

**PROJECT AGREEMENT
(EXECUTION VERSION)**

EAST RAIL MAINTENANCE FACILITY

CONFIDENTIAL

TABLE OF CONTENTS

| | Page |
|--|-------------|
| 1. DEFINITIONS AND INTERPRETATION..... | 2 |
| 1.1 Definitions and Interpretation..... | 2 |
| 1.2 Conflict of Terms..... | 4 |
| 1.3 Conflict of Documents..... | 5 |
| 2. COMMERCIAL CLOSE AND FINANCIAL CLOSE..... | 5 |
| 2.1 Effective Date..... | 5 |
| 2.2 Standby Letter of Credit..... | 5 |
| 2.3 Financial Close..... | 6 |
| 2.4 Disruption in Financial Markets..... | 7 |
| 3. SCOPE OF AGREEMENT..... | 8 |
| 3.1 Scope of Agreement..... | 8 |
| 4. BUSINESS OPPORTUNITIES..... | 8 |
| 4.1 Business Opportunities..... | 8 |
| 5. REPRESENTATIONS AND WARRANTIES..... | 9 |
| 5.1 Project Co Representations and Warranties..... | 9 |
| 5.2 HMQ Agencies’ Representations and Warranties..... | 12 |
| 6. BACKGROUND INFORMATION..... | 15 |
| 6.1 No Liability..... | 15 |
| 6.2 No Warranty..... | 15 |
| 6.3 No Claims..... | 16 |
| 6.4 Technical Reports..... | 16 |
| 7. PROJECT DOCUMENTS..... | 17 |
| 7.1 Project Documents..... | 17 |
| 7.2 Ancillary Documents..... | 17 |
| 7.3 Changes to Lending Agreements and Refinancing..... | 18 |
| 7.4 Compliance with Lending Agreements..... | 18 |
| 8. HMQ AGENCIES’ RESPONSIBILITIES..... | 18 |
| 8.1 General..... | 18 |
| 9. PROJECT CO RESPONSIBILITIES..... | 19 |
| 9.1 Other Business..... | 19 |
| 9.2 General..... | 19 |
| 9.3 Project Co Parties..... | 20 |
| 9.4 Permits, Licences, Approvals and Agreements..... | 20 |
| 9.5 Safety During the Works Phase..... | 22 |
| 9.6 Health and Safety Certification..... | 23 |

TABLE OF CONTENTS
(continued)

| | Page |
|--|-------------|
| 9.7 Additional Works..... | 25 |
| 9.8 Demolition Requirements | 28 |
| 10. REPRESENTATIVES..... | 30 |
| 10.1 The HMQ Representative | 30 |
| 10.2 The Project Co Representative..... | 30 |
| 10.3 Communications to Representatives..... | 31 |
| 10.4 Key Individuals..... | 31 |
| 11. WORKS COMMITTEE | 32 |
| 11.1 Establishment..... | 32 |
| 11.2 Function and Role..... | 33 |
| 11.3 Term of Works Committee | 34 |
| 11.4 Replacement of Committee Members | 34 |
| 11.5 Procedures and Practices..... | 34 |
| 12. FACILITIES MANAGEMENT COMMITTEE | 35 |
| 12.1 Establishment..... | 35 |
| 12.2 Function and Role..... | 36 |
| 12.3 Replacement of Committee Members | 37 |
| 12.4 Procedures and Practices..... | 37 |
| 13. QUALITY MANAGEMENT..... | 38 |
| 14. LICENCE | 39 |
| 14.1 Licence to Site..... | 39 |
| 14.2 Non-exclusive Licence/Development of Site | 40 |
| 14.3 Limited Access Areas | 40 |
| 14.4 Naming and Signage..... | 41 |
| 14.5 No Interest in Land | 41 |
| 14.6 Non-Disturbance Agreement | 41 |
| 15. TITLE ENCUMBRANCES | 41 |
| 15.1 Title Encumbrances | 41 |
| 15.2 No Site Encumbrances..... | 42 |
| 15.3 Construction Lien Act (Ontario)..... | 42 |
| 16. SITE CONDITION..... | 43 |
| 16.1 Acceptance of Site Condition | 43 |
| 16.2 Contamination..... | 44 |
| 16.3 Items of Geological, Historical or Archaeological Interest or Value | 45 |

TABLE OF CONTENTS
(continued)

| | Page |
|---|-------------|
| 17. TOWN OF WHITBY, REGION OF DURHAM AND THIRD PARTY FINANCIAL OBLIGATIONS | 46 |
| 17.1 Town of Whitby, Region of Durham and Third Party Financial Obligations | 46 |
| 17.2 HMQ Agencies’ Financial Obligations | 46 |
| 18. DESIGN AND CONSTRUCTION OBLIGATIONS | 46 |
| 18.1 Overall Responsibility | 46 |
| 18.2 Complete and Operational Facility | 47 |
| 18.3 Development of Design | 47 |
| 18.4 Start-Up Meeting | 49 |
| 18.5 Design Review Meetings and Design Workshops..... | 50 |
| 18.6 [Intentionally Deleted] | 53 |
| 18.7 Performance of Design Obligations..... | 53 |
| 18.8 General Construction Obligations..... | 54 |
| 18.9 Substitutions..... | 55 |
| 18.10 Change in Standards | 55 |
| 18.11 Works Submittals..... | 56 |
| 18.12 Cash Allowance | 56 |
| 18.13 Apprenticeship Plan and Program | 58 |
| 18.14 Procurement Monitoring and Implementation Plan..... | 59 |
| 18.15 External Track Warranty..... | 59 |
| 19. HMQ AGENCIES’ ACCESS AND MONITORING | 61 |
| 19.1 HMQ Agencies’ Access During the Works Phase | 61 |
| 19.2 Right to Use Site by Province Persons | 61 |
| 19.3 Right of Access to Additional Contractors | 62 |
| 19.4 Increased Monitoring | 62 |
| 19.5 Right to Open Up | 62 |
| 19.6 No Relief from Obligations | 63 |
| 20. WORKS SCHEDULE AND WORKS REPORT | 63 |
| 20.1 Completion of Works..... | 63 |
| 20.2 The Works Schedule..... | 63 |
| 20.3 Failure to Maintain Schedule | 65 |
| 20.4 Notification of Early Substantial Completion..... | 66 |
| 20.5 Works Report | 67 |
| 21. EQUIPMENT..... | 67 |
| 21.1 FF&E Steering Committee | 67 |
| 21.2 [INTENTIONALLY DELETED]..... | 68 |
| 21.3 [INTENTIONALLY DELETED]..... | 68 |
| 21.4 HMQ Agencies’ FF&E Responsibilities | 68 |

TABLE OF CONTENTS
(continued)

| | Page |
|---|-------------|
| 21.5 Project Co FF&E Responsibilities | 69 |
| 21.6 Project Co Procurement and Other Responsibilities..... | 70 |
| 21.7 Minimizing Disruption..... | 74 |
| 21.8 Scheduling of FF&E Procurement, Refurbishment and Installation | 74 |
| 21.9 Maintenance of FF&E..... | 74 |
| 22. LEADERSHIP IN ENERGY & ENVIRONMENTAL DESIGN..... | 75 |
| 22.1 LEED Design and Construction Obligations | 75 |
| 22.2 LEED Progress Reports | 75 |
| 22.3 LEED Certification | 75 |
| 22.4 Greenhouse Gas Credits..... | 76 |
| 22.5 Energy Matters..... | 76 |
| 23. INDEPENDENT CERTIFIER | 76 |
| 23.1 Appointment | 76 |
| 23.2 Role of Independent Certifier | 76 |
| 23.3 Changes to Terms of Appointment..... | 77 |
| 23.4 Right to Change Appointment | 77 |
| 23.5 Cooperation..... | 77 |
| 23.6 Payment of Independent Certifier..... | 77 |
| 23.7 Replacement..... | 77 |
| 24. COMMISSIONING AND COMPLETION | 78 |
| 24.1 Commissioning Activities..... | 78 |
| 24.2 Final Commissioning Program | 78 |
| 24.3 Commencement of Project Co Commissioning..... | 79 |
| 24.4 Substantial Completion Certificate..... | 80 |
| 24.5 Operation and Maintenance Manuals | 81 |
| 24.6 HMQ Commissioning..... | 81 |
| 24.7 Countdown Notice | 82 |
| 24.8 Minor Deficiencies..... | 82 |
| 24.9 Rectification of Minor Deficiencies..... | 83 |
| 24.10 Failure to Rectify Minor Deficiencies | 83 |
| 24.11 Final Completion Certificate..... | 84 |
| 24.12 Effect of Certificates/Use..... | 85 |
| 25. PROJECT CO SERVICE OBLIGATIONS..... | 86 |
| 25.1 Overall Responsibility | 86 |
| 25.2 Commencement of Services | 86 |
| 25.3 Coordination and No Disruption..... | 86 |
| 25.4 No Closure of Facility..... | 86 |
| 25.5 Equipment for Project Co Services..... | 86 |

TABLE OF CONTENTS
(continued)

| | Page |
|---|-------------|
| 26. MAINTENANCE..... | 86 |
| 26.1 Maintenance Plans | 86 |
| 26.2 Revisions to Preventive Maintenance Plan..... | 87 |
| 26.3 HMQ Change in Timing | 88 |
| 26.4 Unscheduled Maintenance..... | 88 |
| 26.5 Emergency Maintenance Work..... | 88 |
| 26.6 Other Maintenance Work..... | 89 |
| 26.7 Plant Services Information Management System..... | 89 |
| 26.8 Performance Audits | 89 |
| 27. HUMAN RESOURCES | 91 |
| 27.1 Intentionally Deleted..... | 91 |
| 27.2 Intentionally Deleted..... | 91 |
| 27.3 Intentionally Deleted..... | 91 |
| 27.4 Admittance of Personnel..... | 91 |
| 27.5 Confirmation of Action..... | 91 |
| 27.6 Notification of Personnel | 91 |
| 27.7 Finality as to Admission | 91 |
| 27.8 Adherence to Project Co HR Policy | 91 |
| 27.9 Change in HR Policy Requirements | 91 |
| 27.10 Intentionally Deleted..... | 92 |
| 27.11 Staff Competency..... | 92 |
| 27.12 Convictions | 93 |
| 27.13 Effect of Convictions | 93 |
| 27.14 Notification of Convictions..... | 93 |
| 27.15 Disciplinary Action..... | 93 |
| 27.16 Human Resources Policies..... | 94 |
| 27.17 Management Organizations | 94 |
| 27.18 Orientation Procedure | 94 |
| 28. GOODS, EQUIPMENT, CONSUMABLES AND MATERIALS..... | 94 |
| 28.1 Standards..... | 94 |
| 28.2 Hazardous Substances and Materials..... | 95 |
| 28.3 Change in Hazardous Materials Policies | 97 |
| 29. MONITORING | 97 |
| 29.1 Monitoring of Performance..... | 97 |
| 29.2 Failure Points | 98 |
| 29.3 Warning Notices | 98 |
| 29.4 Monitoring Notices | 99 |
| 30. HMQ AGENCIES’ REMEDIAL RIGHTS..... | 101 |
| 30.1 Exercise of Remedial Rights..... | 101 |

TABLE OF CONTENTS
(continued)

| | Page |
|--|-------------|
| 30.2 Emergency | 103 |
| 30.3 Rectification | 103 |
| 30.4 Costs and Expenses | 104 |
| 30.5 Reimbursement Events | 105 |
| 30.6 Reimbursement if Improper Exercise of Rights | 105 |
| 31. PAYMENT | 106 |
| 31.1 Lump Sum Payments | 106 |
| 31.2 Monthly Service Payments | 106 |
| 31.3 Payment Adjustments | 106 |
| 31.4 Payment Commencement | 107 |
| 31.5 Adjustments to Payment Periods | 107 |
| 31.6 Invoicing and Payment Arrangements | 107 |
| 31.7 Electronic Invoicing | 109 |
| 31.8 Final Payment Periods | 110 |
| 31.9 Disputes | 110 |
| 31.10 Payments | 111 |
| 31.11 Manner of Payment | 111 |
| 31.12 Intentionally Deleted | 111 |
| 31.13 Set-Off | 111 |
| 31.14 Effect of Payment | 112 |
| 31.15 Audit of Performance of Project Operations | 112 |
| 31.16 No Other Entitlement | 113 |
| 32. TAXES | 113 |
| 32.1 Taxes | 113 |
| 32.2 Changes in Scope of Taxation | 114 |
| 32.3 Changes in Recoverability of Tax Credits | 114 |
| 32.4 Information and Assistance Provided by Project Co | 115 |
| 32.5 Residency — <i>Income Tax Act</i> (Canada) | 115 |
| 32.6 Taxes - General | 115 |
| 32.7 Taxes - Indemnity | 115 |
| 33. FINANCIAL MODEL | 116 |
| 33.1 Appointment of Custodian | 116 |
| 33.2 Delivery and Use of Financial Model | 116 |
| 34. RECORDS, INFORMATION AND AUDIT | 117 |
| 34.1 Records Provisions | 117 |
| 34.2 Information and General Audit Rights | 117 |
| 35. CHANGES IN LAW | 119 |
| 35.1 Performance after Change in Law | 119 |

TABLE OF CONTENTS
(continued)

| | Page |
|---|-------------|
| 35.2 Works Change in Law | 119 |
| 35.3 Relevant Change in Law | 120 |
| 36. VARIATIONS | 122 |
| 36.1 Variation Procedure | 122 |
| 36.2 Innovation and Value Engineering | 122 |
| 37. DELAY EVENTS..... | 125 |
| 37.1 Definition | 125 |
| 37.2 Consequences of a Delay Event..... | 126 |
| 37.3 Mitigation..... | 127 |
| 38. COMPENSATION EVENTS | 128 |
| 38.1 Definition | 128 |
| 38.2 Consequences of a Compensation Event | 128 |
| 38.3 Mitigation..... | 128 |
| 38.4 Insured Exposure | 129 |
| 39. EXCUSING CAUSES..... | 129 |
| 39.1 Definition | 129 |
| 39.2 Consequences of an Excusing Cause | 131 |
| 39.3 Mitigation..... | 132 |
| 39.4 Insured Exposure | 132 |
| 40. RELIEF EVENTS..... | 132 |
| 40.1 Definition | 132 |
| 40.2 Consequences of a Relief Event | 133 |
| 40.3 Mitigation and Process..... | 134 |
| 40.4 Insured Exposure | 135 |
| 41. FORCE MAJEURE..... | 135 |
| 41.1 Definition | 135 |
| 41.2 Consequences of Force Majeure..... | 136 |
| 41.3 Mitigation and Process..... | 136 |
| 41.4 Insured Exposure | 137 |
| 41.5 Modifications | 137 |
| 42. PROJECT CO DEFAULT..... | 138 |
| 42.1 Project Co Events of Default | 138 |
| 42.2 Notification of Occurrence | 143 |
| 42.3 Right to Termination..... | 143 |
| 42.4 Remedy Provisions | 143 |
| 42.5 Replacement of Non-Performing Service Provider | 145 |

TABLE OF CONTENTS
(continued)

| | Page |
|------------|---|
| 42.6 | HMQ Agencies' Costs 146 |
| 42.7 | No other Rights to Terminate 146 |
| 43. | HMQ DEFAULT 146 |
| 43.1 | HMQ Events of Default 146 |
| 43.2 | Project Co's Options 147 |
| 43.3 | Project Co's Costs 147 |
| 43.4 | No Other Rights to Terminate 148 |
| 44. | RELIEF EVENT AND NON-DEFAULT TERMINATION 148 |
| 44.1 | Termination for Relief Event 148 |
| 44.2 | Termination for Force Majeure 148 |
| 44.3 | Termination for Convenience 148 |
| 44.4 | Automatic Expiry on Expiry Date 149 |
| 45. | EFFECT OF TERMINATION 149 |
| 45.1 | Termination 149 |
| 45.2 | Continued Effect - No Waiver 149 |
| 45.3 | Continuing Performance 149 |
| 45.4 | Effect of Notice of Termination 149 |
| 45.5 | Ownership of Information 152 |
| 45.6 | Provision in Subcontracts 152 |
| 45.7 | Transitional Arrangements 152 |
| 45.8 | Termination upon Aforesaid Transfer 153 |
| 45.9 | Survival 153 |
| 46. | COMPENSATION ON TERMINATION 154 |
| 46.1 | Compensation on Termination 154 |
| 46.2 | Full and Final Settlement 154 |
| 47. | EXPIRY TRANSITION PROCEDURE 155 |
| 47.1 | Expiry Transition 155 |
| 48. | INTELLECTUAL PROPERTY 155 |
| 48.1 | Representation and Warranty 155 |
| 48.2 | Delivery of Project Data and Intellectual Property Rights 155 |
| 48.3 | Licence of Project Data and Intellectual Property Rights 155 |
| 48.4 | Jointly Developed Materials 156 |
| 48.5 | Maintenance of Data 157 |
| 48.6 | Claims 157 |
| 48.7 | HMQ Trade-Marks 157 |
| 48.8 | Confidential Information 158 |
| 48.9 | Government Use of Documents 158 |

TABLE OF CONTENTS
(continued)

| | Page |
|--|-------------|
| 48.10 Restrictions | 158 |
| 49. CONFIDENTIALITY / COMMUNICATIONS | 158 |
| 49.1 Disclosure | 158 |
| 49.2 Redaction | 159 |
| 49.3 Disclosure to Government | 159 |
| 49.4 Freedom of Information and Protection of Privacy Act | 160 |
| 49.5 Use and Disclosure of Confidential Information | 160 |
| 49.6 Exceptions..... | 161 |
| 49.7 Survival of Confidentiality | 162 |
| 49.8 Communications Protocol..... | 162 |
| 50. PERSONAL INFORMATION | 162 |
| 50.1 General..... | 162 |
| 50.2 Protection of Personal Information..... | 163 |
| 50.3 Conflict and Survival | 164 |
| 51. INSURANCE AND PERFORMANCE SECURITY..... | 164 |
| 51.1 General Requirements..... | 164 |
| 51.2 No Relief from Liabilities and Obligations | 164 |
| 52. TITLE | 164 |
| 52.1 Title..... | 164 |
| 53. INDEMNITIES | 165 |
| 53.1 Project Co Indemnities to HMQ Agencies | 165 |
| 53.2 HMQ Agencies’ Indemnities to Project Co | 167 |
| 53.3 Conduct of Claims | 168 |
| 53.4 Mitigation - Indemnity Claims..... | 170 |
| 54. LIMITS ON LIABILITY | 171 |
| 54.1 Indirect Losses | 171 |
| 54.2 No Liability in Tort..... | 171 |
| 54.3 Sole Remedy | 171 |
| 54.4 Maximum Liability | 172 |
| 55. DISPUTE RESOLUTION PROCEDURE | 172 |
| 56. ASSIGNMENT, SUBCONTRACTING AND CHANGES IN CONTROL | 172 |
| 56.1 Project Co Assignment | 172 |
| 56.2 HMQ Agencies Assignment | 173 |
| 56.3 Subcontractors..... | 174 |
| 56.4 Changes in Ownership and Control | 174 |

TABLE OF CONTENTS
(continued)

| | Page |
|---|-------------|
| 56.5 HMQ Agencies' Due Diligence..... | 175 |
| 57. PROHIBITED ACTS | 175 |
| 57.1 Definition | 175 |
| 57.2 Remedies..... | 176 |
| 57.3 Permitted Payments | 178 |
| 57.4 Notification | 178 |
| 57.5 Replacement of Project Co Party..... | 178 |
| 58. NOTICES..... | 178 |
| 58.1 Notices to Parties | 178 |
| 58.2 Notices to Representatives..... | 179 |
| 58.3 Facsimile..... | 180 |
| 58.4 Change of Address..... | 180 |
| 58.5 Deemed Receipt of Notices | 180 |
| 58.6 Service on HMQ Agencies | 181 |
| 59. HMQ AGENCIES' DESIGNATE..... | 181 |
| 59.1 Right to Designate..... | 181 |
| 60. GENERAL..... | 181 |
| 60.1 Amendments | 181 |
| 60.2 Waiver..... | 181 |
| 60.3 Relationship Between the Parties..... | 182 |
| 60.4 General Duty to Mitigate | 182 |
| 60.5 Actual Knowledge | 183 |
| 60.6 Entire Agreement..... | 183 |
| 60.7 No Reliance..... | 183 |
| 60.8 Severability | 183 |
| 60.9 Enurement | 184 |
| 60.10 Governing Law and Jurisdiction..... | 184 |
| 60.11 Cumulative Remedies | 184 |
| 60.12 Further Assurance | 184 |
| 60.13 Costs..... | 184 |
| 60.14 Language of Agreement..... | 184 |
| 60.15 Proof of Authority..... | 185 |
| 60.16 Counterparts..... | 185 |
| 60.17 Government Entities and Province Persons as Third Party Beneficiaries | 185 |

SCHEDULES

| | | |
|-------------|---|---|
| Schedule 1 | - | Definitions and Interpretation |
| Schedule 2 | - | Completion Documents |
| Schedule 3 | - | Custody Agreement |
| Schedule 4 | - | Lenders' Direct Agreement |
| Schedule 5 | - | Direct Agreements |
| Schedule 6 | - | Independent Certifier Agreement |
| Schedule 7 | - | [Intentionally Deleted] |
| Schedule 8 | - | Energy Matters |
| Schedule 9 | - | Key Individuals |
| Schedule 10 | - | Review Procedure |
| Schedule 11 | - | Quality Management |
| Schedule 12 | - | [Intentionally Deleted] |
| Schedule 13 | - | Project Co Proposal Extracts |
| Schedule 14 | - | Outline Commissioning Program |
| Schedule 15 | - | Output Specifications |
| Schedule 16 | - | Title Encumbrances |
| Schedule 17 | - | [Intentionally Deleted] |
| Schedule 18 | - | Communications Protocol |
| Schedule 19 | - | Procurement Monitoring and Implementation Plan |
| Schedule 20 | - | Payment Mechanism |
| Schedule 21 | - | FF&E List |
| Schedule 22 | - | Variation Procedure |
| Schedule 23 | - | Compensation on Termination |
| Schedule 24 | - | Expiry Transition Procedure |
| Schedule 25 | - | Insurance and Performance Security Requirements |
| Schedule 26 | - | Record Provisions |
| Schedule 27 | - | Dispute Resolution Procedure |
| Schedule 28 | - | Refinancing |
| Schedule 29 | - | Standby Letter of Credit |
| Schedule 30 | - | Insurance Trust Agreement |
| Schedule 31 | - | Project Co Information |
| Schedule 32 | - | Financial Model Extracts |
| Schedule 33 | - | Works Report Requirements |
| Schedule 34 | - | Project Co HR Policy Requirements |

THIS PROJECT AGREEMENT is made as of the • day of •, 2015.

BETWEEN:

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

AND:

METROLINX, a non-share capital corporation continued under the *Metrolinx Act, 2006*, S.O. 2006, c.16 and a Crown agency in accordance with the *Crown Agency Act*, R.S.O. 1990, c.48

(collectively, “**HMQ Agencies**”)

AND:

PLENARY INFRASTRUCTURE ERMF GP, a general partnership formed under the laws of Ontario

(“**Project Co**”)

WHEREAS:

- A. HMQ Agencies wish to procure a new rail maintenance facility that will provide additional train storage and maintenance capacity to support GO Transit’s continued expansion and growth.
- B. Project Co will provide the Project Operations, which Project Operations include the design, construction, financing and maintenance of the Facility (the “**Project**”).
- C. HMQ Agencies and Project Co wish to enter into this project agreement (the “**Project Agreement**”), which sets out the terms and conditions upon which Project Co shall perform the Project Operations.
- D. The Project will proceed as an alternative financing and procurement project under MEDEI’s *ReNew Ontario* infrastructure investment plan, and complies with the principles set out in MEDEI’s *Building a Better Tomorrow: An Infrastructure Planning, Financing and Procurement Framework for Ontario’s Public Sector* (the “**IPFP Framework**”).
- E. The IPFP Framework establishes 5 fundamental principles which guide the financing and procurement of public infrastructure projects in Ontario:

1. The public interest is paramount.
 2. Value for money must be demonstrable.
 3. Appropriate public control/ownership must be preserved.
 4. Accountability must be maintained.
 5. All processes must be fair, transparent and efficient.
- F. The IPFP Framework states that, consistent with the principle of appropriate public ownership/control, public ownership of assets will be preserved in the public sector.
- G. With a view to ensuring that the Parties are able to properly and effectively discharge their respective duties, functions and responsibilities under Applicable Law, it is the intent that HMQ Agencies and Project Co work collaboratively, responsibly and cooperatively throughout the Project Term.
- H. HMQ Agencies intend be liable, on a joint and several basis, for all of the obligations of HMQ Agencies pursuant to this Project Agreement, save and except as provided for in this Project Agreement.

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

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions and Interpretation

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

| Schedule No. | Description |
|---------------------|-----------------------------------|
| Schedule 1 | - Definitions and Interpretation |
| Schedule 2 | - Completion Documents |
| Schedule 3 | - Custody Agreement |
| Schedule 4 | - Lenders' Direct Agreement |
| Schedule 5 | - Direct Agreements |
| Schedule 6 | - Independent Certifier Agreement |
| Schedule 7 | - [Intentionally Deleted] |
| Schedule 8 | - Energy Matters |
| Schedule 9 | - Key Individuals |

| Schedule No. | Description |
|---------------------|---|
| Schedule 10 | - Review Procedure |
| Schedule 11 | - Quality Management |
| Schedule 12 | - [Intentionally Deleted] |
| Schedule 13 | - Project Co Proposal Extracts |
| Schedule 14 | - Outline Commissioning Program |
| Schedule 15 | - Output Specifications |
| Schedule 16 | - Title Encumbrances |
| Schedule 17 | - [Intentionally Deleted] |
| Schedule 18 | - Communications Protocol |
| Schedule 19 | - Procurement Monitoring and Implementation Plan |
| Schedule 20 | - Payment Mechanism |
| Schedule 21 | - FF&E List |
| Schedule 22 | - Variation Procedure |
| Schedule 23 | - Compensation on Termination |
| Schedule 24 | - Expiry Transition Procedure |
| Schedule 25 | - Insurance and Performance Security Requirements |
| Schedule 26 | - Record Provisions |
| Schedule 27 | - Dispute Resolution Procedure |
| Schedule 28 | - Refinancing |
| Schedule 29 | - Standby Letter of Credit |
| Schedule 30 | - Insurance Trust Agreement |
| Schedule 31 | - Project Co Information |
| Schedule 32 | - Financial Model Extracts |
| Schedule 33 | - Works Report Requirements |
| Schedule 34 | - Project Co HR Policy Requirements |

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

- (f) Unless it is specifically provided that a consent, approval or satisfaction is in the sole discretion of Project Co, no consent, approval or satisfaction of Project Co or the Project Co Representative shall be unreasonably withheld or delayed.

1.2 Conflict of Terms

- (a) In the event of ambiguities, conflicts or inconsistencies between or among any of the provisions of this Project Agreement, the provisions shall govern in the following order of precedence with each taking precedence over those listed subsequently:
- (i) the provisions of amendments in writing to this Project Agreement signed by the Parties and Variation Confirmations shall govern and take precedence only over those specific provisions of this Project Agreement expressly amended thereby;
 - (ii) any provision establishing a higher standard of safety, reliability, durability, performance or service shall take precedence over a provision establishing a lower standard of safety, reliability, durability, performance or service;
 - (iii) the body of this Project Agreement;
 - (iv) Schedule 1 Definitions and Interpretation;
 - (v) Schedule 27 Dispute Resolution Procedure;
 - (vi) Schedule 20 Payment Mechanism;
 - (vii) Schedule 21 FF&E List
 - (viii) Schedule 15 Output Specifications;
 - (ix) Schedule 25 Insurance and Performance Security Requirements;
 - (x) Schedule 22 Variation Procedure;
 - (xi) Schedule 10 Review Procedure;
 - (xii) Schedule 14 Outline Commissioning Program;
 - (xiii) Schedule 11 Quality Management
 - (xiv) Schedule 28 Refinancing;
 - (xv) Schedule 23 Compensation on Termination;
 - (xvi) Schedule 26 Record Provisions;
 - (xvii) Schedule 24 Expiry Transition Procedure;

- (xviii) the other Schedules in the order in which they are listed in Section 1.1(b); and
- (xix) Schedule 13 Project Co Proposal Extracts.
- (b) Subject to Section 1.2(a), if the ambiguity, conflict or inconsistency is between a provision of general application and a provision that applies only to a specific part of the Project Operations, the provision that applies to the specific part of the Project Operations shall govern for that specific part of the Project Operations.
- (c) If any ambiguity, conflict or inconsistency is not readily resolved by the foregoing provisions of this Section 1.2, then Project Co or HMQ Agencies, upon discovery of same, shall immediately give notice to the HMQ Representative. The HMQ Representative shall, within 10 Business Days after such notice, make a determination of which provision governs and give notice of such determination, in writing, to Project Co.
- (d) HMQ Agencies and Project Co shall comply with the determination of the HMQ Representative pursuant to this Section 1.2 unless HMQ Agencies or Project Co dispute the decision of the HMQ Representative in which event such Dispute may be referred for resolution in accordance with Schedule 27 - Dispute Resolution Procedure.

1.3 Conflict of Documents

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

2. COMMERCIAL CLOSE AND FINANCIAL CLOSE

2.1 Effective Date

- (a) The provisions of Sections 1 to 11, 13, 15 to 23, 27, 28, 32, 34 to 36 and 48 to 60, and Schedules 1 to 3, 9 to 11, 13, 16 to 19, 21, 22, 25 to 27 and 29 will come into effect on the date of this Project Agreement. All other provisions of this Project Agreement will come into effect only on Financial Close. The provisions of this Project Agreement will terminate on the Termination Date.

2.2 Standby Letter of Credit

- (a) On the date of this Project Agreement, Project Co shall deliver, or cause to be delivered, to HMQ Agencies an irrevocable standby letter of credit (the "**Standby Letter of Credit**") in the amount of [REDACTED] substantially in the form of Schedule 29 - Standby Letter of Credit. Project Co may, with the consent of HMQ Agencies, which consent may be withheld in the sole discretion of HMQ Agencies, provide multiple irrevocable standby letters of credit delivered from The Toronto-Dominion Bank as approved and confirmed by HMQ Agencies (each a "**Letter of Credit Provider**") in an amount totalling [REDACTED] and each substantially in the form of Schedule 29 –

Standby Letter of Credit. For the purposes of this Section 2.2, each of the multiple irrevocable standby letters of credit is referred to as a Standby Letter of Credit.

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

2.3 Financial Close

- (a) No later than 30 days prior to the Financial Close Target Date, Project Co will deliver to HMQ Agencies drafts of all documents referred to in Section 1 of Schedule 2 - Completion Documents.
- (b) On or before the Financial Close Target Date:
 - (i) Project Co shall deliver to HMQ Agencies the documents referred to in Section 1 of Schedule 2 - Completion Documents; and
 - (ii) HMQ Agencies shall deliver to Project Co the documents referred to in Section 2 of Schedule 2 - Completion Documents.

- (c) If Project Co fails to deliver to HMQ Agencies any of the documents referred to in Section 1 of Schedule 2 - Completion Documents by the Financial Close Target Date (other than as a direct result of a breach by HMQ Agencies of their obligations under Section 2.3(b)(ii)) and HMQ Agencies do not waive such requirement, HMQ Agencies will be entitled to draw on the Standby Letter of Credit, in full or in part, to retain the proceeds thereof as liquidated damages and may terminate this Project Agreement in its entirety by written notice having immediate effect. The Parties agree that such liquidated damages are not a penalty but represent a genuine and reasonable pre-estimate of the damages that HMQ Agencies will suffer as a result of the happening of the specified event and would be difficult or impossible to quantify such damages upon the happening of the specified event. Such payment shall constitute full and final settlement of any and all damages that may be claimed by HMQ Agencies as a result of Project Co not achieving Financial Close. The Parties agree that such liquidated damages shall be payable whether or not HMQ Agencies incur or mitigate its damages, and that HMQ Agencies shall not have any obligation to mitigate any such damages.
- (d) As contemplated under Section 10.3.2 of the Request for Proposals, Project Co shall, no later than 10 days following written instruction from HMQ Agencies given on or after Financial Close, pay the Design and Bid Fee amount plus, for clarity, any applicable HST to each of the eligible unsuccessful Proponents (as that term is defined in the Request for Proposals), as directed by HMQ Agencies. If Project Co is directed to pay the Design and Bid Fee to fewer than two Proponents, then Project Co shall revise the Financial Model prior to Financial Close to reflect such change.
- (e) If HMQ Agencies fail to deliver to Project Co any of the documents referred to in Section 2 of Schedule 2 - Completion Documents by the Financial Close Target Date (other than as a direct result of a breach by Project Co of its obligations under Section 2.3(b)(i)) and Project Co does not waive such requirement, Project Co will be entitled to the return of the Standby Letter of Credit and to terminate this Project Agreement in its entirety by written notice having immediate effect.

2.4 Disruption in Financial Markets

- (a) If Financial Close cannot be achieved by the Financial Close Target Date by reason solely of a Severe Market Disruption, subject to Project Co's obligation to renew the Standby Letter of Credit, pursuant to Section 2.2, the Financial Close Target Date will be extended until the date falling 10 Business Days (or such other period as the Parties agree, acting reasonably) after the date on which such Severe Market Disruption ceases.
- (b) If a Severe Market Disruption exists, then, at any time before such Severe Market Disruption ceases and prior to Financial Close, HMQ Agencies may in their sole discretion either:
- (i) terminate this Project Agreement in its entirety by written notice having immediate effect; or
 - (ii) direct Project Co to assign to HMQ Agencies and HMQ Agencies will 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 HMQ Agencies elect to be assigned.
- (c) If HMQ Agencies exercise their rights pursuant to Section 2.4(b), and, provided Project Co has, if directed, delivered the assignments provided for in (ii)(A) and (B) above, Project Co will be entitled to the return of its Standby Letter of Credit and to payment of an amount equal to the Design and Bid Fee pursuant to Section 10.3.2 of the Request for Proposals [REDACTED]. HMQ Agencies' obligation to return the Standby Letter of Credit and to pay such fee shall be contingent on the receipt of a waiver, in form and substance satisfactory to HMQ Agencies, that such fee represents full and final satisfaction of any obligation or liability of HMQ Agencies, the Government of Ontario and any other Government Entity to Project Co and any Project Co Parties in connection with the Project Agreement and the Request for Proposals.

3. SCOPE OF AGREEMENT

3.1 Scope of Agreement

- (a) Project Co shall undertake the Project and perform the Project Operations in accordance with and subject to the provisions of this Project Agreement.
- (b) Project Co shall exercise its rights and perform its obligations at its own cost and risk without recourse to HMQ Agencies, except as otherwise provided in this Project Agreement. Project Co's sole recourse to Metrolinx with respect to the subject matter of this Project Agreement shall be to Metrolinx in its capacity as agent of the Province.

4. BUSINESS OPPORTUNITIES

4.1 Business Opportunities

- (a) Project Co acknowledges that HMQ Agencies reserve the right to all commercial and other opportunities (including, for greater certainty, all retail operations) in the Facility and at the Site ("**Business Opportunities**"). HMQ Agencies may, as set out in this Project Agreement, grant rights in the Business Opportunities to Project Co.
- (b) To encourage the development of Business Opportunities, Project Co may, from time to time, propose Business Opportunities for HMQ Agencies' consideration. All such proposals shall describe the Business Opportunity in full with the expected financial and other advantages to HMQ Agencies and Project Co. HMQ Agencies may accept any such proposal in their sole discretion and subject to such terms and conditions as HMQ Agencies may require.

- (c) Notwithstanding that Project Co has proposed a Business Opportunity to HMQ Agencies for their consideration, Project Co acknowledges that HMQ Agencies reserve the right to proceed with such Business Opportunity or any similar Business Opportunity with Project Co or with any third party, and may initiate a separate procurement process for the development of any Business Opportunity.

5. REPRESENTATIONS AND WARRANTIES

5.1 Project Co Representations and Warranties

- (a) Project Co represents and warrants to HMQ Agencies that as of the date of this Project Agreement:
- (i) Project Co is a partnership formed and validly existing under the laws of the Province of Ontario, and has all the requisite power and authority to own its properties and assets, to carry on its business as it is currently being conducted, and to enter into this Project Agreement and to perform its obligations hereunder;
 - (ii) **[REDACTED]**;
 - (iii) **[REDACTED]** is a company incorporated and validly existing under the laws of the Province of British Columbia, is in good standing with the British Columbia Ministry of Finance, Corporate Registry with respect to filing of annual reports, and has all the requisite corporate power and authority to own its properties and assets, to carry on its business as it is currently being conducted, and to enter into this Project Agreement and to perform its obligations hereunder in its capacity as a partner of Project Co;
 - (iv) **[REDACTED]** is a company incorporated and validly existing under the laws of the Province of British Columbia, is in good standing with the British Columbia Ministry of Finance, Corporate Registry with respect to the filing of annual reports, and has all the requisite corporate power and authority to own its properties and assets, to carry on its business as it is currently being conducted and to enter into this Project Agreement and to perform its obligations hereunder in its capacity as a partner of Project Co;
 - (v) **[REDACTED]** is a limited partnership and validly existing under the laws of the Province of Ontario;
 - (vi) **[REDACTED]** is a company incorporated and validly existing under the laws of the Province of Ontario in good standing with respect to the filing of annual reports, and has all the requisite corporate power and authority to own its properties and assets to carry on its business as it is currently being conducted, and to enter into this Project Agreement and to perform its obligations hereunder on behalf of **[REDACTED]** , in its capacity as a partner of Project Co;

- (vii) Project Co and the Project Co Parties, collectively, have extensive experience and are knowledgeable in the design, construction and maintenance of maintenance and storage facilities and have the required ability, experience, skill and capacity to perform the Project Operations in a timely and professional manner as set out in this Project Agreement;
- (viii) Each of [REDACTED] has the requisite power, authority and capacity to execute and 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;
- (ix) 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;
- (x) 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;
- (xi) 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) the partnership agreement of Project Co;
 - (B) the constating, or organizational documents, of any of the Partners or, in the case of [REDACTED];
 - (C) any Applicable Law; or
 - (D) any covenant, contract, agreement, or understanding to which it is a party or by which it or any of its properties or assets is bound or affected;
- (xii) no Project Co Event of Default has occurred and is continuing;
- (xiii) all of the information regarding Project Co set out in Schedule 31 – Project Co Information is true and correct in all material respects;

- (xiv) 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;
- (xv) Project Co has carefully reviewed the whole of this Project Agreement, and all other documents made available to Project Co by or on behalf of HMQ Agencies, and, to Project Co's knowledge, nothing contained herein or therein inhibits or prevents Project Co from completing the Works or performing the Project Operations in accordance with this Project Agreement in a good and safe manner so as to achieve and satisfy the requirements of this Project Agreement;
- (xvi) After giving effect to Financial Close, Project Co will be able to meet its obligations as they generally become due;
- (xvii) Project Co is registered under Division V of Part IX of the *Excise Tax Act*, R.S.C. 1985, c.E-15, and its HST registration number is [REDACTED];
- (xviii) the Scheduled Substantial Completion Date is a realistic date and is achievable by Project Co performing the Works in accordance with this Project Agreement;
- (xix) Project Co is not a Non-Resident;
- (xx) to the knowledge of Project Co, after due inquiry, 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;
- (xxi) to the knowledge of Project Co, after due inquiry, no Restricted Person has, directly or indirectly, an Economic Interest in Project Co or the Project;
- (xxii) the Construction Contractor is in possession of, the Health and Safety Certification as required under this Project Agreement (or has made an application to IHSA for its Health and Safety Certification as required under this Project Agreement) and has the ability to maintain such Health and Safety Certification through to Final Completion in accordance with its terms, provisions and conditions; and
- (xxiii) at Substantial Completion, the Service Provider will be in possession of, the Health and Safety Certification as required under the Project Agreement, and the Service Provider will have the ability to maintain such Healthy and Safety

Certification from the date of Substantial Completion for the duration of the Project Term in accordance with its terms, provisions and conditions.

5.2 HMQ Agencies' Representations and Warranties

- (a) HMQ represents and warrants to Project Co, on a several basis, that as of the date of this Project Agreement:
- (i) IO is a non-share capital corporation continued and amalgamated under the *Ontario Infrastructure and Lands Corporation Act, 2011*, S.O. 2011, c.9, Schedule 32, as amended, and has all the requisite corporate power and authority to own its properties and assets, to carry on its business as it is currently being conducted, and to enter into this Project Agreement as agent for the Province;
 - (ii) subject to Sections 5.2(a)(v)(C), 5.2(a)(v)(D), 5.2(a)(v)(E) and 5.2(a)(v)(F), IO is entering into this Project Agreement as agent for the Province and has the requisite power, authority and capacity to execute and deliver this Project Agreement and to bind the Province to this Project Agreement, and Project Co is entitled to rely upon IO's authority to bind the Province in respect of all other agreements, instruments, undertakings and documents executed and delivered by IO as agent for the Province that are required by this Project Agreement to be executed and delivered by the Province;
 - (iii) subject to Sections 5.2(a)(v)(C), 5.2(a)(v)(D), 5.2(a)(v)(E) and 5.2(a)(v)(F), HMQ has the requisite power, authority and capacity to perform its obligations under this Project Agreement, and to do all acts and things, and execute, deliver and perform all other agreements, instruments, undertakings and documents as are required by this Project Agreement to be done, executed, delivered or performed;
 - (iv) IO has obtained all necessary approvals to enter into this Project Agreement as agent for the Province;
 - (v) this Project Agreement has been duly authorized, executed, and delivered by HMQ and constitutes a legal, valid, and binding obligation of HMQ, enforceable against HMQ in accordance with its terms, subject only to:
 - (A) limitations with respect to the enforcement of remedies by bankruptcy, insolvency, moratorium, winding-up, arrangement, reorganization, fraudulent preference and conveyance and other laws of general application affecting the enforcement of creditors' rights generally;
 - (B) general equitable principles and the fact that the availability of equitable remedies such as specific performance and injunction are not available against the Province and that a court may stay proceedings or the execution of judgments;

- (C) statutory limitations of general application respecting the enforceability of claims against the Province or its property;
 - (D) Section 11.3 of the *Financial Administration Act*, R.S.O. 1990, c.F.12;
 - (E) any terms and conditions set out in the approval that has been provided in connection with this Project Agreement for the purposes of Section 28 of the *Financial Administration Act*, R.S.O. 1990, c.F.12.; and
 - (F) the powers of the Minister of Finance to effect set offs against amounts owing by Ontario pursuant to Section 43 of the *Financial Administration Act*, R.S.O. 1990, c. F.12; and
- (vi) the execution, delivery, and performance by HMQ of this Project Agreement does not and will not violate or conflict with, or constitute a default under:
- (A) the *Ontario Infrastructure and Lands Corporation Act, 2011*, S.O. 2011, c.9, Schedule 32, as amended, or any regulations made in respect thereof;
 - (B) the *Executive Council Act*, R.S.O. 1990, c.E.25;
 - (C) any Applicable Law; or
 - (D) any covenant, contract, agreement, or understanding relating to the Project or the Site to which it is a party or by which it or any of its properties or assets is bound or affected.
- (b) Metrolinx represents and warrants to Project Co, on a several basis, that as of the date of this Project Agreement:
- (i) Metrolinx is a non-share capital corporation continued under the *Metrolinx Act, 2006*, S.O. 2006, c.16, and has all of the requisite corporate power and authority to own its properties and assets, to carry on its business as it is currently being conducted, and to enter into this Project Agreement as agent for the Province and is entering into this Project Agreement as a Crown agency in accordance with Section 3 of the *Metrolinx Act, 2006*, S.O. 2006, c.16;
 - (ii) subject to Sections 5.2(b)(v)(C), 5.2(b)(v)(D) and 5.2(b)(v)(E), Metrolinx is entering into this Project Agreement in its own name as agent for the Province and has the requisite power, authority and capacity to execute and deliver this Project Agreement and to bind itself personally, and to bind the Province to this Project Agreement subject to the provisions of the *Metrolinx Act, 2006*, including without limitation section 35, and Project Co is entitled to rely upon Metrolinx's authority to bind itself and the Province on such basis in respect of all other agreements, instruments, undertakings and documents executed and delivered by Metrolinx as agent for the Province that are required by this Project Agreement to be executed and delivered by Metrolinx;

- (iii) subject to Sections 5.2(b)(v)(C), 5.2(b)(v)(D) and 5.2(b)(v)(E), Metrolinx has the requisite power, authority and capacity to perform its obligations under this Project Agreement and to do all acts and things, and execute, deliver and perform all other agreements, instruments, undertakings and documents as are required by this Project Agreement to be done, executed, delivered or performed;
- (iv) Metrolinx has obtained all necessary approvals to enter into this Project Agreement as agent for the Province;
- (v) this Project Agreement has been duly authorized, executed, and delivered by Metrolinx and constitutes a legal, valid, and binding obligation of Metrolinx and the Province, enforceable against Metrolinx and the Province in accordance with its terms, subject only to:
 - (A) limitations with respect to the enforcement of remedies by bankruptcy, insolvency, moratorium, winding-up, arrangement, reorganization, fraudulent preference and conveyance and other laws of general application affecting the enforcement of creditors' rights generally;
 - (B) general equitable principles and the fact that the availability of equitable remedies such as specific performance and injunction may not be available against Metrolinx and the Province and that a court may stay proceedings or the execution of judgments;
 - (C) statutory limitations of general application respecting the enforceability of claims against Metrolinx or the Province or the property of Metrolinx or the Province;
 - (D) any terms and conditions as are set out in the approval that has been provided in connection with this Project Agreement for the purposes of Section 28 of the *Financial Administration Act*, R.S.O. 1990, c.F.12; and
 - (E) with regard to the enforceability of the Project Agreement against the Province, section 35 of the *Metrolinx Act, 2006* and the powers of the Minister of Finance to effect set offs against amounts owing by the Province pursuant to Section 43 of the *Financial Administration Act*, R.S.O. 1990, c.F.12;
- (vi) the execution, delivery, and performance by Metrolinx of this Project Agreement does not and will not violate or conflict with, or constitute a default under:
 - (A) the *Metrolinx Act, 2006*, S.O. 2006, c.16, or any regulations made in respect thereof;
 - (B) any Applicable Law; or

- (C) any covenant, contract, agreement, or understanding relating to the Project or the Site to which it is a party or by which it or any of its properties or assets is bound or affected;
- (vii) Metrolinx has rights of use and access to, on and over the Site and has or will have the requisite power to obtain such rights that are sufficient to enable HMQ Agencies to grant or cause to be granted to Project Co the rights contemplated in Section 14.1; and
- (viii) Metrolinx is or will be the registered owner of, and has or will have good title in fee simple to the Site (save and except the Town and Region Works Lands), subject only to the Title Encumbrances.
- (c) HMQ Agencies represent and warrant to Project Co, on a joint and several basis, that as of the date of this Project Agreement no HMQ Event of Default has occurred and is continuing.

6. BACKGROUND INFORMATION

6.1 No Liability

- (a) Except as expressly provided in Sections 6.4, 16.2 and 16.3, neither HMQ Agencies nor any other Province Person shall be liable to Project Co or any Project Co Party for, and Project Co or any Project Co Party shall not seek to recover from HMQ Agencies, or any other Province Person, any damages, losses, costs, liabilities or expenses which may arise (whether in contract, tort or otherwise) from the adoption, use or application of the Background Information by, or on behalf of, Project Co or any Project Co Party.

6.2 No Warranty

- (a) Except as expressly provided in Sections 6.4, 16.2 and 16.3:
 - (i) neither HMQ Agencies nor any other Province Person gives any warranty or undertaking of whatever nature in respect of the Background Information and, specifically (but without limitation), neither HMQ Agencies nor any other Province Person warrants that the Background Information represents all of the information in its possession or power (either during the conduct of the procurement process for the Project or at the time of execution and delivery of this Project Agreement) relevant or material to or in connection with the Project or the obligations of Project Co under this Project Agreement or under any of the Project Documents; and
 - (ii) neither HMQ Agencies nor any Province Person shall be liable to Project Co or any Project Co Party in respect of any failure, whether before, on or after the execution and delivery of this Project Agreement:

- (A) to disclose or make available to Project Co or any Project Co Party any information, documents or data;
- (B) to review or update the Background Information; or
- (C) to inform Project Co or any Project Co Party of any inaccuracy, error, omission, defect or inadequacy in the Background Information.

6.3 No Claims

- (a) Project Co acknowledges and confirms that:
 - (i) it has conducted its own analysis and review of the Background Information and has, before the execution and delivery of this Project Agreement, satisfied itself as to the accuracy, completeness and fitness for purpose of any such Background Information upon which it places reliance; and
 - (ii) except as expressly provided in Sections 6.4, 16.2 and 16.3, it shall not be entitled to and shall not, and shall ensure that no Project Co Party shall, make any claim against any Province Person (whether in contract, tort or otherwise), including, without limitation, any claim in damages, for extensions of time or for additional payments under this Project Agreement on the grounds:
 - (A) of any misunderstanding or misapprehension in respect of the Background Information; or
 - (B) that the Background Information was incorrect or insufficient,
- nor shall Project Co be relieved from any of its obligations under this Project Agreement on any such ground.

6.4 Technical Reports

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

7. PROJECT DOCUMENTS

7.1 Project Documents

- (a) Project Co shall perform its obligations under, and observe all of the provisions of, each of the Project Documents to which it is a party, and shall ensure that each Project Co Party shall perform its obligations under, and observe all of the provisions of, each of the Project Documents to which such Project Co Party is a party, so as to ensure that other parties to such Project Documents shall not be entitled to terminate same. In the event that Project Co receives a notice of default under any of the Project Documents, it shall promptly, and, in any event, no later than 2 Business Days after receipt thereof, deliver a copy of such notice of default to HMQ Agencies.

7.2 Ancillary Documents

- (a) Project Co shall not:
- (i) terminate or agree to the termination of all or part of any Ancillary Document, except pursuant to Sections 30.3, 42.5, 56.3 and 57.2 or otherwise to prevent or cure a Project Co Event of Default (provided that commercially reasonable alternative measures would not prevent or cure such Project Co Event of Default);
 - (ii) make or agree to any amendment, restatement or other modification of any Ancillary Document that materially adversely affects Project Co's ability to perform its obligations under this Project Agreement or that has the effect of increasing any liability of HMQ Agencies, whether actual or potential;
 - (iii) breach its obligations (or waive or allow to lapse any rights it may have) or permit others to breach their obligations (or waive or allow to lapse any rights they may have) under any Ancillary Document, that materially adversely affect Project Co's ability to perform its obligations under this Project Agreement or that have the effect of increasing any liability of HMQ Agencies, whether actual or potential; or
 - (iv) enter into, or permit the entry into by any other person of, any agreement replacing all or part of any Ancillary Document, except in the circumstances referenced in Section 7.2(a)(i),

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

7.2(a)(iv), Project Co shall, to the extent applicable, comply with all provisions herein applicable to changes in Project Co Parties, including Section 56.3.

7.3 Changes to Lending Agreements and Refinancing

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

7.4 Compliance with Lending Agreements

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

8. HMQ AGENCIES' RESPONSIBILITIES

8.1 General

- (a) HMQ Agencies shall, at their own cost and risk:
- (i) perform all of its obligations under, and observe all provisions of, this Project Agreement in compliance with Applicable Law;
 - (ii) obtain, maintain, and, as applicable, renew the HMQ Permits, Licences, Approvals and Agreements which may be required for the performance of the Project Operations;
 - (iii) comply with all Permits, Licences, Approvals and Agreements in accordance with their terms;
 - (iv) cooperate with Project Co in the fulfillment of the purposes and intent of this Project Agreement, provided, however, that HMQ Agencies shall not be under any obligation to perform any of Project Co's obligations under this Project Agreement; and

- (v) perform or cause to be performed the HMQ FM Services in accordance with Good Industry Practice and the performance standards to be established by the Facilities Management Committee pursuant to this Project Agreement.
- (b) During the Operational Term, HMQ Agencies shall use or permit the use of the Facility for the predominant purpose of the Maintenance and Storage Activities and the HMQ FM Services and any other transit and storage related purpose, and for ancillary uses compatible with the foregoing.
- (c) HMQ Agencies shall, and shall cause all HMQ Parties to, take reasonable steps to minimize undue interference with the provision of the Project Operations by Project Co or any Project Co Party.
- (d) Nothing in this Project Agreement shall in any way fetter the right, authority and discretion of HMQ Agencies or any other Province Person in fulfilling its statutory or other functions under Applicable Law, and Project Co understands and agrees that nothing in this Project Agreement shall preclude IO's board of directors or Metrolinx's board of directors (or any respective designate appointed pursuant to Section 59 of this Project Agreement) from performing, discharging or exercising its duties, responsibilities and powers under Applicable Law. Project Co further agrees that, subject to Section 36.1(b), it shall comply, and shall cause all relevant Project Co Parties to comply, with all written directions issued by or on behalf of IO's board of directors or Metrolinx's board of directors (or any respective designate appointed pursuant to Section 59) from time to time.
- (e) Except as set out in Sections 5.2(a), 5.2(b), 53.2(d) and 53.2(e), HMQ and Metrolinx shall be liable, on a joint and several basis, for all of the obligations of HMQ Agencies under this Project Agreement and for each covenant of the other under this Project Agreement. For clarity, the joint and several liability of Metrolinx pursuant to this Project Agreement is solely in its capacity as agent of the Province.

9. PROJECT CO RESPONSIBILITIES

9.1 Other Business

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

9.2 General

- (a) Project Co shall, at its own cost and risk:
 - (i) perform all of its obligations under, and observe all provisions of, this Project Agreement in compliance with Applicable Law;
 - (ii) perform all Project Operations:

- (A) in compliance with Applicable Law;
 - (B) in compliance with all Permits, Licences, Approvals and Agreements and so as to preserve the existence and continued effectiveness of any such Permits, Licences, Approvals and Agreements;
 - (C) so as to satisfy the Output Specifications;
 - (D) in accordance with Good Industry Practice;
 - (E) in a manner consistent with the Quality Plans and the Project Co Proposal Extracts;
 - (F) in a timely and professional manner;
 - (G) with due regard to the health and safety of persons and property;
 - (H) subject to the other provisions of this Project Agreement, in a manner which will not impair the ability of HMQ Agencies or any Province Person to comply with Applicable Law;
 - (I) subject to the other provisions of this Project Agreement, in a manner which will not impair the performance of the Maintenance and Storage Activities and the HMQ FM Services; and
 - (J) in accordance with all other terms of this Project Agreement; and
- (iii) cooperate with HMQ Agencies in the fulfillment of the purposes and intent of this Project Agreement, provided however that Project Co shall not be under any obligation to perform any of HMQ Agencies' obligations under this Project Agreement.

9.3 Project Co Parties

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

9.4 Permits, Licences, Approvals and Agreements

- (a) Project Co shall, at its own cost and risk:
- (i) obtain, maintain, and, as applicable, renew all Project Co Permits, Licences, Approvals and Agreements which may be required for the performance of the Project Operations;

- (ii) assume the obligations of Project Co under the Permits, Licences, Approvals and Agreements as set out in Appendix 1 - Permits, Licences, Approvals and Agreements to Schedule 1 - Definitions and Interpretation, including without limitation, the administration of all HMQ Security Deposits which are subject to being released and returned to HMQ Agencies and the administration of the renewal or replacement of the HMQ Security Deposits if and as required and Project Co shall cooperate with HMQ Agencies and any other person, perform the obligations under the Permits, Licences, Approvals and Agreements for which Project Co is responsible which are conditions for the release to HMQ Agencies of any such HMQ Security Deposits and take all such necessary actions to have such HMQ Security Deposits released and returned to HMQ Agencies; and
 - (iii) comply with all Permits, Licences, Approvals and Agreements in accordance with their terms.
- (b) Project Co acknowledges that following assumption of obligations under the Development Approvals as set out in Section 9.4(a)(ii), HMQ Agencies shall have no liability for nor obligations respecting non-performance by third parties to the agreements comprising the Development Approvals, the risk respecting any occurrence of such non-performance having been assumed by Project Co;
- (c) Where any Permits, Licences, Approvals and Agreements have requirements that may impose any conditions, liabilities or obligations on HMQ Agencies or any Province Person, Project Co shall not obtain or renew such Permits, Licences, Approvals and Agreements without the prior written consent of HMQ Agencies, not to be unreasonably withheld or delayed, provided that neither HMQ Agencies nor any Province Person shall be responsible for obtaining or for the failure of Project Co to obtain any Permit, Licence, Approval or Agreement or for the failure of Project Co to renew any HMQ Permit, Licence, Approval or Agreement. HMQ Agencies shall comply, or shall require compliance, with any conditions, liabilities or obligations as are imposed on HMQ Agencies or any Province Person by the requirements of any Permit, Licence, Approval or Agreement obtained with HMQ Agencies' consent under this Section 9.4(b).
- (d) HMQ Agencies shall provide Project Co with such information and administrative assistance as Project Co may reasonably require in relation to the Permits, Licences, Approvals and Agreements. In respect of Section 9.4(a)(ii), HMQ Agencies shall: (i) provide Project Co with relevant information and copies of notices received under the applicable HMQ Permits, Licences, Approvals and Agreements and (ii) execute any documents under the applicable HMQ Permits, Licences, Approvals and Agreements, which Applicable Law requires that only HMQ Agencies can execute.
- (e) Notwithstanding Section 37.1(a)(ii) or Section 38.1(a), if any breach by HMQ Agencies of any of their obligations in respect of the HMQ Permits, Licences, Approvals and Agreements that are expressly described in Appendix 1 – Permits, Licences, Approvals and Agreements to Schedule 1 – Definitions and Interpretation as being the responsibility of HMQ Agencies to the extent that any such breach delays Project Co in obtaining, or

renders it impossible for Project Co to obtain, a building permit as required pursuant to Appendix 1 – Permits, Licences, Approvals and Agreements to Schedule 1 – Definitions and Interpretation, Project Co shall provide written notice to the HMQ Representative within 5 Business Days of becoming aware of such delay or impossibility. The HMQ Representative shall, after receipt of the aforesaid notice from Project Co, be entitled to provide written notice to Project Co notifying Project Co that HMQ Agencies have exercised their rights of Crown immunity to exempt Project Co from the requirement to obtain a building permit and that Project Co is required to proceed with the Works forthwith, and any such requirement shall, subject to and in accordance with Schedule 22 – Variation Procedure, result in a Variation except to the extent that any such aforementioned breach by HMQ Agencies is caused, or contributed to, by Project Co or any Project Co Party. For the avoidance of doubt: (i) the exercise by HMQ Agencies of their rights of Crown immunity in respect of the HMQ Permits, Licences, Approvals and Agreements that are expressly described in Appendix 1 – Permits, Licences, Approvals and Agreements to Schedule 1 – Definitions and Interpretation as being the responsibility of HMQ Agencies shall not constitute a breach of their obligations in respect thereof; and (ii) except to the extent expressly provided in a Variation Confirmation or a Variation Directive, nothing in this Section 9.4(e) shall relieve Project Co from complying with its obligations under this Project Agreement (including its obligation to obtain a building permit).

9.5 Safety During the Works Phase

- (a) From Financial Close until the Final Completion Date, Project Co shall:
- (i) comply with the Safety Plan;
 - (ii) keep the Site, the Works and the Facility in a safe and orderly state, as appropriate in accordance with Good Industry Practice, to avoid danger to persons on the Site, in the Facility and in the immediate vicinity of the Site;
 - (iii) take such measures as are reasonable in accordance with Good Industry Practice to prevent access to the Site and the Facility of any persons or creatures not entitled to be there;
 - (iv) comply with Applicable Law relating to health and safety, including without limitation the *Occupational Health and Safety Act*, R.S.O. 1990, c.O.1 and all regulations thereto;
 - (v) perform, or cause a Project Co Party to perform, all of the obligations of the “constructor”, and indemnify HMQ Agencies and each other Province Person against any and all of the liabilities of the “constructor”, under the *Occupational Health and Safety Act*, R.S.O. 1990, c.O.1 and all regulations thereto; and
 - (vi) provide HMQ Agencies with a certificate of good standing from WSIB or any successor thereto once every 90 days.

9.6 Health and Safety Certification

- (a) Project Co shall cause the Construction Contractor at its own cost and risk, at all times during the performance of the Works:
- (i) to the extent the Construction Contractor has not obtained its Health and Safety Certification prior to Financial Close, to use best efforts to obtain its Health and Safety Certification no later than six months following Financial Close. In the event that HMQ Agencies are satisfied, in their sole discretion, that the Construction Contractor has used best efforts to obtain its Health and Safety Certification in accordance with this Section 9.6 and the Construction Contractor has not obtained its Health and Safety Certification by the end of such six month period, then HMQ Agencies shall establish a time period during which the Construction Contractor shall obtain its Health and Safety Certification, which time period shall not be less than 60 days;
 - (ii) maintain, and, as applicable, renew its Health and Safety Certification; and
 - (iii) comply with all requirements of the Health and Safety Certification in accordance with its terms.
- (b) Without limiting any other provision of this Project Agreement, if at any time during the performance of the Works:
- (i) the Construction Contractor fails:
 - (A) to maintain its Health and Safety Certification in accordance with its terms or in accordance with this Project Agreement; or
 - (B) to obtain its Health and Safety Certification in accordance with this Project Agreement and HMQ Agencies, in their sole discretion, determine that the failure to obtain the Health and Safety Certification is as a result of Project Co not using best efforts to obtain such certification and HMQ Agencies deliver a notice to Project Co indicating that HMQ Agencies are of the opinion that the Construction Contractor has failed to obtain its Health and Safety Certification in accordance with this Project Agreement;(collectively, an “**H&S Certification Default Event**”); or
 - (ii) HMQ Agencies delivers a notice to Project Co indicating that HMQ Agencies is of the opinion that the Construction Contractor will fail to maintain its Health and Safety Certification in accordance with its terms or in accordance with this Project Agreement;

Project Co shall either:

- (iii) immediately upon the occurrence of an H&S Certification Default Event, notify HMQ Agencies that an H&S Certification Default Event has occurred and produce and deliver to the HMQ Representative:
 - (A) a report identifying the reasons for the failure to obtain or maintain the Health and Safety Certification;
 - (B) a plan showing the steps that are to be taken to have the Health and Safety Certification reinstated or obtained, as applicable, within a period of not more than 30 days (the “**Health and Safety Certification Reinstatement Plan**”), which Health and Safety Certification Reinstatement Plan shall be subject to review and approval by HMQ Agencies and, to the extent HMQ Agencies requires any amendments or revisions to be made to the Health and Safety Certification Reinstatement Plan, Project Co shall take, and shall cause the Construction Contractor to take, all reasonable steps as may be necessary to make all such required amendments and revisions and deliver to HMQ Agencies an amended Health and Safety Certification Reinstatement Plan not more than 5 Business Days from the date on which such request is made by HMQ Agencies; and
 - (C) no later than 5 Business Days after the H&S Certification Default Event occurs, arrange to have conducted a complete H&S Inspection in accordance with Section 13(b); or
- (iv) within 5 Business Days of receipt of the notice from HMQ Agencies under Section 9.6(b)(ii), produce and deliver to the HMQ Representative:
 - (A) a report identifying the manner in which the Health and Safety Certification shall be maintained or obtained, as applicable;
 - (B) a plan showing the steps that are to be taken to ensure that the Health and Safety Certification will be maintained without interruption (the “**Health and Safety Certification Maintenance Plan**”), which Health and Safety Certification Maintenance Plan shall be subject to review and approval by HMQ Agencies and, to the extent HMQ Agencies requires any amendments or revisions to be made to the Health and Safety Certification Maintenance Plan, Project Co shall take all reasonable steps as may be necessary to make all such required amendments and revisions and deliver to HMQ Agencies an amended Health and Safety Certification Maintenance Plan not more than 5 Business Days from the date on which such request is made by HMQ Agencies; and
 - (C) arrange to have conducted a complete H&S Inspection in accordance with Section 13(b).

9.7 Additional Works

- (a) HMQ Agencies reserve the right to carry out Additional Works. HMQ Agencies may, at any time during the performance of the Works, assign the methods and means of construction of the Additional Works and/or the coordination and scheduling of the Additional Works and/or the safety training in respect of the Additional Works to Project Co.
- (b) In connection with the Additional Works, HMQ Agencies shall:
- (i) to the extent such matters have been assigned to Project Co pursuant to Section 9.7(a), cause Additional Contractors to comply with the instructions of Project Co relating to matters of health and safety on the Site, methods and means of construction, and coordination and scheduling of the Additional Works with (A) the Works during the performance of the Works, and (B) at the request of HMQ Agencies, with the Project Co Services during the performance of the Project Co Services as HMQ Agencies consider appropriate taking into account the nature of the Additional Works and the potential for impact on the Project Co Services;
 - (ii) enter into separate contracts with Additional Contractors containing terms and provisions which are consistent with the terms and provisions of this Project Agreement and which require Additional Contractors to comply with all directions of Project Co in respect of any matter regarding health and safety on the Site, methods and means of construction and coordination and scheduling of the Additional Works, to the extent such matters have been assigned to Project Co pursuant to Section 9.7(a);
 - (iii) ensure that insurance coverage is provided in respect of the Additional Works as would be required by a prudent owner similarly situated and that such insurance is coordinated with the insurance coverage of Project Co as it affects the Works and the Project Co Services to provide seamless insurance coverage to Project Co and HMQ Agencies (including, if appropriate, naming HMQ Agencies and Project Co as additional insureds and/or loss payees) and in any event, such insurance shall provide for commercial general liability insurance of not less than [REDACTED]; and
 - (iv) take all necessary steps to avoid labour disputes or other disputes on the Project arising from the Additional Works.
- (c) In connection with the Additional Works, Project Co shall, to the extent HMQ Agencies have assigned to Project Co any or all of the matters referred to in Section 9.7(a) and subject to the performance by HMQ Agencies of their obligations under Sections 9.7(b)(i) and 9.7(b)(ii), during the performance of the Works, and at the request of HMQ Agencies, during the performance of the Project Co Services as HMQ Agencies consider appropriate taking into account the nature of the Additional Works and the potential for impact on the Project Co Services:

- (i) provide for the methods and means of construction (where applicable) of the Additional Works and the coordination and scheduling of the Additional Works with the Works and the Project Co Services to be performed under this Project Agreement;
 - (ii) afford Additional Contractors reasonable opportunity to introduce and store their products and use their construction machinery and equipment to execute the Additional Works;
 - (iii) participate with HMQ Agencies and Additional Contractors in reviewing their construction schedules when directed to do so by HMQ Agencies;
 - (iv) where all or part of the performance of the Works in accordance with the Project Agreement or Project Co Services is affected by or depends upon, the completion and/or proper execution of the Additional Works, promptly report to HMQ Agencies in writing any readily apparent deficiencies in the Additional Works, prior to proceeding with the affected Works. Failure by Project Co to so report shall invalidate any claims against HMQ Agencies by reason of such readily apparent deficiencies; and
 - (v) assume overall responsibility for compliance by the Additional Contractors and Additional Works with all aspects of Applicable Law relating to health and safety at the Site prior to Substantial Completion and assume and exercise the responsibilities of the ‘constructor’ under the *Occupational Health and Safety Act*, R.S.O. 1990, c.O.1, in accordance with such Act.
- (d) If, in respect of Additional Works carried out prior to Substantial Completion:
- (i) any Additional Contractors cause any damage to the Works;
 - (ii) Project Co incurs any additional costs or there is any delay in the Works Schedule as a result of any Additional Contractors not complying with the instructions of Project Co regarding coordination, scheduling and/or safety and/or method and means of construction; or
 - (iii) if Project Co incurs any additional costs or there is any delay in the Works Schedule as a result of any Additional Works,

then, provided such delay in the Works Schedule or additional costs is not as a result of Project Co’s failure to perform its obligations under Sections 9.7(c)(i), 9.7(c)(ii), 9.7(c)(iii) or 9.7(c)(v) or any act or omission of Project Co or a Project Co Party, any such delay in the Works Schedule or additional costs in respect of the Works shall, subject to and in accordance with Section 37, be treated as a Delay Event and, subject to and in accordance with Section 38, be treated as a Compensation Event.

- (e) Claims, disputes, and other matters in question between Project Co and Additional Contractors (except to the extent they involve claims, disputes and other matters between

Project Co and HMQ Agencies pursuant to this Agreement) shall be dealt with in substantially the same manner as contemplated in Schedule 27 - Dispute Resolution Procedure, provided the Additional Contractors are subject to binding reciprocal obligations in the contracts between HMQ Agencies and the Additional Contractors. Project Co shall be deemed to have consented to arbitration of any dispute with any other contractor whose contract with HMQ Agencies contains a binding reciprocal agreement to arbitrate.

(f)

- (i) Project Co shall have a period of 10 Business Days following notice from HMQ Agencies of HMQ Agencies' intention to carry out Additional Works including a reasonable description of such Additional Works to request a Variation if such Additional Works are (A) reasonably expected to void a warranty 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 effect on Project Co's ability to perform any of the Project Operations, including a delay in the Works or additional costs in respect of the Works;
- (ii) if Project Co has requested a Variation in accordance with Section 9.7(f)(i), HMQ Agencies shall, within 10 Business Days of 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 pursuant to Section 9.7(e) for resolution in accordance with Schedule 27 - Dispute Resolution Procedure; and where HMQ Agencies have given notice to Project Co that it does not agree that a Variation is required, HMQ Agencies shall, within 10 Business Days of a subsequent agreement or of a determination that a Variation is required, issue a Variation Enquiry and the relevant provisions of Schedule 22 - Variation Procedure shall apply except that:
 - (A) HMQ Agencies shall not be entitled to withdraw any such Variation Enquiry unless HMQ Agencies determine not to proceed with the Additional Works or to proceed only in a manner that the Additional Works will not result in a warranty becoming void (as contemplated in Section 9.7(f)(i)) or will not result in any material adverse effect (including material additional costs) on Project Co's ability to perform any of the Project Operations and Project Co has agreed with such conclusion, or the Parties otherwise agree; and
 - (B) the Parties shall, without prejudice to their respective obligations under this Project Agreement, use commercially reasonable efforts to mitigate any adverse effects of such Additional Works, including, with respect to any increase in costs arising from any void warranty.

- (g) Placing, installing, applying or connecting the Additional Works performed by Additional Contractors, on and to the Works performed by Project Co will not relieve Project Co from its obligations under the Project Agreement with respect to the Works, except to the extent expressly described in any Variation Confirmation.

9.8 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 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 persons having responsibility for the supervision of any such Demolition are qualified as either a professional engineer, limited license holder or provisional license holder (as such terms are used in the Performance Standards Regulation) (such person is hereinafter referred to as a "**Demolition Supervisor**");
 - (iii) observe and perform the Demolition in a manner that is consistent with the recommendations set forth in the Demolition Guidelines in all material respects; and
 - (iv) in respect of any Complex Structure Demolition to be conducted by Project Co or any Project Co Party:
 - (A) prepare detailed specifications relating to such Complex Structure Demolition which specifications will include, without limitation, 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 HMQ Agencies or any Province Person 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) immediately upon the occurrence of a Demolition Default Event, notify HMQ Agencies of that a Demolition Default Event has occurred, unless HMQ Agencies was the person that provided notice of the Demolition Default Event;
 - (ii) cease all work in respect of such Demolition; and
 - (iii) within 5 Business Days of receipt of a notice of a Demolition Default Event produce and deliver to the HMQ Representative:
 - (A) a report identifying the reasons for the occurrence of the Demolition Default Event; and
 - (B) a Demolition Plan showing the steps that are to be taken to rectify the Demolition Default Event within a period of not more than 30 days from the occurrence of the Demolition Default Event, which Demolition Plan shall be subject to review and approval by HMQ Agencies and, to the extent HMQ Agencies 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 HMQ Agencies an amended and revised Demolition Plan not more than 5 Business Days from the date on which such request is made by HMQ Agencies.
- (c) No Demolition shall be recommenced at the Site that was the subject of the Demolition Default Event until:
- (i) HMQ Agencies 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) HMQ Agencies has received a report, in form and substance satisfactory to HMQ Agencies, 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.

10. REPRESENTATIVES**10.1 The HMQ Representative**

- (a) Subject to the limitations set out in Section 10.1(d), the HMQ Representative shall exercise the functions and powers identified in this Project Agreement as functions or powers to be performed by the HMQ Representative and such other functions and powers of HMQ Agencies under this Project Agreement as HMQ Agencies may notify Project Co from time to time.
- (b) HMQ Agencies may, from time to time by written notice to Project Co, change the HMQ Representative. Such change shall have effect on the later of the date of delivery of such notice and the date specified in such notice.
- (c) During any period when no HMQ Representative has been appointed, or when the HMQ Representative is unable, through illness, incapacity or any other reason whatsoever, to perform the HMQ Representative's functions under this Project Agreement, HMQ Agencies shall perform or may, by written notice to Project Co, promptly appoint an alternative HMQ Representative to perform the functions which would otherwise be performed by the HMQ Representative. Upon receipt of such written notice, Project Co and the Project Co Representative shall be entitled to treat any act of such alternative HMQ Representative which is permitted by this Project Agreement as being authorized by HMQ Agencies, and Project Co and the Project Co Representative shall not be required to determine whether authority has in fact been given.
- (d) The HMQ Representative shall not, except as otherwise provided in this Project Agreement, be entitled to modify or waive any provision of this Project Agreement or to authorize a Variation.
- (e) Subject to the limitations set out in Sections 10.1(a) and 10.1(d), unless otherwise notified in writing, Project Co and the Project Co Representative shall be entitled to treat any act of the HMQ Representative which is authorized by this Project Agreement as being authorized by HMQ Agencies, and Project Co and the Project Co Representative shall not be required to determine whether authority has in fact been given.

10.2 The Project Co Representative

- (a) Subject to the limitations set out in Section 10.2(d), the Project Co Representative shall have full authority to act on behalf of Project Co for all purposes of this Project Agreement.
- (b) Project Co may change the Project Co Representative with the prior written consent of HMQ Agencies, not to be unreasonably withheld or delayed.
- (c) During any period when the Project Co Representative is unable, through illness, incapacity or any other reason whatsoever, to perform the Project Co Representative's functions under this Project Agreement, Project Co shall perform or may, by written

notice to HMQ Agencies, promptly appoint an alternative Project Co Representative to perform the functions which would otherwise be performed by the Project Co Representative, provided that, Project Co must seek HMQ Agencies' consent in accordance with Section 10.2(b) if such alternative Project Co Representative is in place for more than 180 days. Upon receipt of such written notice, HMQ Agencies and the HMQ Representative shall be entitled to treat any act of such alternative Project Co Representative which is permitted by this Project Agreement as being authorized by Project Co, and HMQ Agencies and the HMQ Representative shall not be required to determine whether authority has in fact been given.

- (d) The Project Co Representative shall not, except as otherwise provided in this Project Agreement, be entitled to modify or waive any provision of this Project Agreement.
- (e) Subject to the limitations set out in Section 10.2(d), unless otherwise notified in writing, HMQ Agencies and the HMQ Representative shall be entitled to treat any act of the Project Co Representative which is authorized by this Project Agreement as being authorized by Project Co, and HMQ Agencies and the HMQ Representative shall not be required to determine whether authority has in fact been given.

10.3 Communications to Representatives

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

10.4 Key Individuals

- (a) The individuals who are critical to the performance of the Works are identified in Part A of Schedule 9 - Key Individuals. Project Co shall use commercially reasonable efforts to ensure that the persons identified in Part A of Schedule 9 – Key Individuals remain involved in the Works in the capacity set out in Schedule 9 - Key Individuals and, in particular, will not, for the duration of the Works, require or request any such person to be involved in any other project on behalf of Project Co or any Project Co Party if, in the opinion of HMQ Agencies, acting reasonably, such involvement would have a material adverse effect on the Works.
- (b) Subject to the following sentence of this Section 10.4(b), the individuals who are critical to the performance of the Project Co Services are identified in Part B of Schedule 9 - Key Individuals. Project Co shall use commercially reasonable efforts to ensure that the persons identified or to be identified in Part B and Part C of Schedule 9 – Key Individuals remain involved in the Project Co Services in the capacity set out in Schedule 9 - Key Individuals, as applicable, and, in particular, will not, for the duration of the Project Co Services, require or request any such person to be involved in any other project on behalf of Project Co or any Project Co Party if, in the opinion of HMQ Agencies, acting

reasonably, such involvement would have a material adverse effect on the Project Co Services.

- (c) If Project Co considers it necessary to replace any individual identified in Schedule 9 - Key Individuals, Project Co shall provide HMQ Agencies with relevant information on the proposed replacement and shall consult with HMQ Agencies before finalizing the appointment of such replacement. Project Co shall not replace any of the individuals identified in Schedule 9 - Key Individuals without the prior written consent of HMQ Agencies, which consent shall not be withheld or delayed where the proposed replacement is suitably qualified and experienced.
- (d) If HMQ Agencies determine, acting reasonably, that it is in the best interests of HMQ Agencies that any individual identified in Schedule 9 - Key Individuals be replaced, HMQ Agencies shall notify Project Co (including a detailed explanation of the reasons for such determination), and, within 30 days of receipt by Project Co of such notice, Project Co shall provide HMQ Agencies with relevant information on the proposed replacement and shall consult with HMQ Agencies before finalizing the appointment of such replacement. Project Co shall not replace any of the individuals identified in Schedule 9 - Key Individuals without the prior written consent of HMQ Agencies, which consent shall not be withheld or delayed where the proposed replacement is suitably qualified and experienced.

11. WORKS COMMITTEE

11.1 Establishment

- (a) The Parties shall, within 30 days following Financial Close, establish a committee (the “**Works Committee**”) consisting of:
 - (i) six representatives appointed by HMQ Agencies from time to time, one of whom will be the HMQ Representative; and
 - (ii) the following three representatives appointed by Project Co:
 - (A) the Project Co Representative;
 - (B) one representative of the Construction Contractor; and
 - (C) such other representative appointed by Project Co from time to time.
- (b) The Independent Certifier and the Planning, Design & Compliance Consultant shall be entitled to, but not required to, attend meetings as non-voting members of the Works Committee. Members of the Works Committee may invite, on prior notice to all members, such advisors and consultants as they require from time to time to attend meetings and provide briefings to the Works Committee.
- (c) The HMQ Representative shall be the chairperson of the Works Committee.

11.2 Function and Role

- (a) The Works Committee shall assist the Parties by promoting cooperative and effective communication with respect to matters related to the Works. The Works Committee shall interface with the Facilities Management Committee and the FF&E Steering Committee as and when required.
- (b) The Works Committee shall be responsible for receiving and reviewing all matters related to the Works, including:
 - (i) any design, construction and commissioning issues;
 - (ii) the Works Schedule;
 - (iii) any issues arising from reports or documents provided by Project Co or the Independent Certifier;
 - (iv) any quality assurance and safety issues;
 - (v) the Works Reports;
 - (vi) any special matters referred to the Works Committee by IO, Metrolinx or Project Co;
 - (vii) any community and media relations issues in accordance with Schedule 18 - Communications Protocol;
 - (viii) monitoring the Final Commissioning Program; and
 - (ix) any other issues pertaining to the Works.
- (c) Subject to Section 11.2(d), any unanimous decision of the Works Committee shall be final and binding on the Parties. If the Works Committee is unable to reach a unanimous decision, either Party may refer the matter for resolution in accordance with Schedule 27 - Dispute Resolution Procedure.
- (d) The Works Committee shall not have authority to make decisions with respect to or approve:
 - (i) any amendment to or waiver of any provision of this Project Agreement;
 - (ii) any change to a major milestone date set out in the Works Schedule, the Scheduled Substantial Completion Date or the Scheduled Final Completion Date;
 - (iii) any Variation;

- (iv) any change that may materially adversely affect Project Co's ability to achieve Substantial Completion by the Scheduled Substantial Completion Date or Final Completion by the Scheduled Final Completion Date; or
- (v) any matter with respect to which HMQ Agencies have a right of consent or in respect of which HMQ Agencies may exercise discretion pursuant to this Project Agreement.

11.3 Term of Works Committee

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

11.4 Replacement of Committee Members

- (a) HMQ Agencies shall be entitled to replace any of its representatives on the Works Committee by written notice to Project Co. HMQ Agencies 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 HMQ Agencies, not to be unreasonably withheld or delayed.

11.5 Procedures and Practices

- (a) The members of the Works Committee may:
 - (i) adopt such procedures and practices for the conduct of the activities of the Works Committee as they consider appropriate from time to time;
 - (ii) invite to any meeting of the Works Committee such other persons as the members of the Works Committee may agree;
 - (iii) exclude from any meeting of the Works Committee such persons (other than members of the Works Committee) 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) Either the Project Co Representative or the HMQ Representative 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 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 at the Site, the Facility or another location in Toronto, Ontario. Meetings of the Works Committee may be held by means of such telephonic, electronic or other communication facilities as permit all persons participating in the meeting to communicate with each other simultaneously and instantaneously. A person participating in a meeting by such means will be deemed to be present at such meeting, provided that each member of the Works Committee must attend in person at least once each calendar quarter.
- (e) Four representatives of HMQ Agencies (one of whom shall be the HMQ Representative) and two representatives of 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 5 Business Days of the holding of the meeting or the making of the recommendation or decision. Unless HMQ Agencies notify Project Co within 5 Business Days of receipt of the minutes that HMQ Agencies disagree with the contents of the minutes, Project Co and HMQ Agencies shall be deemed to have approved such minutes. Project Co shall maintain a complete set of all minutes of the meetings of the Works Committee and shall make such minutes available for inspection by HMQ Agencies during regular business hours.

12. FACILITIES MANAGEMENT COMMITTEE

12.1 Establishment

- (a) The Parties shall, not later than 18 months prior to the Scheduled Substantial Completion Date, establish a committee (the “**Facilities Management Committee**”) consisting of:
 - (i) for the period from the establishment of the Facilities Management Committee until the Final Completion Date, one representative appointed by IO from time to time;
 - (ii) two senior representatives of Metrolinx appointed by Metrolinx from time to time, one of whom shall be the HMQ Representative; and
 - (iii) two senior representatives of Project Co, one of whom shall be the Project Co Representative and the other shall be a representative of the Service Provider.

- (b) Members of the Facilities Management Committee may invite, on prior notice to all members, such advisors and consultants as they require from time to time to attend meetings and provide briefings to the Facilities Management Committee.
- (c) The HMQ Representative shall be the chairperson of the Facilities Management Committee.

12.2 Function and Role

- (a) The Facilities Management Committee shall assist the Parties by promoting cooperative and effective communication with respect to matters related to the Project Operations, both prior to and during the Operational Term. The Facilities Management Committee shall interface with the Works Committee as and when required, and shall form the utilities management subcommittee (“**Utilities Management Subcommittee**”) to receive and review all matters related to the Utilities Management Services.
- (b) The Facilities Management Committee shall be responsible for receiving and reviewing all matters related to the Project Operations (excluding the Works), both prior to and during the Operational Term, including:
 - (i) any joint review of the Project Co Services and the Output Specifications;
 - (ii) the recommendations of the Utilities Management Subcommittee;
 - (iii) any changes to Service Quality Plans;
 - (iv) any performance issues;
 - (v) the development and modification of performance standards for the HMQ FM Services, which performance standards shall be based on the Project Co Proposal Extracts and Good Industry Practice;
 - (vi) any interface issues between the Project Co Services and the HMQ FM Services;
 - (vii) any special matter referred to the Facilities Management Committee by IO, Metrolinx or Project Co;
 - (viii) any community and media relations issues in accordance with Schedule 18 - Communications Protocol; and
 - (ix) any other issues pertaining to the Project Operations (excluding the Works).
- (c) Subject to Section 12.2(d), any unanimous decision of the Facilities Management Committee shall be final and binding on the Parties. If the Facilities Management Committee is unable to reach a unanimous decision, either Party may refer the matter for resolution in accordance with Schedule 27 - Dispute Resolution Procedure.

- (d) The Facilities Management Committee shall not have authority to make decisions with respect to or approve:
- (i) any amendment to or waiver of any provision of this Project Agreement;
 - (ii) any Variation;
 - (iii) any change that may materially adversely affect Project Co's ability to perform the Project Co Services or HMQ Agencies' ability to perform the Maintenance and Storage Activities or the HMQ FM Services; or
 - (iv) any matter with respect to which HMQ Agencies have a right of consent or in respect of which HMQ Agencies may exercise discretion pursuant to this Project Agreement.

12.3 Replacement of Committee Members

- (a) HMQ Agencies shall be entitled to replace any of its representatives on the Facilities Management Committee by written notice to Project Co. HMQ Agencies 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 Facilities Management Committee with the prior written consent of HMQ Agencies, not to be unreasonably withheld or delayed.

12.4 Procedures and Practices

- (a) The members of the Facilities Management Committee may:
- (i) adopt such procedures and practices for the conduct of the activities of the Facilities Management Committee as they consider appropriate from time to time;
 - (ii) invite to any meeting of the Facilities Management Committee such other persons as the members of the Facilities Management Committee may agree;
 - (iii) exclude from any meeting of the Facilities Management Committee such persons as the members of the Facilities Management Committee may agree; and
 - (iv) receive and review reports from any person or organization agreed to by the members of the Facilities Management Committee.
- (b) Once established, the Facilities Management Committee shall meet at least once each month during the Operational Term, unless otherwise agreed by the members of the Facilities Management Committee or the Parties.
- (c) Any member of the Facilities Management Committee may convene a special meeting of the Facilities Management Committee at any time. Special meetings of the Facilities Management Committee may be convened on not less than 5 Business Days' notice to all

members of the Facilities Management Committee identifying the agenda items to be discussed at the special meeting, provided that, in an Emergency, a meeting may be called at any time on such notice as may be reasonable in the circumstances.

- (d) Unless otherwise agreed by the members of the Facilities Management Committee, the Facilities Management Committee shall meet at the Facility or another location in Toronto, Ontario. Meetings of the Facilities Management Committee may be held by means of such telephonic, electronic or other communication facilities as permit all persons participating in the meeting to communicate with each other simultaneously and instantaneously. A person participating in a meeting by such means will be deemed to be present at such meeting, provided that each member of the Facilities Management Committee must attend in person at least once each calendar quarter.
- (e) One representative of HMQ Agencies and one representative of either Project Co or Service Provider shall constitute a quorum at any meeting of the Facilities Management Committee. A quorum of members may exercise all the powers of the Facilities Management Committee. The members shall not transact business at a meeting of the Facilities Management Committee unless a quorum is present.
- (f) Minutes of all meetings, recommendations and decisions of the Facilities Management 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 5 Business Days of the holding of the meeting or the making of the recommendation or decision. Unless HMQ Agencies notify Project Co within 5 Business Days of receipt of the minutes that HMQ Agencies disagree with the contents of the minutes, HMQ Agencies 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 Facilities Management Committee and shall make such minutes available for inspection by HMQ Agencies during regular business hours.

13. QUALITY MANAGEMENT

- (a) Project Co shall comply with the provisions of Schedule 11 - Quality Management.
- (b) Project Co shall cause the Construction Contractor, at its sole cost and expense, to conduct an inspection of its facilities and of its health and safety management systems on an annual basis until Final Completion or as otherwise required in accordance with Sections 9.6(b)(iii)(C) or 9.6(b)(iv)(C) (each, an “**H&S Inspection**”), which H&S Inspections shall:
 - (i) be conducted by a Certified H&S Inspector; and
 - (ii) include, at a minimum (A) a review of general compliance with all applicable *Occupational Health and Safety Act* (Ontario) requirements, compliance with all safety manuals applicable to locations at which the Works are being conducted and (B) a review of the Construction Contractor’s job hazard analysis

documentation on any location which could endanger or put at risk the safety of any Person working at the Site.

Project Co shall cause the results of each H&S Inspection (such results referred to as the “**H&S Inspection Report**”) to be delivered to HMQ Agencies and to the Works Committee not more than 5 Business Days from the date on which the H&S Inspection is completed. Any H&S Inspection Report arising from an H&S Inspection shall be tabled and presented by Project Co for discussion by the Works Committee at the next meeting of the Works Committee that follows the date on which such H&S Inspection Report was issued.

14. LICENCE

14.1 Licence to Site

- (a) Effective during the time periods set out in clauses (i) through (v) of this Section 14.1(a), and subject to the other provisions of this Section 14, HMQ Agencies hereby grant or have caused to be granted, and shall continuously grant or cause to be granted, to Project Co and all Project Co Parties such non-exclusive licence rights of use and access to, on and over the Site and Facility, except such rights set out as a Project Co responsibility to obtain under the Permits, Licences, Approvals and Agreements tables attached as Appendix 1 to Schedule 1 - Definitions and Interpretation, as are required by Project Co and such Project Co Parties sufficient (subject to Project Co performing its obligations described in the Permits, Licences, Approvals and Agreements tables attached as Appendix 1 to Schedule 1 - Definitions and Interpretation) to allow Project Co and such Project Co Parties to perform the Project Operations:
- (i) from Financial Close until the Termination Date in respect of the Metrolinx Lands (other than any Metrolinx Lands that are Hopkins Street Lands, South Blair Grade Separation Laydown Area Lands, South Blair Grade Separation Site Area Lands or Habitat Conservation Area Lands);
 - (ii) from December 1, 2016 until the Termination Date in respect of the Hopkins Street Lands or, solely with respect to any portion of the Hopkins Street Lands to which Metrolinx acquires title prior to December 1, 2016, from the date of such acquisition until the Termination Date;
 - (iii) from December 1, 2016 until the Termination Date in respect of the South Blair Grade Separation Site Area Lands;
 - (iv) from March 1, 2017 until the Termination Date in respect of the South Blair Grade Separation Laydown Area Lands; and
 - (v) from Financial Close until the Termination Date in respect of the Habitat Conservation Area Lands only following receipt of express written authorization of HMQ Agencies.

East Rail Maintenance Facility

- (b) Project Co shall ensure that each Project Co Party shall at all times, when entering the Site and the Facility, act in a manner consistent with the obligations of Project Co under the Project Agreement.
- (c) In consideration for the licence granted pursuant to Section 14.1(a), Project Co shall provide the Project Operations subject to and in accordance with this Project Agreement.
- (d) Without derogating from any of HMQ Agencies' rights hereunder, in particular, its rights of access to the Site and the Facility prior to the Substantial Completion Date for purposes of the HMQ Commissioning, HMQ Agencies acknowledge that, in respect of the Project Operations, Project Co and the Project Co Parties require, and HMQ Agencies shall provide access to the Site and the Facility without material interference by HMQ Agencies or any Province Person from the date of Financial Close until the Termination Date.
- (e) Except as may be provided in the Permits, Licences, Approvals and Agreements, none of the rights granted pursuant to this Section 14.1 shall extend beyond the boundaries of the Site, or to any lands other than the Site, other than easements and similar interests of HMQ Agencies which benefit the Site, obtained after the date of this Project Agreement, to the extent the same are necessary for the Project Operations.
- (f) The licence provided in this Section 14.1 shall automatically terminate as of the Termination Date.

14.2 Non-exclusive Licence/Development of Site

- (a) Project Co acknowledges and agrees that the rights granted to Project Co and the Project Co Parties hereunder shall be non-exclusive and that HMQ Agencies and any person authorized by HMQ Agencies may occupy and possess the Site and Facility, including for the purposes of carrying out the Maintenance and Storage Activities and the HMQ FM Services. In exercising such rights Project Co shall not, and shall require that the Project Co Parties shall not, compromise the safety of any HMQ Occupants and, except as permitted under this Project Agreement, disrupt the performance of the Maintenance and Storage Activities or the HMQ FM Services.
- (b) Without limiting Section 14.2(a), Project Co acknowledges that HMQ Agencies may from time to time use or develop (including by way of subdivision or expansion), or permit the use or development of, portions of the Site or the Facility. To the extent that such use or development materially adversely interferes with Project Co's licence rights hereunder or materially adversely interferes with Project Co's ability to perform the Project Operations, such use or development shall, subject to and in accordance with Schedule 22 - Variation Procedure, result in a Variation.

14.3 Limited Access Areas

- (a) For purposes related to security or confidentiality, effective upon Substantial Completion, HMQ Agencies may limit or restrict Project Co's and each Project Co Party's access to

designated portions of the Site or the Facility unless a person seeking access obtains the prior written consent of HMQ Agencies, which consent may be subject to such reasonable conditions as are imposed by HMQ Agencies.

14.4 Naming and Signage

- (a) Project Co acknowledges that HMQ Agencies reserve and retain (i) all rights to designate the name for the Facility and any part of the Facility; (ii) all rights to signage in relation to the Site and the Facility; and (iii) all rights, Trade-Marks, naming or branding regarding the Facility or any part of the Facility. It is agreed, however, that, with the prior written consent of HMQ Agencies, not to be unreasonably withheld or delayed and which may take into consideration any applicable governmental guidelines, including the guidelines set out in Schedule 18 - Communications Protocol, 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 identifying their respective roles in connection with the development and construction of the Project.

14.5 No Interest in Land

- (a) Project Co agrees that, in accordance with the principles of the IPFP Framework, it acquires no estate, right, title or ownership interest in the Site or the Facility or any other interest in land pursuant to this Project Agreement or otherwise.

14.6 Non-Disturbance Agreement

- (a) If HMQ Agencies mortgage, charge or otherwise encumber the Site, HMQ Agencies shall notify Project Co and, at the request of Project Co, provide Project Co with an agreement, in form satisfactory to Project Co, acting reasonably, executed by the mortgagee of the Site permitting Project Co and the Lenders' Agent to access and use the Site under the licence granted pursuant to this Section 14 and the Lenders' Direct Agreement, respectively, free from interference from the mortgagee or any person claiming by or through the mortgagee. This Section 14.6 shall not apply in respect of any portion of the Site used or developed pursuant to Section 14.2(b) if neither the licence granted pursuant to this Section 14 nor the Project Operations pertain to such portion of the Site.

15. TITLE ENCUMBRANCES

15.1 Title Encumbrances

- (a) Project Co shall perform all obligations under the Title Encumbrances for or on behalf of HMQ Agencies, other than:
 - (i) obligations under any Title Encumbrance which Project Co is not legally capable of performing for or on behalf of HMQ Agencies;

- (ii) obligations under any Title Encumbrance added after the date of this Project Agreement unless such obligations are provided in the Output Specifications as obligations of Project Co or the Parties agree that such obligations are obligations of Project Co;
 - (iii) obligations under any Title Encumbrance which the applicable Governmental Authority may formally relieve or waive, with the consent of HMQ Agencies, with respect to any Development Approval; and
 - (iv) obligations under the Title Encumbrances that Appendix 1 - Permits, Licences, Approvals and Agreements of Schedule 1 - Definitions and Interpretation require HMQ Agencies to perform or cause to be performed.
- (b) All Project Operations performed by or on behalf of Project Co, whether before, during or after the completion of the Works, shall be performed in a manner which does not breach the Title Encumbrances or any of the Development Approvals.
 - (c) Subject to Encumbrances that Project Co shall remove pursuant to Section 15.2, 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 Site or the Facility or any part of the Site or the Facility, except in accordance with the terms of this Project Agreement.

15.2 No Site Encumbrances

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

15.3 Construction Lien Act (Ontario)

- (a) The Parties acknowledge that the foregoing provisions of Section 15.2 shall apply to claims for lien made upon or against the Site pursuant to the CLA and shall also apply to claims made against HMQ Agencies, any Governmental Authority or the holdback under the CLA as though such a claim were an Encumbrance against the Site as referred to therein.

- (b) Project Co shall withhold from each Subcontractor the holdbacks required under the CLA and shall deal with such holdbacks in accordance with the CLA.
- (c) In furtherance of Section 15.3(b), Project Co shall, as a condition of final payment under any Subcontract for which lien rights or rights in respect of the holdback may be claimed under the CLA, require that a certificate of completion under Section 33(1) of the CLA for such Subcontract be issued and the relevant Project Co Party provide statutory declarations or other assurances confirming that all those engaged by the Project Co Party have been paid in accordance with Applicable Law.
- (d) Project Co shall follow the requirements of the CLA and Good Industry Practice for posting and advertising certificates of completion when issued.
- (e) Project Co shall cause a Payment Certifier to be appointed under the Construction Contract and shall cause such Payment Certifier to certify the substantial performance of the Construction Contract in accordance with the CLA.

16. SITE CONDITION

16.1 Acceptance of Site Condition

- (a) Subject to Sections 6.4, 16.2, and 16.3, Project Co acknowledges and agrees that it has inspected all matters relating to the Site, including the Background Information, prior to executing this Project Agreement and agrees to accept the Site and the Site Conditions on an “as is, where is” basis. Without limiting the generality of the foregoing, but subject to Sections 6.4, 16.2, and 16.3, Project Co shall not be entitled to make any claim of any nature whatsoever against any Province Person on any grounds relating to the Site, including the fact that incorrect or insufficient information on any matter relating to the Site was given to it by any person, whether or not a Province Person, unless the relevant person has given Project Co an express written entitlement to rely on information relating to the Site provided by such person to Project Co.
- (b) Subject to Sections 6.4, 16.2, and 16.3, Project Co acknowledges and agrees that it has and shall be deemed to have:
 - (i) performed all necessary Site due diligence and investigations and inspected and examined the Site and its surroundings;
 - (ii) satisfied itself as to the nature of the Site Conditions, the ground and the subsoil, the level and quantity of groundwater, the form and nature of the Site, the loadbearing and other relevant properties of the Site, the risk of injury or damage to property affecting the Site, the nature of the materials (whether natural or otherwise) to be excavated and the nature of the design, work and materials necessary for the execution and delivery of the Works;
 - (iii) satisfied itself as to the presence of any Contamination on, in or under the Site, or migrating to or from the Site;

- (iv) satisfied itself as to the adequacy of the rights of access to, from and through the Site and any accommodation it may require for the purposes of fulfilling its obligations under this Project Agreement;
 - (v) satisfied itself as to the possibility of interference by persons of any description whatsoever with access to or use of, or rights in respect of, the Site; and
 - (vi) satisfied itself as to the precautions, times and methods of working necessary to prevent any nuisance or interference, whether public or private, being caused to any third parties.
- (c) Project Co further acknowledges and agrees that, other than as referred to or contained in this Project Agreement, no representations or warranties have been made, nor documentation delivered to Project Co or any Project Co Party, which would indicate that Project Co would be unable to perform the Project Operations in a lawful manner.

16.2 Contamination

- (a) HMQ Agencies shall be responsible for Contamination on, in or under, or migrating to or from, the Site, except for any such Contamination:
- (i) that was described in, or was properly inferable, readily apparent or readily discoverable from the Environmental Reports and Designated Substance Reports or the Geotechnical Reports;
 - (ii) that could have been properly inferable, readily apparent or readily discoverable on the basis of reasonable, normal course and industry standard investigations, inspections or other due diligence; or
 - (iii) that is caused by Project Co or any Project Co Party.
- (b) Upon the discovery of any Contamination for which HMQ Agencies are responsible pursuant to Section 16.2(a), Project Co shall immediately inform the HMQ Representative and shall comply with all Applicable Law in respect thereof at HMQ Agencies' cost pursuant to Section 16.2(d).
- (c) In the event that HMQ Agencies wish Project Co to perform actions which are in addition to any required pursuant to Section 16.2(b), then HMQ Agencies shall issue an instruction to Project Co specifying what action HMQ Agencies require Project Co to take and Project Co shall promptly and diligently comply with all such instructions at HMQ Agencies' cost pursuant to Section 16.2(d).
- (d) If Sections 16.2(b) and 16.2(c) require Project Co to perform any alteration, addition, demolition, extension or variation in the Project Operations as a result of Contamination for which HMQ Agencies are responsible pursuant to Section 16.2(a) and which would not otherwise be required under this Project Agreement, then any such alteration, addition, demolition, extension or variation:

- (i) in the Works shall, subject to and in accordance with Section 37, be treated as a Delay Event and, subject to and in accordance with Section 38, be treated as a Compensation Event; and
- (ii) in the Project Co Services shall, subject to and in accordance with Schedule 22 - Variation Procedure, result in a Variation.

16.3 Items of Geological, Historical or Archaeological Interest or Value

- (a) As between the Parties, all fossils, artefacts and other objects having artistic, historic, archaeological or monetary value, including human remains and burial sites, which may be found on or at the Site or the Facility at any time or otherwise during the course of performing the Works are or shall be the sole and absolute property of HMQ Agencies.
- (b) Upon the discovery of any item referred to in Section 16.3(a) during the course of the Works, Project Co shall:
 - (i) immediately inform the HMQ Representative of such discovery;
 - (ii) take all steps not to disturb the item and, if necessary, cease any Works in so far as performing such Works would endanger the item or prevent or impede its excavation;
 - (iii) take all necessary steps to preserve and ensure the preservation of the item in the same position and condition in which it was found; and
 - (iv) comply, and ensure compliance by all Project Co Parties, with Applicable Law and all requirements of Governmental Authorities with respect to such discovery, including the *Funeral, Burial and Cremation Services Act, 2002 (Ontario)* and the Heritage Guidelines and Protocols.
- (c) In the event that HMQ Agencies wish Project Co to perform actions which are in addition to any required pursuant to Section 16.3(b), then HMQ Agencies shall issue an instruction to Project Co specifying what action HMQ Agencies require Project Co to take and Project Co shall promptly and diligently comply with all such instructions.
- (d) If Sections 16.3(b) and 16.3(c) require Project Co to perform any alteration, addition, demolition, extension or variation in the Works as a result of such discovery and which would not otherwise be required under this Project Agreement, then any such alteration, addition, demolition, extension or variation in the Works shall, subject to and in accordance with Section 37, be treated as a Delay Event and, subject to and in accordance with Section 38, be treated as a Compensation Event.

17. TOWN OF WHITBY, REGION OF DURHAM AND THIRD PARTY FINANCIAL OBLIGATIONS

17.1 Town of Whitby, Region of Durham and Third Party Financial Obligations

- (a) Subject to Section 17.2, Project Co shall be responsible for all Financial Obligations under or in respect of all Permits, Licences, Approvals and Agreements including to the Town of Whitby, the Region of Durham, any Utility Company, any Governmental Authority or any other third party in respect of the Works, including:
- (i) any development charges relating to the Works, the Facility or the Site, except to the extent specifically provided otherwise in Appendix 1 – Permits, Licences, Approvals and Agreements to Schedule 1 – Definitions and Interpretation;
 - (ii) any engineering administration and inspection fees required in respect of works or services required to be performed;
 - (iii) any security deposits and letters of credit required under any Permits, Licences, Approvals and Agreements; and
 - (iv) any other amounts payable under any Project Co Permits, Licences, Approvals and Agreements.
- (b) The Parties agree that any refund, partial rebate or credit granted by the Town of Whitby, the Region of Durham, any applicable Utility Company, any applicable Governmental Authority or any other third party relating to the Financial Obligations referred to in Section 17.1(a) shall be for the benefit of HMQ Agencies to the extent such Financial Obligations were paid by HMQ Agencies and shall be for the benefit of Project Co to the extent such Financial Obligations were paid by Project Co.

17.2 HMQ Agencies' Financial Obligations

- (a) HMQ Agencies shall be responsible for all Financial Obligations required under the HMQ Permits, Licences, Approvals and Agreements that are expressly described in Appendix 1 - Permits, Licences, Approvals and Agreements to Schedule 1 - Definitions and Interpretation as being the responsibility of HMQ Agencies, including any development charges payable under the *Development Charges Act* (Ontario).

18. DESIGN AND CONSTRUCTION OBLIGATIONS

18.1 Overall Responsibility

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

- (iii) in accordance with the Works Schedule; and
 - (iv) in accordance with the other terms and conditions of this Project Agreement.
- (b) Without prejudice to Section 18.1(a), but subject to the provisions of Section 26, Schedule 20 - Payment Mechanism and Schedule 24 - Expiry Transition Procedure, if, at any time during the Project Term, any of the Works carried out by or on behalf of Project Co do not fully satisfy the Output Specifications and/or any other term or condition of this Project Agreement (other than the Project Co Proposal Extracts), Project Co shall, at its own cost and expense, rectify the Works, the Facility and any part thereof so that:
- (i) the Works, the Facility and all parts thereof shall, at all times, comply with and satisfy in full the Output Specifications and the other terms and conditions of this Project Agreement (other than the Project Co Proposal Extracts); and
 - (ii) the Works, the Facility and all parts thereof will, at all times, be able to meet the structural, mechanical, electrical and other performance standards set out in the Output Specifications.

18.2 Complete and Operational Facility

- (a) Project Co shall design, engineer, construct and commission the Facility so as to provide HMQ Agencies a complete and operational Facility in accordance with the Output Specifications and the Project Co Proposal Extracts, and that will allow Project Co to perform the Project Co Services, all in accordance with and subject to the terms of this Project Agreement.

18.3 Development of Design

- (a) Project Co shall, at its own cost, develop and complete the design of the Facility and all Design Data in accordance with the requirements of this Project Agreement, including Schedule 10 - Review Procedure and this Section 18.3.
- (b) The further development of the design and the process by which it is progressed must fully comply with the requirements of this Project Agreement.
- (c) In order to develop the detailed design of the Facility and to achieve Facility Design Acceptability, Project Co shall consult with the user groups, stakeholders and the HMQ Design Team in an interactive process. The development of the detailed design based on user group and stakeholder input shall in no way be considered a Variation.
- (d) The Parties agree that Appendix A to Schedule 10 - Review Procedure is an initial list of Design Data and other items that will require design review, which Design Data and other items shall include design, procurement and construction documentation (to a scale required by the HMQ Design Team) for each of the following:

- (i) staged [REDACTED]%, [REDACTED]% and [REDACTED]% design development documentation, being design development drawings, reports, schedules and specifications progressed from the date of this Project Agreement with extensive user group input, showing all architectural, engineering and landscape design information sufficient to allow for the development of working drawing documentation submitted at [REDACTED]% completion and [REDACTED]% completion (each such instance, “**Pre-Final Design Development Submittals**”) and at [REDACTED]% completion (the “**Final Design Development Submittals**”) of the development of the working drawings (collectively, the “**Design Development Submittals**”);
 - (ii) staged [REDACTED]%, [REDACTED]% and [REDACTED]% working drawing documentation, being construction drawings, reports, schedules and specifications progressed from the Design Development Submittals, showing all architectural, engineering and landscape design information in accordance with the requirements of this Project Agreement (the “**Construction Document Submittals**”);
 - (iii) Permit, Licence, Approval and Agreement drawings (phased, if applicable); and
 - (iv) all other documentation required pursuant to Schedule 10 - Review Procedure.
- (e) Project Co shall participate in weekly design meetings with the HMQ Design Team and frequent consultations with user groups, including on an interim and ad hoc basis, and as needed, in order to fully achieve Facility Design Acceptability.
- (f) Project Co shall submit to the HMQ Representative for review in accordance with Schedule 10 - Review Procedure all Design Data and other items listed in Section 18.3(d).
- (g) The Design Data and other items listed in Section 18.3(d) must contain, at a minimum, the following additional information:
- (i) identification of the stage of design or construction to which the documentation relates;
 - (ii) all design or construction drawings and specifications necessary to enable the HMQ Design Team to make an informed decision as to whether Project Co is permitted to proceed pursuant to Schedule 10 - Review Procedure;
 - (iii) for each stage of the design or construction documentation, a schedule identifying all changes to the relevant documentation that has occurred from the previous stage of design or construction documentation; and
 - (iv) where changes have been submitted, an indication of how the changes meet the requirements of this Project Agreement.

- (h) All design review meetings held by Project Co with the HMQ Design Team and user group design workshops shall be held in the City of Toronto, Ontario unless HMQ Agencies otherwise agree in writing.
- (i) If Project Co commences or permits the commencement of the next level of design or construction of any part or parts of the Facility 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 Site, replace and restore, as applicable, any parts of the design or construction that do not comply with this Project Agreement.
- (j) Neither HMQ Agencies nor any other Province Person (including for certainty, the Planning, Design & Compliance Consultant) will have any liability:
 - (i) if a document submitted by Project Co and reviewed by HMQ Agencies or the HMQ Representative 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 some defect in any documents, drawings, specifications or certificates submitted by Project Co.
- (k) Project Co and HMQ Agencies will cooperate with each other in the design review process. Notwithstanding such cooperation by HMQ Agencies, 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.
- (l) Project Co shall allow the HMQ Design Team, at any time, a reasonable opportunity to view any items of Design Data, which shall be made available to the HMQ Design Team as soon as practicable following receipt of a written request from the HMQ Representative.
- (m) Project Co shall cause the Construction Contractor to establish and maintain a computerized design database by which Project Co and the HMQ Design Team can upload design documents as required by the HMQ Design Team. Project Co and the HMQ Design Team shall have access to such computerized design database remotely by computer to view drawings comprised within the Design Data and to electronically store and print copies of such Design Data.

18.4 Start-Up Meeting

- (a) Within 10 Business Days of Financial Close, Project Co and the HMQ Design Team shall attend a start-up meeting (the “**Start-Up Meeting**”) with HMQ Agencies to set out the design development process in greater detail.
- (b) The agenda for the Start-Up Meeting shall include the following:

- (i) Project Co's plan to develop a successful long-term partnership with HMQ Agencies for the purpose of supporting HMQ Agencies in achieving its vision, mission and core values;
- (ii) Project Co's plan to ensure that the Works are completed in accordance with the requirements set forth in this Project Agreement;
- (iii) Project Co's process to ensure optimum design quality;
- (iv) Project Co's approach to a fully integrated interior design process that includes every element of interior finishes, furniture, fixtures, equipment, occupant signage and wayfinding;
- (v) a proposed schedule of Works Submittals which is consistent with the Works Schedule and which provides for a progressive and orderly flow of Works Submittals from Project Co to the HMQ Design Team to allow sufficient time for review of each Works Submittal by the HMQ Design Team, including allowing sufficient time for the HMQ Design Team to consult with users, as required, and taking into account both the resources available to the HMQ Design Team to conduct such review and whether delay in the review of the subject matter of the Works Submittal will have a material impact on Project Co's ability to progress future anticipated Works Submittals and the Works in accordance with the Works Schedule;
- (vi) Project Co's plan to successfully integrate feedback from user groups and the HMQ Design Team
- (vii) Project Co's approach to timing, construction, adjustment and user feedback on required mock-ups; and
- (viii) a communication process that includes an electronic data room and the use of a computerized document tracking system that has the capacity to report, on request, the status of all design and construction documentation, and that takes into account the document security protocol described in Section 49.5(f).

18.5 Design Review Meetings and Design Workshops

- (a) In order to obtain user input in the preparation of, and prior to submitting, the Design Development Submittals and the Construction Document Submittals, the Parties will hold design review meetings (the "**Design Review Meetings**") with the HMQ Design Team and hold user group design workshops (the "**Design Workshops**") beginning immediately after Commercial Close upon the following terms:
 - (i) the Project Co Representative shall arrange the Design Review Meetings and Design Workshops in consultation with the HMQ Representative;

- (ii) all Design Review Meetings and all Design Workshops shall be held in Toronto, Ontario, unless HMQ Agencies agree otherwise in writing;
 - (iii) the Parties shall cooperate to develop a reasonable schedule for the Design Review Meetings and the Design Workshops and shall incorporate such schedule into the Works Schedule;
 - (iv) Project Co shall circulate to the HMQ Design Team an agenda for each of the Design Review Meetings and each of the Design Workshops no later than 10 Business Days prior to the relevant Design Review Meeting and/or Design Workshop;
 - (v) the Design Review Meetings and Design Workshops shall be held in person, except where otherwise agreed by the Parties, acting reasonably;
 - (vi) Project Co shall maintain minutes of the Design Review Meetings and Design Workshops, including possible design solutions and changes in design, and, within two Business Days after each Design Review Meeting and Design Workshop, Project Co shall provide to the HMQ Design Team a copy of the minutes, together with a copy of any notes, comments, sketches, drawings, tracings, lay-outs, plans or diagrams prepared at the Design Review Meeting and Design Workshop;
 - (vii) HMQ Agencies and Project Co agree that the subject matter of the Design Review Meetings and Design Workshops shall not be regarded as Submittals to which Schedule 10 - Review Procedure applies, and that HMQ Agencies shall not be bound by the input provided in connection with the Design Review Meetings and Design Workshops;
 - (viii) Project Co shall submit to HMQ Agencies the Design Development Submittals or the Construction Document Submittals, as applicable, for review pursuant to Schedule 10 - Review Procedure; and
 - (ix) the Parties agree that, with respect to the Design Development Submittals and the Construction Document Submittals, the period for review shall be 15 Business Days rather than the 10 Business Days prescribed in Section 2.2 of Schedule 10 - Review Procedure.
- (b) Prior to the [REDACTED]% and [REDACTED]% Design Development Submittals, the Parties will hold Design Review Meetings and/or Design Workshops (as required by HMQ Agencies) with respect to the following matters and any other Design Review Meetings and Design Workshops required by Project Co or HMQ Agencies, each acting reasonably:
- (i) space planning and room layouts;
 - (ii) exterior elevations including materials, finishes and colours;

- (iii) interior materials, finishes and colours;
 - (iv) millwork;
 - (v) FF&E;
 - (vi) structural design including plans and sections;
 - (vii) mechanical and electrical systems including plant layouts and functionality;
 - (viii) civil engineering design including grading and site servicing;
 - (ix) site landscape design;
 - (x) information/communication technology;
 - (xi) security systems;
 - (xii) track and specialty trackwork ;
 - (xiii) scad/yard control;
 - (xiv) sustainable design LEED, including a dedicated LEED workshop;
 - (xv) telecommunications systems; and
 - (xvi) future expansion and adaptability features.
- (c) Prior to the [REDACTED]% Design Development Submittals, the Parties will hold Design Review Meetings and/or Design Workshops (as required by HMQ Agencies) with respect to the following matters and any other Design Review Meetings and Design Workshops required by Project Co or HMQ Agencies, each acting reasonably:
- (i) all items listed in Section 18.5(b) and all items listed in Section 7 of Appendix A of Schedule 10 - Review Procedure, as required;
 - (ii) physical mock-ups for HMQ Agencies and user review (including, for certainty, review by Metrolinx Staff);
 - (iii) interior elevations;
 - (iv) door/hardware functionality;
 - (v) yard control work stations; and
 - (vi) signage and wayfinding.

- (d) Prior to the [REDACTED]%, [REDACTED]% and [REDACTED]% Construction Documents Submittals, the Parties will hold Design Review Meetings and/or Design Workshops (as required by HMQ Agencies) with respect to the following matters and any other Design Review Meetings and/or Design Workshops required by Project Co or HMQ Agencies, each acting reasonably:
- (i) items including the Main Building, Facilities Maintenance Building, Wheel Shop and Consist Wash, Track and Yard Maintenance, Fuel Storage, Load Test Cell, Canopies, storm water management pond and track;
 - (ii) safety and security certification, including track; and
 - (iii) building controls, track and yard control, operational systems, integration of systems, commissioning and landscaping.
- (e) The purpose of the Design Review Meetings and Design Workshops is to facilitate the incorporation of HMQ Agencies' input, involvement and feedback into the Design Data prior to submission of such Design Data in accordance with Schedule 10 - Review Procedure.

18.6 [Intentionally Deleted]

18.7 Performance of Design Obligations

- (a) In the design and engineering of the Facility, Project Co, its consultants and the Project Co Parties shall, at a minimum, exercise the standard of care normally exercised by licensed 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 licensed or registered professional engineers and architects registered to practice in the Province of Ontario. Such architects and engineers shall certify and, if required by Applicable Law, sign and seal, all designs, drawings and technical reports confirming that they comply with all prevailing design standards and design practices for such work in the Province of Ontario, all other applicable standards, specifications and codes, and as otherwise required by Applicable Law.
- (c) Project Co shall ensure that the Design Team certifies that the design and construction of the Works is in accordance with the requirements of the Project Agreement as contemplated pursuant to Appendix A of Schedule 10 – Review Procedure. During construction and commissioning of the Works, the Design Team shall review Shop Drawings, inspect the Works and review the reports, test results, certificates, confirmations, opinions and inspections prepared by other persons in connection with or relating to the construction and commissioning of the Works, all to the extent necessary to satisfy the Design Team that the Works have been performed in compliance with the Project Agreement.

- (d) Project Co shall ensure that the Design Team has, and has assigned, sufficient resources necessary to satisfy the construction monitoring activities and frequency of certification required by the Design Team as contemplated pursuant to Schedule 10 – Review Procedure.

18.8 General Construction Obligations

- (a) Project Co is responsible for all construction means, methods and techniques used to undertake the Works and must provide everything (including labour, plant, equipment and materials) necessary for the construction and commissioning of the Facility, and other performance of the Works.
- (b) Project Co shall in a timely and professional manner and in accordance with the requirements of this Project Agreement:
- (i) construct the Works diligently, expeditiously and in a thorough and workman-like manner and consistent with the Design Quality Plan and Construction Quality Plan;
 - (ii) ensure that no works other than the Works under this Project Agreement are constructed on the Site by Project Co or any person for whom Project Co is responsible at law;
 - (iii) protect the Works from all of the elements, casualty and damage;
 - (iv) in respect of plant, equipment and materials incorporated in the Works, use plant, equipment and materials that:
 - (A) are of a kind that are consistent with the Output Specifications;
 - (B) are new, of good quality and are used, handled, stored and installed in accordance with Applicable Law and Good Industry Practice with respect to health and safety so as not to be hazardous or dangerous; and
 - (C) where they differ from the Output Specifications, have been substituted with HMQ Agencies' prior written consent in accordance with Section 18.9.
- (c) Without limiting Project Co's obligations pursuant to Section 9.5 or Project Co's indemnity pursuant to Section 53.1, Project Co shall, at all times throughout the progress of the Works, be responsible for maintaining and securing the Site to prevent access onto the Site and the Facility of any persons not entitled to be there as determined by Project Co acting reasonably, and the licence granted to Project Co pursuant to Section 14.1 shall include rights for Project Co to do so.
- (d) At Financial Close Project Co shall provide a new construction site office located on the Site for use by HMQ Agencies, which shall remain in place until Final Completion or

such other time as may be mutually agreed by HMQ Agencies and Project Co. The site office shall satisfy the following requirements, in each case, in form and substance satisfactory to HMQ Agencies, acting reasonably: (i) the site office shall be no less than 8m x 18m and equipped with nine (9) workstations (cubicles) each one complete with at least one double power outlet, one data jack, one phone jack and telephone, one high speed internet connection and one individual desk light. Each workstation's work area shall be sized to accommodate extended full size drawings, one chair and a lockable filing cabinet; (ii) one common area with 1-5 tier lateral lockable filing cabinet, two wall mounted shelves minimum 300mm deep and 1500mm wide, one photocopier/facsimile, table sized to accommodate extended full size drawings; (iii) provide complete office supplies, two computers sufficient to operate CAD and MS Office including at least Word, Excel, Power Point and Project; internet access (highspeed) through a dedicated internet connection and three telephone lines; (iv) one boardroom with capacity for 20 occupants, complete with table and chairs, whiteboard, overhead projector and 96" screen, six (6) power outlets, high speed internet connection, one phone and data jack and a teleconference phone (Polycom Speakerphone or similar); (v) two washrooms (men's and women's) with permanent supply of liquid soap, paper towels and toilet paper; (vi) one kitchenette equipped with microwave, small fridge, coffee maker, kettle, water dispenser and permanent water supply; (vii) the site office shall include natural light (windows) and proper artificial lighting, air conditioning and heating units.

18.9 Substitutions

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

18.10 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 Facility, and that standard has changed between the date of this Project Agreement and the date that such compliance is required, then Project Co shall give notice to HMQ Agencies of such change. If, after such notice, HMQ Agencies require compliance with the changed standard (rather than the standard applicable as of the date of this Project Agreement), then, to the extent such change impacts the Works and would not have otherwise been taken into account by compliance with Good Industry Practice, such changed standard shall, subject to and in accordance with Schedule 22 - Variation Procedure, result in a Variation. If HMQ Agencies do not require compliance with the changed standard, then Project Co shall continue to comply with the standard applicable as of the date of this Project Agreement, without a Variation

therefor. This Section 18.10 shall not apply where a change in a technical standard is also a Change in Law.

18.11 Works Submittals

- (a) Any and all items, documents and anything else required or specified by this Project Agreement in respect of the Works to be submitted to, reviewed or otherwise processed by HMQ Agencies prior to Substantial Completion, including any and all subsequent revisions, amendments and changes thereto, shall be subject to review by HMQ Agencies pursuant to Schedule 10 - Review Procedure. The first document to be submitted by Project Co for review by HMQ Agencies pursuant to Schedule 10 - Review Procedure shall be the draft document control and security protocol described in Section 49.5(f)

18.12 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 18.12.
- (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 and shall ensure that such monies earn a rate of interest that is no less than the rate of interest that is quoted or published by Schedule I Banks in Canada as payable on interest bearing Canadian dollar demand deposit accounts;
 - (iii) interest earned on the Cash Allowance Account will accrue in the Cash Allowance Account;
 - (iv) Project Co shall provide a reconciliation of the Cash Allowance Account to HMQ Agencies on a monthly basis;
 - (v) subject to Project Co's obligation to fund the Cash Allowance Account pursuant to Section 18.12(b)(i), HMQ Agencies shall make deposits into the Cash Allowance Account in the event that the payment requirements for Cash Allowance Items, including applicable HST, for invoices approved by HMQ Agencies exceed the then balance of the Cash Allowance Account, for clarity, determined on an aggregate basis across all Cash Allowance Items, prior to approving any such invoices;

- (vi) if, at Final Completion, there exists a positive balance in the Cash Allowance Account, such balance will be paid by Project Co to HMQ Agencies or as HMQ Agencies 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 to the HMQ 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 reports described in Section 18.12(c), Project Co shall, on a monthly basis, provide to the HMQ 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 and including copies of all vendor and Project Co Party invoices;
 - (ii) evidence that the commitment by Project Co to perform the Cash Allowance Items has been approved by HMQ Agencies; and
 - (iii) any discounts, rebates, refunds, chargebacks, credits, price adjustments and other allowances available to Project Co in connection with the performance of the Cash Allowance Items.
- (e) HMQ Agencies shall, within 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. HMQ Agencies shall only be permitted to withhold their approval if HMQ Agencies determine that the Request for Payment Approval does not contain the information that HMQ Agencies require, acting reasonably, to discharge their obligations under this Section 18.12. If HMQ Agencies withhold their approval pursuant to this Section 18.12(e) and subsequently receive the information that HMQ Agencies require, acting reasonably, to discharge their obligations under this Section 18.12, they shall, within 10 Business Days of their receipt of such information, provide to Project Co, in writing, HMQ Agencies’ approval of the invoices set out in the aforementioned Request for Payment Approval.
- (f) If HMQ Agencies approve the payment of the invoices set out in a Request for Payment Approval, Project Co shall make payment to the relevant vendors or each Project Co

Party, as applicable, from the Cash Allowance Account. To the extent the invoices and/or payments approved by HMQ Agencies in accordance with this Section 18.12 are in excess of the then balance of the Cash Allowance Account, HMQ Agencies shall, in accordance with Section 18.12(b)(v), pay such excess amount to the relevant vendors or Project Co Parties.

- (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 Works Schedule and any costs, expense or delays related to funding or managing the Cash Allowance Account are the responsibility of Project Co.

18.13 Apprenticeship Plan and Program

- (a) No later than six months after Financial Close, Project Co shall provide a plan setting out Project Co's Project-specific approach to maximizing apprenticeship opportunities on the Project (the "**Apprenticeship Plan**") for review and approval by HMQ Agencies. The Apprenticeship Plan shall include:
- (i) specific objectives for apprenticeship opportunities for the Project on a trade-by-trade basis;
 - (ii) apprenticeship opportunities for each trade required on the Project;
 - (iii) a confirmation that apprenticeships will be registered with the Ministry of Training, Colleges and Universities and the Ontario College of Trades, as applicable;
 - (iv) a program to ensure the required supply of apprentices to meet Project Co's Apprenticeship Plan objectives and requirements;
 - (v) a program to support apprentices on the Project, to complete their apprenticeships during the Project Term and, for those whose apprenticeships are not complete by

the end of the Project Term a program to support apprentices to complete their apprenticeships after the end of the Project Term; and

- (vi) a focused apprenticeship program for youth-at-risk, historically disadvantaged groups in local communities including low-income, racialized and immigrant populations, and military veterans.
- (b) Project Co shall implement the approved Apprenticeship Plan.
- (c) Project Co shall provide an annual report to HMQ Agencies on the implementation of the Apprenticeship Plan which report shall include:
 - (i) statistics on the number of apprentices involved in the Project relative to the number of journeypersons, for each month of the Project; and
 - (ii) detailed information setting out Project Co's progress toward achieving the objectives set out in the Apprenticeship Plan, including an identification of any barriers that prevented Project Co from achieving its objectives.
- (d) HMQ Agencies may require Project Co to amend its Apprenticeship Plan if, in HMQ Agencies' opinion, acting reasonably, Project Co is failing to maximize apprenticeship opportunities on the Project pursuant to the then current Apprenticeship Plan.
- (e) HMQ Agencies may, in their sole discretion, release Project Co's Apprenticeship Plan to the public. Project Co's Apprenticeship Plan shall not be Confidential Information.

18.14 Procurement Monitoring and Implementation Plan

- (a) Project Co shall implement and comply with the provisions of Schedule 19 – Procurement Monitoring and Implementation Plan.
- (b) A director or officer of Project Co shall submit, annually, on each anniversary of Commercial Close, a completed and executed declaration in the form attached as Appendix 1 to Schedule 19 - Procurement Monitoring and Implementation Plan that Project Co has made the proper inquiries and has determined that the requirements of the Procurement Monitoring and Implementation Plan have been complied with by Project Co and its Subcontractors in the immediately previous year.

18.15 External Track Warranty

- (a) External Track Works:
 - (i) Project Co represents, warrants and covenants that the materials and equipment used in the External Track Works shall be in compliance with the provisions this Project Agreement and shall have the characteristics described in Section 28.1(a)(i)-(iii).

- (ii) Any deficiency, defect or error in the External Track Works resulting from the failure of Project Co to comply with its obligations under this Project Agreement, including the structural, mechanical, electrical and other performance standards set out in the Output Specifications, shall collectively be referred to as a “**Construction Defect**”.
 - (iii) For a period of 2 years from the Final Completion Date (the “**Warranty Period**”), Project Co shall at its own cost and expense correct and make good all Construction Defects arising in respect of the External Track Works.
 - (iv) In addition to the obligation to correct and make good Construction Defects during the Warranty Period, Project Co shall at its own cost and expense correct and make good any Construction Defects that could not reasonably have been ascertained by a competent person in accordance with Good Industry Practice during a visual inspection of the External Track Works (“**Construction Latent Defect**”), provided HMQ Agencies give Project Co written notice of the Construction Latent Defect within the time frame applicable to such Construction Latent Defect pursuant to the *Limitations Act, 2002* (Ontario).
 - (v) The warranties described in this Section 18.15 shall cover labour and material, including, the costs of removal and replacement of covering materials. The warranties shall not limit extended warranties on any items of equipment or material called for elsewhere in the Output Specifications or otherwise provided by any manufacturer of such equipment or material.
- (b) Prompt Repair of Warranty Work
- (i) Project Co acknowledges that the timely performance of warranty work is critical to the ability of HMQ Agencies to maintain effective operations of the Facility. Project Co further acknowledges that if HMQ Agencies are unable to contact Project Co and/or obtain, if Project Co fails to complete, the corrective work within such time period required by HMQ Agencies (which for greater certainty shall consist of an initial on-site visit by Project Co within 24 hours of being notified of the warranty work by HMQ Agencies for any issue, which in the sole discretion of HMQ Agencies, is related to the safety or reliable operations of the Facility, 72 hours for work which, in the sole discretion of HMQ Agencies, does not directly impact the safety or reliable operation of the Facility, or such earlier time as reasonably required in the circumstances), acting reasonably, that HMQ Agencies’ own forces may take such emergency steps as are reasonable and appropriate to correct such defects, deficiencies or non-compliant items in the External Track Works, at Project Co’s sole cost and expense, and except in the case of damage caused by HMQ Agencies’ own forces, such emergency steps taken by HMQ Agencies’ own forces shall not invalidate any warranties in respect of such portion of the External Track Works affected by such corrective actions of HMQ Agencies’ own forces.

- (ii) After the Final Completion Date, HMQ Agencies shall cause Project Co to be granted access to the External Track Works for the purpose of performing such warranty work that is required pursuant to this Section 18.15. Project Co acknowledges that such access to the External Track Works may be subject to such limitations as may be imposed by HMQ Agencies, acting reasonably.

19. HMQ AGENCIES' ACCESS AND MONITORING

19.1 HMQ Agencies' Access During the Works Phase

- (a) Subject to Section 19.1(b) but without limiting any of HMQ Agencies' rights in respect of the Site, Project Co acknowledges and agrees that the Province Persons and their respective representatives shall, prior to Substantial Completion, have unrestricted access to the Site, the Facility and any workshop where materials, plant or equipment are being manufactured, prepared or stored at all reasonable times during normal working hours.
- (b) In exercising their access rights under Section 19.1(a), the Province Persons and their respective representatives shall:
 - (i) provide reasonable prior notice appropriate to the circumstances (other than for any offices or other facilities provided at the Site for any Province Person's own use);
 - (ii) comply with all relevant safety procedures and any reasonable directions with regard to site safety that may be issued by or on behalf of the 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.

19.2 Right to Use Site by Province Persons

- (a) During the Operational Term, each Province Person (including, for certainty, the Planning, Design & Compliance Consultant) and HMQ Service User shall have a right to use, enter on, have access to, and occupancy of, the Site and the Facility as is required by them for any purpose, including to perform the Maintenance and Storage Activities and the HMQ FM Services and to ensure the achievement of Facility Design Acceptability. Project Co hereby confirms that such right to enter on, occupy, use and access the Site and the Facility including the unrestricted right to full access to the Site and the Facility to all Province Persons (including, for certainty, the Planning, Design & Compliance Consultant) and HMQ Service Users during such period shall be without interference by Project Co or any Project Co Party. In exercising such rights Project Co shall not, and shall require that the Project Co Parties shall not, disrupt the performance of the Maintenance and Storage Activities or the HMQ FM Services.

19.3 Right of Access to Additional Contractors

- (a) Subject to Section 9.6, during the Project Term, Project Co shall, and shall ensure that the Project Co Parties shall, give Additional Contractors access to those parts of the Site and the Facility as is necessary for the purpose of carrying out and completing Additional Works.

19.4 Increased Monitoring

- (a) If, at any stage, HMQ Agencies are of the opinion, acting reasonably, that there are defects in the Works or that Project Co has failed to comply, in any material respect, with the requirements of this Project Agreement (including the Output Specifications and the Project Co Proposal Extracts), HMQ Agencies may, without prejudice to any other right or remedy available to them, by notice to Project Co, increase the level of monitoring of Project Co from that set out in this Project Agreement to such level as HMQ Agencies consider reasonable taking into account the nature of the relevant defect or failure until such time as Project Co shall have demonstrated, to HMQ Agencies' 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 HMQ Agencies for any reasonable costs incurred as a result of such increased monitoring.

19.5 Right to Open Up

- (a) HMQ Agencies shall have the right, at any time prior to the Final Completion Date to request Project Co to open up and inspect (or allow HMQ Agencies to inspect) any part or parts of the Works, or to require testing of any part or parts of the Works, where HMQ Agencies reasonably believe that such part or parts of the Works is or are defective or that Project Co has failed to comply with the requirements of this Project Agreement (including the Output Specifications, the Project Co Proposal Extracts and the Design Data) relevant to such part or parts of the Works, and Project Co shall comply with such request. When HMQ Agencies make such a request, HMQ Agencies shall include reasonably detailed reasons with such request.
- (b) If the inspection shows that the relevant part or parts of the Works is or are defective or that Project Co has failed to comply with the requirements of this Project Agreement (including the Output Specifications, the Project Co Proposal Extracts and the Design Data) relevant to such part or parts of the Works, Project Co shall rectify all such defects and non-compliance diligently and at no cost to HMQ Agencies and Project Co shall not be entitled to any additional compensation or extension of time in relation thereto.
- (c) If the inspection shows that the relevant part or parts of the Works is or are not defective and that Project Co has complied with the requirements of this Project Agreement (including the Output Specifications, the Project Co Proposal Extracts and the Design Data) relevant to such part or parts of the Works, the exercise by HMQ Agencies of their rights pursuant to this Section 19.5 shall, subject to and in accordance with Section 37, be treated as a Delay Event and, subject to and in accordance with Section 38, be treated as a Compensation Event.

19.6 No Relief from Obligations

- (a) The Parties acknowledge that the exercise by HMQ Agencies or the HMQ Representative of the rights under this Section 19.6 shall in no way affect the obligations of Project Co under this Project Agreement except as set out in this Section 19.6.

20. WORKS SCHEDULE AND WORKS REPORT

20.1 Completion of Works

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

20.2 The Works Schedule

- (a) Project Co shall prepare and submit to HMQ Agencies and the Independent Certifier:
 - (i) within 45 days of Financial Close, a detailed 6-Month Works Schedule;
 - (ii) within 180 days after Financial Close, a detailed draft of the Works Schedule; and
 - (iii) every month thereafter until Final Completion, an updated detailed Works Schedule as contemplated pursuant to Section 20.5;

each using Microsoft Project or other software compatible with Microsoft Project that supports the completion of the Works in accordance with Section 20.1. The Submittals shall include the electronic data files that support the chosen software.

- (b) HMQ Agencies shall provide Project Co with comments on the draft schedule in accordance with Schedule 10 - Review Procedure, provided that the period for review of such draft schedule shall be 20 Business Days rather than the 15 Business Days prescribed in Section 2.2 of Schedule 10 - Review Procedure. Project Co shall revise the draft schedule to the extent required by Schedule 10 - Review Procedure within 30 days of receipt of any comments from HMQ Agencies.
- (c) When agreed by the Parties, the draft of the Works Schedule shall become the Works Schedule.
- (d) The 6-Month Works Schedule and the Works Schedule shall be prepared in accordance with Good Industry Practice for a project of similar scale, scope, type and complexity and shall be in sufficient detail so as to enable the HMQ Representative and, if applicable, the Independent Certifier, to monitor the progress of the Works, including all commissioning activities, and the likely future progress of the Works. Given the size and complexity of the Project, the Works Schedule shall include no fewer than 1,000 activities.

- (e) Without limiting the generality of Section 20.2(d), the 6-Month Works Schedule shall include, at a minimum, in respect of the 6-month period beginning at Financial Close:
- (i) all elements to be included in the Works Schedule pursuant to Schedule 3, Part 1 of the Request for Proposals;
 - (ii) major milestone events;
 - (iii) the dates that key decisions must be made by HMQ Agencies, or key meetings where HMQ Agencies are to be present, to support the progress of the Works;
 - (iv) a detailed and editable procurement, delivery, installation, training and commissioning and inventory services schedule for all FF&E;
 - (v) the proposed dates for all plans, all Works Submittals required to be submitted under this Project Agreement and any Schedule by Project Co pursuant to the Review Procedure;
 - (vi) all activities related to the environmental process, proposed Stakeholder consultations, and Environmental Approvals, including review periods by Governmental Authorities and third parties pursuant to Project Co Permits, Licenses and Approvals showing in sufficient detail how these dates affect the critical path of the Works Schedule;
 - (vii) all design related activities, including the proposed date for each of the Design Workshops;
 - (viii) all field and construction activities, including construction staging, subcontract work and cash allowance work, both on and off the Site;
 - (ix) all procurement activities undertaken by the Construction Contractor with respect to materials and equipment, including timelines for Shop Drawings, manufacturing periods and dates of delivery to the Site;
 - (x) projected Construction Contract cash flows;
 - (xi) free float for each activity and total float for the overall Project;
 - (xii) the underlying assumptions used including the dependency of each activity on other activities;
 - (xiii) the critical path; and
 - (xiv) a narrative that describes, in sufficient detail, the rationale behind the items identified in this Section 20.2(e).
 - (xv) all Project Co Commissioning and HMQ Commissioning activities;

- (xvi) the manpower requirements for each activity, including subcontract work;
 - (xvii) a manpower histogram, both overall and by trade;
 - (xviii) a cumulative “S”-curve showing planned percent completion for each month from the commencement of the Works until the Scheduled Final Completion Date; and
 - (xix) projected Construction Contract cash flows.
- (f) Without limiting the generality of Section 20.2(d), the Works Schedule shall include, at a minimum, in respect of the period from 6 months following Financial Close until the Substantial Completion Date:
- (i) subject to Section 20.2(f)(ii), all elements to be included in the 6-Month Works Schedule pursuant to Section 20.2(e);
 - (ii) the proposed date for each Works Submittal, except for the proposed dates for plans under 20.2(e)(v)
 - (iii) all Project Co Commissioning and HMQ Commissioning activities;
 - (iv) the manpower requirements for each activity, including subcontract work;
 - (v) a manpower histogram, with descriptions of overall manpower as well as by trade and manpower sourced locally (including both direct engagement and contract work);
 - (vi) a cumulative “S”-curve showing planned percent completion for each month from the commencement of the Works until the Scheduled Final Completion Date; and
 - (vii) Project Co’s original baseline and progress in percent complete for each scheduled activity on the critical path.

20.3 Failure to Maintain Schedule

- (a) Without limiting any other provision of this Project Agreement but subject to Section 37, if, at any time:
- (i) the actual progress of the Works has fallen significantly behind the Works Schedule; or
 - (ii) HMQ Agencies are of the opinion that:
 - (A) the actual progress of the Works has fallen significantly behind the Works Schedule; or
 - (B) Project Co will not achieve Substantial Completion by the Longstop Date,

then Project Co shall be required:

- (iii) within 5 Business Days of receipt of notice from HMQ Agencies, to produce and deliver to each of the HMQ Representative and the Independent Certifier:
 - (A) a report identifying the reasons for the delay;
 - (B) a plan showing the steps that are to be taken by Project Co to eliminate or reduce the delay to:
 - (I) achieve Substantial Completion by the Scheduled Substantial Completion Date; or
 - (II) if Substantial Completion will not be achieved by the Scheduled Substantial Completion Date, achieve Substantial Completion by the Longstop Date; and
- (iv) to bring the progress of the Works back on schedule in accordance with the plan delivered under Section 20.3(a)(iii)(B) and approved by the HMQ Representative.
- (b) At any time prior to Final Completion, Project Co shall, no later than 5 Business Days following the written request of HMQ Agencies, deliver to HMQ Agencies a copy of the most current version of the Works Schedule and/or any past version of the Works Schedule requested by HMQ Agencies in its native software format.
- (c) Project Co shall notify the HMQ Representative if, at any time, the actual progress of the Works is significantly ahead of the Works Schedule.
- (d) For greater certainty, provided that Project Co has complied with this Section 20.3 and is not in default under Section 42.1(a)(iii), the failure to achieve Substantial Completion by the Scheduled Substantial Completion Date shall not be a Project Co Event of Default for purposes of Section 42.1(a)(iv).

20.4 Notification of Early Substantial Completion

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

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

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

20.5 Works Report

- (a) Project Co shall continuously monitor the progress of the Works in relation to the Works Schedule and, within 15 Business Days following the end of each calendar month from Financial Close until the Final Completion Date, Project Co shall provide to the HMQ Representative and the Independent Certifier a works report (each, a “**Works Report**”), which will include:
 - (i) an executive summary describing the general status of the Works and progress made over the relevant month;
 - (ii) an updated Works Schedule, in both summary and detailed formats;
 - (iii) a narrative description of any Disputes related to the Works, including any action that has taken place over the relevant month to resolve such Disputes;
 - (iv) in accordance with Section 22.2, a LEED progress report; and
 - (v) an update on those matters set out in Schedule 33 – Works Report Requirements

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

- (b) Project Co shall use and interact with, and ensure that the Construction Contractor uses and interacts with the on-line collaborative project management (“**OCPM**”) software system specified by HMQ Agencies. It is contemplated that the OCPM software system will automate certain aspects of the processes identified in Schedule 10 – Review Procedure, Schedule 11 – Quality Management, Schedule 22 – Variation Procedure, and Schedule 33 – Works Report Requirements and other processes as determined by HMQ Agencies in their sole discretion.

21. EQUIPMENT

21.1 FF&E Steering Committee

- (a) The Parties shall, within 30 days following Financial Close, establish a committee (the “**FF&E Steering Committee**”) consisting of:

- (i) five representatives appointed by HMQ Agencies from time to time, namely, the IO project manager, the Metrolinx project coordinator, the Planning, Design & Compliance Consultant and other technical and facility representatives appointed by HMQ Agencies from time to time;
 - (ii) two representatives of Project Co, one of whom shall be the Project Co Representative, appointed by Project Co from time to time.
- (b) Members of the FF&E Steering Committee may invite, on prior notice to all members, such advisors and consultants as they require from time to time to attend meetings and provide briefings to the FF&E Steering Committee.
- (c) The FF&E Steering Committee shall assist the Parties by promoting cooperative and effective communication with respect to matters related to the FF&E, including the interaction between FF&E commissioning and Plant commissioning.
- (d) The primary role of the FF&E Steering Committee shall be to review all matters, including budget review, and make all required decisions related to the FF&E including, without limitation:
- (i) Project Co proposals and recommendations for the quantity, make, model, vendor and any terms and conditions of financing or payment, as the case may be; and
 - (ii) Project Co proposals and recommendations with respect to scheduling the procurement or transfer and/or refurbishment, as applicable, installation and commissioning of all FF&E.
- (e) The members of the FF&E Steering Committee may adopt such other procedures and practices for the conduct of the activities of the FF&E Steering Committee as they consider appropriate from time to time.
- (f) Three representatives of HMQ Agencies and one representative of Project Co shall constitute a quorum at any meeting of the FF&E Steering Committee. A quorum of members may exercise all of the powers of the FF&E Steering Committee. The members shall not transact business at a meeting of the FF&E Steering Committee unless a quorum is present.

21.2 [INTENTIONALLY DELETED]

21.3 [INTENTIONALLY DELETED]

21.4 HMQ Agencies' FF&E Responsibilities

- (a) HMQ Agencies shall review and confirm Project Co's proposals for the method of procurement, quantity, make, model, vendor and any terms and conditions of payment, as the case may be, for all FF&E based upon tenders, quotations or proposals obtained by Project Co under Section 21.621.5(g).

- (b) HMQ Agencies shall enter into or shall cause Metrolinx to enter into all purchase orders and other contracts with respect to FF&E.
- (c) Metrolinx, and not Project Co, shall be liable as “purchaser” to the vendor under every purchase order, contract and manufacturer’s installation invoice related to all FF&E, and all payments related thereto shall be made from the Cash Allowance Account in accordance with the relevant invoice terms. For clarity, Metrolinx shall be responsible for all vendor costs relating to the purchase, delivery and installation of FF&E.

21.5 Project Co FF&E Responsibilities

(a) Design

In addition to any of Project Co's other design responsibilities set forth in this Project Agreement (including, for certainty, the Output Specifications), Project Co shall be responsible for:

- (i) the production of floor layouts showing all FF&E; and
- (ii) the production of all Design Data associated with the layouts and servicing of all FF&E and coordinating all structural, mechanical, and electrical information and communications technology building system services requirements to enable the accurate production of a complete working system for all FF&E.

(b) FF&E Procurement

- (i) Project Co shall be responsible for preparing, revising, coordinating and finalizing the plan to procure or transfer, install and commission, as applicable, all FF&E based on the development of Project Co's Design Data and the latest information available from the HMQ Representative and based on the preparation of detailed FF&E floor layouts pursuant to Section 21.5(a).

(c) Installation and Commissioning

Project Co shall be responsible for:

- (i) scheduling and coordinating the delivery of all FF&E to the Site or Facility;
- (ii) offloading, unpacking, handling, storing, placing and completing the installation of all FF&E in accordance with the Design Data and manufacturer's instructions; and
- (iii) coordinating, scheduling and completing the commissioning of all FF&E.

(d) FF&E Budget

Project Co shall be responsible for preparing, maintaining, and updating an FF&E budget with respect to FF&E, and conducting an ongoing review of the proposed budget with the FF&E Steering Committee.

- (e) FF&E Training
 - (i) For and in respect of each item of FF&E procured by Project Co and operated by Metrolinx Staff, Project Co shall, in accordance with Schedule 14 - Outline Commissioning Program, provide or arrange for adequate, appropriate and timely training in the item's proper operation and maintenance for all applicable Metrolinx Staff.
 - (ii) HMQ Agencies shall arrange for Metrolinx Staff to be available for training purposes in accordance with the Works Schedule and the Final Commissioning Program, as applicable.
- (f) Substantial Completion
 - (i) For the purpose of achieving Substantial Completion, all FF&E required for the completion of the Works must be successfully assembled, installed and commissioned by Project Co at the Facility in accordance with the Final Commissioning Program provided that, in respect of any item of the FF&E, such requirements shall be waived by HMQ Agencies if, despite having used commercially reasonable efforts to do so, Project Co is unable to complete the procurement, installation or commissioning of such item of the FF&E due to a delay in the performance of any of its obligations by HMQ Agencies, an FF&E vendor or manufacturer.
- (g) Holdback

Whether or not Final Completion has been achieved, until such time as Project Co has completed the procurement (if applicable), installation and commissioning of all FF&E in accordance with this Section 21, HMQ Agencies may withhold from any payment or payments due to Project Co a holdback amount equal to [REDACTED].

21.6 Project Co Procurement and Other Responsibilities

- (a) Project Co shall act as purchasing and procurement manager for HMQ Agencies and shall:
 - (i) in consultation with the FF&E Steering Committee, prepare and finalize the list of the FF&E based on the development of Project Co's Design Data and the latest information available from the HMQ Representative and update the budget for the FF&E for approval by the FF&E Steering Committee;

- (ii) in consultation with FF&E Steering Committee, review the FF&E building system requirements and the FF&E design drawings for reconciliation with the services and space designed prior to purchasing or moving of any FF&E;
- (iii) in consultation with the FF&E Steering Committee, establish, and comply with, procurement processes that are fair and competitive, all in accordance with any applicable IO and Metrolinx policies and good purchasing and procurement practices, and taking into account the procurement method set forth in 21.6(a)(iv) in respect of the procurement of the FF&E;
- (iv) use the Government of Ontario’s Vendors of Record List (the “**VOR**”) to procure all FF&E;
- (v) in consultation with the FF&E Steering Committee, prepare tenders, requests for quotations or requests for proposals (the “**FF&E Procurement Documentation**”), which shall, subject to Section 21.4(a) and this Section 21.6, be in form and substance satisfactory to HMQ Agencies;
- (vi) manage the procurement of all FF&E, including:
 - (A) providing advice to the FF&E Steering Committee in respect of the evaluation of tenders, quotations or proposals from FF&E vendors;
 - (B) assisting the FF&E Steering Committee in the review of the tenders, quotations or proposals from FF&E vendors by clearly delineating the costs and performance of the FF&E, the training methods and values, the testing and calibration protocols, the acceptable end results and the party responsible for such testing, be it the vendor, a third party or individuals engaged by Project Co;
 - (C) assisting the FF&E Steering Committee with the selection of tenders, quotations or proposals from FF&E vendors;
 - (D) subject to Section 21.4(a) and Section 21.8(b), procuring the entering into by HMQ Agencies or Metrolinx of all purchase orders and other contracts with respect to all FF&E; and
 - (E) providing such documentation as HMQ Agencies require, acting reasonably, to discharge their obligations under this Section 21.
- (vii) in accordance with the FF&E Procurement Documentation, act as a single point of contact for all FF&E vendors;
- (viii) test and calibrate any FF&E not tested and calibrated by vendors and coordinate the acceptance testing of all the FF&E; and

- (ix) for a two-year period following Substantial Completion, coordinate and manage any warranty issues with the FF&E vendors.
- (b) HMQ Agencies acknowledge and agree that it will be reasonable for Project Co not to accept a particular VOR for the procurement of the FF&E if:
 - (i) a vendor on the VOR will not provide a 100% performance bond or alternative security in favour of HMQ Agencies with the Construction Contractor named as dual obligee or beneficiary, as the case may be, thereunder; and
 - (ii) the vendor on the VOR will not include a provision in its purchase order/agreement whereby it agrees to execute and deliver, under seal, to the Construction Contractor a covenant to and in favour of the Construction Contractor that such vendor on the VOR will perform its obligations under such purchase order/agreement.
- (c) If:
 - (i) Project Co does not agree on any of the vendors on the VOR as a result of or in circumstances described in Section 21.6(b)(i) or Section 21.6(b)(ii), or
 - (ii) the prices and other terms and conditions of sale offered by the vendor in respect of the items to be supplied under the purchase order/agreement are less favourable than its commitment as a vendor of record to the Government of Ontario,then Project Co shall tender the relevant FF&E supply contract, to a vendor or vendors acceptable to HMQ Agencies (such acceptance not to be withheld unreasonably) under a competitive process consistent with Government of Ontario practice for the purchase of goods and services. Where Project Co is, for any reason, unable to tender the relevant FF&E supply contract, in accordance with the immediately preceding sentence, Project Co shall tender such FF&E supply contract to a vendor or vendors acceptable to HMQ Agencies (such acceptance not to be withheld unreasonably) pursuant to an alternative competitive process satisfactory to HMQ Agencies in their reasonable discretion. Project Co acknowledges and agrees that all contracts for the supply of FF&E under this Project Agreement shall be between Metrolinx and the applicable vendor, notwithstanding that such vendor is not a vendor on the VOR.
- (d) Based on the tenders, quotations and proposals received from FF&E vendors, Project Co shall make recommendations to the FF&E Steering Committee for the procurement of each item or type of FF&E. Each such recommendation shall include the following information:
 - (i) item description, item number, and quantities;
 - (ii) the manufacturer, model number, vendor, specifications and options for the item;

- (iii) an analysis and recommendation as to which make, model number and vendor of the item provides the overall best value for HMQ Agencies, and any other benefits of the recommendation;
 - (iv) an analysis of the effect of the items on the overall design of the Facility and the relevant areas within the Facility;
 - (v) details of the warranties, vendor installation, service agreements, training, supplies, spare parts and start-up consumables included with the items by the relevant manufacturer or vendor;
 - (vi) details of training for all applicable Metrolinx Staff;
 - (vii) FF&E acceptance testing procedures, if any, (including, without limitation, the results and guidelines for acceptance) proposed by the relevant FF&E vendor;
 - (viii) the dates and times when the items shall be delivered to the Site or the Facility, as applicable;
 - (ix) all costs, with a breakdown of applicable HST and net of all direct or indirect discounts, rebates, refunds, chargebacks, credits, price adjustments or any other allowances obtained across all categories of FF&E that effectively reduce the net selling price of such FF&E or reduce the service contract price, and any Taxes applicable to the items;
 - (x) the total amounts and timing of cash flows required to implement the recommendation and the full details of the calculation of such amounts;
 - (xi) whether the procurement is a purchase, a lease, part of a managed equipment program, based on usage pricing or any other arrangement, and the terms and timing of payments thereof;
 - (xii) if so requested by the HMQ Representative, a copy of each, quotation or proposal and all other relevant information in respect of the items and such other documentation as HMQ Agencies may reasonably require, all of which shall be provided on a fully transparent and open basis to the HMQ Representative; and
 - (xiii) if no tenders, quotations and proposals are available or have been received by Project Co, an alternate recommended course of action for procurement by Project Co, including possible substitutes for such items.
- (e) In response to any recommendation made by Project Co in accordance with Section 21.6(d), HMQ Agencies may do any of the following with respect to some or all of the items:
- (i) instruct Project Co to proceed with the procurement;

- (ii) withdraw the requirement for Project Co to proceed with the procurement;
 - (iii) increase or decrease the quantities of any item, require the procurement of other items in substitution for such items or otherwise change the items to be procured or the terms on which such items are to be procured; or
 - (iv) reject any FF&E vendor or item.
- (f) Project Co shall provide to the HMQ Representative, as soon as reasonably practicable following a request therefor, such additional information as HMQ Agencies may require in respect of any recommendation made by Project Co in accordance with Section 21.6(d).

21.7 Minimizing Disruption

- (a) Project Co shall perform all of its obligations under this Section 21 so as to minimize, to the greatest extent reasonably possible, any disruption of the Project Operations, the operation of the Maintenance and Storage Activities and the HMQ FM Services. Project Co acknowledges and agrees that such activities may require work outside of normal working hours in order to accommodate the efficient operation of the Facility. Project Co shall coordinate any activities undertaken pursuant to this Section 21.7(a) in accordance with its obligations pursuant to Section 25.3 of the Project Agreement.

21.8 Scheduling of FF&E Procurement, Refurbishment and Installation

- (a) Project Co shall, in consultation with HMQ Agencies, prepare a schedule for the procurement or transfer and/or refurbishment, as applicable, installation and commissioning of all FF&E, and shall incorporate the timing of procurement or transfer and/or refurbishment as applicable, installation and commissioning of all FF&E into the Works Schedule and the Final Commissioning Program. Such schedule shall include the date by which HMQ Agencies must make a final determination of the quantity, make, service contract, model and vendor, as the case may be, of each piece or type of FF&E.
- (b) HMQ Agencies shall review and confirm Project Co's proposals for the quantity, make, service contract, model and vendor of each piece of FF&E, and shall execute or cause Metrolinx to execute any purchase order, contract, manufacturer's installation invoice and/or other documentation related to the FF&E, by the relevant date set out in the Works Schedule, provided that the HMQ Representative shall have received such documentation as HMQ Agencies require, acting reasonably, to discharge their obligations under this Section 21 no later than 30 days prior to the relevant date set out in the Works Schedule.

21.9 Maintenance of FF&E

- (a) Project Co is responsible for the maintenance, replacement or refurbishment of the FF&E as set out in Schedule 15 - Output Specifications and this Section 21.

- (b) Project Co is responsible for providing certain cleaning and furniture and equipment services in respect of FF&E as more particularly described in Schedule 15 - Output Specifications.

22. LEADERSHIP IN ENERGY & ENVIRONMENTAL DESIGN

22.1 LEED Design and Construction Obligations

- (a) Project Co shall perform the Works so as to achieve the prerequisites and credits required to achieve the LEED Gold Rating and in so doing, Project Co shall (i) at a minimum, endeavour to achieve the prerequisite credits set out in Section 1.4 of Part 1 of Schedule 15 - Output Specifications.

22.2 LEED Progress Reports

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

22.3 LEED Certification

- (a) Project Co shall cause the Project to be registered with CaGBC on behalf of HMQ Agencies. Project Co shall verify that the Project is registered with CaGBC within 60 days following Financial Close and confirm to HMQ Agencies that Project Co is satisfied that the registration is valid, and is effective as of the date that it was made.
- (b) If there is a change in the requirements for achievement of LEED Silver Rating or LEED Gold Rating under the LEED Rating System, and Project Co is required by the CaGBC to comply with such change, then Project Co shall notify HMQ Agencies of such change and such change shall, subject to and in accordance with Schedule 22 - Variation Procedure, result in a Variation.
- (c) Project Co shall apply to the CaGBC to obtain LEED Gold Rating for the Facility as soon as possible.
- (d) In the event that LEED Gold Rating is not obtained within 24 months after the Substantial Completion Date, other than as a direct result of any act or omission of HMQ Agencies or any HMQ Party, Project Co shall pay to HMQ Agencies liquidated damages in the aggregate amount of [REDACTED], and, in the event that:
- (i) Project Co fails to obtain the Project specific essential LEED credits identified in Section 1.5 of Part 1 of Schedule 15 - Output Specifications; or
 - (ii) LEED Silver Rating is not obtained within 24 months after the Substantial Completion Date;

other than as a direct result of any act or omission of HMQ Agencies or any HMQ Party, Project Co shall pay to HMQ Agencies liquidated damages in the aggregate amount of

[REDACTED]. The Parties agree that such liquidated damages are not a penalty but represent a genuine and reasonable pre-estimate of the damages that HMQ Agencies will suffer as a result of the happening of either of the specified events and would be difficult or impossible to quantify upon the happening of either of the specified events. Such payment shall constitute full and final settlement of any and all damages that may be claimed by HMQ Agencies as a result of a failure by Project Co to obtain the minimum number of points required pursuant to Section 22.3(d)(i) or to achieve LEED Silver Rating or LEED Gold Rating, as applicable, and, for greater certainty, a failure by Project Co to obtain any of the mandatory prerequisites or credits set out in Section 22.1(a) or to achieve LEED Silver Rating or LEED Gold Rating, as applicable, shall not result in a Project Co Event of Default. The Parties agree that such liquidated damages shall be payable whether or not HMQ Agencies incur or mitigate their damages, and that HMQ Agencies shall not have any obligation to mitigate any such damages.

22.4 Greenhouse Gas Credits

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

22.5 Energy Matters

- (a) Each of Project Co and HMQ Agencies shall comply with the provisions of Schedule 8 - Energy Matters.

23. INDEPENDENT CERTIFIER

23.1 Appointment

- (a) On or prior to Financial Close, the Parties shall appoint an independent, suitably qualified and experienced consultant to act as the Independent Certifier for the purposes of this Project Agreement and shall enter into an agreement with the Independent Certifier substantially in the form of Schedule 6 - Independent Certifier Agreement. If the Parties are unable to agree upon the Independent Certifier within such period of time, then the determination of the Independent Certifier shall be made in the same manner as the identification of a replacement Independent Certifier under Section 23.7(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.

23.2 Role of Independent Certifier

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

23.3 Changes to Terms of Appointment

- (a) Neither HMQ Agencies nor Project Co shall without the other's prior written approval (not to be unreasonably withheld or delayed):
 - (i) waive, settle, compromise or otherwise prejudice any rights or claims which the other may from time to time have against the Independent Certifier; or
 - (ii) vary the terms of the Independent Certifier Agreement or the 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.

23.4 Right to Change Appointment

- (a) The Parties acknowledge that the Independent Certifier shall provide certain services and reports to Project Co, the Lenders and the Project Co Parties in addition to performing the functions of the Independent Certifier under this Project Agreement. The Parties may agree to terminate the Independent Certifier Agreement upon 30 days' notice to the Independent Certifier. If such notice is given, then, pursuant to Section 23.7, a new Independent Certifier will be appointed. The Parties agree that, notwithstanding the 30 days' notice of termination, the Independent Certifier shall continue on a day-to-day basis thereafter until a new Independent Certifier is appointed.

23.5 Cooperation

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

23.6 Payment of Independent Certifier

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

23.7 Replacement

- (a) In the event of the Independent Certifier's engagement being terminated otherwise than for full performance, the Parties shall liaise and cooperate with each other in order to appoint a replacement consultant to act as the Independent Certifier as soon as reasonably practicable. The identity of any such replacement shall be as agreed by the Parties and the terms of his/her appointment shall, unless otherwise agreed, be as set out in the Independent Certifier Agreement.

- (b) In the event the Parties fail to agree upon the identity of a replacement Independent Certifier within 5 Business Days of the original Independent Certifier's appointment being terminated, then a replacement Independent Certifier shall be chosen as follows:
 - (i) each Party shall, within 5 Business Days thereafter, select 3 suitably qualified and experienced replacements that would be acceptable to that Party, and shall provide notice thereof to the other Party, with a ranking of preference for replacements;
 - (ii) if the Parties have both selected a common replacement, then such common replacement shall be the Independent Certifier, and if there is more than one common replacement, then the common replacement with the highest overall ranking (calculated by adding together the ordinal rank assigned by the Parties) shall be selected, and in the event of a tie, the lowest-cost of such tied replacements shall be selected; and
 - (iii) if the Parties have not selected a common replacement, then the determination of the new replacement may be referred for resolution in accordance with Schedule 27 - Dispute Resolution Procedure.

24. COMMISSIONING AND COMPLETION

24.1 Commissioning Activities

- (a) Project Co shall perform all Project Co Commissioning, and shall facilitate the performance of all HMQ Commissioning, pursuant to the Final Commissioning Program.

24.2 Final Commissioning Program

- (a) Project Co shall prepare a draft of the Final Commissioning Program in respect of the Project Co Commissioning and the HMQ Commissioning and shall provide a copy thereof to the Independent Certifier, the HMQ Commissioning Agent and the HMQ Representative not less than 365 days prior to the Scheduled Substantial Completion Date.
- (b) The Final Commissioning Program shall:
 - (i) describe the requirements, and the timing and sequence of such requirements, necessary in order that the Project Co 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;

- (ii) describe the requirements, and the timing and sequence of such requirements, of the HMQ Commissioning activities;
 - (iii) comply with all requirements of the Outline Commissioning Program and include all details, including for all appendices, required to be completed in the Outline Commissioning Program;
 - (iv) be consistent with the Outline Commissioning Program and impose no greater or more onerous obligations on HMQ Agencies than those set out in the Outline Commissioning Program, unless otherwise agreed to by HMQ Agencies;
 - (v) include the names of the individuals or companies proposed to perform all Project Co Commissioning;
 - (vi) include a schedule of each of the Project Co Commissioning Tests and the HMQ Commissioning Tests proposed to be performed and the timeframe for completion, with start and end dates;
 - (vii) include a schedule of meetings to be held between the Parties to coordinate the performance of the Project Co Commissioning and the HMQ Commissioning;
 - (viii) provide for the re-verification of systems following the HMQ Commissioning; and
 - (ix) list the approvals required from any Governmental Authority, manufacturer or other person that are necessary to meet the requirements of the Final Commissioning Program or Applicable Law.
- (c) HMQ Agencies shall provide Project Co with comments on the draft Final Commissioning Program in accordance with Schedule 10 - Review Procedure, and Project Co shall revise the draft Final Commissioning Program to the extent required by Schedule 10 - Review Procedure within 30 days of receipt of any comments from HMQ Agencies.
- (d) When agreed by the Parties, the Final Commissioning Program shall replace the Outline Commissioning Program.

24.3 Commencement of Project Co Commissioning

- (a) Project Co shall give 30 days' written notice to the Independent Certifier, the HMQ Commissioning Agent and the HMQ Representative of the proposed commencement of the Project Co Commissioning.
- (b) Project Co shall give at least 5 Business Days' notice to, and shall invite, the Independent Certifier, the HMQ Commissioning Agent and the HMQ Representative to witness, and to comment on, each aspect of the Project Co Commissioning. Project Co shall, together with such notice, provide all information that the Independent Certifier, the HMQ

Commissioning Agent and the HMQ Representative may reasonably require in relation thereto, including:

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

24.4 Substantial Completion Certificate

- (a) Project Co shall give the Independent Certifier and the HMQ Representative at least 10 Business Days' notice prior to the date upon which Project Co anticipates all requirements for Substantial Completion shall be satisfied.
- (b) Project Co shall give the Independent Certifier and the HMQ Representative notice (the "**Substantial Completion Notice**") upon the satisfaction of all requirements for Substantial Completion, which Substantial Completion Notice shall describe, in reasonable detail, the satisfaction of the requirements for Substantial Completion, together with Project Co's opinion as to whether the conditions for issuance of the Substantial Completion Certificate have been satisfied.
- (c) HMQ Agencies shall, within 5 Business Days after receipt of the Substantial Completion Notice, provide the Independent Certifier and Project Co with HMQ Agencies' opinion as to whether the conditions for issuance of the Substantial Completion Certificate have been satisfied and, if applicable, any reasons as to why they consider that the Substantial Completion Certificate should not be issued.
- (d) Within 5 Business Days after Project Co's receipt of HMQ Agencies' opinion pursuant to Section 24.4(c), the Parties shall cause the Independent Certifier to determine whether the conditions for issuance of the Substantial Completion Certificate have been satisfied, having regard for the opinions of both Project Co and HMQ Agencies, to determine whether any Minor Deficiencies exist, and to issue to HMQ Agencies and to Project Co either:
 - (i) the Substantial Completion Certificate, setting out in such certificate the Substantial Completion Date and the Minor Deficiencies List (if applicable) in accordance with Section 24.8; or
 - (ii) a report detailing the matters that the Independent Certifier considers are required to be performed by Project Co to satisfy the conditions for issuance of the Substantial Completion Certificate.
- (e) Where the Independent Certifier has issued a report in accordance with Section 24.4(d)(ii) and Project Co has not referred a Dispute in relation thereto for resolution in accordance with Schedule 27 - Dispute Resolution Procedure, Project Co shall, within 5

Business Days after receipt of such report, provide the Independent Certifier and the HMQ Representative with:

- (i) a detailed list indicating the rectification actions proposed for all matters raised in such report;
- (ii) the schedule for completion of all such rectification actions; and
- (iii) any additional Project Co Commissioning that needs to be undertaken as a result of the rectification actions,

and Project Co shall perform all such additional rectification actions and Project Co Commissioning in a timely manner. Upon completion thereof, Project Co may give a further Substantial Completion Notice and Sections 24.4(c) to (e), inclusive, shall be repeated until the Substantial Completion Certificate has been issued.

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

24.5 Operation and Maintenance Manuals

- (a) Project Co shall prepare and deliver to HMQ Agencies all necessary operation and maintenance manuals for the Facility 30 days prior to the Substantial Completion Date. From and after such date and throughout the remainder of the Project Term, Project Co shall prepare and keep current, and at all reasonable times make available to HMQ Agencies, such operation and maintenance manuals and all other such manuals prepared from time to time for the Facility.

24.6 HMQ Commissioning

- (a) The Parties acknowledge that the HMQ Commissioning shall be performed both before and after the Substantial Completion Date. Prior to Substantial Completion, Project Co shall give HMQ Agencies, the HMQ Occupants, the Non-HMQ Occupants and any employees and subcontractors of any of the foregoing full access to the Site, the Facility and all relevant parts thereof at such times as may be set out in the Final Commissioning Program to enable HMQ Agencies, the HMQ Occupants, and the Non-HMQ Occupants to undertake the HMQ Commissioning in accordance with the Final Commissioning Program. HMQ Agencies shall comply, and shall ensure that all HMQ Occupants and Non-HMQ Occupants and all other HMQ Parties comply with the directions, procedures and safety guidelines established by Project Co for the Site and shall use commercially reasonable efforts to minimize disruption to the Project Operations in performing the HMQ Commissioning.

- (b) HMQ Agencies acknowledge that, during the HMQ Commissioning Period, Project Co and each Subcontractor will be active in the Facility in both the rectification of Minor Deficiencies and the completion of Project Co Commissioning, and HMQ Agencies shall take commercially reasonable steps to allow such activities to proceed in accordance with the Final Commissioning Program.
- (c) Project Co acknowledges that, prior to and during the HMQ Commissioning Period, Project Co and each Subcontractor shall cooperate with HMQ Agencies, HMQ Occupants, Non-HMQ Occupants and all other HMQ Parties and use commercially reasonable efforts to ensure that all requirements, and the timing and sequence of such requirements, of the HMQ Commissioning activities are able to be completed in the timeframe for completion set out in the Final Commissioning Program.

24.7 Countdown Notice

- (a) Project Co shall deliver a notice (the “**Countdown Notice**”) to HMQ Agencies and the Independent Certifier specifying the date (which, for greater certainty, will be on or before the Scheduled Substantial Completion Date) on which Project Co anticipates that Substantial Completion will be achieved (the “**Anticipated Substantial Completion Date**”).
- (b) The Countdown Notice shall be delivered not less than 180 days prior to the Anticipated Substantial Completion Date. If Project Co fails to deliver the Countdown Notice not less than 180 days prior to the Scheduled Substantial Completion Date, the Anticipated Substantial Completion Date shall be deemed to be the same date as the Scheduled Substantial Completion Date.
- (c) Project Co acknowledges and agrees that HMQ Agencies require a minimum of 180 days’ notice prior to the Anticipated Substantial Completion Date to prepare for the HMQ Commissioning.
- (d) In accordance with Section 20.4(a), the Anticipated Substantial Completion Date shall not be earlier than the Scheduled Substantial Completion Date without the prior written consent of HMQ Agencies, in their sole discretion.

24.8 Minor Deficiencies

- (a) In the event that Minor Deficiencies exist when Project Co gives the Substantial Completion Notice, the Independent Certifier, in consultation with Project Co and HMQ Agencies, shall prepare a list of all Minor Deficiencies (the “**Minor Deficiencies List**”) identified at that time and an estimate of the cost and the time for rectifying such Minor Deficiencies.
- (b) The Minor Deficiencies List will contain the schedule for the completion and rectification of the Minor Deficiencies. In determining the relevant time for rectifying Minor Deficiencies, Project Co shall schedule the completion and rectification of Minor Deficiencies so as to minimize, to the greatest extent reasonably possible, any impairment

of HMQ Agencies' use and enjoyment of the Facility or disruption of the Project Operations or the performance of the HMQ FM Services.

- (c) The Independent Certifier must prepare the Minor Deficiencies List before the Substantial Completion Certificate is issued, but shall not withhold the Substantial Completion Certificate by reason solely that there are Minor Deficiencies.
- (d) HMQ Agencies may, in their sole discretion, waive any requirement for Substantial Completion, including with respect to FF&E, and the failure to meet any such requirement shall constitute a Minor Deficiency.

24.9 Rectification of Minor Deficiencies

- (a) Project Co shall, in consultation with the HMQ Representative and so as to minimize, to the greatest extent reasonably possible, any disruption of the Project Operations or the performance of the Maintenance and Storage Activities and the HMQ FM Services, complete and rectify all Minor Deficiencies within 45 days of the issuance of the Minor Deficiencies List or such other period as the Independent Certifier may specify in the Minor Deficiencies List.
- (b) Project Co acknowledges and agrees that the completion and rectification of Minor Deficiencies may require work outside of normal working hours in order to accommodate the efficient operation of the Facility.

24.10 Failure to Rectify Minor Deficiencies

- (a) If Project Co has failed to complete and rectify any Minor Deficiency specified in the Minor Deficiencies List
 - (i) within 75 days of the issuance of the Minor Deficiencies List for all Minor Deficiencies where no time for rectification or completion has been specified by the Independent Certifier, or
 - (ii) within 30 days after the time for completion and rectification of any Minor Deficiency where such a time has been specified in the Minor Deficiencies List by the Independent Certifier,

HMQ Agencies may:

- (iii) withhold from the next payment or payments otherwise due to Project Co a holdback amount that is [REDACTED]% of the amount estimated by the Independent Certifier for HMQ Agencies to complete and rectify all such Minor Deficiencies (to the extent then outstanding), which holdback shall be held in an interest bearing account; and

- (iv) engage others to perform the work necessary to complete and rectify any such Minor Deficiency, at the risk and cost of Project Co, and HMQ Agencies may deduct such cost from the holdback amount and interest earned thereon.
- (b) Upon completion and rectification of each Minor Deficiency, HMQ Agencies shall release to Project Co the amount of the holdback related to such Minor Deficiency. Upon completion and rectification of all Minor Deficiencies, HMQ Agencies shall release to Project Co the then remaining amount of the holdback, together with all interest accrued thereon. Where HMQ Agencies exercise their rights pursuant to Section 24.10(a)(iv), if the cost of such completion and rectification exceeds the amount of such holdback and interest, then Project Co shall reimburse HMQ Agencies for all such excess cost.

24.11 Final Completion Certificate

- (a) Project Co shall give the Independent Certifier and the HMQ Representative at least 10 Business Days' notice prior to the date upon which Project Co anticipates all requirements for Final Completion shall be satisfied.
- (b) Project Co shall give the Independent Certifier and HMQ Representative notice (the "**Final Completion Notice**") upon the satisfaction of all requirements for Final Completion, which Final Completion Notice shall describe, in reasonable detail:
 - (i) the items of minor work of a seasonal nature that cannot be completed prior to the Final Completion Date, if any, and the time for completion of such work as agreed between HMQ Agencies and Project Co, each acting reasonably; and
 - (ii) the satisfaction of the requirements for Final Completion, including the completion and rectification of all Minor Deficiencies other than any outstanding seasonal work identified in the Final Completion Notice, together with Project Co's opinion as to whether the conditions for issuance of the Final Completion Certificate have been satisfied.
- (c) HMQ Agencies shall, within 5 Business Days after receipt of the Final Completion Notice, provide the Independent Certifier and Project Co with HMQ Agencies' 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 5 Business Days after Project Co's receipt of HMQ Agencies' opinion pursuant to Section 24.11(c), the Parties shall cause the Independent Certifier to determine whether the conditions for issuance of the Final Completion Certificate have been satisfied, having regard for the opinions of both Project Co and HMQ Agencies, and to issue to HMQ Agencies and to Project Co either:
 - (i) the Final Completion Certificate, setting out in such certificate 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.
- (e) Where the Independent Certifier has issued a report in accordance with Section 24.11(d)(ii) and Project Co has not referred a Dispute in relation thereto for resolution in accordance with Schedule 27 - Dispute Resolution Procedure, Project Co shall, within 5 Business Days after receipt of such report, provide the Independent Certifier and the HMQ Representative with:
 - (i) a detailed list indicating the rectification actions proposed for all matters raised in such report;
 - (ii) the schedule for completion of all such rectification actions; and
 - (iii) any additional Project Co Commissioning that needs to be undertaken as a result of the rectification actions,

and Project Co shall perform all such additional rectification actions and Project Co Commissioning in a timely manner. Upon completion thereof, Project Co may give a further Final Completion Notice and Sections 24.11(c) to (e), inclusive, shall be repeated until the Final Completion Certificate has been issued.

- (f) Any Dispute in relation to the Independent Certifier's decision to issue or not to issue the Final Completion Certificate may be referred for resolution in accordance with Schedule 27 - Dispute Resolution Procedure.
- (g) If, within 30 days after the time specified in the Final Completion Notice for completion of seasonal work, Project Co has failed to complete such seasonal work, HMQ Agencies may engage others to perform the work necessary to complete the seasonal work, at the risk and cost of Project Co. Project Co shall pay to HMQ Agencies the costs incurred by HMQ Agencies to complete such seasonal work within 10 Business Days of presentation of an invoice for such costs.

24.12 Effect of Certificates/Use

- (a) The issue of the Substantial Completion Certificate and the Final Completion Certificate, any taking over or use by HMQ Agencies of any part of the Facility under the terms of this Project Agreement, and any commencement of any Maintenance and Storage Activities or any HMQ FM Services shall, in no way:
 - (i) limit the obligations of Project Co under this Project Agreement including in respect of any defects, deficiencies or items of outstanding work existing or discovered prior to or after the date of any of such certificates or the date of the Minor Deficiencies List; or

- (ii) be construed as an approval by HMQ Agencies of the Works or the way in which they have been carried out.

25. PROJECT CO SERVICE OBLIGATIONS

25.1 Overall Responsibility

- (a) Project Co shall, following the Substantial Completion Date, perform the Project Co Services:
 - (i) so as to satisfy the Output Specifications; and
 - (ii) in accordance with the other terms of this Project Agreement.

25.2 Commencement of Services

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

25.3 Coordination and No Disruption

- (a) Project Co shall perform the Project Co Services so as to coordinate with the operations of Province Persons on the Site and in the Facility and shall use commercially reasonable efforts not to adversely interfere with the operations of Metrolinx or any HMQ Party, including the performance of the Maintenance and Storage Activities or the HMQ FM Services.

25.4 No Closure of Facility

- (a) During the Operational Term, and notwithstanding any Relief Event or event of Force Majeure, Project Co shall not close all or any portion of the Facility in any circumstances other than as directed or approved by HMQ Agencies in writing, acting reasonably.

25.5 Equipment for Project Co Services

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

26. MAINTENANCE

26.1 Maintenance Plans

- (a) No later than 90 days prior to the Substantial Completion Date, Project Co shall submit to the HMQ Representative for review pursuant to Schedule 10 - Review Procedure, the Preventive Maintenance Plan for the first Contract Year and the Five Year Maintenance

Plan for the first 5 Contract Years, and shall update such plans as provided for in the Output Specifications annually thereafter.

- (b) Project Co shall perform the Maintenance Work as identified in the Preventive Maintenance Plan, and, without limiting Project Co's other obligations in respect of the performance of the Project Operations, shall undertake all Maintenance Work:
 - (i) in accordance with the Output Specifications;
 - (ii) at the times scheduled for such Maintenance Work;
 - (iii) in accordance with Good Industry Practice;
 - (iv) in a manner that allows the Facility to remain operational at all times; and
 - (v) otherwise in accordance with the Preventive Maintenance Plan.

26.2 Revisions to Preventive Maintenance Plan

- (a) No later than 30 days prior to the commencement of any calendar quarter, Project Co may submit to the HMQ Representative a revision to the applicable Preventive Maintenance Plan for the Contract Year in which the relevant calendar quarter year falls showing the effect of the proposed changes. If Project Co is entitled to proceed with such changes pursuant to Schedule 10 - Review Procedure, then the Preventive Maintenance Plan as so amended shall become the Preventive Maintenance Plan in respect of that calendar quarter year.
- (b) Without limiting the comments that may be made pursuant to Schedule 10 - Review Procedure in relation to the submission of any Preventive Maintenance Plan, HMQ Agencies, acting reasonably, may comment "**Reviewed as Noted**" or "**Rejected**" on any revision to any Preventive Maintenance Plan pursuant to this Section 26.2 on the grounds that:
 - (i) performing the Preventive Maintenance in the period or at the times suggested would (on the balance of probabilities) materially interfere with the performance of the Maintenance and Storage Activities and/or the HMQ FM Services and such material interference could be avoided or mitigated by Project Co rescheduling the Preventive Maintenance;
 - (ii) performing the Preventive Maintenance in the period or at the times suggested would (on the balance of probabilities) materially adversely affect the safety of staff, visitors or other users of the Facility and such material adverse effect could be avoided or mitigated by Project Co rescheduling the Preventive Maintenance; or
 - (iii) the period for performing the Preventive Maintenance would (on the balance of probabilities) exceed the period reasonably required for the relevant work.

26.3 HMQ Change in Timing

- (a) Notwithstanding the establishment of or entitlement to proceed with any Preventive Maintenance Plan, the HMQ Representative may, at any time and from time to time, require Project Co to accelerate or defer any Preventive Maintenance by giving written notice to Project Co not less than 15 Business Days prior to the scheduled date for performing such Preventive Maintenance, which notice shall set out the time and periods at or during which HMQ Agencies require the Preventive Maintenance to be performed.
- (b) Within 5 Business Days after receipt by Project Co of a notice referred to in Section 26.3(a), Project Co shall notify HMQ Agencies of the amount of any additional reasonable costs which it estimates it shall incur as a direct consequence of such acceleration or deferral (the “**Estimated Increased Maintenance Costs**”). HMQ Agencies shall, within 5 Business Days after receipt by HMQ Agencies of notification of the amount of the Estimated Increased Maintenance Costs, at their option, either confirm or withdraw its request to accelerate or defer the Preventive Maintenance. If HMQ Agencies do not respond within 5 Business Days, the request shall be deemed to have been withdrawn. HMQ Agencies shall reimburse Project Co for any reasonable costs actually incurred by Project Co as a consequence of such acceleration or deferral up to, but not exceeding, the amount of the Estimated Increased Maintenance Costs.

26.4 Unscheduled Maintenance

- (a) If, in circumstances other than an Emergency, the need arises for Unscheduled Maintenance (excluding any work of a *de minimis* nature in respect of which this Section 26.4 does not apply), Project Co shall promptly notify the HMQ Representative of the proposed commencement date, the proposed hours of work and estimated duration of the Unscheduled Maintenance.
- (b) Project Co shall be entitled to perform the Unscheduled Maintenance at the time set out in its notice unless HMQ Agencies, acting reasonably, require Project Co to defer or accelerate such Unscheduled Maintenance. For greater certainty, Project Co shall not be entitled to recover from any Government Entity any costs or losses incurred by Project Co as a consequence of any deferral or acceleration of Unscheduled Maintenance, and nothing in this Section 26.4 shall prevent HMQ Agencies from making any adjustments to the Monthly Service Payments in accordance with Schedule 20 - Payment Mechanism.

26.5 Emergency Maintenance Work

- (a) If, as a result of an Emergency, the need arises for Unscheduled Maintenance, Project Co may perform such Unscheduled Maintenance, provided that Project Co shall notify the HMQ Representative as soon as possible (and in any event within 2 Business Days of the occurrence of the Emergency) of the reasons for and extent of the Unscheduled Maintenance.
- (b) Project Co shall use commercially reasonable efforts to minimize the duration of such Unscheduled Maintenance and its impact upon the performance of the Maintenance and

Storage Activities and the HMQ FM Services. Project Co acknowledges and agrees that Unscheduled Maintenance may require work outside of normal working hours in order to accommodate the efficient operation of the Facility.

- (c) Nothing in this Section 26.5 shall prevent HMQ Agencies from making any adjustments to the Monthly Service Payments in accordance with Schedule 20 - Payment Mechanism.

26.6 Other Maintenance Work

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

26.7 Plant Services Information Management System

- (a) Prior to issuance of the Substantial Completion Certificate, Project Co shall create and commission the Plant Services Information Management System and, throughout the Operational Term, shall maintain same as provided in the Output Specifications.

26.8 Performance Audits

- (a) If HMQ Agencies reasonably believe that Project Co is in breach of its obligations with respect to Maintenance Work, including:
 - (i) under this Section 26;
 - (ii) under the Output Specifications; or
 - (iii) in respect of any defects, deficiencies or items of outstanding work that should have been completed as part of the Works,

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

- (b) HMQ Agencies shall notify Project Co in writing at least 10 Business Days prior to the date that HMQ Agencies wish to cause a Performance Audit to be undertaken. HMQ Agencies shall, acting in good faith, consider any reasonable request by Project Co for the Performance Audit to be performed on an alternative date if such request is made by Project Co in writing at least 5 Business Days prior to the date originally requested by HMQ Agencies, on the basis that performing the Performance Audit on the date originally requested by HMQ Agencies would materially prejudice Project Co's ability to provide the Project Co Services.
- (c) When causing any Performance Audit to be undertaken, HMQ Agencies shall use commercially reasonable efforts to minimize any disruption caused to the provision of the Project Co Services. The cost of a Performance Audit, except where Section 26.8(d)

applies, shall be borne by HMQ Agencies. Project Co shall provide HMQ Agencies, at no additional cost or charge, with any reasonable assistance required by HMQ Agencies from time to time during the Performance Audit.

- (d) If a Performance Audit shows that Project Co has not performed or is not performing its obligations in any material respect, HMQ Agencies shall:
 - (i) provide Project Co with a written notice of non-compliance;
 - (ii) provide Project Co with instructions regarding rectification or Maintenance Work required to be performed by Project Co in order for Project Co to perform its obligations;
 - (iii) specify a reasonable period of time within which Project Co must perform such rectification or Maintenance Work; and
 - (iv) be entitled to exercise all rights pursuant to Section 30.
- (e) If a Performance Audit shows that Project Co has not performed or is not performing its obligations in any material respect, Project Co shall:
 - (i) perform any rectification or Maintenance Work required by HMQ Agencies within a reasonable period of time specified by HMQ Agencies, and be responsible for any costs incurred in performing such rectification or Maintenance Work; and
 - (ii) pay or reimburse HMQ Agencies for the costs of the Performance Audit and any administrative costs incurred by HMQ Agencies in relation to the Performance Audit.
- (f) Nothing in this Section 26.8 shall limit or restrict HMQ Agencies' rights hereunder to perform any other performance audits, inspections and surveys at their own cost and expense.
- (g) HMQ Agencies' right to cause a Performance Audit to be undertaken may not be exercised more than once every 180 days unless any Performance Audit performed in the preceding 12 month period shows that Project Co has not performed or is not performing its obligations in any material respect.

27. HUMAN RESOURCES**27.1 Intentionally Deleted****27.2 Intentionally Deleted****27.3 Intentionally Deleted****27.4 Admittance of Personnel**

- (a) HMQ Agencies shall have the right to refuse admittance to, or order the removal from the Site and/or the Facility of any person employed by (or acting on behalf of) Project Co, or any Project Co Party, whose presence, in the reasonable opinion of HMQ Agencies, is likely to have an adverse effect on the performance of the Maintenance and Storage Activities or the HMQ FM Services or who, in the reasonable opinion of HMQ Agencies, is not a fit and proper person to be at the Site and/or the Facility for any reason.

27.5 Confirmation of Action

- (a) Any action taken under Section 27.4 shall promptly be confirmed by HMQ Agencies to Project Co and, for greater certainty, shall not relieve Project Co of any of its obligations under this Project Agreement.

27.6 Notification of Personnel

- (a) If and when so requested by HMQ Agencies, Project Co shall, within 3 Business Days of such request, provide a list of the names of all persons it expects may require admission, in connection with this Project Agreement, to any premises occupied by HMQ Agencies, specifying the capacities in which those persons are concerned with this Project Agreement and, subject to Applicable Law, giving such other particulars as HMQ Agencies may reasonably require.

27.7 Finality as to Admission

- (a) Any decision of HMQ Agencies made pursuant to Section 27.4 shall be final and conclusive.

27.8 Adherence to Project Co HR Policy

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

27.9 Change in HR Policy Requirements

- (a) HMQ Agencies shall notify Project Co of any proposed change in the matters prescribed in Schedule 34 - Project Co HR Policy Requirements as soon as practicable. Notwithstanding anything else in this Project Agreement, any change in the matters

prescribed in Schedule 34 - Project Co HR Policy Requirements shall, subject to and in accordance with Schedule 22 - Variation Procedure, result in a Variation if and to the extent such change constitutes or necessitates a change in the Output Specifications or increases the Direct Costs to Project Co of providing the Project Co Services.

- (b) Project Co may, within 90 days of becoming aware of same, notify HMQ Agencies, in writing, that a change in the matters prescribed in Schedule 34 - Project Co HR Policy Requirements either constitutes or necessitates a change in the Output Specifications or increases the Direct Costs to Project Co of providing the Project Co Services. Within 15 Business Days of receipt of such notice, HMQ Agencies shall respond to Project Co indicating whether or not they agree that such a change has occurred and either constitutes or necessitates a change in the Output Specifications or increases the Direct Costs to Project Co of providing the Project Co Services. If they do agree, HMQ Agencies shall initiate the procedure set out in Schedule 22 - Variation Procedure as soon as reasonably practicable. If they do not agree, HMQ Agencies shall not issue a Variation Enquiry and the matter may be referred for resolution in accordance with Schedule 27 - Dispute Resolution Procedure.
- (c) For greater certainty, where an immediate change to the matters prescribed in Schedule 34 - Project Co HR Policy Requirements is required in the interest of public safety, such change shall be effective notwithstanding that the procedure in Schedule 22 - Variation Procedure, if applicable in the circumstances, is not yet complete.

27.10 Intentionally Deleted

27.11 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 provision of the Project Co Services with the requisite level of skill and experience to perform the Project Co Services 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 cover periods of holiday, sickness, other absence, and anticipated and actual peaks in demand for each of the Project Co Services;
 - (ii) all persons employed or engaged by Project Co or any Project Co Party (including all relevant grades of supervisory staff) engaged in the provision of the Project Co Services 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 and Authority Requirements and Project Co HR Policy; and

- (iii) it creates and maintains, and causes all Project Co Parties to create and maintain, a process which allows it to assess, monitor and correct, on an ongoing basis, the competency of persons employed or engaged by Project Co or any Project Co Party (including all relevant grades of supervisory staff) engaged in the provision of the Project Co Services to ensure the proper performance of this Project Agreement.

27.12 Convictions

- (a) Project Co (to the extent permitted by Applicable Law) shall, and shall cause each 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 any of the Project Co Services:
 - (i) are questioned concerning their Relevant Convictions; and
 - (ii) are required to complete and deliver to Project Co a criminal records search form.

27.13 Effect of Convictions

- (a) Project Co (to the extent permitted by Applicable Law) shall, and shall cause each Project Co Party to, ensure that no person who discloses any Relevant Convictions, or who is found to have any Relevant Convictions 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 Site and/or the Facility to perform any of the Project Co Services, without the prior written consent of HMQ Agencies, in their sole discretion.

27.14 Notification of Convictions

- (a) To the extent permitted by Applicable Law, Project Co shall ensure that HMQ Agencies are kept advised at all times of any person employed or engaged by Project Co or any Project Co Party in the provision of any of the Project Co Services who, subsequent to the commencement of such employment or engagement, receives a Relevant Conviction of which Project Co or a Project Co Party becomes aware or whose previous Relevant Convictions become known to Project Co or a Project Co Party. Project Co shall use commercially reasonable efforts to obtain, or to cause all Project Co Parties to obtain, all consents as may be required by Applicable Law or otherwise authorizing the disclosure of such information to HMQ Agencies as contemplated in this Section 27.

27.15 Disciplinary Action

- (a) HMQ Agencies, 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 Site or at work is otherwise considered by HMQ Agencies to be undesirable or to constitute a threat to the health and/or safety of any of the users of the Site and/or the Facility. Upon investigation, Project Co may institute, or cause the relevant Project Co Party to institute, disciplinary

proceedings, which shall be in accordance with the requirements of Applicable Law, and shall advise HMQ Agencies in writing of the outcome of any disciplinary action taken in respect of such person.

27.16 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 (the “**Project Co HR Policy**”) covering all relevant matters relating to the Project Operations (including, but not limited to, health and safety and all such other matters as are prescribed in Schedule 34 - Project Co HR Policy Requirements). Project Co shall ensure that the terms and the implementation of Project Co HR Policy comply with Applicable Law, Authority Requirements and Good Industry Practice and that they are published in written form and that copies of them (and any revisions and amendments to them) are available to HMQ Agencies on a timely basis.
- (b) If HMQ Agencies provide any comments on, or request any amendments, modifications or changes to the Project Co HR Policy, Project Co shall consider such comments and amendments, modifications and changes and discuss them with HMQ Agencies. Project Co shall incorporate into the Project Co HR Policy those comments, amendments, modifications and changes with which it agrees, acting reasonably, to the extent that such comments, amendments, modifications or changes comply with Applicable Laws.

27.17 Management Organizations

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

27.18 Orientation Procedure

- (a) Project Co shall not cause, authorize or permit any person engaged or employed by Project Co or any Project Co Party in the delivery of the Project Co Services to commence the performance of their obligations until they have completed the orientation procedure in accordance with Project Co HR Policy.

28. GOODS, EQUIPMENT, CONSUMABLES AND MATERIALS

28.1 Standards

- (a) Project Co shall cause the goods, equipment, consumables and materials used or supplied by it or any Subcontractor in connection with the Project Co Services to be:
 - (i) of good quality, fit for their intended purpose and maintained in a safe, serviceable and clean condition in accordance with the Output Specifications and Good Industry Practice;

- (ii) of the type specified in the Output Specifications, if applicable; and
- (iii) in compliance with Applicable Law,

and shall, as soon as practicable after receiving a request from the HMQ Representative, supply to the HMQ Representative evidence to demonstrate its compliance with this Section 28.1(a).

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

28.2 Hazardous Substances and Materials

- (a) Except to the extent required pursuant to the Output Specifications, Project Co shall not bring, install, keep, maintain or use in or on the Facility, or cause, authorize or permit any Project Co Party to bring, install, keep, maintain or use, any substances, materials, equipment or apparatus, which is likely to cause or in fact causes:

- (i) material damage to the Facility;
- (ii) dust, noise or vibration or any other nuisance to the owners or occupiers of any property adjoining or near to the Facility;
- (iii) the generation, accumulation or migration of any Hazardous Substance in an unlawful manner whether within or outside the Facility; or
- (iv) an adverse effect on the health or well-being of any Province Person or any HMQ Service User,

and shall use commercially reasonable efforts to ensure, by directions to staff and otherwise, that all materials, equipment or apparatus in or on the Facility are operated and stored so as to minimize noise and vibration likely to cause annoyance or disturbance and the unlawful generation or migration of any Hazardous Substance.

- (b) Except for articles or things commonly used or generated in maintenance and storage facilities, Project Co shall not bring, install, keep, maintain or use, or cause, authorize or permit any person to bring, install, keep, maintain or use in or on the Facility any Hazardous Substance or hazardous equipment without the prior written consent of HMQ Agencies and unless Project Co has complied with Applicable Law.
- (c) Where applicable, Project Co shall comply with any applicable HMQ Agencies' policies and Applicable Law regarding WHMIS and the transportation of Hazardous Substances, including:
 - (i) maintaining a library of MSDS on the Site and making MSDS labels available to all workers and HMQ Agencies, and making and posting workplace labels where

applicable, for all materials designated hazardous by Applicable Law relating to WHMIS; and

- (ii) ensuring that Hazardous Substances shipped by Project Co or any Project Co Party are shipped in accordance with Applicable Law governing the transportation of Hazardous Substances,
- (d) HMQ Agencies shall make available to Project Co, on request by Project Co, a list of Hazardous Substances prepared by HMQ Agencies as required by Applicable Law regarding WHMIS and the transportation of Hazardous Substances.
- (e) Project Co shall:
 - (i) ensure that all Hazardous Substances and hazardous materials and equipment used or stored on the Site by Project Co or any Project Co Party are kept in accordance with Applicable Law, Good Industry Practice, properly and securely labelled and stored, under appropriate supervision and used only by appropriately trained and competent staff; and
 - (ii) prevent the unlawful generation, accumulation, discharge, emission and migration of any Hazardous Substance, whether at or from the Facility or into any conducting media or device serving the Facility, including to:
 - (A) prevent any claims relating to Contamination arising or any circumstances likely to result in any claims relating to Contamination arising; and
 - (B) prevent any adverse effect on the health or well-being of any person, including any Province Person and any HMQ Service User,in so far as such Hazardous Substance is, or should be, under the control of Project Co or any Project Co Party pursuant to this Project Agreement.
- (f) This Section 28.2 applies from and after Substantial Completion, and shall not extend to Hazardous Substances or hazardous equipment, materials or apparatus that are produced, brought, installed, kept, maintained or used in relation to the Maintenance and Storage Activities or the HMQ FM Services, except to the extent that such Hazardous Substances or hazardous equipment, materials or apparatus are, or should be, the responsibility of Project Co or under the control of Project Co under this Project Agreement.
- (g) For greater certainty, in the event of a claim relating to Contamination caused by the unlawful generation, accumulation, discharge, emission and migration of any Hazardous Substance, each Party shall bear a proportion of liability based on that Party's degree of fault as agreed by the Parties or determined in accordance with Schedule 27 - Dispute Resolution Procedure.

28.3 Change in Hazardous Materials Policies

- (a) HMQ Agencies shall notify Project Co of any proposed change in any applicable HMQ Agencies' policies regarding WHMIS and the transportation of Hazardous Substances as soon as practicable. Notwithstanding anything else in this Project Agreement, any change in such policies (other than a change arising as a result of a Change in Law, which, if applicable shall be addressed in accordance with Section 35) shall, subject to and in accordance with Schedule 22 - Variation Procedure, result in a Variation if and to the extent such change constitutes or necessitates a change in the Output Specifications or increases the Direct Costs to Project Co of providing the Project Co Services.
- (b) Project Co may, within 90 days of becoming aware of same, notify HMQ Agencies, in writing, that a change in any applicable HMQ Agencies' policies regarding WHMIS and the transportation of Hazardous Substances (other than a change arising as a result of a Change in Law, which, if applicable shall be addressed in accordance with Section 35) either constitutes or necessitates a change in the Output Specifications or increases the Direct Costs to Project Co of providing the Project Co Services. Within 15 Business Days of receipt of such notice, HMQ Agencies shall respond to Project Co indicating whether or not they agree that such a change has occurred and either constitutes or necessitates a change in the Output Specifications or increases the Direct Costs to Project Co of providing the Project Co Services. If they do agree, HMQ Agencies shall initiate the procedure set out in Schedule 22 - Variation Procedure as soon as reasonably practicable. If they do not agree, HMQ Agencies shall not issue a Variation Enquiry and the matter may be referred for resolution in accordance with Schedule 27 - Dispute Resolution Procedure.
- (c) For greater certainty, where an immediate change to any applicable HMQ Agencies' policies regarding WHMIS and the transportation of Hazardous Substances is required in the interest of staff or public safety, such change shall be effective notwithstanding that the procedure in Schedule 22 - Variation Procedure, if applicable in the circumstances, is not yet complete.

29. MONITORING

29.1 Monitoring of Performance

- (a) Project Co shall monitor the performance of the Project Co Services in the manner and at the frequencies set out in the Output Specifications, the Performance Monitoring Program and the Payment Mechanism, and shall compile and at all times maintain records which are accurate and complete of such monitoring and performance. In addition to Project Co's obligations, as set out in the Output Specifications, the Performance Monitoring Program and the Payment Mechanism, Project Co shall, as reasonably requested by HMQ Agencies, provide the HMQ Representative with relevant particulars of any aspects of Project Co's performance which fail to meet the requirements of this Project Agreement.

- (b) HMQ Agencies may, at any and all reasonable times, observe, inspect, monitor, audit and take any steps reasonably necessary to satisfy themselves as to the adequacy of the monitoring, including performing sample checks.

29.2 Failure Points

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

29.3 Warning Notices

- (a) Without prejudice to HMQ Agencies' rights under Section 42 and any other rights under this Project Agreement, if Project Co accrues more than:
- (i) [REDACTED] Failure Points in respect of Availability Failures;
 - (ii) an aggregate of [REDACTED] Failure Points in respect of Quality Failures and/or Service Failures in respect of General Management Services, Material Services, FF&E Services, and Emergency Management Services;
 - (iii) an aggregate of [REDACTED] Failure Points in respect of Quality Failures and/or Service Failures in respect of any one or more of Plant Services, Environmental and Sustainability Services, Special Projects Services, and Utilities Management Services;
 - (iv) an aggregate of [REDACTED] Failure Points in respect of Quality Failures and/or Service Failures in respect of FM Help Desk Services;
 - (v) an aggregate of [REDACTED] Failure Points in respect of Quality Failures and/or Service Failures in respect of Roads and Grounds Maintenance Services and Track Maintenance Services;
 - (vi) an aggregate of [REDACTED] Failure Points in respect of Quality Failures and/or Service Failures in respect of Parking Services; or
 - (vii) an aggregate of [REDACTED] Failure Points in respect of Quality Failures and/or Service Failures in respect of Waste Management and Recycling Services, Cleaning services, and Pest Control Services

in any 1 Payment Period then HMQ Agencies may give a Warning Notice to Project Co setting out the matter or matters giving rise to such notice and stating that it is a "Warning Notice".

29.4 Monitoring Notices

- (a) Without prejudice to HMQ Agencies' rights under Section 42 and any other rights under this Project Agreement, if Project Co accrues, during the period from and after Substantial Completion, more than:
- (i) [REDACTED] Failure Points in respect of Availability Failures;
 - (ii) an aggregate of [REDACTED] Failure Points in respect of Quality Failures and/or Service Failures in respect of General Management Services, Material Services, FF&E Services, and Emergency Management Services;
 - (iii) an aggregate of [REDACTED] Failure Points in respect of Quality Failures and/or Service Failures in respect of any one or more of Plant Services, Environmental and Sustainability Services, Special Projects Services, and Utilities Management Services;
 - (iv) an aggregate of [REDACTED] Failure Points in respect of Quality Failures and/or Service Failures in respect of FM Help Desk Services;
 - (v) an aggregate of [REDACTED] Failure Points in respect of Quality Failures and/or Service Failures in respect of Roads and Grounds Maintenance Services and Track Maintenance Services;
 - (vi) an aggregate of [REDACTED] Failure Points in respect of Quality Failures and/or Service Failures in respect of Parking Services; or
 - (vii) an aggregate of [REDACTED] Failure Points in respect of Quality Failures and/or Service Failures in respect of Waste Management and Recycling Services, Cleaning Services, and Pest Control Services,
- in any rolling 3 Payment Periods, HMQ Agencies may, by notice (a "**Monitoring Notice**") to Project Co require Project Co to increase the level of Project Co's monitoring of its own performance of its obligations under this Project Agreement in respect of the relevant Project Co Service until such time as Project Co shall have demonstrated to the reasonable satisfaction of HMQ Agencies that it is performing, and is capable of continuing to perform, its obligations under this Project Agreement in respect of the relevant Project Co Service.
- (b) HMQ Agencies may give a Warning Notice pursuant to Section 29.3 despite the issuance of a Monitoring Notice in respect of the same matter where a further breach occurs or the original breach has not been remedied within a reasonable period, and whether or not the previous Monitoring Notice remains in effect.
- (c) If a Monitoring Notice is given, then:

- (i) such Monitoring Notice shall specify in reasonable detail the additional measures to be taken by Project Co in monitoring its own performance;
 - (ii) if Project Co, acting reasonably, objects to any of the specified measures on the grounds that they are excessive or that HMQ Agencies were not entitled to give the Monitoring Notice, Project Co shall, within 3 Business Days of the receipt of the Monitoring Notice, notify HMQ Agencies in writing of the matters objected to and any changes necessary in order to prevent prejudice to Project Co's performance of its obligations under this Project Agreement;
 - (iii) if Project Co gives HMQ Agencies a notice under Section 29.4(c)(ii), the measures to be taken by Project Co shall be agreed between the Parties or, in the absence of agreement within 10 Business Days of HMQ Agencies' receipt of such notice, may be referred for resolution in accordance with Schedule 27 - Dispute Resolution Procedure;
 - (iv) if Project Co fails to increase Project Co's monitoring as provided herein, HMQ Agencies may perform such monitoring save where Project Co, acting in good faith, is pursuing a Dispute pursuant to Section 29.4(c)(iii);
 - (v) if it is determined in accordance with Schedule 27 - Dispute Resolution Procedure that HMQ Agencies were entitled to give the applicable Monitoring Notice, Project Co shall bear its own costs and reimburse HMQ Agencies for any reasonable costs and expenses incurred by or on behalf of HMQ Agencies in relation to the giving of such Monitoring Notice; and
 - (vi) if it is determined in accordance with Schedule 27 - Dispute Resolution Procedure that HMQ Agencies were not entitled to give the applicable Monitoring Notice, HMQ Agencies shall bear their own costs and reimburse Project Co for any reasonable costs and expenses incurred by or on behalf of Project Co in relation to the giving of such Monitoring Notice.
- (d) In respect of any Monitoring Notice, if Project Co shall have demonstrated to the reasonable satisfaction of HMQ Agencies that Project Co has performed its obligations under this Project Agreement for a period of 90 consecutive days and during such period has not received a Warning Notice or Monitoring Notice in respect of the same or similar Project Co Service, Project Co may apply for the withdrawal of such Monitoring Notice. If HMQ Agencies are satisfied, acting reasonably, that Project Co has satisfied the aforesaid requirements, it shall, within 10 Business Days of receipt of such application, withdraw such Monitoring Notice and cease to perform or require the performance of the increased monitoring implemented in respect of such Monitoring Notice.
- (e) If it is determined in accordance with Schedule 27 - Dispute Resolution Procedure that HMQ Agencies were not entitled to give any Monitoring Notice, HMQ Agencies shall promptly withdraw such Monitoring Notice and cease to perform or require the performance of the increased monitoring implemented in respect of such Monitoring Notice.

30. HMQ AGENCIES' REMEDIAL RIGHTS**30.1 Exercise of Remedial Rights**

- (a) HMQ Agencies may exercise all rights set out in this Section 30 at any time and from time to time if:
- (i) HMQ Agencies, acting reasonably, consider that a breach by Project Co of any obligation under this Project Agreement, or any act or omission on the part of Project Co or any Project Co Party:
 - (A) does or can reasonably be expected to create a serious threat to the health, safety or security of any user of any part of or the whole of the Facility, including Province Persons and HMQ Service Users and other members of the public;
 - (B) does or can reasonably be expected to result in a materially adverse interruption in the provision of one or more of the Project Co Services;
 - (C) does or can reasonably be expected to materially prejudice HMQ Agencies' ability to carry out the Maintenance and Storage Activities or provide the HMQ FM Services; or
 - (D) may potentially compromise the reputation or integrity of HMQ Agencies or any Government Entity or the nature of the Province's transportation system, so as to negatively affect public confidence in that system,

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 30.1(a)(i)(A), 30.1(a)(i)(B) or 30.1(a)(i)(C), HMQ Agencies shall not exercise their rights under this Section 30 unless Project Co has failed to cure the relevant breach, act or omission within 5 Business Days of notice from HMQ Agencies or, if such breach, act or omission cannot reasonably be cured within such 5 Business Day period, Project Co thereafter fails to diligently and continuously pursue such cure and to cure such breach, act or omission within a reasonable period thereafter, provided that Project Co shall not be entitled to a cure period if any of the consequences set out in Sections 30.1(a)(i)(A), 30.1(a)(i)(B) or 30.1(a)(i)(C) actually occur; and
- (F) in respect of Section 30.1(a)(i)(D), HMQ Agencies shall not exercise their rights under this Section 30 unless Project Co has failed to cure the relevant breach, act or omission within 5 Business Days of notice from HMQ Agencies or, if such breach, act or omission cannot reasonably be

cured within such 5 Business Day period, Project Co thereafter fails to diligently and continuously pursue such cure and to cure such breach, act or omission within a reasonable period thereafter;

- (ii) Project Co accrues, in any 1 Payment Period more than:
 - (A) [REDACTED] Failure Points in respect of Availability Failures;
 - (B) an aggregate of [REDACTED] Failure Points in respect of Quality Failures and/or Service Failures in respect of General Management Services, Material Services, FF&E Services, and Emergency Management Services;
 - (C) an aggregate of [REDACTED] Failure Points in respect of Quality Failures and/or Service Failures in respect of any one or more of Plant Services, Environmental and Sustainability Services, Special Projects Services, and Utilities Management Services;
 - (D) an aggregate of [REDACTED] Failure Points in respect of Quality Failures and/or Service Failures in respect of FM Help Desk Services;
 - (E) an aggregate of [REDACTED] Failure Points in respect of Quality Failures and/or Service Failures in respect of Roads and Grounds Maintenance Services and Track Management Services;
 - (F) an aggregate of [REDACTED] Failure Points in respect of Quality Failures and/or Service Failures in respect of Parking Services; or
 - (G) an aggregate of [REDACTED] Failure Points in respect of Quality Failures and/or Service Failures in respect of Waste Management and Recycling Services, Cleaning Services, and Pest Control Services;
- (iii) while a Monitoring Notice is in effect that is not being disputed by Project Co, acting in good faith, Project Co receives a Warning Notice in respect of the same or similar Project Co Service;
- (iv) pursuant to Part 5 of Schedule 11 – Quality Management, a Quality Audit that is not being disputed by Project Co, acting in good faith, shows that Project Co has not performed or is not performing its obligations and Project Co has failed to perform the rectification or Maintenance Work as provided pursuant to Section 26.8(e)(i);
- (v) a labour dispute materially affects or can reasonably be expected to materially affect the Project Operations, the Maintenance and Storage Activities or the HMQ FM Services;

- (vi) HMQ Agencies have received a notice under the Service Provider's Direct Agreement that entitles HMQ Agencies to exercise step-in rights thereunder;
- (vii) Project Co has failed to comply with any written direction issued by or on behalf of HMQ Agencies (or any designate appointed pursuant to Section 59.1); or
- (viii) Project Co has not caused the Construction Contractor to perform its obligations with respect to its Health and Safety Certification in accordance with Section 9.6 or Project Co has not caused the Construction Contractor to perform its obligations to rectify any non-compliance noted in any H&S Inspection Report in accordance with Section 13(b).
- (ix) Project Co has not performed or is not performing its obligations in respect of the Demolition Requirements in accordance with Section 9.8 or Project Co has not performed or is not performing its obligations to rectify any Demolition Default Event in accordance with Section 9.8;

30.2 Emergency

- (a) Notwithstanding that Project Co is not in breach of its obligations under this Project Agreement, HMQ Agencies may exercise all of the rights set out in this Section 30 at any time and from time to time during the Operational Term if HMQ Agencies, acting reasonably, consider the circumstances to constitute an Emergency.

30.3 Rectification

- (a) Without prejudice to HMQ Agencies' rights under Section 42 and any other rights under this Project Agreement, in any of the circumstances set out in Sections 30.1 or 30.2, HMQ Agencies may, by written notice, require Project Co to take such steps as HMQ Agencies, acting reasonably, consider necessary or expedient to mitigate, rectify or protect against such circumstance, including, if applicable, the termination and replacement of Subcontractors, and Project Co shall use commercially reasonable efforts to comply with HMQ Agencies' requirements as soon as reasonably practicable.
- (b) If HMQ Agencies give notice to Project Co pursuant to Section 30.3(a) and either:
 - (i) Project Co does not either confirm, within 5 Business Days of such notice or such shorter period as is appropriate in the case of an Emergency or in the event HMQ Agencies are entitled to exercise step-in rights under the Service Provider's Direct Agreement, that it is willing to take the steps required in such notice or present an alternative plan to HMQ Agencies to mitigate, rectify and protect against such circumstances that HMQ Agencies may accept or reject acting reasonably; or
 - (ii) Project Co fails to take the steps required in such notice or accepted alternative plan within such time as set out in such notice or accepted alternative plan or within such longer time as HMQ Agencies, acting reasonably, shall think fit,

then HMQ Agencies may take such steps as they consider to be appropriate, acting reasonably, including, if applicable, exercising step-in rights under the Service Provider's Direct Agreement and requiring the termination and replacement of Subcontractors, either themselves or by engaging others (including a third party) to take any such steps, and may perform or obtain the performance of the relevant Project Co Services to the standards required by this Project Agreement, and the provisions of Section 39, including Section 39.1(a)(v) and Section 39.2, shall apply.

- (c) Notwithstanding the foregoing provisions of this Section 30.3, in the event of an Emergency, the notice under Section 30.3(a) shall be given as promptly as possible having regard to the nature of the Emergency and HMQ Agencies may, prior to Project Co's confirmation under Section 30.3(b)(i), take such steps as are appropriate having regard to the nature of the Emergency.
- (d) Where HMQ Agencies consider it to be necessary to do so, the steps which HMQ Agencies may take pursuant to this Section 30.3 subsequent to the provision of the notice under Section 30.3(a) unless the notice is given at a later time as provided in Section 30.3(c), may, at HMQ Agencies' option, include the partial or total suspension of Project Co's right and obligation to deliver any part of the Project Co Services having regard to the circumstances in question (without any extension of the Project Term or suspension of any other Project Co Services), and the provisions of Section 39, including Section 39.1(a)(v) and Section 39.2, shall apply, but such suspension shall be only for so long as, as applicable:
 - (i) the circumstances referred to in Section 30.1 or 30.2 subsist; or
 - (ii) in respect of any such circumstances relating to Project Co's performance of the Project Co Services, until such time as Project Co shall have demonstrated to the reasonable satisfaction of HMQ Agencies that, notwithstanding such circumstances, Project Co has taken such steps, including, if applicable, the termination and replacement of Subcontractors, as are required pursuant to this Section 30.3 and as are necessary to be capable of performing its obligations in respect of the relevant Project Co Services to the required standard in accordance with this Project Agreement, and thereafter Project Co shall perform its obligations as aforesaid.

30.4 Costs and Expenses

- (a) Subject to HMQ Agencies' obligations pursuant to Sections 30.5 and 30.6:
 - (i) Project Co shall bear all costs and expenses incurred by Project Co in relation to the exercise of HMQ Agencies' rights pursuant to this Section 30; and
 - (ii) Project Co shall reimburse HMQ Agencies for all reasonable costs and expenses incurred by HMQ Agencies in relation to the exercise of HMQ Agencies' rights pursuant to this Section 30.

30.5 Reimbursement Events

- (a) In this Section 30.5, a “**Reimbursement Event**” means:
- (i) an act or omission of Project Co or any Project Co Party or a breach by Project Co or any Project Co Party of any obligation under this Project Agreement, but only to the extent such act, omission or breach is caused by a Province Person;
 - (ii) a labour dispute involving employees of any Province Person that materially affects or can reasonably be expected to materially affect the Project Operations, the Maintenance and Storage Activities or the HMQ FM Services; or
 - (iii) an Emergency that is not caused or contributed to by an act or omission of Project Co or any Project Co Party or a breach by Project Co or any Project Co Party of any obligation under this Project Agreement.
- (b) If HMQ Agencies either take steps themselves or require Project Co to take steps in accordance with this Section 30 as a result of a Reimbursement Event:
- (i) HMQ Agencies shall reimburse Project Co for the reasonable costs and expenses incurred by Project Co in relation to the exercise of HMQ Agencies’ rights pursuant to this Section 30 that would not otherwise have been incurred by Project Co in the proper performance of its obligations under this Project Agreement; and
 - (ii) subject to Section 30.5(c), HMQ Agencies shall bear all costs and expenses incurred by HMQ Agencies in relation to the exercise of HMQ Agencies’ rights pursuant to this Section 30.
- (c) If, in exercising its rights pursuant to this Section 30, HMQ Agencies perform any part of the Project Co Services either themselves or by engaging others, HMQ Agencies shall be entitled to deduct from any Monthly Service Payment the reasonable cost of performing such Project Co Services. If HMQ Agencies make such a deduction, then Project Co shall be relieved of its reimbursement obligations under Section 30.4(a)(ii) up to the amount that is equal to that deduction.

30.6 Reimbursement if Improper Exercise of Rights

- (a) If HMQ Agencies exercise their rights pursuant to this Section 30, but HMQ Agencies were not entitled to do so, HMQ Agencies shall reimburse Project Co for the reasonable costs and expenses directly incurred by Project Co over and above those that would otherwise have been incurred by Project Co in the proper performance of its obligations under this Project Agreement and that are directly and reasonably incurred by Project Co in complying with those written requirements of HMQ Agencies issued as a result of HMQ Agencies having exercised such rights.

- (b) Project Co acknowledges and agrees that Project Co has no right to require a determination of whether or not HMQ Agencies are entitled to exercise its rights pursuant to this Section 30 before taking any such action that HMQ Agencies may require and Project Co shall comply with all of HMQ Agencies' requirements. Only concurrently with or after complying with HMQ Agencies' requirements shall Project Co be entitled to refer any Dispute for resolution in accordance with Schedule 27 - Dispute Resolution Procedure.

31. PAYMENT**31.1 Lump Sum Payments**

- (a) HMQ Agencies shall pay to Project Co the Substantial Completion Payment plus, for clarity, applicable HST on the Payment Commencement Date. HMQ Agencies and Project Co each acknowledge and agree that the purpose of the Substantial Completion Payment is to assist Project Co with a portion of the direct costs of construction incurred by Project Co in respect of the Facility.
- (b) Intentionally Deleted.

31.2 Monthly Service Payments

- (a) Subject to and in accordance with this Project Agreement, including this Section 31 and Schedule 20 - Payment Mechanism, HMQ Agencies shall pay to Project Co the all-inclusive Monthly Service Payments as consideration for the performance of the Project Co Services.

31.3 Payment Adjustments

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

31.4 Payment Commencement

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

31.5 Adjustments to Payment Periods

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

31.6 Invoicing and Payment Arrangements

- (a) Within 5 Business Days following the end of each Payment Period, Project Co shall issue to HMQ Agencies an invoice for the amount of the Monthly Service Payment, owing by HMQ Agencies to Project Co for such Payment Period, with such adjustments as provided in the Payment Adjustment Report issued in the previous Payment Period.
- (b) Project Co shall comply with all requirements of Schedule 20 - Payment Mechanism in respect of invoices and shall include with each invoice such supporting documentation as HMQ Agencies may reasonably require in connection with payments hereunder.
- (c) Each invoice shall be in a form agreed by the Parties, acting reasonably, and shall include as a minimum:
 - (i) the Monthly Service Payment, payable in respect of the applicable Payment Period;
 - (ii) any adjustments set out in the Payment Adjustment Report issued in the previous Payment Period that have been approved by HMQ Agencies;
 - (iii) any other adjustments to reflect overpayments and underpayments, as agreed between the Parties or determined in accordance with Schedule 27 - Dispute Resolution Procedure;
 - (iv) any amount owing to HMQ Agencies under this Project Agreement;
 - (v) any amount owing to Project Co under this Project Agreement; and
 - (vi) the net amount owing by HMQ Agencies to Project Co, or by Project Co to HMQ Agencies, as applicable.

- (d) HST shall be shown separately on all invoices from Project Co, together with Project Co's HST registration number.
- (e) Each monthly invoice delivered during the period from the Substantial Completion Date until 45 days following the Final Completion Date shall include up-to-date copies of the parcel registers for the Site.
- (f) Upon agreement of the Parties, the form of invoice may be changed from time to time.
- (g) The HMQ Representative shall review each invoice submitted in accordance with this Section 31.6. HMQ Agencies shall pay the amount stated in such invoice on the first Business Day of the Payment Period next following the Payment Period in which the invoice is received. Any such payment shall be subject to adjustment pursuant to Section 31.6(k).
- (h) HMQ Agencies shall not be obligated to make any payment to Project Co unless all conditions precedent applicable to such payment under this Project Agreement have been satisfied by Project Co. Further, HMQ Agencies shall not be obligated to pay an invoice delivered by Project Co after the second Payment Period following the Payment Commencement Date until Project Co has delivered the Payment Adjustment Report referred to in Section 31.6(i) for the previous Payment Period. In the event that Project Co delivers any Payment Adjustment Report later than the stipulated date in Section 31.6(i), HMQ Agencies' obligation to pay the invoice issued by Project Co for the immediately following Payment Period shall be extended by the number of days by which Project Co was late in delivering the applicable Payment Adjustment Report to HMQ Agencies.
- (i) Within 5 Business Days following the end of each Payment Period, Project Co shall also submit to HMQ Agencies:
 - (i) a Performance Monitoring Report in respect of the Payment Period just ended; and
 - (ii) a report (a "**Payment Adjustment Report**") setting out any adjustments required between the actual Monthly Service Payment determined by Project Co to be owing by HMQ Agencies to Project Co in respect of the Payment Period just ended and the amount that was paid by HMQ Agencies during such Payment Period, including details of:
 - (A) all Deductions in relation to Availability Failures;
 - (B) all Deductions in relation to Quality Failures;
 - (C) all Deductions in relation to Service Failures; and
 - (D) any Gainshare Adjustment or Painshare Adjustment.

- (j) Project Co shall include with each Payment Adjustment Report such supporting documentation as is reasonably required to substantiate and confirm the adjustments set out in each Payment Adjustment Report.
- (k) Within 10 Business Days of receipt by HMQ Agencies of the Payment Adjustment Report, the HMQ Representative shall:
 - (i) determine and advise Project Co that the Payment Adjustment Report is approved by HMQ Agencies, in which case the adjustments set out therein will be reflected by Project Co in the invoice next issued by Project Co; or
 - (ii) if HMQ Agencies dispute Project Co's entitlement to any part of the amounts set out therein, notify Project Co in writing of that part of the amounts (insofar as at the time of such notice HMQ Agencies are reasonably able to quantify it) which HMQ Agencies dispute and submit to Project Co such supporting documentation as is reasonably required to substantiate and confirm such claim. In such event, HMQ Agencies shall withhold payment of any disputed amount pending agreement or determination of Project Co's entitlement to the disputed amount in accordance with Section 31.9.
- (l) In respect of all invoices issued by Project Co for payment from and after the Payment Commencement Date through to the Payment Period ending no less than 45 days following the date of the Final Completion Certificate, Project Co shall cause its solicitors to:
 - (i) subsearch title to the Site as at noon of the day that each payment is due; and
 - (ii) promptly send to HMQ Agencies
 - (A) a Notice, and
 - (B) a statutory declaration from an officer of Project Coconfirming no liens pursuant to the CLA have been registered against the Site in connection with the Works.

Project Co acknowledges that if a claim for lien has been registered against the Site, the provisions of Section 15.3 shall apply.

31.7 Electronic Invoicing

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

31.8 Final Payment Periods

- (a) At the beginning of each of the final 3 Payment Periods immediately prior to the Expiry Date, HMQ Agencies shall estimate, acting reasonably, the adjustments to the Monthly Service Payment for each such Payment Period. HMQ Agencies may withhold the amounts that it has reasonably estimated for such adjustments from amounts paid to Project Co during each of the final 3 Payment Periods.
- (b) Within 10 Business Days of receipt by HMQ Agencies of the applicable Payment Adjustment Report for each of the final 3 Payment Periods, the HMQ Representative shall either:
- (i) determine and advise Project Co that the Payment Adjustment Report is approved by HMQ Agencies and perform a reconciliation between the amount payable based on such Payment Adjustment Report and the amount HMQ Agencies previously paid in respect of the applicable Payment Period. Based on such reconciliation, either HMQ Agencies or Project Co shall pay to the other Party the amount properly owing in accordance with such reconciliation; or
 - (ii) if HMQ Agencies dispute Project Co's entitlement to any part of the amounts set out therein, notify Project Co in writing of that part of the amounts (insofar as at the time of such notice HMQ Agencies are reasonably able to quantify it) which HMQ Agencies dispute and submit to Project Co such supporting documentation as is reasonably required to substantiate and confirm such claim. In such event, the HMQ Representative shall perform a reconciliation between the undisputed amount payable based on such Payment Adjustment Report and the amount HMQ Agencies previously paid in respect of the applicable Payment Period. Based on such reconciliation, either HMQ Agencies or Project Co shall pay to the other Party the amount properly owing in accordance with such reconciliation, provided that HMQ Agencies shall withhold payment of any disputed amount pending agreement or determination of Project Co's entitlement to the disputed amount in accordance with Section 31.9.

31.9 Disputes

- (a) If HMQ Agencies, acting in good faith, dispute all or any part of a Payment Adjustment Report and/or the Monthly Service Payments payable thereunder, they shall notify Project Co in writing of that part of the amounts (insofar as at the time of such notice HMQ Agencies are reasonably able to quantify it) which HMQ Agencies dispute and submit to Project Co such supporting documentation as is reasonably required to substantiate and confirm such claim. The Parties shall use commercially reasonable efforts to resolve the Dispute in question within 10 Business Days of the aforesaid notice of the Dispute. If they fail to so resolve the Dispute within such period, the Dispute may be referred for resolution in accordance with Schedule 27 - Dispute Resolution Procedure. Following resolution of the Dispute, any amount which has been paid by HMQ Agencies that is determined not to have been payable shall be paid forthwith by

Project Co to HMQ Agencies and Project Co shall indemnify and hold harmless HMQ Agencies from and against any damages suffered or incurred resulting from such overpayment by HMQ Agencies as provided for at Section 53.1(e) on the basis that the due date was the date of the overpayment by HMQ Agencies. Following resolution of the Dispute, any amount which has been withheld by HMQ Agencies that is determined to have been payable shall be paid forthwith by HMQ Agencies to Project Co and HMQ Agencies shall indemnify and hold harmless Project Co from and against any damages suffered or incurred resulting from such withholding by HMQ Agencies as provided for at Section 53.2(c) on the basis that the due date was the date upon which such amount became payable to Project Co.

31.10 Payments

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

31.11 Manner of Payment

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

31.12 Intentionally Deleted**31.13 Set-Off**

- (a) The Parties agree that their rights of set-off at law or in equity are limited to the right of:
 - (i) HMQ Agencies to set off against any amounts otherwise due to Project Co pursuant to the terms of this Project Agreement, any amounts (including, without limitation, any amounts payable in accordance with Section 53) which are due to HMQ Agencies by Project Co pursuant to the terms of this Project Agreement; and
 - (ii) Project Co to set off against any amounts otherwise due to HMQ Agencies pursuant to the terms of this Project Agreement, any amounts (including, without

limitation, any amounts payable in accordance with Section 53) which are due to Project Co by HMQ Agencies pursuant to the terms of this Project Agreement.

31.14 Effect of Payment

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

31.15 Audit of Performance of Project Operations

- (a) Without limiting HMQ Agencies' rights and Project Co's obligations pursuant to Section 34.2, at any time and from time to time until 180 days after the Termination Date, HMQ Agencies may give notice to Project Co requiring an audit of any matter relating to performance of the Project Operations and payments by or to HMQ Agencies within the 7 year period prior to the date of such notice, including any Payment Adjustment Reports, and any other records, reports, information, documents or data relating to performance and payments to verify their accuracy, correctness and completeness.
- (b) HMQ Agencies shall appoint an auditor to perform and complete such audit at HMQ Agencies' cost and expense and pursuant to terms of reference determined by HMQ Agencies.
- (c) Within a reasonable time following receipt of a notice referred to in Section 31.15(a), Project Co shall make available to HMQ Agencies' auditor, any Payment Adjustment Reports, and any other records, reports, information, documents or data relating to performance and payments.
- (d) HMQ Agencies shall notify Project Co of the results of the audit, and if HMQ Agencies' auditor discovers any inaccuracy, incorrectness or incompleteness, then, subject to Project Co's right to dispute the same in accordance with Schedule 27 - Dispute Resolution Procedure:
 - (i) Project Co shall:
 - (A) remedy any such inaccuracy, incorrectness or incompleteness and issue a revision to the applicable Payment Adjustment Report or other record, report, information, document or data; and
 - (B) where the inaccuracy, incompleteness or incorrectness has resulted in any material overpayment by HMQ Agencies, reimburse HMQ Agencies for all costs relating to the auditor and audit to a maximum amount that is the lesser of:
 - (I) the actual costs relating to the auditor and audit; or

- (II) an amount equal to the amount of any overpayment;
- (ii) where the inaccuracy, incompleteness or incorrectness has resulted in any overpayment, whether or not material, by HMQ Agencies, Project Co shall reimburse HMQ Agencies for the amount of such overpayment, and, further, shall indemnify HMQ Agencies from and against any damages suffered or incurred resulting from such overpayment by HMQ Agencies as provided for at Section 53.1(e) on the basis that the due date was the date of the overpayment by HMQ Agencies; and
- (iii) where the inaccuracy, incompleteness or incorrectness has resulted in any underpayment, whether or not material, by HMQ Agencies, HMQ Agencies shall pay Project Co the amount of such underpayment and, further, shall indemnify Project Co from and against any damages suffered or incurred resulting from such underpayment by HMQ Agencies as provided for at Section 53.2(c) on the basis that the due date was the date of the underpayment by HMQ Agencies.

31.16 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.

32. TAXES

32.1 Taxes

- (a) All amounts specified in this Project Agreement, including, for clarity, any compensation payable on termination, are expressed exclusive of HST, but inclusive of all Taxes payable pursuant to Applicable Law. For clarity, HMQ Agencies shall not be required to pay any interest and/or penalties that are imposed on or assessed against Project Co or any Project Co Party for non-compliance with Applicable Law. Except as specified in Sections 32.1(d) and 32.1(e), if Project Co is required by Applicable Law to collect any such HST from HMQ Agencies, HMQ Agencies shall pay such HST to Project Co simultaneously with the amount to which such applicable HST relates or applies.
- (b) HMQ Agencies shall pay, when due and payable, all property taxes or payments in lieu of property taxes that are assessed in respect of ownership or use of the Site or Facility.
- (c) Within 3 weeks after the end of the month in which Substantial Completion occurs, HMQ Agencies shall pay to Project Co any and all HST exigible in accordance with paragraph 168(3)(c) of the *Excise Tax Act* (Canada) in respect of the design and construction of the Facility (the "**Section 32.1(c) Payment**"), which amount shall reflect the capital cost of the Facility as set out in the Financial Model or shall be otherwise agreed between HMQ Agencies and Project Co, and will be set out in an invoice issued by Project Co to HMQ Agencies no later than the Substantial Completion Date. For clarity, the calculation of the amount of the Section 32.1(c) Payment, if any, to be made by HMQ Agencies to Project

Co in accordance with the foregoing shall have deducted from it the HST amounts already paid by HMQ Agencies to Project Co on account of the design and construction of the Facility.

- (d) Subject to Section 32.1(e), in each Monthly Service Payment invoice provided by Project Co to HMQ Agencies, if applicable, Project Co shall show on a distinct line of the invoice the Monthly Previously Paid HST Amount used to determine the amount of unpaid HST payable by HMQ Agencies on such Monthly Service Payment. For clarity, if applicable, a Monthly Previously Paid HST Amount must be credited to HMQ Agencies on each Monthly Service Payment invoice.
- (e) HMQ Agencies shall pay all applicable HST properly payable in accordance with the *Excise Tax Act* (Canada) by HMQ Agencies upon and in connection with payments by HMQ Agencies.

32.2 Changes in Scope of Taxation

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

32.3 Changes in Recoverability of Tax Credits

- (a) HMQ Agencies will pay to Project Co from time to time, as the same is incurred by Project Co, amounts equal to any Irrecoverable Tax to the extent such Irrecoverable Tax results from a Change in Law. Project Co will pay to HMQ Agencies 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 32.3, the term “**Irrecoverable Tax**” means HST or an irrecoverable sales tax levied by the Province in lieu of all or a portion of HST incurred by Project Co in respect of the supply of any good or service to HMQ Agencies which is consumed, used or supplied, or to be consumed, used or supplied, exclusively by Project Co in the course of carrying out the Works or otherwise performing the Project Operations to the extent that Project Co is unable to recover or be credited with input tax credits, refunds, rebates or exemptions for such HST.
- (c) For the purposes of this Section 32.3, the term “**Recoverable Tax**” means HST incurred by Project Co in respect of the supply of any good or service to HMQ Agencies which is consumed, used or supplied, or to be consumed, used or supplied, exclusively by Project Co in the course of carrying out the Works or otherwise performing the Project Operations to the extent that Project Co is able to recover or be credited with input tax credits, refunds, rebates or exemptions for such HST.

32.4 Information and Assistance Provided by Project Co

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

32.5 Residency — *Income Tax Act* (Canada)

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

32.6 Taxes - General

- (a) Project Co shall not, without the prior written consent of HMQ Agencies (which consent may be withheld in its sole discretion), undertake any action or transaction that, if undertaken, would cause HMQ Agencies to have (or result in HMQ Agencies having) any obligation to deduct, withhold or remit any Taxes that are required by Applicable Law to be deducted, withheld or remitted from any amounts paid or credited to Project Co or any Project Co Party under this Project Agreement or under any other Project Document.

32.7 Taxes - Indemnity

- (a) If (i) Project Co becomes a Non-Resident, or (ii) HMQ Agencies are or become required by Applicable Law to deduct or withhold any amount in respect of Taxes on or in respect of any amounts paid or credited to Project Co or a Project Co Party by HMQ Agencies under the Project Agreement or under any of the Project Documents, then HMQ Agencies shall be entitled to make any applicable deductions or withholdings 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) HMQ Agencies are required by

Applicable Law to deduct or withhold amounts in respect of any such amounts, in each case, in respect of all Taxes that are required by Applicable Law to be deducted or withheld from amounts paid or credited to a Non-Resident or otherwise as required by Applicable Law; and all amounts paid or credited by HMQ Agencies under this Project Agreement or under any other Project Document to Project Co or a Project Co Party shall be paid or credited net of such deductions or withholdings.

- (b) If (i) Project Co becomes a Non-Resident, or (ii) HMQ Agencies are or become required by Applicable Law to deduct or withhold any amount in respect of Taxes on or in respect of any amounts paid or credited to Project Co or a Project Co Party by HMQ Agencies under this Project Agreement or under any of the Project Documents, Project Co shall, in each case, indemnify and hold harmless HMQ Agencies for (A) the full amount of all Taxes ("**Indemnifiable Taxes**") that arise, are imposed on or are required to be paid by HMQ Agencies in respect of any amounts paid or credited by HMQ Agencies to Project Co or any Project Co Party under this Project Agreement or under any other Project Document as a result of either of the foregoing items less any amount withheld or deducted by HMQ Agencies 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 30 days from the date HMQ Agencies make written demand for it. A certificate containing reasonable detail as to the amount of Indemnifiable Taxes and Associated Liabilities submitted to Project Co by HMQ Agencies shall be conclusive evidence, absent manifest error, of the amount due from Project Co to HMQ Agencies. HMQ Agencies shall be entitled to exercise their rights of set-off under Section 31.13 against any amounts owing under this indemnification.

33. FINANCIAL MODEL

33.1 Appointment of Custodian

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

33.2 Delivery and Use of Financial Model

- (a) In accordance with Schedule 2 - Completion Documents, Project Co shall deliver copies of the Financial Model (1 printed copy and 2 copies on CD-Rom) to HMQ Agencies and the Custodian to be held in custody on terms to be agreed by the Parties.
- (b) Following the approval by HMQ Agencies of any amendment to the Financial Model, Project Co shall promptly deliver copies of the revised Financial Model, in the same form

as the original Financial Model (or such other form as may be agreed by the Parties from time to time), to HMQ Agencies and the Custodian.

- (c) The Parties shall instruct the Custodian to keep both a hard copy and an electronic copy of all versions of the Financial Model.
- (d) Project Co hereby grants to HMQ Agencies an irrevocable, royalty free perpetual, non-exclusive and transferable licence, including the right to grant sub-licences, to use the Financial Model or any revised Financial Model for any purpose in connection with this Project Agreement, whether during or after the Project Term.
- (e) For greater certainty, Project Co acknowledges and agrees that HMQ Agencies shall not be liable to Project Co for, and Project Co shall not seek to recover from HMQ Agencies, any HMQ Party or any Government Entity any damages, losses, costs, liabilities or expenses which may arise (whether in contract, tort or otherwise) as a result of any errors in the Financial Model.

34. RECORDS, INFORMATION AND AUDIT

34.1 Records Provisions

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

34.2 Information and General Audit Rights

- (a) Project Co shall provide and shall cause the Subcontractors to provide, to HMQ Agencies 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 or the Subcontractors as HMQ Agencies 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 and the Service Provider shall be available to Project Co and Project Co shall include relevant terms in all Subcontracts to this effect.
- (b) Project Co shall also provide to HMQ Agencies, and shall require each Subcontractor, including the Construction Contractor and the Service Provider, to provide to HMQ Agencies (at HMQ Agencies' reasonable cost), all information, reports, documents, records and the like required to be provided pursuant to Section 34.2(a) which subsequently come into the possession of, or become available to, Project Co or each Subcontractor, as HMQ Agencies may reasonably require from time to time to enable HMQ Agencies to provide reports, notices, returns and the like pursuant to Applicable Law, including information and documentation pertaining to the physical condition of the Facility, health and safety, fire safety, emergency preparedness, environmental matters, employees and human resources related matters, other than Sensitive Information.

- (c) Project Co shall promptly after receipt provide HMQ Agencies with a copy of any material notice, order, direction, requirement or other similar communication received by it or by any Subcontractor from any Governmental Authority in relation to any of the Project Operations, the Maintenance and Storage Activities, the HMQ FM Services or the Facility and Project Co shall include relevant terms in all Subcontracts to this effect.
- (d) Project Co shall promptly notify HMQ Agencies of any actions, suits, proceedings, or investigations commenced, pending or threatened against Project Co or, to Project Co's knowledge, any Subcontractor at law or in equity before any Governmental Authority or arbitral body (whether or not covered by insurance) that individually or in the aggregate could result in any material adverse effect on the business, properties, or assets or the condition, financial or otherwise, of Project Co or in any impairment of its ability to perform its obligations under this Project Agreement.
- (e) All information, reports, documents and records in the possession of, or available to, Project Co, including as referred to in Schedule 26 - Record Provisions, which are required to be provided to or available to HMQ Agencies hereunder, shall be subject and open to inspection and audit by HMQ Agencies at any time and from time to time, which inspection and audit shall take place during normal business hours and at Project Co's normal places of business unless HMQ Agencies and Project Co otherwise agree. HMQ Agencies shall also have the right to monitor and audit the performance of any and all parts of the Works or Project Co Services wherever located, and Project Co shall cooperate with, and shall require each Subcontractor to cooperate with, and provide access to the representatives of HMQ Agencies monitoring and auditing such parts of the Works or Project Co Services, including providing them with access and copies (at HMQ Agencies' reasonable cost) of all relevant information, reports, documents and records pertaining to the performance of such parts of the Works or Project Co Services. Except as otherwise provided herein, all of HMQ Agencies' costs for the inspections, audits and monitoring shall be borne by HMQ Agencies.
- (f) In conducting an audit of Project Co under Section 34.2(e) or as otherwise provided under this Project Agreement, HMQ Agencies shall have all rights necessary or incidental to conducting an audit, including the right to have access to and inspect and take copies (at HMQ Agencies' reasonable cost) of all books and records of Project Co required to be provided to or available to HMQ Agencies hereunder, upon reasonable notice and at reasonable times. Project Co shall fully cooperate with HMQ Agencies and their auditors in the conduct of any audits, including by making available all such records and accounts (other than Sensitive Information) in existence at that time as they may require to perform a full and detailed audit, and Project Co further agrees to promptly review and settle with HMQ Agencies all matters arising from such audits, including the refunding of monies to HMQ Agencies where applicable. At the reasonable request of HMQ Agencies' auditors, Project Co shall provide such information, reports, documents and records as HMQ Agencies' auditors may reasonably require, other than Sensitive Information.

- (g) HMQ Agencies' rights pursuant to this Section 34.2 shall be in addition to, and shall not limit, any other audit, information, inspection or similar rights under this Project Agreement.
- (h) HMQ Agencies' rights pursuant to this Section 34.2 shall not limit or restrict any Governmental Authority's right of review, audit, information or inspection under Applicable Law.

35. CHANGES IN LAW

35.1 Performance after Change in Law

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

35.2 Works Change in Law

- (a) On the occurrence of a Works Change in Law:
 - (i) either Party may give notice to the other of the need for a Variation as a result of such Works Change in Law;
 - (ii) the Parties shall meet within 10 Business Days of such notice to consult with respect to the effect of the Works Change in Law and to reach an agreement on whether a Variation is required as a result of such Works Change in Law, and, if the Parties have not, within 10 Business Days of this meeting, reached an agreement, either Party may refer the question of whether a Works Change in Law has occurred or the effect of any Works Change in Law for resolution in accordance with Schedule 27 - Dispute Resolution Procedure; and
 - (iii) HMQ Agencies shall, within 10 Business Days of agreement or determination that a Variation is required, issue a Variation Enquiry and the relevant provisions of Schedule 22 - Variation Procedure shall apply except that:
 - (A) Project Co may only object to any such Variation Enquiry on the grounds that the implementation of the Variation would not enable it to comply with the Works Change in Law;
 - (B) Project Co shall be responsible for obtaining all Development Approvals and Project Co Permits, Licences, Approvals and Agreements required in respect of the Variation;
 - (C) HMQ Agencies 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.

35.3 Relevant Change in Law

- (a) On the occurrence of a Relevant Change in Law, either Party shall be entitled to seek compensation for any increase or decrease (as the case may be) in the net cost to Project Co of performing the Project Operations so as to put such Party in no better and no worse position than it would have been in had the Relevant Change in Law not occurred. Any such compensation shall be calculated in accordance with this Section 35.3.
- (b) On the occurrence of a Relevant Change in Law:
 - (i) either Party may give notice to the other of the need for a Variation as a result of such Relevant Change in Law;
 - (ii) the Parties shall meet within 10 Business Days of such notice to consult with respect to the effect of the Relevant Change in Law and to reach an agreement on whether a Variation is required as a result of such Relevant Change in Law, and, if the Parties have not, within 10 Business Days of this meeting, reached an agreement, either Party may refer the question of whether a Relevant Change in Law has occurred or the effect of any Relevant Change in Law for resolution in accordance with Schedule 27 - Dispute Resolution Procedure; and
 - (iii) HMQ Agencies shall, within 10 Business Days of agreement or determination that a Variation is required, issue a Variation Enquiry and the relevant provisions of Schedule 22 - Variation Procedure shall apply except that:
 - (A) Project Co may only object to any such Variation Enquiry on the grounds that the implementation of the Variation would not enable it to comply with the Relevant Change in Law;
 - (B) Project Co shall be responsible for obtaining all Development Approvals and Project Co Permits, Licences, Approvals and Agreements required in respect of the Variation;
 - (C) HMQ Agencies 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 of 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 35.3, and any calculation of compensation shall take into consideration, inter alia:
 - (I) any failure by a Party to comply with Section 35.3(b)(iii)(E);
 - (II) the extent to which a Party has been, or shall be, compensated in respect of such Change in Law as a result of any indexation or adjustment of the Monthly Service Payments under this Project Agreement;
 - (III) any increase or decrease in its costs resulting from such Relevant Change in Law; and
 - (IV) any amount which Project Co recovers under any insurance policy (or would recover if it complied with its obligations to insure under this Project Agreement or the terms of any policy of insurance required under this Project Agreement) which amount, for greater certainty, shall not include the amount of any excess or deductibles or any amount above the maximum insured amount applicable to any such insurance policy.
- (c) Project Co shall not be entitled to any payment or compensation or, except as provided in Section 37 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 35.3, and Section 38 shall be construed accordingly.
- (d) In relation to a Relevant Change in Law that results in a net increase or decrease in costs incurred by Project Co in delivery of the Project Operations, taking into consideration, inter alia, Section 35.3(b)(iii)(E), if the cost impact of such Relevant Change in Law in a

given Contract Year (in aggregate with all other such Relevant Changes in Law that have a cost impact in the same Contract Year) amounts to less than [REDACTED] (index linked) in that Contract Year, neither HMQ Agencies nor Project Co shall be entitled to any payment or compensation pursuant to this Section 35.3 or otherwise in respect of the cost impact of that Relevant Change in Law in that Contract Year, or, except as provided in Section 37 or otherwise in this Project Agreement, any other relief in respect of such Relevant Change in Law in that Contract Year.

36. VARIATIONS

36.1 Variation Procedure

- (a) Except as otherwise expressly provided in this Project Agreement, Schedule 22 - Variation Procedure shall apply in respect of Variations and Small Works.
- (b) For greater certainty, Project Co shall, subject to and in accordance with Schedule 22 - Variation Procedure, be entitled to a Variation if a written direction issued by or on behalf of HMQ Agencies to Project Co or any Project Co Party results in a variation, addition, reduction, substitution, omission, modification, deletion, removal or other change to the whole or any part of the Project Operations, including in relation to the whole or any part of the Works or the Project Co Services.
- (c) Without limiting Project Co's obligations pursuant to Section 9.3 and Schedule 22 - Variation Procedure, Project Co shall include in each Subcontract, and shall cause each Project Co Party to comply with, the Variation Procedure, to the extent that the Variation Procedure requires Project Co to minimize the cost and impact of Variations, including Variations as to scope of Project Co Services.

36.2 Innovation and Value Engineering

- (a) Project Co acknowledges that HMQ Agencies at all times desires to reduce the Monthly Service Payments and the overall cost to HMQ Agencies of the Facility and the Project Co Services, and Project Co agrees to cooperate, explore and work with HMQ Agencies in investigating and considering innovation and value engineering and other cost saving measures.
- (b) If an innovation and value engineering proposal is at any time and from time to time originated and initiated solely by Project Co, Project Co may make a proposal (the "**Innovation Proposal**") by notice to HMQ Agencies.
- (c) The Parties agree that the subject of an Innovation Proposal shall not include:
 - (i) any Variation Enquiry initiated by HMQ Agencies;
 - (ii) any Variation resulting from a Change in Law; or
 - (iii) any change to the Maintenance and Storage Activities or the HMQ FM Services .

- (d) The Innovation Proposal must:
- (i) set out sufficient detail to enable HMQ Agencies to evaluate the Innovation Proposal in full;
 - (ii) specify Project Co's reasons and justification for proposing the Innovation Proposal;
 - (iii) request HMQ Agencies to consult with Project Co with a view to deciding whether to agree to the Innovation Proposal and, if so, what consequential changes HMQ Agencies require as a result;
 - (iv) indicate any implications of the Innovation Proposal, including a difference between the existing and the proposed requirements of this Project Agreement, and the comparative advantages of each to Project Co and HMQ Agencies;
 - (v) indicate, in particular, whether an increase or decrease to the Monthly Service Payments is proposed, and, if so, give a detailed cost estimate of such proposed change;
 - (vi) indicate if there are any dates by which a decision by HMQ Agencies must be made;
 - (vii) indicate the capital cost of the Innovation Proposal, including the cost of financing; and
 - (viii) include such other information and documentation as may be reasonably requested by HMQ Agencies to fully evaluate and consider the Innovation Proposal.
- (e) HMQ Agencies shall, acting in good faith, evaluate the Innovation Proposal, taking into account all relevant issues, including whether:
- (i) a change in the Monthly Service Payments will occur;
 - (ii) the Innovation Proposal affects the quality of the Works, the Facility or the Project Co Services, or the likelihood of successful completion of the Works or delivery of the Project Co Services;
 - (iii) the Innovation Proposal will benefit or interfere with the efficient operation of the Facility or the performance of the Maintenance and Storage Activities or the HMQ FM Services;
 - (iv) the Innovation Proposal will interfere with the relationship between HMQ Agencies and third parties;

- (v) the financial strength of Project Co is sufficient to deliver the changed Works or perform the changed Project Co Services, as applicable;
 - (vi) the residual value of the Facility is affected;
 - (vii) the Innovation Proposal will change the Lifecycle Payment;
 - (viii) the Innovation Proposal materially affects the risks or costs to which HMQ Agencies are exposed; or
 - (ix) any other matter HMQ Agencies consider relevant.
- (f) HMQ Agencies may request clarification or additional information regarding the Innovation Proposal, and may request modifications to the Innovation Proposal.
- (g) HMQ Agencies may, in their sole discretion, accept or reject any Innovation Proposal.
- (h) If HMQ Agencies accept the Innovation Proposal, with or without modification, the relevant Innovation Proposal shall be documented and evidenced by a written Variation Confirmation, together with any other documents necessary to amend this Project Agreement or any relevant Project Documents to give effect to the Innovation Proposal.
- (i) Unless HMQ Agencies specifically agree to an increase in the Monthly Service Payments in accepting an Innovation Proposal pursuant to Section 36.2(h), there shall be no increase in the Monthly Service Payments as a result of an Innovation Proposal.
- (j) If, after taking into account the agreed implementation and reasonably allocated development costs incurred by Project Co in connection with the Innovation Proposal and any other uses of the Innovation Proposal by Project Co, the Innovation Proposal causes or will cause the costs of Project Co and/or of a Subcontractor to decrease, the net savings in the costs of Project Co and/or the Subcontractor will be shared equally by Project Co and HMQ Agencies, and HMQ Agencies' share of the net savings shall, if the Parties agree, be reflected in either a lump sum payment or in a reduction of the Monthly Service Payments.
- (k) If an Innovation Proposal causes or will cause the costs of HMQ Agencies to decrease, the net savings in the costs of HMQ Agencies will be shared as follows:
- (i) equally by Project Co and HMQ Agencies for the first 5 years following the implementation of the Innovation Proposal; and
 - (ii) thereafter, HMQ Agencies shall be entitled to the full benefit of the net savings in costs (if applicable),

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

37. DELAY EVENTS

37.1 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:
- (i) the implementation of a Variation to the extent Project Co has identified such delay in its Estimate and such delay has been documented in the Variation Confirmation;
 - (ii) subject to Section 9.4(e), any breach by HMQ Agencies of any of HMQ Agencies’ obligations under this Project Agreement (including any delay by HMQ Agencies in giving access to the Site pursuant to Section 14.1, any obstruction of the rights afforded to Project Co under Section 14.1, any delay by HMQ Agencies in carrying out their obligations set forth in Section 21.8(b) or any delay by HMQ Agencies in carrying out their obligations set forth in Schedule 10 - Review Procedure), except to the extent that any such breach is caused, or contributed to, by Project Co or any Project Co Party;
 - (iii) an opening up of the Works pursuant to Section 19.5 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 HMQ Agencies in respect of the same or a similar component of the Works or subset of the Works;
 - (iv) a requirement pursuant to Sections 16.2(b) or 16.2(c) for Project Co to perform any alteration, addition, demolition, extension or variation in the Works, or to suspend or delay performance of the Works, upon the discovery of Contamination, which alteration, addition, demolition, extension or variation in the Works, or suspension or delay in the performance of the Works, would not otherwise be required under this Project Agreement;
 - (v) a requirement pursuant to Sections 16.2(b) or 16.2(c) for Project Co to perform any alteration, addition, demolition, extension or variation in the Works, or to suspend or delay performance of the Works, upon the discovery of any fossils, artefacts and other objects having artistic, historic, archaeological or monetary value, including human remains and burial sites, which alteration, addition, demolition, extension or variation in the Works, or suspension or delay in the performance of the Works, would not otherwise be required under this Project Agreement;
 - (vi) subject to compliance by Project Co with the provisions of Section 9.6, the execution of Additional Works on the Site by Additional Contractors;

- (vii) a requirement pursuant to Section 13.1 of Schedule 27 - Dispute Resolution Procedure for Project Co to proceed in accordance with the direction of HMQ Agencies during the pendency of a Dispute, which Dispute is subsequently determined in Project Co's favour;
- (viii) an event of Force Majeure;
- (ix) a Relief Event; or
- (x) a Relevant Change in Law.

37.2 Consequences of a Delay Event

- (a) Project Co shall provide written notice to the HMQ Representative and the Independent Certifier within 5 Business Days of becoming aware of the occurrence of a Delay Event. Project Co shall, within 10 Business Days after such notification, provide further written details to the HMQ Representative and the Independent Certifier which shall include:
 - (i) a statement of which Delay Event the claim is based upon;
 - (ii) details of the circumstances from which the Delay Event arises;
 - (iii) details of the contemporary records which Project Co shall maintain to substantiate its claim for extra time;
 - (iv) details of the consequences (whether direct or indirect, financial or non-financial) which such Delay Event may have upon the Scheduled Substantial Completion Date, and
 - (v) details of any measures which Project Co proposes to adopt to mitigate the consequences of such Delay Event.
- (b) As soon as possible but in any event within 3 Business Days of Project Co receiving, or becoming aware of, any supplemental information which may further substantiate or support Project Co's claim, Project Co shall submit further particulars based on such information to the HMQ Representative and the Independent Certifier.
- (c) The HMQ Representative shall, after receipt of written details under Section 37.2(a), or of further particulars under Section 37.2(b), be entitled by written notice to require Project Co to provide such further supporting particulars as the HMQ Representative may reasonably consider necessary. Project Co shall afford the HMQ Representative and the Independent Certifier reasonable facilities for investigating the validity of Project Co's claim, including, without limitation, on-site inspection.
- (d) Subject to the provisions of this Section 37, the HMQ Representative shall allow Project Co an extension of time equal to the delay caused by the Delay Event and shall fix a revised Scheduled Substantial Completion Date, or a revised Scheduled Final Completion

Date, as applicable, as soon as reasonably practicable and in any event within 10 Business Days of the later of:

- (i) the date of receipt by the HMQ Representative of Project Co's notice given in accordance with Section 37.2(a) and the date of receipt of any further particulars (if such are required under Section 37.2(c)), whichever is later; and
 - (ii) the date of receipt by the HMQ Representative of any supplemental information supplied by Project Co in accordance with Section 37.2(b) and the date of receipt of any further particulars (if such are required under Section 37.2(c)), whichever is later.
- (e) For the avoidance of doubt, there shall be no extension to the Project Term as a result of any delay caused by a Delay Event.
- (f) If:
- (i) the HMQ Representative declines to fix a revised Scheduled Substantial Completion Date or a revised Scheduled Final Completion Date, as applicable;
 - (ii) Project Co considers that a different Scheduled Substantial Completion Date or Final Completion 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 determination by the Independent Certifier. The decision of the Independent Certifier may be disputed by either Party and referred for resolution in accordance with Schedule 27 - Dispute Resolution Procedure.

37.3 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 37.3, such failure shall be taken into account in determining Project Co's entitlement to an extension of time pursuant to this Section 37.

38. COMPENSATION EVENTS

38.1 Definition

- (a) For the purposes of this Project Agreement, “**Compensation Event**” means any event referred to in Sections 37.1(a)(ii), 37.1(a)(iii), 37.1(a)(iv), 37.1(a)(v), 37.1(a)(vi), and 37.1(a)(vii) 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.

38.2 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 38. 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 37.1(a)(i);
 - (ii) Section 41, in the case of a Delay Event referred to in Section 37.1(a)(viii);
 - (iii) Section 40, in the case of a Delay Event referred to in Section 37.1(a)(ix); and
 - (iv) Section 35, in the case of a Delay Event referred to in Section 37.1(a)(x).
- (b) Subject to Sections 38.3 and 38.4, if it is agreed, or determined in accordance with Schedule 27 - Dispute Resolution Procedure, that there has been a Compensation Event, Project Co shall be entitled to such compensation as would place Project Co in no better and no worse position than it would have been in had the relevant Compensation Event not occurred. For greater certainty, in respect of a Compensation Event that is also a Delay Event, such compensation will include amounts which, but for the Delay Event, would have been paid by HMQ Agencies to Project Co. Project Co shall promptly provide the HMQ Representative with any information the HMQ Representative may require in order to determine the amount of such compensation.
- (c) If HMQ Agencies are required to compensate Project Co pursuant to this Section 38.2, then HMQ Agencies may either pay such compensation as a lump sum payment or payments at times and in a manner to be agreed with Project Co, acting reasonably, or, alternatively, HMQ Agencies may request Project Co to agree to an adjustment to the Monthly Service Payments. If Project Co agrees to an adjustment to the Monthly Service Payments, then the provisions of Schedule 22 - Variation Procedure shall apply.

38.3 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 38 in relation to any Compensation Event.

- (b) To the extent that Project Co does not comply with its obligations under this Section 38.3, such failure shall be taken into account in determining Project Co's entitlement to relief pursuant to this Section 38.

38.4 Insured Exposure

- (a) The compensation payable to Project Co pursuant to this Section 38 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.

39. EXCUSING CAUSES

39.1 Definition

- (a) For the purposes of this Project Agreement, "**Excusing Cause**" means any of the following events or circumstances if it occurs after the Substantial Completion Date and to the extent, in each case, that it interferes adversely with, or causes a failure of, the performance of the Project Co Services:
- (i) the implementation of a Variation to the extent Project Co has identified any impact on the Project Co Services in its Estimate and such impact has been documented in the Variation Confirmation;
 - (ii) any breach by HMQ Agencies of any of HMQ Agencies' obligations under this Project Agreement (including any obstruction of the rights afforded to Project Co under Section 14.1), except to the extent that any such breach is caused, or contributed to, by Project Co or any Project Co Party;
 - (iii) any deliberate or negligent act or omission of any Province Person or any failure by any Province Person (having regard to the interactive nature of the activities of HMQ Agencies and Project Co) to take commercially reasonable steps to perform its activities in a manner which minimizes undue interference with Project Co's performance of the Project Co Services, except to the extent:
 - (A) any such act, omission or failure is caused, or contributed to, by Project Co or any Project Co Party;
 - (B) the Province Person is acting in accordance with a recommendation or instruction of Project Co or any Project Co Party;
 - (C) any such act, omission or failure was contemplated in Schedule 15 - Output Specifications or was otherwise provided for in this Project Agreement; or

- (D) the consequences of any such act, omission or failure would have been prevented by the proper performance of Project Co's obligations under this Project Agreement;
- (iv) the outbreak or the effects of any outbreak of Medical Contamination, except to the extent that such Medical Contamination, or the effects of such Medical Contamination, are caused, or contributed to, by Project Co or any Project Co Party, including any failure by Project Co or any Project Co Party to comply with procedures or instructions relating to control of infection or to take commercially reasonable steps to mitigate the effects of such Medical Contamination, provided that neither Project Co nor any Project Co Party shall be deemed to have caused, or contributed to, an outbreak of Medical Contamination if such Medical Contamination was caused, or contributed to, by an employee of Project Co or any Project Co Party who was unaware of his or her condition;
- (v) the implementation of any action taken by HMQ Agencies, or any suspension of Project Co's obligation to deliver all or any part of the Project Co Services, or the compliance by Project Co with instructions given by HMQ Agencies, in each case in the circumstances referred to in Section 30;
- (vi) the performance of any Small Works in accordance with the terms of this Project Agreement during the period of time agreed between HMQ Agencies and Project Co;
- (vii) any official or unofficial strike, lockout, work to rule or other labour-related action involving employees of any Province Person;
- (viii) any breach by HMQ Agencies of their obligations to perform the HMQ FM Services in accordance with this Project Agreement to the extent that such breach has a material adverse effect on Project Co's ability to perform the Project Co Services;
- (ix) the performance of any Preventive Maintenance in accordance with the Preventive Maintenance Plan and any acceleration of Preventive Maintenance pursuant to Section 26.3, provided that:
 - (A) improperly performed Preventive Maintenance and the effects thereof shall not constitute an Excusing Cause; and
 - (B) where the Preventive Maintenance continues beyond the period set out in the Preventive Maintenance Plan or beyond the period required for its accelerated performance pursuant to Section 26.3 (except where the continuation was due to an Excusing Cause other than as set out in this Section 39.1(a)(ix)), Failure Points may accrue from the time the Preventive Maintenance was due to have been completed in accordance with the Preventive Maintenance Plan or Section 26.3, as applicable; or

- (x) the occurrence of any Contamination for which HMQ Agencies are responsible pursuant to Section 16.2.

39.2 Consequences of an Excusing Cause

- (a) Provided that the effect of an Excusing Cause is claimed by Project Co, in writing, within 10 Business Days of the date on which Project Co or any Project Co Party became aware of the occurrence of such Excusing Cause, then (subject to Sections 39.3 and 39.4):
 - (i) any failure by Project Co to perform, and any poor performance of, any affected Project Co Services shall not constitute a breach of this Project Agreement by Project Co, no Failure Points shall accrue in respect of such failure and Project Co shall be relieved of its obligations to perform such Project Co Services for the duration and to the extent prevented by such Excusing Cause;
 - (ii) any interference shall be taken into account in measuring the performance of any affected Project Co Services in accordance with the Performance Monitoring Program, which shall be operated as though the relevant Project Co Services had been performed free from such adverse interference;
 - (iii) any interference shall be taken into account in operating the Payment Mechanism, which shall be operated as though any Availability Failure, Quality Failure or Service Failure resulting from such interference had not occurred, so that Project Co shall be entitled to payment under this Project Agreement as if there had been no such interference with the Project Co Services, provided however that Project Co shall not be entitled to any additional compensation, except as may be provided hereunder for compensation on termination of this Project Agreement, if this Project Agreement is terminated as provided herein;
 - (iv) this Section 39.2 shall not limit HMQ Agencies' entitlement to reimbursement pursuant to Section 30.4;
 - (v) HMQ Agencies shall reimburse Project Co for all incremental Direct Costs (including all applicable Taxes and all legal or professional services, legal costs being on a full indemnity basis) incurred by Project Co as a result of any Excusing Cause referred to in Section 39.1(a)(ii), 39.1(a)(iii), 39.1(a)(vii), 39.1(a)(viii) or 39.1(a)(x), including costs arising from any steps taken to cure or mitigate against such events, together with any applicable margin for overhead and profit on such Direct Costs as set out in Schedule 22 - Variation Procedure; and
 - (vi) the Monthly Service Payments payable by HMQ Agencies shall be reduced by any savings in Direct Costs arising from Project Co being relieved of its obligations to perform the Project Co Services as otherwise provided herein, together with any applicable margin for overhead and profit on such Direct Costs as set out in Schedule 22 - Variation Procedure.

39.3 Mitigation

- (a) If Project Co is (or claims to be) affected by an Excusing Cause, Project Co shall, and shall require all Project Co Parties to, take and continue to take commercially reasonable steps:
- (i) to eliminate or mitigate the consequences of such event upon the performance of its obligations under this Project Agreement;
 - (ii) to continue to perform its obligations under this Project Agreement to the extent possible notwithstanding the Excusing Cause; and
 - (iii) to resume performance of its obligations under this Project Agreement affected by the Excusing Cause as soon as practicable.
- (b) To the extent that Project Co does not comply with its obligations under this Section 39.3, such failure shall be taken into account in determining Project Co's entitlement to relief pursuant to this Section 39.

39.4 Insured Exposure

- (a) The compensation payable to Project Co pursuant to this Section 39 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.

40. RELIEF EVENTS

40.1 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), earthquake, riot or civil commotion;
 - (ii) failure by any Utility Company, local authority or other like body to perform works or provide services;
 - (iii) accidental loss or damage to the Works and/or the Facility or any roads servicing the Site;

- (iv) without prejudice to any obligation of Project Co to provide stand-by power facilities in accordance with this Project Agreement, failure or shortage of power, fuel or transport;
- (v) blockade or embargo falling short of Force Majeure;
- (vi) any official or unofficial strike, lockout, work to rule or other labour-related action generally affecting the construction, building maintenance or facilities management industry (or a significant sector of that industry) in the Province of Ontario; or
- (vii) any civil disobedience or protest action, including any action taken by any person or persons protesting or demonstrating against the carrying out of any part of the Project Operations or the construction and/or operation of maintenance and storage facilities in general,

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

40.2 Consequences of a Relief Event

- (a) Subject to Section 40.3:
 - (i) no right of termination, other than either Party's right to terminate this Project Agreement pursuant to Section 44.1, shall arise under this Project Agreement by reason of any failure by a Party to perform any of its obligations under this Project Agreement; and
 - (ii) as soon as the events or circumstances constituting a Relief Event have ceased, any Failure Points accrued in respect of any failure by Project Co to perform any of its obligations under this Project Agreement shall be cancelled and any related Warning Notices and Monitoring Notices shall be withdrawn,

but only to the extent that such failure to perform is caused by the occurrence of a Relief Event (it being acknowledged and agreed by the Parties that all other rights and obligations of the Parties under this Project Agreement remain unaffected by the occurrence of a Relief Event). For greater certainty, HMQ Agencies shall be entitled to make Deductions in accordance with Schedule 20 - Payment Mechanism notwithstanding the cancellation of Failure Points pursuant to Section 40.2(a)(ii). Any Deduction to Project Co as a result of any Relief Event set out under Sections 40.1(a)(v), 40.1(a)(vi) or 40.1(a)(vii) shall not exceed, in the aggregate, the amount that would be necessary to reduce payments to Project Co to an amount below the Senior Debt Service Amount.

- (b) In respect of a Relief Event that is also a Delay Event pursuant to Section 37.1(a)(ix):

- (i) Project Co shall only be relieved of its obligations under this Project Agreement to the extent, if any, provided for in Section 37;
- (ii) in respect of a Relief Event referred to in Section 40.1(a)(v), 40.1(a)(vi) or 40.1(a)(vii), on the earlier of (A) the Substantial Completion Date and (B) the date of payment of the HMQ Default Termination Sum, Non-Default Termination Sum or Prohibited Acts Termination Sum (and as a part thereof) in accordance with Schedule 23 - Compensation on Termination, HMQ Agencies 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 the delay by Project Co or any Project Co Party to the Senior Lenders up to and including the Scheduled Substantial Completion Date or the date of payment of the HMQ Default Termination Sum, Non-Default Termination Sum or Prohibited Acts Termination Sum, as applicable, together with interest thereon at the rate payable on the Senior Debt Amount, which, but for the Delay Event, would not have been paid by Project Co to the Senior Lenders.
- (c) If a Relief Event occurs prior to the Substantial Completion Date, Project Co shall not be entitled to receive any compensation other than as expressly provided in Sections 40.2(b)(ii) and 46.
- (d) During a Relief Event which occurs on or after the Substantial Completion Date, the provisions of Schedule 20 - Payment Mechanism will continue to be in full force and effect, subject to Section 40.2(a).
- (e) Subject to Section 46, 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 40.

40.3 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 40.3, such failure shall preclude such Party's entitlement to relief pursuant to this Section 40.
- (c) The Party claiming relief shall give written notice to the other Party within 5 Business Days of such Party becoming aware of the relevant Relief Event. Such initial notice shall give sufficient details to identify the particular event claimed to be a Relief Event.
- (d) A subsequent written notice shall be given by the Party claiming relief to the other Party within a further 5 Business Days of the initial notice, which notice shall contain such relevant information relating to the failure to perform (or delay in performing) as is

available, including, without limitation, the effect of the Relief Event on the ability of the Party to perform, the action being taken in accordance with Section 40.3(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 40.3(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.

40.4 Insured Exposure

- (a) The compensation payable to Project Co pursuant to this Section 40 shall be reduced by any amount which Project Co or a Project Co Party recovers, or is entitled to recover, under any insurance policy, or would have recovered if it had complied with the requirements of this Project Agreement in respect of insurance or the terms of any policy of insurance required under this Project Agreement, which amount, for greater certainty, shall not include any excess or deductibles or any amount over the maximum amount insured under any such insurance policy.

41. FORCE MAJEURE

41.1 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 Facility and/or the Site, 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 Facility and/or the Site from any event referred to in Section 41.1(a)(i);
 - (iv) pressure waves caused by devices traveling at supersonic speeds; or
 - (v) the discovery of any fossils, artefacts and other objects having artistic, historic, archaeological or monetary value, including human remains and burial sites, which, as a result of Applicable Law, requires the Works to be abandoned.

41.2 Consequences of Force Majeure

- (a) Subject to Section 41.3, 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 37.1(a)(viii):
 - (i) Project Co shall only be relieved of its obligations under this Project Agreement to the extent, if any, provided for in Section 37; and
 - (ii) where such Delay Event causes a delay in achieving Substantial Completion by the Scheduled Substantial Completion Date, on the earlier of (A) the Substantial Completion Date and (B) the date of payment of the HMQ Default Termination Sum, Non-Default Termination Sum or Prohibited Acts Termination Sum (and as a part thereof) in accordance with Schedule 23 - Compensation on Termination, HMQ Agencies 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 became payable in accordance with the Lending Agreements during the period of delay by Project Co or any Project Co Party to the Lenders up to and including the Scheduled Substantial Completion Date or the date of payment of the HMQ Default Termination Sum, Non-Default Termination Sum or Prohibited Acts Termination Sum, as applicable, together with interest thereon at the rate or rates payable on the principal amount of debt funded under the Lending Agreements, which, but for the Delay Event, would not have been paid by Project Co to the Lenders.
- (c) If an event of Force Majeure occurs prior to the Substantial Completion Date, Project Co shall not be entitled to receive any compensation other than as expressly provided in Sections 41.2(b)(ii) and 46.
- (d) During an event of Force Majeure which occurs on or after the Substantial Completion Date, the provisions of Schedule 20 - Payment Mechanism will be suspended, and HMQ Agencies shall pay to Project Co, for each Payment Period, the Senior Debt Service Amount, the Junior Debt Service Amount and an amount which reflects the cost to Project Co of the Project Co Services provided to HMQ Agencies, provided that, during such Payment Period, the amount paid to Project Co pursuant to this Section 41.2(d) shall never be more than the Maximum Service Payment.
- (e) Subject to Section 46, 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 41.

41.3 Mitigation and Process

- (a) Where a Party is (or claims to be) affected by an event of Force Majeure, such Party shall take commercially reasonable steps to mitigate the consequences of such event of Force

Majeure upon the performance of its obligations under this Project Agreement, shall resume performance of its obligations affected by the event of Force Majeure as soon as practicable and shall use commercially reasonable efforts to remedy its failure to perform.

- (b) To the extent that the Party claiming relief does not comply with its obligations under Section 41.3(a), such failure shall be taken into account in determining such Party's entitlement to relief pursuant to this Section 41.
- (c) The Party claiming relief shall give written notice to the other Party within 5 Business Days of such Party becoming aware of the relevant event of Force Majeure. Such initial notice shall give sufficient details to identify the particular event claimed to be an event of Force Majeure.
- (d) A subsequent written notice shall be given by the Party claiming relief to the other Party within a further 5 Business Days of the initial notice, which notice shall contain such relevant information relating to the failure to perform (or delay in performing) as is available, including, without limitation, the effect of the event of Force Majeure on the ability of the Party to perform, the action being taken in accordance with Section 41.3(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 41.3(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.

41.4 Insured Exposure

- (a) The compensation payable to Project Co pursuant to this Section 41 shall be reduced by any amount which Project Co or a Project Co Party recovers, or is entitled to recover, under any insurance policy, or would have recovered if it had complied with the requirements of this Project Agreement in respect of insurance or the terms of any policy of insurance required under this Project Agreement, which amount, for greater certainty, shall not include any excess or deductibles or any amount over the maximum amount insured under any such insurance policy.

41.5 Modifications

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

a failure of HMQ Agencies and Project Co to reach agreement pursuant to this Section 41.5.

42. PROJECT CO DEFAULT

42.1 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 HMQ Agencies of their payment obligations hereunder:
 - (A) Project Co admits in writing its inability to pay its debts generally as they become due, or makes a general assignment for the benefit of creditors, or a receiver, manager, administrator, administrative receiver, receiver and manager, trustee, custodian or other similar official or any other like person is appointed by or on behalf of or at the instance of a creditor of Project Co with respect to Project Co or any of the property, assets or undertaking of Project Co, or any creditor of Project Co takes control, or takes steps to take control, of Project Co or any of Project Co’s assets, or any proceedings are instituted against Project Co that result in Project Co being declared or ordered bankrupt or in administration, liquidation, winding-up, reorganization, compromise, arrangement, adjustment, protection, relief or composition of it or with respect to it or its debts or obligations, or any such proceedings are instituted by Project Co seeking any such result, or any such proceedings are instituted by a person other than Project Co, HMQ Agencies, an HMQ Party or a person related to any of them seeking such result and such proceedings have or will have a material adverse effect on the performance of the Maintenance and Storage Activities or the HMQ FM Services (where such proceedings have not been withdrawn, stayed, discharged, or are otherwise of no further effect, within 90 days of being instituted), under Applicable Law (including the *Bankruptcy and Insolvency Act*, R.S.C. 1985, C.B-3 and the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c.C-36) 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 42.1(a)(i)(A);
 - (B) Project Co ceases performing a substantial portion of its business, or a substantial portion of such business is suspended or is not being performed, whether voluntarily or involuntarily, that has or will have a

- material adverse effect on Project Co's ability to perform its obligations under this Project Agreement;
- (C) if any execution, sequestration, extent or other process of 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 shall suffer any event, or any event or set of circumstances occurs or comes about, analogous to the foregoing events or sets of circumstances set out this Section 42.1(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 42.1(a)(i)(A), (B) or (C), constitute a Project Co Event of Default;
- (ii) Project Co failing to achieve Substantial Completion within 365 days after the Scheduled Substantial Completion Date (the "**Longstop Date**");
 - (iii) Project Co either:
 - (A) failing to deliver a rectification plan under Section 20.3(a)(iii)(B);
 - (B) delivering a rectification plan under Section 20.3(a)(iii)(B) which indicates that Project Co will not achieve Substantial Completion by the Longstop Date; or
 - (C) delivering a rectification plan under Section 20.3(a)(iii)(B) that is not acceptable to the Independent Certifier, acting reasonably, as to the matters set out in Section 20.3(a)(iii)(B)(II);
 - (iv) Project Co making any representation or warranty herein that is false or misleading when made, and that has or will have at any time a material adverse effect on the performance of Project Operations, Maintenance and Storage Activities or the HMQ FM Services, or that may compromise the Province's reputation or integrity or the nature of the Province's transportation system, so as to affect public confidence in that system, and, in the case of a false or misleading representation or warranty that is capable of being remedied, such breach is not remedied within 10 Business Days of receipt of notice of the same from HMQ Agencies;
 - (v) Project Co committing a breach of Sections 49 or 50 or a breach of its obligations under this Project Agreement (other than a breach that is otherwise referred to in Sections 42.1(a)(i) to (iv) inclusive or 42.1(a)(vi) to (xx) inclusive) which has or will have a material adverse effect on the performance of the Maintenance and Storage Activities or the HMQ FM Services, other than where such breach is a consequence of a breach by HMQ Agencies of their obligations under this Project

Agreement, and upon becoming aware of such breach Project Co failing to remedy such breach in accordance with all of the following:

- (A) Project Co shall:
 - (I) immediately commence and thereafter diligently continue to remedy the breach and to mitigate any adverse effects on HMQ Agencies and the performance of the Maintenance and Storage Activities and the HMQ FM Services;
 - (II) put forward, within 5 Business Days of receipt of notice of such breach from HMQ Agencies, a reasonable plan and schedule for diligently remedying the breach and mitigating its effect, which plan and schedule shall specify in reasonable detail the manner in which, and the latest date by which, such breach is proposed to be remedied, which latest date shall in any event be within 60 days of notice of such breach, or if such breach is not capable of being rectified in such period then such longer period as is reasonable in the circumstances; and
 - (III) thereafter perform its obligations to achieve all elements of such plan and schedule in accordance with its terms within the time for the performance of its obligations thereunder; and
- (B) upon Project Co failing to comply with any of the provisions of Section 42.1(a)(v)(A):
 - (I) Project Co shall continue to diligently remedy the breach and to mitigate any adverse effects on HMQ Agencies and the performance of the Maintenance and Storage Activities and the HMQ FM Services;
 - (II) Project Co shall, within 3 Business Days after notice from HMQ Agencies, submit a plan and schedule, which HMQ Agencies shall have no obligation to accept, for remedying the breach and mitigating its effect within such period, if any, acceptable to HMQ Agencies, in their sole discretion, and thereafter perform its obligations to achieve all elements of such plan and schedule in accordance with its terms within the time for the performance of its obligations thereunder; and
 - (III) for greater certainty, Project Co failing to comply with any of the provisions of this Section 42.1(a)(v)(B), or HMQ Agencies, in their sole discretion, not accepting the plan and schedule submitted by Project Co pursuant to that Section, shall constitute a Project Co Event of Default;

- (vi) Project Co wholly abandoning the Works for a period which exceeds 3 Business Days from receipt by Project Co of a written request to return to the Site, other than as a consequence of a breach by HMQ Agencies of their obligations under this Project Agreement;
- (vii) Project Co ceasing to provide any Project Co Service in accordance with this Project Agreement which are necessary for the performance of the Maintenance and Storage Activities or the HMQ FM Services, other than as a consequence of a breach by HMQ Agencies of their obligations under this Project Agreement;
- (viii) Project Co failing to comply with Sections 56.1 or 56.3;
- (ix) the occurrence of any Change in Ownership or Change in Control which is prohibited by Section 56.4;
- (x) Project Co being awarded a total of [REDACTED] or more Failure Points in any rolling 3 Payment Periods during the period from and after Substantial Completion;
- (xi) Project Co being awarded a total of [REDACTED] or more Failure Points in any rolling 6 Payment Periods during the period from and after Substantial Completion;
- (xii) Project Co being awarded a total of [REDACTED] or more Failure Points in any rolling 12 Payment Periods during the period from and after Substantial Completion;
- (xiii) Project Co failing to remove an Encumbrance that arose due to an act or omission of Project Co or any Project Co Party (other than a Title Encumbrance and any Encumbrance derived through HMQ Agencies) within 45 days of the earlier of:
 - (A) the registration of such Encumbrance against title to the Site or any part thereof; and
 - (B) the date on which Project Co or any Project Co Party knew, or ought to have known, about the existence of the Encumbrance;
- (xiv) Project Co failing to pay any sum or sums due to HMQ Agencies under this Project Agreement, which sum or sums are not being disputed by Project Co in accordance with Schedule 27 - Dispute Resolution Procedure and which sum or sums, either singly or in aggregate, exceed(s) [REDACTED] (index linked), and such failure continues for 30 days from receipt by Project Co of a notice of non-payment from HMQ Agencies;
- (xv) Project Co failing to comply with Section 57;
- (xvi) Project Co failing to comply with Section 7.3 or Schedule 28 - Refinancing;

- (xvii) Project Co failing to obtain any bond, security or insurance required to be obtained by or on behalf of Project Co pursuant to this Project Agreement or any such bond, security or insurance being vitiated or otherwise ceasing to be in full force and effect or in material compliance with the requirements set out in this Project Agreement, other than as a consequence of a breach by HMQ Agencies of their obligations under this Project Agreement, and:
 - (A) in respect of insurance, such breach by Project Co is not remedied within 10 Business Days of the occurrence of the breach; and
 - (B) in respect of a bond or security, such breach by Project Co is not remedied within 5 Business Days of Project Co becoming aware of such breach;
- (xviii) Project Co failing to comply with any determination, order or award made against Project Co in accordance with Schedule 27 - Dispute Resolution Procedure;
- (xix) at any time after the Substantial Completion Date, Project Co committing a breach of its obligations under this Project Agreement (other than as a consequence of a breach by HMQ Agencies of their obligations under this Project Agreement) which results in a criminal conviction or a conviction under the *Occupational Health and Safety Act*, R.S.O. 1990, c.O.1 against Project Co or any Project Co Party or HMQ Agencies (an “**H&S Conviction**”) provided however that:
 - (A) an H&S Conviction of Project Co, a Project Co Party or HMQ Agencies shall not constitute a Project Co Event of Default if, within 90 days from the date of the H&S Conviction (whether or not the H&S Conviction is subject to an appeal or any further judicial process), the involvement in the Project Operations of each relevant Project Co Party (which in the case of an individual director, officer or employee shall be deemed to include the Project Co Party of which that person is a director, officer or employee) is terminated in accordance with Section 56.3 or Project Co takes such other disciplinary action against each such Project Co Party as is acceptable to HMQ Agencies, in their sole discretion; and
 - (B) in determining whether to exercise any right of termination for a Project Co Event of Default pursuant to this Section 42.1(a)(xix), HMQ Agencies shall:
 - (I) act in a reasonable and proportionate manner having regard to such matters as the gravity of any offence and the identity of the person committing the act leading to the H&S Conviction; and
 - (II) give all due consideration, where appropriate, to action other than termination of this Project Agreement; or
- (xx) Project Co failing to comply with Sections 27.8 and 27.13.

42.2 Notification of Occurrence

- (a) Project Co shall, promptly upon Project Co becoming aware of the occurrence, notify HMQ Agencies 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.

42.3 Right to Termination

- (a) On the occurrence of a Project Co Event of Default, or at any time after HMQ Agencies become aware of a Project Co Event of Default, and, if the occurrence of a Project Co Event of Default is disputed by Project Co in good faith, then following confirmation in accordance with Schedule 27 - Dispute Resolution Procedure that a Project Co Event of Default has occurred, HMQ Agencies may, subject to Section 42.4, 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.

42.4 Remedy Provisions

- (a) In the case of a Project Co Event of Default referred to in Sections 42.1(a)(i)(B), 42.1(a)(i)(C), 42.1(a)(i)(D) (where the Project Co Event of Default referred to in Section 42.1(a)(i)(D) is analogous to a Project Co Event of Default referred to in Section 42.1(a)(i)(B) or 42.1(a)(i)(C)), 42.1(a)(iii), 42.1(a)(iv), 42.1(a)(vi), 42.1(a)(vii), 42.1(a)(viii), 42.1(a)(ix) (where the Project Co Event of Default referred to in Section 42.1(a)(ix) is capable of being remedied), 42.1(a)(xiv), 42.1(a)(xvi), 42.1(a)(xvii) (where the Project Co Event of Default referred to in Section 42.1(a)(xvii) is not in respect of insurance), 42.1(a)(xviii), 42.1(a)(xix) or 42.1(a)(xx), HMQ Agencies shall, prior to being entitled to terminate this Project Agreement, give notice of default to Project Co, and to any person specified in the Lenders' Direct Agreement to receive such notice, and Project Co shall:
- (i) within 5 Business Days of such notice of default, put forward a reasonable plan and schedule for diligently remedying the Project Co Event of Default, which schedule shall specify in reasonable detail the manner in, and the latest date by which, such Project Co Event of Default is proposed to be remedied, which latest date shall, in any event, be within 30 days of the notice of default, or if such breach is not capable of being remedied in such period then such longer period as is acceptable to HMQ Agencies, 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 42.4(a)(i) that has a date for the Project Co Event of Default to be remedied that is beyond 30 days

from the notice of default, HMQ Agencies shall have 5 Business Days from receipt of the same within which to notify Project Co that HMQ Agencies do not accept such longer period in the plan and schedule and that the 30 day limit will apply, failing which HMQ Agencies 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 42.4(a), occurs and:
- (i) Project Co fails to immediately commence and thereafter diligently continue to remedy the Project Co Event of Default and to mitigate any adverse effects on HMQ Agencies and the performance of the Maintenance and Storage Activities and the HMQ FM Services; or
 - (ii) Project Co fails to put forward a plan and schedule pursuant to Section 42.4(a)(i); or
 - (iii) such Project Co Event of Default is not remedied within 30 days of such notice of default or such longer period as is established pursuant to the plan and schedule established pursuant to Sections 42.4(a) and (b); or
 - (iv) where Project Co puts forward a plan and schedule pursuant to Section 42.4(a)(i) and Project Co fails to perform its obligations thereunder necessary to achieve all elements of such plan and schedule in accordance with its terms within the time for the performance of its obligations,

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

- (d) Notwithstanding that HMQ Agencies may give the notice referred to in Section 42.4(a), and without prejudice to the other rights of HMQ Agencies in this Section 42.4, at any time during which a Project Co Event of Default is continuing, HMQ Agencies may, at Project Co's risk and expense, take such steps as HMQ Agencies consider appropriate, either themselves or by engaging others (including a third party) to take such steps, to perform or obtain the performance of Project Co's obligations under this Project Agreement or to remedy such Project Co Event of Default.
- (e) Upon the occurrence of a Project Co Event of Default that Project Co has remedied pursuant to this Section 42.4, such occurrence of a Project Co Event of Default shall thereafter cease to be a Project Co Event of Default and HMQ Agencies shall not be entitled to terminate this Project Agreement for that occurrence of a Project Co Event of Default.

42.5 Replacement of Non-Performing Service Provider

- (a) HMQ Agencies may, acting reasonably, require Project Co to terminate the Service Contract and ensure that a replacement Service Provider is appointed in accordance with Section 56.3 to provide the Project Co Services within 60 days:
- (i) as an alternative to termination of this Project Agreement pursuant to Sections 42.3 or 42.4, in any circumstance in which HMQ Agencies could exercise such right of termination, if the Project Co Event of Default was caused, or contributed to, by the Service Provider or otherwise relates to the Project Co Services; or
 - (ii) if Project Co accrues, in any rolling 6 Payment Periods more than:
 - (A) [REDACTED] Failure Points in respect of Availability Failures;
 - (B) an aggregate of [REDACTED] Failure Points in respect of Quality Failures and/or Service Failures in respect of General Management Services, Material Services, FF&E Services, and Emergency Management Services;
 - (C) an aggregate of [REDACTED] Failure Points in respect of Quality Failures and/or Service Failures in respect of any one or more of Plant Services, Environmental and Sustainability Services, Special Projects Services, and Utilities Management Services;
 - (D) an aggregate of [REDACTED] Failure Points in respect of Quality Failures and/or Service Failures in respect of FM Help Desk Services;
 - (E) an aggregate of [REDACTED] Failure Points in respect of Quality Failures and/or Service Failures in respect of Roads and Grounds Maintenance Services and Track Management Services;
 - (F) an aggregate of [REDACTED] Failure Points in respect of Quality Failures and/or Service Failures in respect of Parking Services; or
 - (G) an aggregate of [REDACTED] Failure Points in respect of Quality Failures and/or Service Failures in respect of Waste Management and Recycling Services, Cleaning Services, and Pest Control Services,

provided that this Section 42.5 shall not give rise to partial termination of either the obligation to provide the Project Operations or this Project Agreement.

- (b) If HMQ Agencies exercise their rights under this Section 42.5, Project Co shall, within 5 Business Days, put forward a proposal for the interim management or provision of the Project Co Services, until such time as a replacement Service Provider can be engaged by Project Co. If Project Co fails to do so, or if its proposal is not reasonably likely to give adequate provision of the Project Co Services and the Parties cannot agree within a

further 3 Business Days to a plan for the interim management or provision of the Project Co Services, then, without prejudice to the other rights of HMQ Agencies in this Section 42.5, HMQ Agencies themselves may perform, or engage others (including a third party) to perform, the Project Co Services and Section 30.4 shall apply, *mutatis mutandis*, to the Project Co Services. Any Dispute in respect of the interim management or provision of the Project Co Services may be referred for resolution in accordance with Schedule 27 - Dispute Resolution Procedure.

- (c) If Project Co fails to terminate, or secure the termination of, the Service Contract, and to secure a replacement Service Provider, in accordance with this Section 42.5, HMQ Agencies shall be entitled to exercise their termination rights in accordance with Sections 42.3 and 42.4, as applicable.
- (d) Where a replacement Service Provider is appointed in accordance with this Section 42.5, [REDACTED]% of the Failure Points, accrued by Project Co prior to such replacement, shall be cancelled.

42.6 HMQ Agencies' Costs

- (a) Project Co shall reimburse HMQ Agencies for all reasonable costs (including all applicable Taxes and all legal or professional services, legal costs being on a full indemnity basis) properly incurred by HMQ Agencies in exercising their rights under this Section 42, including any relevant increased administrative expenses. HMQ Agencies shall take commercially reasonable steps to mitigate such costs.

42.7 No other Rights to Terminate

- (a) HMQ Agencies 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 42 and 44.

43. HMQ DEFAULT

43.1 HMQ Events of Default

- (a) For the purposes of this Project Agreement, "**HMQ Event of Default**" means any one or more of the following events or circumstances:
 - (i) HMQ Agencies failing to pay any sum or sums due to Project Co under this Project Agreement, which sum or sums are not being disputed by HMQ Agencies in accordance with Schedule 27 - Dispute Resolution Procedure and which sum or sums, either singly or in aggregate, exceed(s) [REDACTED] (index linked), and:
 - (A) in respect of the Substantial Completion Payment, such failure continues for 10 Business Days;

- (B) subject to Section 43.1(a)(i)(C), in respect of any Monthly Service Payment, such failure continues for 30 days;
- (C) in respect of any 3 Monthly Service Payments in any rolling 9 month period, such failure continues for 15 Business Days in respect of each such Monthly Service Payment; or
- (D) in respect of any other payment due and payable by HMQ Agencies to Project Co under this Project Agreement, such failure continues for 90 days,

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

- (ii) HMQ Agencies committing a material breach of their obligations under Section 14 (other than as a consequence of a breach by Project Co of its obligations under this Project Agreement), which breach materially adversely affects the ability of Project Co to perform its obligations under this Project Agreement for a continuous period of not less than 60 days; or
- (iii) an act of any Governmental Authority which renders it impossible for Project Co to perform all or substantially all of its obligations under this Project Agreement (other than as a consequence of a breach by Project Co of its obligations under this Project Agreement) for a continuous period of not less than 60 days (for greater certainty, the non-issuance of, or the imposition of any conditions or limitations in, any of the Project Co Permits, Licences and Approvals shall not constitute an “act of any Governmental Authority”).

43.2 Project Co’s Options

- (a) On the occurrence of an HMQ Event of Default and while the same is continuing, Project Co may give notice to HMQ Agencies of the occurrence of such HMQ 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, may:
 - (i) suspend performance of the Works and the Project Co Services until such time as HMQ Agencies have remedied such HMQ Event of Default; or
 - (ii) if such HMQ Event of Default has not been remedied within 30 days of receipt by HMQ Agencies of notice of the occurrence of such HMQ Event of Default, terminate this Project Agreement in its entirety by notice in writing having immediate effect.

43.3 Project Co’s Costs

- (a) HMQ Agencies 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 43, including any relevant increased administrative expenses. Project Co shall take commercially reasonable steps to mitigate such costs.

43.4 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.

44. RELIEF EVENT AND NON-DEFAULT TERMINATION

44.1 Termination for Relief Event

- (a) Subject to Section 44.1(b), if a Relief Event occurs and the effects of the Relief Event continue for 180 days from the date on which the Party affected gives notice to the other Party pursuant to Section 40.3(c), either Party may, at any time thereafter, terminate this Project Agreement by written notice to the other Party having immediate effect, provided that the effects of the Relief Event continue during such period to prevent either Party from performing a material part of its obligations under this Project Agreement.
- (b) Neither Party shall be entitled to exercise its right to terminate this Project Agreement in accordance with Section 44.1(a) if Project Co or a Project Co Party recovers, or is entitled to recover, under any insurance policy, or would have recovered if it had complied with the requirements of this Project Agreement in respect of insurance or the terms of any policy of insurance required under this Project Agreement, an amount which, together with the Monthly Service Payment, is equal to or greater than [REDACTED] of the Maximum Service Payment for the relevant Payment Period.

44.2 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 41.5 within 180 days from the date on which the Party affected gives notice to the other Party as set out therein, either Party may, at any time thereafter, terminate this Project Agreement by written notice to the other Party having immediate effect, provided that the effects of the event of Force Majeure continue during such period to prevent either Party from performing a material part of its obligations under this Project Agreement.

44.3 Termination for Convenience

- (a) HMQ Agencies shall, in their sole discretion and for any reason whatsoever, be entitled to terminate this Project Agreement at any time on 180 days' written notice to Project Co.

- (b) In the event of notice being given by HMQ Agencies in accordance with this Section 44.3, HMQ Agencies shall, at any time before the expiration of such notice, be entitled to direct Project Co to refrain from commencing, or allowing any third party to commence, the Works, or any part or parts of the Works, or the Project Co Services, or any element of the Project Co Services, where such Works or Project Co Services have not yet been commenced.

44.4 Automatic Expiry on Expiry Date

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

45. EFFECT OF TERMINATION

45.1 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 44.4, this Section 45 shall apply in respect of such termination.

45.2 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.

45.3 Continuing Performance

- (a) Subject to any exercise by HMQ Agencies of their rights to perform, or to seek, pursuant to this Project Agreement, a third party to perform, the obligations of Project Co, the Parties shall continue to perform their obligations under this Project Agreement (including, if applicable, pursuant to Schedule 23 - Compensation on Termination), notwithstanding the giving of any notice of default or notice of termination, until the termination of this Project Agreement becomes effective in accordance with this Section 45.

45.4 Effect of Notice of Termination

- (a) On the service of a notice of termination, or termination on the Expiry Date pursuant to Section 44.4:

- (i) if termination is prior to the Substantial Completion Date, in so far as any transfer shall be necessary to fully and effectively transfer such property to HMQ Agencies as shall not already have been transferred to HMQ Agencies pursuant to Section 52.1, Project Co shall transfer to, and there shall vest in, HMQ Agencies, free from all Encumbrances (other than the Title Encumbrances and any Encumbrances derived through HMQ Agencies), such part of the Works and Facility as shall have been constructed and such items of the Plant and FF&E as shall have been procured by Project Co, and, if HMQ Agencies so elect:
 - (A) all plant, equipment and materials (other than those referred to in Section 45.4(a)(i)(B)) on or near to the Site shall remain available to HMQ Agencies for the purposes of completing the Works; and
 - (B) all construction plant and equipment shall remain available to HMQ Agencies for the purposes of completing the Works, subject to payment by HMQ Agencies of the Construction Contractor's reasonable charges;
- (ii) if termination is prior to the Substantial Completion Date, Project Co shall deliver to HMQ Agencies (to the extent such items have not already been delivered to HMQ Agencies) one complete set of all Project Data and Intellectual Property relating to the design, construction and completion of the Works and the Facility;
- (iii) in so far as title shall not have already passed to HMQ Agencies pursuant to Section 52.1 or Section 45.4(a)(i), Project Co shall hand over to, and there shall vest in, HMQ Agencies, free from all Encumbrances (other than the Title Encumbrances and any Encumbrances derived through HMQ Agencies), the Facility together with all other assets and rights capable of being transferred that are necessary for the performance of the Project and the Project Operations and all facilities and equipment, including the FF&E, and to the extent that any such assets or rights are not capable of being transferred by Project Co to HMQ Agencies, Project Co shall enter into agreements or make other arrangements in order to permit the use of the assets or rights by HMQ Agencies in order to enable them, or their designated agents or subcontractors, to continue to perform the activities which would have otherwise been performed by Project Co if this Project Agreement had not been terminated;
- (iv) if HMQ Agencies so elect, Project Co shall ensure that any of the Subcontracts between Project Co and a Subcontractor (including the Construction Contract and the Service 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 Project Operations or to protect the interests of Project Co, shall be novated or assigned to HMQ Agencies or their nominee, provided that where termination occurs other than as a result of a Project Co Event of Default, the consent of the relevant Subcontractor shall be required, and further provided that any such novation or assignment of a Subcontract with the

Construction Contractor or the Service Provider shall be made by HMQ Agencies pursuant to, and subject to, the terms of the applicable Direct Agreement;

- (v) Project Co shall, or shall ensure that any Project Co Party shall, offer to sell (and if HMQ Agencies so elect, execute such sale) to HMQ Agencies 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 the Title Encumbrances and any Encumbrances derived through HMQ Agencies), all or any part of the stocks of material and other assets, road vehicles, 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 Facility, and reasonably required by HMQ Agencies in connection with the operation of the Facility or the provision of the Project Co Services;
- (vi) Project Co shall deliver to HMQ Agencies (to the extent such items have not already been delivered to HMQ Agencies) one complete set of:
 - (A) the most recent As Built Drawings in the format that HMQ Agencies, acting reasonably, consider most appropriate at the time showing all alterations made to the Facility since the Substantial Completion Date;
 - (B) the most recent maintenance, operation and training manuals for the Facility; and
 - (C) the Plant Services Information Management System, fully updated;
- (vii) Project Co shall use commercially reasonable efforts to assign, or otherwise transfer, to HMQ Agencies, free from all Encumbrances (other than the Title Encumbrances and any Encumbrances derived through HMQ Agencies), 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 Facility;
- (viii) Project Co shall deliver to HMQ Agencies all information, reports, documents, records and the like referred to in Section 34, including as referred to in Schedule 26 - Record Provisions, except where such are required by Applicable Law to be retained by Project Co or the Project Co Parties (in which case complete copies shall be delivered to HMQ Agencies); and
- (ix) in the case of the termination of this Project Agreement on the Expiry Date in accordance with Section 44.4, the Facility and elements of the Facility shall be in the condition required in accordance with Section 47 and Schedule 24 - Expiry Transition Procedure.

45.5 Ownership of Information

- (a) Subject to Section 48, all information obtained by Project Co, including the As Built 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 Project Operations accumulated over the course of the Project Term shall be the property of HMQ Agencies and upon termination of this Project Agreement shall be provided or returned to HMQ Agencies, as applicable, in electronic format acceptable to HMQ Agencies, acting reasonably, where it exists in electronic format, and in its original format, when not in electronic format.

45.6 Provision in Subcontracts

- (a) Project Co shall make provision in all Subcontracts to which it is a party (including requiring the relevant Project Co Parties to make such provision and to require other Project Co Parties to make such provision) to ensure that HMQ Agencies shall be in a position to exercise their rights, and Project Co shall be in a position to perform its obligations, under this Section 45.

45.7 Transitional Arrangements

- (a) On the termination of this Project Agreement for any reason, for a reasonable period both before and after any such termination, Project Co shall, subject to the continued provision of Project Co Services pursuant to Sections 3.2 and 3.3 of Schedule 23 - Compensation on Termination if applicable:
- (i) cooperate fully with HMQ Agencies and any successors providing to HMQ Agencies services in the nature of any of the Project Co Services or any part of the Project Co Services in order to achieve a smooth transfer of the manner in which HMQ Agencies obtain services in the nature of the Project Co Services and to avoid or mitigate, in so far as reasonably practicable, any inconvenience or any risk to the health and safety of the users of the Facility, including HMQ Service Users and members of the public;
 - (ii) as soon as practicable remove from the Site all property belonging to Project Co or any Project Co Party that is not acquired by HMQ Agencies pursuant to Section 45.4 or otherwise, and, if Project Co has not done so within 60 days after any notice from HMQ Agencies requiring it to do so, HMQ Agencies may, without being responsible for any loss, damage, costs or expenses, remove and sell any such property and shall hold any proceeds, less all costs incurred to the credit of Project Co;
 - (iii) forthwith deliver to the HMQ Representative:

- (A) all keys to, and any pass cards and other devices used to gain access to any part of the Facility; and
 - (B) to the extent transferable and without prejudice to HMQ Agencies' rights pursuant to Section 48, any copyright licences for any computer programs, or licences to use the same, used in connection with the operation of the Facility; and
- (iv) as soon as practicable vacate the Site and, without limiting Project Co's obligations under Schedule 24 - Expiry Transition Procedure, shall leave the Site and the Facility in a safe, clean and orderly condition.
- (b) If HMQ Agencies wish to conduct a competition prior to the Expiry Date with a view to entering into an agreement for the provision of services, which may or may not be the same as, or similar to, the Project Co Services or any of them, following the expiry of this Project Agreement, Project Co shall, subject to payment of Project Co's reasonable costs, cooperate with HMQ Agencies fully in such competition process, including by:
- (i) providing any information which HMQ Agencies may reasonably require to conduct such competition, including all information contained in the Plant Services Information Management System, other than Sensitive Information; and
 - (ii) assisting HMQ Agencies by allowing any or all participants in such competition process unrestricted access to the Site and the Facility.

45.8 Termination upon Aforesaid Transfer

- (a) On completion of Project Co's obligations pursuant to this Section 45, this Project Agreement shall terminate and, except as provided in Section 45.9, all rights and obligations of HMQ Agencies and Project Co under this Project Agreement shall cease and be of no further force and effect.

45.9 Survival

- (a) Except as otherwise provided in this Project Agreement, termination of this Project Agreement shall be without prejudice to, and shall not affect:
- (i) all representations, warranties and indemnities under this Project Agreement; and
 - (ii) Sections 1.2, 1.3, 5, 5.2(c), 7, 15.2, 16.1, 16.2(a), 16.3(a), 23.6, 24.12, 26.8, 29.4, 30, 31.6, 31.8, 31.13, 31.14, 31.15, 32, 33, 34, 42.6, 43.3, 44.4, 45, 46, 47, 48, 49, 50, 52, 53, 54, 55, 57.3, 58.1, 60.4, 60.8, 60.9, 60.10, 60.11, 60.12 of this Project Agreement, Schedule 23 - Compensation on Termination, Sections 2, 4 and 5 of Schedule 24 - Expiry Transition Procedure, Sections 1.2 to 1.8 of Schedule 26 - Record Provisions, Schedule 27 - Dispute Resolution Procedure, and any other provisions of this Project Agreement which are expressed to survive termination

or which are required to give effect to such provisions which survive termination or to such termination or the consequences of such termination,

all of which shall survive the termination of this Project Agreement, including for termination on the Expiry Date pursuant to Section 44.4.

46. COMPENSATION ON TERMINATION

46.1 Compensation on Termination

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

46.2 Full and Final Settlement

- (a) Except as otherwise provided in Section 46.2(b), any compensation paid pursuant to this Section 46, including pursuant to Schedule 23 - Compensation on Termination in the total amount owing thereunder, shall be in full and final settlement of any claims, demands and proceedings of Project Co and HMQ Agencies, and each shall be released from all liability to the other in relation to any breaches or other events leading to such termination of this Project Agreement, and the circumstances leading to such breach or termination, and Project Co and HMQ Agencies 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 46.2(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 31.13 or taken into account pursuant to Schedule 23 - Compensation on Termination in determining or agreeing upon the HMQ Default Termination Sum, Adjusted Highest Qualifying Tender Price, Adjusted Estimated Fair Value, Non-Default Termination Sum, Prohibited Acts Termination Sum or any other termination sum, as the case may be;
 - (ii) any liabilities arising under or in respect of any breach by either Party of their obligations under Section 45.9 of this Project Agreement, or the Sections referred to therein, which did not lead to such termination and which arises or continues after the Termination Date; and
 - (iii) any amount owing to HMQ Agencies in relation to:
 - (A) taxes or tax withholdings, including workers' compensation levies;

- (B) fines, penalties or restitution orders by a court under any Federal or Provincial statute;
- (C) any order made by a court under the *Civil Remedies Act*, S.O. 2001, c.28 and
- (D) any fraud or other criminal offence committed against HMQ Agencies.

47. EXPIRY TRANSITION PROCEDURE

47.1 Expiry Transition

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

48. INTELLECTUAL PROPERTY

48.1 Representation and Warranty

- (a) Project Co represents, warrants and covenants to HMQ Agencies and agrees that:
 - (i) Project Co is and shall be the sole and exclusive owner of the Project Data and the Intellectual Property Rights or has and shall have the right to provide the licences granted to HMQ Agencies herein;
 - (ii) Project Co has and shall have the right to provide the assignments granted to HMQ Agencies herein; and
 - (iii) the Project Data and the Intellectual Property Rights and their use by the HMQ Parties do not and shall not infringe, and are not and shall not be a misappropriation of, any third party Intellectual Property Rights, and, as of the date of this Project Agreement, Project Co has not received any alleged infringement or misappropriation notices from third parties regarding the Project Data or the Intellectual Property Rights.

48.2 Delivery of Project Data and Intellectual Property Rights

- (a) Project Co shall make all Project Data and Intellectual Property Rights available to, and upon request shall deliver to, HMQ Agencies free of charge all Project Data, and shall obtain all necessary licences, permissions and consents to ensure that Project Co shall make the Project Data and Intellectual Property Rights available to and deliver the Project Data to HMQ Agencies on the aforesaid terms of this Section 48.2, for any and all of the Approved Purposes.

48.3 Licence of Project Data and Intellectual Property Rights

- (a) Project Co:

- (i) hereby grants to HMQ Agencies an irrevocable, worldwide, royalty free, perpetual, non-exclusive and transferable licence, including the right to grant sub-licences, to use the Project Data and the Intellectual Property Rights for any and all of the Approved Purposes;
 - (ii) shall, at Project Co's cost, where any Intellectual Property Rights are or become vested in the Construction Contractor or the Service Provider, obtain the grant of an equivalent licence to that referred to in Section 48.3(a)(i), provided that such licence may, in respect of the Construction Contractor's and the Service Provider's Intellectual Property Rights that are proprietary and subject to trademark or copyright, be limited to the term of the relevant Subcontract; and
 - (iii) shall, at Project Co's cost, where any Intellectual Property Rights are or become vested in a third party (other than the Construction Contractor or the Service Provider), obtain the grant of an equivalent licence to that referred to in Section 48.3(a)(i), provided that Project Co is able to obtain such licence from such third party on reasonable commercial terms and conditions.
- (b) In this Section 48.3 and Section 48.5(a), "use" includes any and all acts of copying, modifying, adapting, translating, incorporating with other materials, creating derivative works and otherwise using the Project Data and Intellectual Property Rights.

48.4 Jointly Developed Materials

- (a) To the extent any data, documents, drawings, reports, plans, software, formulae, calculations or designs or any other materials are developed jointly by Project Co and HMQ Agencies pursuant to this Project Agreement or in relation to the Facility, the Site or Project Operations (the "**Jointly Developed Materials**"), then the Parties hereby acknowledge and agree that HMQ Agencies shall be the sole and exclusive owners of all right, title and interest in and to the Jointly Developed Materials, any Intellectual Property associated therewith and any and all improvements, modifications and enhancements thereto. Project Co shall, at the request of HMQ Agencies, execute such further agreements and cause the Project Co Parties to execute any and all assignments, waivers of moral rights and other documents as may be reasonably required to fulfill the intent of this provision.
- (b) HMQ Agencies hereby grant Project Co a royalty free, non-exclusive and non-transferable licence, with a right to grant sub-licences to each Subcontractor, to use the 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.
- (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 HMQ Agencies.

48.5 Maintenance of Data

- (a) To the extent that any of the data, materials and documents referred to in this Section 48 are generated by, or maintained on, a computer or similar system, Project Co shall procure for the benefit of HMQ Agencies, either at no charge or at the lowest reasonable fee, the grant of a licence or sub-licence for any relevant software to enable HMQ Agencies or their nominee to access and otherwise use (as such term is defined in Section 48.3(b)), subject to the payment by HMQ Agencies of any relevant fee, such data, materials and documents for the Approved Purposes.
- (b) Without limiting the obligations of Project Co under Section 48.5(a), Project Co shall ensure the backup and storage in safe custody of the data, materials and documents referred to in this Section 48 in accordance with Good Industry Practice. Project Co shall submit to the HMQ Representative Project Co's proposals for the backup and storage in safe custody of such data, materials and documents and HMQ Agencies shall be entitled to object if the same is not in accordance with Good Industry Practice. Project Co shall comply, and shall cause all Project Co Parties to comply, with all procedures to which the HMQ Representative has not objected. Project Co may vary its procedures for such backup and storage subject to submitting its proposals for change to the HMQ Representative, who shall be entitled to object on the basis set out above. Any Disputes in connection with the provisions of this Section 48.5(b) may be referred for resolution in accordance with Schedule 27 - Dispute Resolution Procedure with reference to Good Industry Practice.

48.6 Claims

- (a) Where a demand, claim, action or proceeding is made or brought against any Province Person which arises 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 HMQ Agencies or a Province Person or because the use of any materials, Plant, machinery or equipment in connection with the Project Operations infringes any rights in or to any Intellectual Property of a third party then, unless such infringement has arisen out of the use of any Project Data or Intellectual Property Rights by HMQ Agencies otherwise than in accordance with the terms of this Project Agreement, Project Co shall indemnify, defend and hold harmless HMQ Agencies from and against all such demands, claims, actions and proceedings and Section 53.3 shall apply.

48.7 HMQ Trade-Marks

- (a) Project Co shall not use any HMQ Trade-Marks or the Trade-Marks of a Government Entity without obtaining a trade-mark licence on terms and conditions mutually satisfactory to HMQ Agencies (or the relevant Government Entity) and Project Co, both acting reasonably.

48.8 Confidential Information

- (a) It is expressly acknowledged and agreed that nothing in this Section 48 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.

48.9 Government Use of Documents

- (a) The Parties hereby disclaim any right, title or interest of any nature whatsoever they each may have in or to this Project Agreement that might prohibit or otherwise interfere with a Government Entity's ability to use this Project Agreement in any manner desired by such Government Entity.
- (b) Each of the Parties hereby consents to the use by each Government Entity of this Project Agreement, and any portion thereof, subject to compliance with FIPPA and to the removal by HMQ Agencies (in consultation with Project Co) of any information supplied in confidence to a Government Entity by either Party in circumstances where disclosure may be refused under section 17(1) of FIPPA.

48.10 Restrictions

- (a) Project Co hereby covenants and agrees that it will not make any commercial use, including, without limitation, use in any other request for proposal or similar procurement process, of the Project Data, the Intellectual Property Rights, the Jointly Developed Material, the Intellectual Property of a Government Entity or the Confidential Information of a Government Entity, including, without limitation, the Output Specifications, or any other drawings, reports, documents, plans, formulae, calculations, manuals, or other data that was created specifically for the Project or was based upon the Project Data, the Intellectual Property Rights, the Jointly Developed Material, the Intellectual Property of a Government Entity or the Confidential Information of a Government Entity, including, without limitation, the Output Specifications.

49. CONFIDENTIALITY / COMMUNICATIONS**49.1 Disclosure**

- (a) Subject to Sections 49.1(b), 49.1(c) and 49.2, but notwithstanding anything else in this Project Agreement to the contrary, Project Co acknowledges and agrees that, in accordance with the transparency and accountability principles of the IPFP Framework, HMQ Agencies 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 HMQ Agencies, in their sole discretion, may consider appropriate. In exercising their discretion, HMQ Agencies will be guided by the principles set out in Sections 49.1(b) and 49.1(c).

- (b) HMQ Agencies will not disclose portions of this Project Agreement, any terms hereof, including any contractual submissions or other records kept in accordance with this Project Agreement, any information related to the performance of Project Co (or any Project Co Party) or any information derived from this Project Agreement or the information related to the performance of Project Co (or any Project Co Party) which would be exempt from disclosure under section 17(1) of FIPPA.
- (c) Notwithstanding Section 49.1(b), but subject to Section 49.2, where a compelling public interest in the disclosure of the information clearly outweighs the public interest in limiting the disclosure of the information supplied by Project Co (or any Project Co Party), HMQ Agencies may disclose such information.

49.2 Redaction

- (a) Prior to disclosing or publishing this Project Agreement, any terms hereof, including any contractual submissions or other records kept in accordance with this Project Agreement, any information related to the performance of Project Co (or any Project Co Party) or any information derived from this Project Agreement or the information related to the performance of Project Co (or any Project Co Party), HMQ Agencies shall provide to Project Co a redacted version of this Project Agreement or other documents or information to be disclosed or published, on the basis that the information so redacted constitutes information which should not be disclosed pursuant to Section 49.1(b). The Parties acknowledge and agree that the Annual Service Payment, but not the breakdown thereof, may be disclosed.
- (b) If Project Co, acting in good faith, contends that any of the information not redacted constitutes information that falls within the scope of Section 49.1(b) and, accordingly, would be exempt from disclosure under FIPPA, the dispute may be referred for resolution in accordance with Schedule 27 - Dispute Resolution Procedure, and HMQ Agencies shall not disclose any information in dispute until a determination is made. Any such determination shall be made with reference to the text and principles of FIPPA.

49.3 Disclosure to Government

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

(or any Project Co Party) are public documents and information and, as such, may be disclosed by each Government Entity.

49.4 Freedom of Information and Protection of Privacy Act

- (a) The Parties acknowledge and agree that FIPPA applies to each Government Entity, and that each Government Entity is required to fully comply with FIPPA.

49.5 Use and Disclosure of Confidential Information

- (a) Except as authorized hereunder, each Party shall hold in confidence, not disclose and not permit any person any manner of access to, whether directly or indirectly, any Confidential Information of the other Party, provided that this Section 49 shall not restrict either Party from disclosing such Confidential Information to its professional advisors, to the extent necessary, to enable that Party to perform, to cause to be performed, or to enforce, its rights or obligations under this Project Agreement.
- (b) Project Co may:
- (i) disclose in confidence to the Lenders and prospective Lenders, including any trustee of the Lenders, and their respective professional advisors such Confidential Information as is reasonably required by the Lenders in connection with the raising or syndication of the financing or any sub-participation in the financing of the Project Operations or which Project Co is obliged to supply by the terms of the Lending Agreements; and
 - (ii) disclose in confidence to any Project Co Party and their professional advisors, such Confidential Information as is necessary for the performance by that Project Co Party of that Project Co Party's obligations under this Project Agreement.
- (c) Project Co acknowledges that each Government Entity may use the Project Co Confidential Information for purposes not specific to the Project, but for other general governmental purposes, such as development of the Province's alternate procurement and financing policies and framework. A Government Entity will advise Project Co prior to using any Project Co Confidential Information for non-Project purposes.
- (d) Subject to the foregoing, neither Party shall use, or directly or indirectly cause, authorize or permit any other person to use, any Confidential Information of the other Party except for the purposes of this Project Agreement, as permitted by this Project Agreement or as authorized by the disclosing Party in writing.
- (e) Each Party shall protect all Confidential Information of the disclosing Party with the same degree of care as it uses to prevent the unauthorized use, disclosure, publication, or dissemination of its own confidential information of a similar nature or character, but in no event less than a reasonable degree of care.

- (f) Without limiting the generality of Section 49.5, Project Co shall comply with the document control and security protocol submitted by Project Co pursuant to Section 18.11 and approved by HMQ Agencies, which protocol shall prescribe limitations on the use, disclosure and storage of this Project Agreement and any other Confidential Information specified by HMQ Agencies.

49.6 Exceptions

- (a) Information of a Party (the “**Proprietor**”), other than Government Sensitive Information and Personal Information, will not be considered to be Confidential Information in the following circumstances:
- (i) the Proprietor advises the other Party to whom the information has been disclosed (the “**Confidant**”) that the information is not required to be treated as Confidential Information;
 - (ii) the information is as of the date of this Project Agreement, or becomes at any time thereafter, generally available to or accessible by the public through no fault or wrongdoing of the Confidant;
 - (iii) the information is a matter of public record or in the public domain;
 - (iv) the information was in the possession of the Confidant prior to its disclosure and the Confidant came into possession of such information without being in breach of this Project Agreement;
 - (v) the information is received by the Confidant on a non-confidential basis from a source other than the Proprietor, provided that to the best of the Confidant’s knowledge such source is not bound by a confidentiality agreement with the Proprietor or otherwise prohibited from disclosing the information to the Confidant by a contractual, legal or fiduciary obligation;
 - (vi) the information was independently developed by the Confidant without access to the Confidential Information, as evidenced by written records;
 - (vii) the information is required to be disclosed pursuant to Applicable Law, provided that the Confidant provides the Proprietor with reasonable notification and an opportunity to contest such requirement prior to disclosure;
 - (viii) the information is disclosed to HMQ Agencies upon a termination of this Project Agreement, pursuant to Section 45 or is otherwise required by HMQ Agencies for the purposes of performing (or having performed) the Project Operations, including the design or construction of the Facility, the operation, maintenance or improvement of the Facility, or any other operations or services the same as, or similar to, the Project Operations; or
 - (ix) the information would not be exempt from disclosure under FIPPA.

49.7 Survival of Confidentiality

- (a) The obligations in Section 49.1 to Section 49.6 will cease on the date that is 3 years after the Termination Date and accordingly shall survive the termination of this Project Agreement.

49.8 Communications Protocol

- (a) The Parties shall comply with the provisions of Schedule 18 - Communications Protocol.

50. PERSONAL INFORMATION**50.1 General**

- (a) Project Co acknowledges the importance of maintaining the confidentiality and privacy of Personal Information.
- (b) Project Co shall, and shall require each Project Co Party to, only collect, hold, process, use, store and disclose Personal Information with the prior consent of HMQ Agencies to the extent necessary to perform Project Co's obligations under this Project Agreement and shall not disclose Personal Information or otherwise permit access to or make Personal Information available to any person except as expressly permitted or instructed by HMQ Agencies.
- (c) Project Co shall, and shall require each Project Co Party to, at all times treat Personal Information as strictly confidential and shall comply with all applicable requirements of the Output Specifications and the requirements of Applicable Law, including FIPPA, the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c.5 and any other Canadian federal or provincial legislation now in force or that may in the future come into force governing the collection, use, disclosure and protection of personal information applicable to Project Co, each Project Co Party or to the Project Operations.
- (d) All Project Operations that involve or may involve the collection, use, storage, processing or any other handling of Personal Information shall be performed by Project Co and each Project Co Party within Canada, and Project Co shall, and shall cause each Project Co Party to, not store, process, communicate, transfer, access or permit or enable direct or remote access to any Personal Information outside of Canada.
- (e) Project Co shall, and shall cause each Project Co Party to, implement, maintain and adhere to appropriate policies, procedures and controls to ensure that Personal Information is not stored or processed in, communicated or transferred to, or accessed from, outside of Canada, and that the requirements of this Section 50 are otherwise complied with.
- (f) 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 50.

- (g) Project Co shall allow HMQ Agencies on reasonable notice to inspect any Personal Information in the custody or possession of Project Co or a Project Co Party and to audit Project Co and each Project Co Party's compliance with this Section 50 including, without limitation, the measures used by Project Co and each Project Co Party to protect Personal Information, and otherwise promptly and properly respond to all reasonable inquiries of HMQ Agencies with respect to Project Co or each Project Co Party's handling of Personal Information.
- (h) Project Co shall not subcontract or delegate to any third party any of the Project Operations that involve or may involve the collection, use, storage, processing or any other handling of Personal Information without the express consent of HMQ Agencies and without obtaining written contractual commitments of such third party substantially the same as those of this Section 50

50.2 Protection of Personal Information

- (a) Project Co shall implement and use, and shall require each Project Co Party to implement and use, appropriate technical, organizational and physical security measures to protect Personal Information against loss, theft and unauthorized access, disclosure, copying, use, modification or disposal, and shall otherwise ensure and shall require each Project Co Party to take all necessary steps and to include provisions in Subcontracts to require Project Co Parties to take all necessary steps, such that Project Co, the Project Co Parties, and its and their staff shall protect, secure and keep confidential any Personal Information.
- (b) Project Co shall keep confidential and shall require each Project Co Party to keep confidential all Personal Information, and shall restrict and shall require 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 information to fulfil their job requirements in connection with the Project Operations and that are subject to obligations of confidentiality and Personal Information protection no less stringent than those of this Section 50, and shall include provisions in all Subcontracts to require all Project Co Parties to keep confidential all Personal Information that any of them may encounter or obtain during the course of their duties.
- (c) Upon termination of this Project Agreement or upon request of HMQ Agencies, whichever comes first, Project Co shall immediately cease all use of and return to HMQ Agencies or, at the direction of HMQ Agencies, dispose of, destroy or render permanently anonymous all Personal Information, in each case using appropriate technical, organizational and physical security measures to protect Personal Information against loss, theft and unauthorized access, disclosure, copying, use or modification.
- (d) To the extent that any of the Project Operations involve or may involve destruction or disposal of Personal Information, including any disposal or destruction pursuant to Section 50.2(c) above, such activities shall include, at a minimum, irreversible destruction, shredding or pulverizing of all documents, records or media containing

Personal Information to a size or state that ensures that the document, record or other medium is permanently destroyed and that no information contained therein can be read, reconstructed or deciphered.

- (e) Project Co shall immediately inform HMQ Agencies of any actual or suspected loss, theft or accidental or unauthorized access, disclosure, copying, use, modification or destruction of Personal Information by Project Co or each of Project Co Party or any other breach of this Section 50.
- (f) HMQ Agencies may from time to time require that Project Co or any Project Co Party execute and deliver within 2 Business Days of such request an agreement satisfactory to HMQ Agencies, acting reasonably, requiring such person to keep Personal Information confidential.
- (g) Project Co shall provide, and shall cause each Project Co Party to provide, in a timely manner, all necessary and reasonable information and co-operation to HMQ Agencies and to any regulatory or other governmental bodies or authorities with jurisdiction or oversight over Applicable Laws governing the collection, use, disclosure and protection of Personal Information in connection with any investigations, audits or inquiries made by any such bodies or authorities under such legislation.

50.3 Conflict and Survival

- (a) To the extent of any conflict or inconsistency between this Section 50 and any other provision of the Project Agreement, this Section 50 shall prevail.
- (b) The obligations in this Section 50 shall survive the termination of this Project Agreement.

51. INSURANCE AND PERFORMANCE SECURITY

51.1 General Requirements

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

51.2 No Relief from Liabilities and Obligations

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

52. TITLE

52.1 Title

- (a) Title to each item and part of the Facility and the FF&E, including any materials, supplies, equipment, facilities, parts and any other deliverable or component items, but

not the risk of loss or damage or destruction thereto or thereof, shall pass to HMQ Agencies (or as HMQ Agencies may direct) upon the receipt of such item on the Site, 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 Facility or are to be affixed or attached to the Facility prior to Substantial Completion shall pass to HMQ Agencies (or as HMQ Agencies may direct) at the time that such items are included in the Facility or affixed or attached to the Facility.

53. INDEMNITIES

53.1 Project Co Indemnities to HMQ Agencies

- (a) Project Co shall indemnify and save harmless HMQ Agencies, each Government Entity 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 breach of a representation or warranty by Project Co herein.
- (b) Project Co shall indemnify and save harmless 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 Site and the Facility, or to any equipment, assets or other property related thereto;
 - (iii) the death or personal injury of any person;
 - (iv) any physical loss of or damage to property or assets of any third party; or
 - (v) any other loss or damage of any third party,

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

- (vi) the breach of this Project Agreement by HMQ Agencies; or
- (vii) in respect of Section 53.1(b)(i) any deliberate or negligent act or omission of any Province Person; or

- (viii) in respect of Sections 53.1(b)(ii), 53.1(b)(iii), 53.1(b)(iv) or 53.1(b)(v), any act or omission of any Province Person; or
- (ix) a deliberate or negligent act or omission of an HMQ Service User that results in undue interference with Project Co's performance of the Project Co Services and Project Co has been unable to take commercially reasonable steps necessary to prevent, negate or mitigate the undue interference due to acting in accordance with a recommendation or instruction of HMQ Agencies or an appropriate Province Person, except to the extent:
 - (A) any such deliberate or negligent act or omission is caused or contributed to by Project Co or any Project Co Party; or
 - (B) the HMQ Service User is acting in accordance with a direction, recommendation or instruction of Project Co or any Project Co Party.
- (c) Project Co shall indemnify and save harmless HMQ Agencies, each Government Entity 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, 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; or
 - (ii) any Contamination on, in or under, or migrating to or from, the Site, except for Contamination for which HMQ Agencies are responsible pursuant to Section 16.2(a);except to the extent that such Direct Losses are caused, or contributed to, by the breach of this Project Agreement by HMQ Agencies or by any act or omission of HMQ Agencies or any HMQ Party or Government Entity.
- (d) Without prejudice to HMQ Agencies' rights under Section 42 and any other rights under this Project Agreement, if HMQ Agencies exercise their step-in rights under the Construction Contractor's Direct Agreement or the Service Provider's Direct Agreement, Project Co shall indemnify HMQ Agencies for all obligations of Project Co assumed by HMQ Agencies under the Construction Contract or the Service Contract, as the case may be, and for all reasonable costs and expenses incurred by HMQ Agencies in relation to the exercise of HMQ Agencies' rights.
- (e) Project Co shall indemnify HMQ Agencies for damages suffered or incurred on account of (i) any payment not duly made by Project Co pursuant to the terms of this Project Agreement on the due date; (ii) any overpayment to or underpayment by Project Co; or

(iii) an amount determined as payable by Project Co to HMQ Agencies 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 HMQ Agencies, or from the date identified (if any) applicable to an amount determined as payable by Project Co to HMQ Agencies under Schedule 27 - Dispute Resolution Procedure, up to and including the date of payment.

53.2 HMQ Agencies' Indemnities to Project Co

- (a) HMQ Agencies shall indemnify and save harmless Project Co and the Project Co Parties and each of their respective directors, officers, employees, agents and representatives from and against any and all Direct Losses which may be suffered, sustained, incurred or brought against them as a result of, in respect of, or arising out of any one or more of the following:
- (i) the death or personal injury of any person arising, directly or indirectly, out of, or in consequence of, or involving or relating to, the performance or breach of this Project Agreement by HMQ Agencies or any act or omission of any Province Person, except to the extent caused, or contributed to, by the breach of this Project Agreement by Project Co or by any act or omission of Project Co or any Project Co Party;
 - (ii) any physical loss of or damage to all or any part of any property or assets of Project Co or any Project Co Party, arising, directly or indirectly, out of, or in consequence of, or involving or relating to, breach of this Project Agreement by HMQ Agencies or any deliberate or negligent act or omission of any Province Person, except to the extent caused, or contributed to, by the breach of this Project Agreement by Project Co or by any act or omission of Project Co or any Project Co Party; and
 - (iii) any physical loss of or damage to property or assets of any third party, or any other loss or damage of any third party, arising, directly or indirectly, out of, or in consequence of, or involving or relating to, breach of this Project Agreement by HMQ Agencies or any deliberate or negligent act or omission of any Province Person, except to the extent caused, or contributed to, by the breach of this Project Agreement by Project Co or by any act or omission of Project Co or any Project Co Party,

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

- (b) HMQ Agencies 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 a breach of the representation or warranty set out in Section 5.2(c).

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

53.3 Conduct of Claims

- (a) This Section 53.3 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 53, the Beneficiary shall give written notice to the Indemnifier as soon as reasonably practicable and in any event within 10 Business Days of receipt of the same. Such notice shall specify with reasonable particularity, to the extent that information is available, the factual basis for the claim and the amount of the claim.
- (c) Subject to Sections 53.3(d), 53.3(e) and 53.3(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 53.3 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 53.3(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 10 Business Days of the notice from the Beneficiary under Section 53.3(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 53.3(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 53.3(c) applies. For greater certainty, Project Co acknowledges and agrees that where HMQ Agencies are the Beneficiary, HMQ Agencies 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 53.3(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 53.3 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.

53.4 Mitigation - Indemnity Claims

- (a) For greater certainty, Section 60.4 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.

54. LIMITS ON LIABILITY

54.1 Indirect Losses

- (a) Subject to Section 54.1(b) without prejudice to HMQ Agencies' rights under the Payment Mechanism, or the Parties' rights in respect of payments provided for herein, the indemnities under this Project Agreement shall not apply and there shall be no right to claim damages for breach of this Project Agreement, in tort or on any other basis whatsoever, to the extent that any loss claimed by either Party is:
- (i) for punitive, exemplary or aggravated damages;
 - (ii) for loss of profits, loss of use, loss of production, loss of business or loss of business opportunity; or
 - (iii) is a claim for consequential loss or for indirect loss of any nature suffered or allegedly suffered by either Party,
- (collectively, "**Indirect Losses**").
- (b) With respect to the indemnity in Section 53.1(b)(i) only, the exceptions in Sections 54.1(a)(ii) and 54.1(a)(iii) shall not apply as a result of, or in relation to, HMQ Agencies' loss of use of the Facility or a portion thereof, which for the purposes of Section 53.1(b)(i) shall be Direct Losses.

54.2 No Liability in Tort

- (a) Subject to the indemnities provided herein, Province Persons shall not 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 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.

54.3 Sole Remedy

- (a) Subject to:
- (i) any other rights of HMQ Agencies expressly provided for in this Project Agreement; and
 - (ii) HMQ Agencies' right to claim, on or after termination of this Project Agreement, the amount of their reasonable costs, losses, damages and expenses suffered or incurred by them as a result of rectifying or mitigating the effects of any breach of this Project Agreement by Project Co except to the extent that the same has already been recovered by HMQ Agencies pursuant to this Project Agreement or has been taken into account to reduce any compensation payable by HMQ Agencies pursuant to Section 46,

the sole remedy of HMQ Agencies in respect of a failure to provide the Project Co Services in accordance with this Project Agreement shall be the operation of the Payment Mechanism.

- (b) Nothing in Section 54.3(a) shall prevent or restrict the right of HMQ Agencies to seek injunctive relief or a decree of specific performance or other discretionary remedies of a court of competent jurisdiction.
- (c) Notwithstanding any other provision of this Project Agreement, and except to the extent recovered under any of the insurances required pursuant to Schedule 25 - Insurance and Performance Security Requirements, neither Party shall be entitled to recover compensation or make a claim under this Project Agreement, or any other agreement in relation to the Project, in respect of any loss that it has incurred (or any failure of the other Party) to the extent that the Party has already been compensated in respect of that loss or failure pursuant to this Project Agreement, or otherwise.

54.4 Maximum Liability

- (a) Subject to Section 54.4(b), the maximum aggregate liability of each Party in respect of all claims under Section 53 shall not exceed [REDACTED]. This limit shall be index linked and shall be exclusive of any insurance or performance security proceeds received or which will be received pursuant to 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 53.1(b)(i) shall not exceed [REDACTED]. This limit shall be index linked and shall be exclusive of any insurance or performance security proceeds received or which will be received pursuant to 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 54.4 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.

55. DISPUTE RESOLUTION PROCEDURE

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

56. ASSIGNMENT, SUBCONTRACTING AND CHANGES IN CONTROL

56.1 Project Co Assignment

- (a) Project Co shall not assign, transfer, charge, dispose of or otherwise alienate any interest in this Project Agreement, the Construction Contract, the Service Contract or any agreement entered into in connection with this Project Agreement without the prior

written consent of HMQ Agencies, not to be unreasonably withheld or delayed, provided however that no assignment, transfer, charge, disposition or other alienation shall be permitted to a person where that person or its Affiliates is a Restricted Person or a person whose standing or activities are inconsistent with (1) the Province's reputation or integrity or (2) the nature of the Province's transportation system, so as to affect public confidence in that system.

- (b) Section 56.1(a) shall not apply to the grant of any security for any loan made to Project Co under the Lending Agreements provided that any grantee of such security shall enter into the Lenders' Direct Agreement in relation to the exercise of its rights, if HMQ Agencies so require.

56.2 HMQ Agencies Assignment

- (a) HMQ Agencies may assign, transfer, dispose of or otherwise alienate any interest in this Project Agreement or any agreement in connection with this Project Agreement to which Project Co and HMQ Agencies are parties:
 - (i) to the Province;
 - (ii) in circumstances other than those described in Section 56.2(a)(i), as may be required to comply with Applicable Law;
 - (iii) to any minister of the Crown;
 - (iv) to a Crown agency having the legal capacity, power, authority and ability to become a party to and to perform the obligations of HMQ Agencies under this Project Agreement provided that such person confirms in writing to Project Co that it will perform all of HMQ Agencies' obligations hereunder and under the other Project Documents to which HMQ Agencies are a party in respect of the period from and after the assignment; and
 - (v) in circumstances other than those described in Sections 56.2(a)(i) to 56.2(a)(iv), with the prior written consent of Project Co, not to be unreasonably withheld or delayed; provided that the person to whom any such assignment, transfer, disposition or other alienation is made has the capacity to perform, and confirms in writing to Project Co that it will perform all the obligations of HMQ Agencies hereunder and under any agreement in connection with this Project Agreement to which Project Co and HMQ Agencies are parties in respect of the period from and after the assignment.
- (b) HMQ Agencies shall not be released of any of their obligations under this Project Agreement except upon an assignment, transfer, disposition or other alienation of its interest in this Project Agreement in accordance with this Section 56.2.

56.3 Subcontractors

- (a) Project Co shall not subcontract any interest in this Project Agreement, the Construction Contract or the Service Contract, and shall not permit the Construction Contractor or the Service Provider to subcontract any interest in the Construction Contract or Service Contract, to a Restricted Person, or any Affiliate thereof, or a person whose standing or activities are inconsistent with the Province's reputation or integrity, or the nature of the Province's transportation system, so as to affect public confidence in that system.
- (b) Project Co shall not terminate, agree to the termination of or replace the Construction Contractor or the Service Provider unless Project Co has complied with Sections 7.2(a), 56.3(c) and 56.3(d) or received the prior written consent of HMQ Agencies, not to be unreasonably withheld or delayed.
- (c) Subject to Section 56.3(d), if either the Construction Contract or the Service 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 or the Service Provider, as the case may be, shall cease to act in relation to the Project, Project Co shall forthwith appoint a replacement, subject to HMQ Agencies' prior written consent, acting reasonably, as to the suitability of the replacement.
- (d) It is a condition of replacement of the Construction Contractor or Service Provider that, and Project Co shall require that, any replacement enter into a contract upon the same or substantially similar terms as the person so replaced and into a direct agreement on the same terms as the Direct Agreement entered into by the person so replaced, unless any material variations are approved by HMQ Agencies, acting reasonably.

56.4 Changes in Ownership and Control

- (a) No Change in Ownership of Project Co, or any person owning, directly or indirectly, beneficially or otherwise, any of the shares or units of or any other ownership interest in Project Co or any such person, shall be permitted:
 - (i) where the person acquiring the ownership interest is a Restricted Person or a person whose standing or activities: (i) are inconsistent with the roles of HMQ Agencies in the province of Ontario; (ii) may compromise the reputation of HMQ Agencies and/or the Province; or (iii) may compromise the integrity of the Province or the Project; or
 - (ii) if such Change in Ownership would have a material adverse effect on the performance of the Project Operations, the Maintenance and Storage Activities or the HMQ FM Services.
- (b) No 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, shall be permitted where the person with or acquiring Direct or Indirect Power or Control is a Restricted Person or a

person whose standing or activities are inconsistent with the Province's reputation or integrity.

- (c) Prior to the third anniversary following the Substantial Completion Date, HMQ Agencies shall be entitled to receive a [REDACTED]% share of any Excess Equity Gain arising from a Change in Ownership of Project Co.
- (d) Subject to Sections 56.4(a), (b) and (c), (i) no Change in Control of Project Co, or any person owning, directly or indirectly, beneficially or otherwise, any of the shares or units or any other ownership interest in Project Co or any such person, or (ii) no acquisition of 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, shall be permitted without the prior written consent of HMQ Agencies, not to be unreasonably withheld or delayed.
- (e) This Section 56.4 shall not apply to a Change in Ownership or Change in Control or acquisition of Direct or Indirect Power or Control of persons whose equity securities or ownership units or any other ownership interests are listed on a recognized stock exchange.
- (f) Whether or not Project Co is required to obtain HMQ Agencies' consent to a Change in Ownership or Change in Control or acquisition of Direct or Indirect Power or Control pursuant to this Section 56.4, Project Co shall provide timely notice to HMQ Agencies of any proposed Change in Ownership or Change in Control or acquisition of Direct or Indirect Power or Control of Project Co, or any person owning, directly or indirectly, beneficially or otherwise, any of the shares or units or any other ownership interest in Project Co or any such person, as the case may be, within 5 Business Days of such Change in Ownership or Change in Control or acquisition of Direct or Indirect Power or Control, and such notification shall include a statement identifying all such owners, or persons with an ownership interest in Project Co, as the case may be, and their respective holdings of such ownership interest in Project Co, prior to and following any such Change in Ownership or Change in Control or acquisition of Direct or Indirect Power or Control.

56.5 HMQ Agencies' Due Diligence

- (a) Project Co shall promptly reimburse HMQ Agencies for HMQ Agencies' reasonable due diligence costs (including fees of professional advisors) in connection with any consent required of HMQ Agencies pursuant to, or HMQ Agencies' determination of Project Co's compliance with, Section 56.1, 56.3 or 56.4 whether or not such consent is granted.

57. PROHIBITED ACTS

57.1 Definition

- (a) The term "**Prohibited Act**" means:

- (i) offering, giving or agreeing to give to HMQ Agencies or any public body (or anyone employed by or acting on their behalf), or to any family member of such person, any gift or consideration of any kind as an inducement or reward:
 - (A) for doing or not doing, or for having done or not having done, any act in relation to the obtaining or performance of this Project Agreement or any other agreement with HMQ Agencies or any public body in connection with the Project; or
 - (B) for showing or not showing favour or disfavour to any person in relation to this Project Agreement or any other agreement with HMQ Agencies or any public body in connection with the Project;

provided that this Section 57.1(a)(i) shall not apply to Project Co or any Project Co Party (or anyone employed by or acting on their behalf) providing consideration to HMQ Agencies or any public body in the ordinary course, or as reasonably necessary, to fulfill or comply with the obligations and liabilities of Project Co under this Project Agreement or any other agreement with HMQ Agencies or any public body in connection with the Project;

- (ii) entering into this Project Agreement or any other agreement with HMQ Agencies 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, HMQ Agencies or any public body (or anyone employed by or acting on their behalf), or to any family member of such person, unless, before the relevant agreement is entered into, particulars of any such commission or fee have been disclosed in writing to HMQ Agencies, provided that this Section 57.1(a)(ii) shall not apply to a fee or commission paid by Project Co or any Project Co Party (or anyone employed by or acting on their behalf) to HMQ Agencies or any public body pursuant to an agreement where such fee or commission is paid in the ordinary course, or as reasonably necessary, to fulfill or comply with the obligations and liabilities of Project Co under this Project Agreement or any other agreement with HMQ Agencies or any public body in connection with the Project without contravening the intent of this Section 57;
- (iii) breaching or committing any offence under Applicable Law in respect of corrupt or fraudulent acts in relation to this Project Agreement or any other agreement with HMQ Agencies or any public body in connection with the Project; or
- (iv) defrauding or attempting to defraud or conspiring to defraud HMQ Agencies or any other public body.

57.2 Remedies

- (a) If Project Co or any Project Co Party (or anyone employed by or acting on their behalf) commits any Prohibited Act, then HMQ Agencies shall be entitled to act in accordance with the following:

- (i) if the Prohibited Act is committed by Project Co or by an employee acting under the direction of a director or officer of Project Co, then HMQ Agencies may give written notice to Project Co and Section 42 shall apply;
 - (ii) if the Prohibited Act is committed by an employee of Project Co acting independently of a direction of a director or officer of Project Co, then HMQ Agencies may give written notice to Project Co and Section 42 shall apply, unless, within 30 days of receipt of such notice, Project Co terminates the employee's employment and ensures that the relevant part of the Project Operations shall be performed by another person;
 - (iii) if a Prohibited Act is committed by a Project Co Party or by an employee of that Project Co Party not acting independently of a direction of a director or officer of that Project Co Party, then HMQ Agencies may give written notice to Project Co and Section 42 shall apply, unless, within 30 days of receipt of such notice, Project Co terminates the relevant Subcontract and ensures that the relevant part of the Project Operations shall be performed by another person, where relevant, in accordance with Section 56.3;
 - (iv) if the Prohibited Act is committed by an employee of a Project Co Party acting independently of a direction of a director or officer of that Project Co Party, then HMQ Agencies may give notice to Project Co and Section 42 shall apply, unless, within 30 days of receipt of such notice, Project Co causes the termination of the employee's employment and ensures that the relevant part of the Project Operations shall be performed by another person; and
 - (v) if the Prohibited Act is committed on behalf of Project Co or a Project Co Party by a person not specified in Sections 57.2(a)(i) to 57.2(a)(iv), then HMQ Agencies may give notice to Project Co and Section 42 shall apply, unless, within 30 days of receipt of such notice, Project Co causes the termination of such person's employment or the appointment of their employer and, if necessary, ensures that the relevant part of the Project Operations shall be performed by another person.
- (b) Any notice of termination under this Section 57.2 shall specify:
- (i) the nature of the Prohibited Act;
 - (ii) the identity of the person whom HMQ Agencies believe has committed the Prohibited Act; and
 - (iii) the date of termination in accordance with the applicable provisions of this Project Agreement.
- (c) Without prejudice to its other rights or remedies under this Section 57.2, HMQ Agencies shall be entitled to recover from Project Co any Direct Loss sustained in consequence of any breach of this Section 57.

57.3 Permitted Payments

- (a) Nothing contained in this Section 57 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.

57.4 Notification

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

57.5 Replacement of Project Co Party

- (a) Where Project Co is required to replace any Project Co Party pursuant to this Section 57, 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.

58. NOTICES

58.1 Notices to Parties

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

If to Project Co: **[REDACTED]**

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

with a copy to: **[REDACTED]**

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

and

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

with a copy to: **[REDACTED]**

Fax No.: n/a

Attn.: **[REDACTED]**

If to HMQ: 777 Bay Street, 9th Floor
Toronto, Ontario M5G 2C8

Fax No.: **[REDACTED]**
Attn.: Project Manager, East Rail Maintenance
Facility Project

If to Metrolinx: Metrolinx
20 Bay Street, Suite 600
Toronto, Ontario M5J 2W3

Fax: **[REDACTED]**
Attn.: Manager, Rail Facilities

58.2 Notices to Representatives

- (a) In addition to the notice requirements set out in Section 58.1, where any Notice is to be provided or submitted to the HMQ Representative or the Project Co Representative it shall be provided or submitted by sending the same by registered mail, facsimile or by hand, as follows:

If to the Project Co Representative: **[REDACTED]**

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

If to the HMQ Representative: c/o Metrolinx
Railway Corridor Infrastructure
20 Bay Street, Suite 600
Toronto, ON M5J 2W3

Attn: **[REDACTED]**, Manager, Rail Facilities
Fax: **[REDACTED]**

with a copy to: Infrastructure Ontario
777 Bay Street, 9th Floor
Toronto, Ontario M5G 2C8

Fax No.: [REDACTED]
Attn.: Project Manager, East Rail Maintenance
Facility Project

58.3 Facsimile

- (a) Where any Notice is provided or submitted to a Party via facsimile, an original of the Notice sent via facsimile shall promptly be sent by regular mail or registered mail. For greater certainty, a notice given via facsimile shall not be invalid by reason only of a Party's failure to comply with this Section 58.3.

58.4 Change of Address

- (a) Either Party to this Project Agreement may, from time to time, change any of its contact information set forth in Sections 58.1 or 58.2 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.

58.5 Deemed Receipt of Notices

- (a) Subject to Sections 58.5(a), 58.5(c), 58.5(d):
 - (i) a Notice given by registered mail shall be deemed to have been received on the third Business Day after mailing;
 - (ii) a Notice given by hand delivery shall be deemed to have been received on the day it is delivered; and
 - (iii) a Notice given by facsimile shall be deemed to have been received on the day it is transmitted by facsimile.
- (b) If the Party giving the Notice knows or ought reasonably to know of difficulties with the postal system which might affect negatively the delivery of mail, any such Notice shall not be mailed but shall be made or given by personal delivery or by facsimile transmission in accordance with this Section 58.
- (c) If any Notice delivered by hand or transmitted by facsimile is so delivered or transmitted, as the case may be, either on a day that is not a Business Day or on a Business Day after 4:00 p.m. (recipient's local time), then such Notice shall be deemed to have been received by such recipient on the next Business Day.
- (d) A Notice given by facsimile shall be deemed to have been received by the recipient on the day it is transmitted only if a facsimile transmission report (maintained by the sender) indicates that the transmission of such Notice was successful.

58.6 Service on HMQ Agencies

- (a) Where any Notice is required to be served on HMQ Agencies, the obligation to serve such Notice shall be fulfilled by serving it on HMQ Agencies in accordance with the provisions of this Section 58.

59. HMQ AGENCIES' DESIGNATE**59.1 Right to Designate**

At any time and from time to time, the Crown may designate any ministry, branch, agency, division, department or office of the Government of Ontario to carry out administrative responsibility for the rights and obligations of HMQ Agencies under this Agreement (including, without limitation, review of all documentation submitted by Project Co, a Project Co Representative or a Project Co Party to HMQ Agencies for review, approval, comment, evaluation or otherwise as described in this Agreement, engage in discussions, consultations and meetings with Project Co, submitting notices and documentation to HMQ Agencies, 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, 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 HMQ Agencies 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 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 59.1.

60. GENERAL**60.1 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.

60.2 Waiver

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

- (b) Failure by either Party to exercise any of its rights, powers or remedies hereunder or its delay to do so shall not constitute a waiver of those rights, powers or remedies. The single or partial exercise of a right, power or remedy shall not prevent its subsequent exercise or the exercise of any other right, power or remedy.

60.3 Relationship Between the Parties

- (a) The Parties are independent contractors. This Project Agreement is not intended to and does not create or establish between the Parties, or between HMQ Agencies and any Project Co Party, any relationship as partners, joint venturers, employer and employee, master and servant, or (except as provided in this Project Agreement), of principal and agent, and does not create or establish any relationship whatsoever between HMQ Agencies 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, WSIB 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.

60.4 General Duty to Mitigate

- (a) HMQ Agencies 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.

60.5 Actual Knowledge

- (a) Without limitation to its actual knowledge and/or such knowledge which it, at law, may from time to time, be deemed to have, Project Co and HMQ Agencies 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 their respective directors, officers, senior management and their respective Representatives. For clarity, except as expressly set out to the contrary, a reference in this Project Agreement to the “knowledge” of Project Co or of HMQ Agencies, shall be construed in a manner consistent with the foregoing sentence.

60.6 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.

60.7 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 60.7 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.

60.8 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.

60.9 Enurement

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

60.10 Governing Law and Jurisdiction

- (a) This Project Agreement, and each of the documents contemplated by or delivered under or in connection with this Project Agreement, shall be governed by and construed in accordance with the laws of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract, without regard to conflict of laws principles.
- (b) Subject to Schedule 27 - Dispute Resolution Procedure, the Parties hereby irrevocably attorn to the exclusive jurisdiction of the courts of the Province of Ontario and all courts competent to hear appeals therefrom.
- (c) Nothing in this Project Agreement affects the rights, protections and immunities of the Crown under the *Proceedings Against the Crown Act* (Ontario).

60.11 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.

60.12 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.

60.13 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.

60.14 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 declare satisfaite.

- (b) For greater certainty, all correspondence, notices, drawings, test reports, certificates, specifications, information, operating and maintenance instructions, name plates, identification labels, instructions and notices to the public and staff and all other written, printed or electronically readable matter required in accordance with, or for purposes envisaged by, this Project Agreement shall be in English.

60.15 Proof of Authority

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

60.16 Counterparts

- (a) This Project Agreement may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all the Parties shall constitute a full, original and binding agreement for all purposes. Counterparts may be executed either in original or faxed form provided that any Party providing its signature in faxed form shall promptly forward to the other Party an original signed copy of this Project Agreement which was so faxed.

60.17 Government Entities and Province Persons as Third Party Beneficiaries

- (a) The provisions of Sections 3.1(b), 6.1, 6.2(a), 6.3(a), 8.1(d), 9.2(a)(i), 9.4(b), 9.5(a)(v), 16.1(a), 18.3(j), 19.1, 19.2, 25.3(a), 26.4(b), 28.2(a), 28.2(e), 48.6(a), 53.1, 54.2(a) and each other provision of the Project Agreement which is to the benefit of a Province Person, and each of the provisions of Section 6.4(a), 32.7(a), 32.8(a), 32.8(b) and 33.2(e) along with each other provision of the Project Agreement which is to the benefit of an HMQ Party are:
 - (i) intended for the benefit of each such Province Person, and, if so set out in the relevant Section, each such Province Person's directors, officers employees, board appointees, agents and representatives, and shall be enforceable by each of such persons and his or her heirs, executors, administrators and other legal representatives (collectively, the "**Province Person Third Party Beneficiaries**"); and
 - (ii) are in addition to, and not in substitution for, any other rights that the Province Persons and Province Person Third Party Beneficiaries may have in contract or otherwise.

- (b) HMQ Agencies shall hold the rights and benefits accruing to Province Persons and Province Person Third Party Beneficiaries pursuant to Sections 3.1(b), 6.1, 6.2(a), 6.3(a), 6.4(a), 8.1(d), 9.2(a)(i), 9.4(b), 9.5(a)(v), 16.1(a), 18.3(j), 19.1, 19.2, 25.3(a), 26.4(b), 28.2(a), 28.2(e), 32.7(a), 32.8(a) 32.8(b) and 33.2(e), 48.6(a), 53.1, 54.2(a) and each other provision of the Project Agreement which is to the benefit of a Province Person and/or a Province Person Third Party Beneficiary (including, for certainty, an HMQ Party) as agents and in trust for and on behalf of Province Persons and Province Person Third Party Beneficiaries and HMQ Agencies agree to hold such rights and benefit of and, in HMQ Agencies' sole discretion, enforce performance of such covenants on behalf of the Province Persons and the Province Person Third Party Beneficiaries.
- (c) The provisions of Sections 3.1(b), 6.1, 6.2(a), 6.3(a), 6.4(a), 8.1(d), 9.2(a)(i), 9.4(b), 9.5(a)(v), 16.1(a), 18.3(j), 19.1, 19.2, 25.3(a), 26.4(b), 28.2(a), 28.2(e), 32.8(b), 33.2(e), 48.6(a), 48.7(a), 48.9, 48.10, 49, 53.1, 54.2(a) and each other provision of the Project Agreement which is to the benefit of a Government Entity, are:
- (i) intended for the benefit of each Government Entity and, if set out in the relevant Section, each Government Entity's directors, officers, employees, board appointees, agents and representatives, and shall be enforceable by each of such persons and his or her heirs, executors, administrators and other legal representatives (collectively, the "**Government Entity Third Party Beneficiaries**"); and
 - (ii) are in addition to, and not in substitution for, any other rights that the Government Entities and Government Entity Third Party Beneficiaries may have by contract or otherwise.
- (d) HMQ Agencies shall hold the rights and benefits accruing to Government Entities and Government Entity Third Party Beneficiaries pursuant to Sections 3.1(b), 6.1, 6.2(a), 6.3(a), 6.4(a), 8.1(d), 9.2(a)(i), 9.4(b), 9.5(a)(v), 16.1(a), 18.3(j), 19.1, 19.2, 25.3(a), 26.4(b), 28.2(a), 28.2(e), 32.8(b), 33.2(e), 48.6(a), 48.7(a), 48.9, 48.10, 49, 53.1, 54.2(a) and each other provision of the Project Agreement which is to the benefit of a Government Entity and/or a Government Entity Third Party Beneficiary as agents and in trust for and on behalf of the Government Entities and Government Entity Third Party Beneficiaries and agree to hold such rights and benefit of and, in HMQ Agencies' sole discretion, enforce performance of such covenants on behalf of the Government Entities and Government Entity Third Party Beneficiaries.

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

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

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

Per: _____
Name: **[REDACTED]**
Title: **REDACTED)**

I/We have authority to bind the corporation.

METROLINX

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

I/We have authority to bind the corporation.

**PLENARY INFRASTRUCTURE
ERMF GP,**

by its partners:

[REDACTED]

by

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

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

[REDACTED]

by

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

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

[REDACTED]

by

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

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

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**SCHEDULE 1
DEFINITIONS AND INTERPRETATION**

1. **Definitions.** In the Project Agreement, unless the context otherwise requires:
- 1.1 “**6-Month Works Schedule**” means the schedule to be prepared and submitted by Project Co in accordance with Section 20.2 of the Project Agreement.
- 1.2 “**Accessibility Condition**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.3 “**Account Trustee**” has the meaning given in Schedule 30 - Insurance Trust Agreement.
- 1.4 “**Actual Relevant Insurance Cost**” has the meaning given in Section 7.1 of Schedule 25 - Insurance and Performance Security Requirements.
- 1.5 “**Additional Contractors**” means any independent contractor (not being, for the avoidance of doubt, the Construction Contractor, the Service Provider or Project Co) or HMQ Agencies’ own forces, engaged by HMQ Agencies to carry out the Additional Works.
- 1.6 “**Additional Works**” means those works in relation to the Facility which are not Works or Project Co Services and which are to be carried out by an Additional Contractor, including works or services to be performed either before or after Substantial Completion.
- 1.7 “**Adjusted Estimated Fair Value**” has the meaning given in Schedule 23 - Compensation on Termination.
- 1.8 “**Adjusted Highest Qualifying Tender Price**” has the meaning given in Schedule 23 - Compensation on Termination.
- 1.9 “**Affiliate**” means an “**affiliate**” as that term is used in the *Business Corporations Act* (Ontario) and any successor legislation thereto, and, in the case of Project Co, shall include each of its unitholders, shareholders, partners or owners, as the case may be.
- 1.10 “**Ancillary Documents**” means the Construction Contract, the Service Contract, the Performance Security, the Facility Co-ordination Agreement, the [REDACTED], and the [REDACTED]
- 1.11 “**Annual Service Payment**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.12 “**Anticipated Substantial Completion Date**” has the meaning given in Section 24.7(a) of the Project Agreement.
- 1.13 “**Applicable Law**” means:

- (a) any statute or proclamation or any delegated or subordinate legislation including regulations and by-laws;
 - (b) any Authority Requirement; and
 - (c) any judgment of a relevant court of law, board, arbitrator or administrative agency which is a binding precedent in the Province of Ontario,
- in each case, in force in the Province of Ontario, or otherwise binding on Project Co, any Project Co Party, HMQ Agencies, any HMQ Party or any Province Person.
- 1.14 “**Appointed Representative**” has the meaning given in Schedule 4 – Lenders’ Direct Agreement.
- 1.15 “**Appointed Representative Notice**” has the meaning given in Schedule 4 – Lenders’ Direct Agreement.
- 1.16 “**Apprenticeship Plan**” has the meaning given in Section 18.13(a) of the Project Agreement.
- 1.17 “**Approved Purposes**” means:
- (a) HMQ Agencies and the HMQ Parties performing the Maintenance and Storage Activities and the HMQ FM Services (and their operations relating to the performance of the Maintenance and Storage Activities and the HMQ FM Services), their obligations under the Project Agreement and/or any other activities in connection with the Facility and the Site;
 - (b) following termination of the Project Agreement, the design, construction and/or maintenance of the Facility, and/or the performance of any other operations the same as, or similar to, the Project Operations; and
 - (c) the development by Metrolinx and/or the Province of best practices for maintenance and storage facilities in Ontario.
- 1.18 “**Area Weighting Percentage**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.19 “**As Built Drawings**” means drawings prepared by Project Co to reflect the installed, constructed or commissioned conditions of the Works, as applicable, in a format and with content and details that HMQ Agencies, acting reasonably, consider appropriate.
- 1.20 “**Associated Liabilities**” has the meaning given in Section 32.6(b) of the Project Agreement.

- 1.21 “**Authority Requirements**” means any order, direction, directive, request for information, policy, administrative interpretation, guideline or rule of or by any Governmental Authority.
- 1.22 “**Availability Condition**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.23 “**Availability Failure**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.24 “**Availability Failure Deduction**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.25 “**Background Information**” means any and all drawings, reports (including the Environmental Reports and Designated Substance Reports and the Geotechnical Reports), studies, data, documents, or other information, given or made available to Project Co or any Project Co Party by HMQ Agencies or any HMQ Party, or which was obtained from or through any other sources to the date of the Project Agreement.
- 1.26 “**Base Case Equity IRR**” means [REDACTED].
- 1.27 “**Base Date**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.28 “**Base Relevant Insurance Cost**” has the meaning given in Section 7.1 of Schedule 25 - Insurance and Performance Security Requirements.
- 1.29 “**Bedding-In Period**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.30 “**Beneficiary**” has the meaning given in Section 53.3(a) of the Project Agreement.
- 1.31 “**Building Code**” means the regulations made under Section 34 of the *Building Code Act, 1992* (Ontario), as amended from time to time.
- 1.32 “**Building Permit**” means the building permit issued by the Town of Whitby with respect to the construction of the Facility on the Site.
- 1.33 “**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.
- 1.34 “**Business Opportunities**” has the meaning given in Section 4.1(a) of the Project Agreement.
- 1.35 “**CaGBC**” means the Canadian Green Building Council.
- 1.36 “**Canadian and Industry Standards**” means, at the applicable time, those standards, practices, methods and procedures applicable to Good Industry Practice.
- 1.37 “**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.
- 1.38 “**Canopies**” means structures extending across the consist storage tracks carrying electrical and other wayside or consist services as indicated in the Output Specifications.
- 1.39 “**Capital Expenditure**” means capital expenditure as interpreted in accordance with Canadian GAAP.
- 1.40 “**Cash Allowance Account**” means [REDACTED].
- 1.41 “**Cash Allowance Amount**” means [REDACTED].
- 1.42 “**Cash Allowance Items**” means (i) the purchase, delivery and installation of FF&E; and (ii) the Signage Work.
- 1.43 “**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.
- 1.44 “**Certified H&S Inspector**” means an individual having the necessary credentials recognized by the COR Program for the purpose of such individual performing any inspections as may be required to be performed in accordance with Section 13(b) of the Project Agreement.
- 1.45 “**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.
- 1.46 “**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 date of the Project Agreement.

- 1.47 “**Change in Ownership**” means, with respect to a person, any change in ownership, whether beneficial or otherwise, of any of the shares or units or any other ownership interest of such person, or in the direct or indirect power to vote or transfer any of the shares or units or any other ownership interest of such person.
- 1.48 “**Change of Authorization Event**” has the meaning given in Schedule 30 – Insurance Trust Agreement.
- 1.49 “**Change of Authorization Notice**” has the meaning given in Schedule 30 – Insurance Trust Agreement.
- 1.50 “**CLA**” means the *Construction Lien Act* (Ontario).
- 1.51 “**Cleaning and Waste Management Services**” means those cleaning and waste management services to be carried out pursuant to the Cleaning and Waste Management Services Specification.
- 1.52 “**Cleaning Services Specification**” means Section 3.7 of Part 6 of Schedule 15 – Output Specifications.
- 1.53 “**Cleaning Services**” means those waste management and recycling services to be carried out pursuant to the Cleaning Services Specification.
- 1.54 “**Commissioning Tests**” means all commissioning tests:
- (a) described in Schedule 14 - Outline Commissioning Program;
 - (b) required by Applicable Law, Canadian and Industry Standards or CSA Standards;
 - (c) recommended by the manufacturer of any part of the Plant, equipment or FF&E; and
 - (d) required to be included in the Final Commissioning Program by the Independent Certifier, the HMQ Commissioning Agent or the HMQ Representative during its development pursuant to Section 24.2 of the Project Agreement.
- 1.55 “**Common Terms Agreement**” means the common terms, intercreditor and collateral trust agreement to be dated on or about March 27, 2015 and made between, among others, Project Co, the Project Co Partners, the Lenders’ Agent, in its capacity as collateral trustee, certain financial institutions, as lenders, and the other lenders party thereto.
- 1.56 “**Compensation Date**” has the meaning given in Schedule 23 - Compensation on Termination.
- 1.57 “**Compensation Event**” has the meaning given in Section 38.1(a) of the Project Agreement.

- 1.58 “**Complex Structure**” means any post-tensioned or pre-tensioned structure that has undergone significant structural alteration making it difficult for personnel at the Site to predict the direction of forces or likely collapse mechanism to be experienced by such structure in connection with any Demolition of all or any part of such structure.
- 1.59 “**Complex Structure Demolition**” means any Demolition:
- (a) where significant structural elements, such as girders, columns, shearwalls or slabs, or Complex Structures are being removed, de-stressed, or altered;
 - (b) where large penetrations are being created through slabs;
 - (c) which 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) 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 Demolition where any apparent or inferable risk associated with the demolition poses a significant risk to workers, the public or adjacent property.
- 1.60 “**Confidant**” has the meaning given in Section 49.6(a)(i) of the Project Agreement.
- 1.61 “**Confidential Information**” means all confidential and proprietary information which is supplied by or on behalf of a Party, whether before or after the date of the Project Agreement.
- 1.62 “**Construction Contract**” means the design-build agreement between Project Co and the Construction Contractor dated on or about the date of the Project Agreement.
- 1.63 “**Construction Contractor**” means [REDACTED].
- 1.64 “**Construction Contractor’s Direct Agreement**” means the direct agreement between HMQ Agencies, Project Co, the Construction Contractor and each of the Construction Guarantors in the form set out in Schedule 5-1 - Construction Contractor’s Direct Agreement.
- 1.65 “**Construction Defect**” has the meaning given in Section 18.15(a)(ii) of the Project Agreement.
- 1.66 “**Construction Document Submittals**” has the meaning given in Section 18.3(c)(ii) of the Project Agreement.
- 1.67 “**Construction Guarantors**” means [REDACTED].

- 1.68 “**Construction Latent Defect**” has the meaning given in Section 18.15(a)(iv) of the Project Agreement.
- 1.69 “**Construction Quality Plan**” means such document included in Schedule 11 – Quality Management.
- 1.70 “**Contamination**” means the presence of any Hazardous Substance in the environment, except Hazardous Substances present in the environment in concentrations below applicable standards as set by Applicable Laws. If Contamination is present in soil, surface water or groundwater, then the soil, surface water or groundwater, as applicable, containing the Contamination shall also be deemed to be Contamination for the purposes of the Project Agreement.
- 1.71 “**Contract Day**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.72 “**Contract Month**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.73 “**Contract Year**” means the period of 12 calendar months that commences on April 1st of each calendar year and ends on the next ensuing March 31st, provided that:
- (a) the first Contract Year shall be such period that commences on the Payment Commencement Date and ends on the next ensuing March 31st; and
 - (b) the final Contract Year shall be such period that commences on the April 1st that precedes the date on which the Project Agreement expires or is terminated, for whatever reason, and ends on the expiry or termination of the Project Agreement.
- 1.74 “**COR Certification**” means, in respect of a person, (a) receipt by such person of its Certificate of Recognition and Letter of Good Standing; or (b) receipt by another person within a group of persons where such other person’s Certificate of Recognition and Letter of Good Standing extends and applies to such person; or (c) the Certificate of Recognition and Letter of Good Standing of an Affiliate where the health and safety management system implemented by such Affiliate is also implemented by the person.
- 1.75 “**COR Program**” means the national safety program known as “The Certificate of Recognition (COR™)”, being a safety program that enables persons to assess their health and safety management systems to manage risks, establish controls, and minimize the incidence of injury and illness to their workers, and being nationally trademarked and endorsed by participating members of the Canadian Federation of Construction Safety Associations, or such other national safety program approved by HMQ Agencies.
- 1.76 “**Countdown Notice**” has the meaning given in Section 24.7(a) of the Project Agreement.
- 1.77 “**CPI**” means CPI-XFET, as published by Statistics Canada from time to time, or failing such publication, such other index as the Parties may agree, or as may be determined in

- accordance with Schedule 27 - Dispute Resolution Procedure, most closely resembles such index.
- 1.78 “**CPI_n**” is the value of CPI on April 1st of the relevant Contract Year “n”, to be determined by reference to the relevant index in the month of February most recently preceding the indexation date.
- 1.79 “**CPI₀**” is the value of CPI on the Base Date, to be determined by reference to the relevant index in the month immediately preceding the Base Date.
- 1.80 “**Crown**” means Her Majesty the Queen in Right of Ontario.
- 1.81 “**CSA Standard**” means, at the applicable time, the Canadian Standards Association standards.
- 1.82 “**CSIS**” means the Canadian Security Intelligence Service.
- 1.83 “**Custodian**” means the person appointed as the Custodian pursuant to the Custody Agreement and as may be permitted pursuant to the Project Agreement.
- 1.84 “**Custody Agreement**” means the custody agreement between Project Co, HMQ Agencies, the Custodian and the Lenders’ Agent in the form set out in Schedule 3 - Custody Agreement.
- 1.85 “**Deduction**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.86 “**Delay Events**” has the meaning given in Section 37.1(a) of the Project Agreement.
- 1.87 “**Demand Maintenance**” means all ad hoc, unscheduled or first response maintenance (other than Preventive Maintenance) to the Site, the Facility, equipment and the FF&E, which includes the response to malfunctions and provision of minor repairs, adjustments and general maintenance as follows:
- (a) first response to equipment malfunctions and assessment of the problem (e.g., operator error, utility problem, minor or major failure), and required response;
 - (b) performance of minor repairs and general maintenance, including filter changes, topping-up fluids, adjustments, resets, clearing blockages, minor carpentry and replacing minor parts such as rollers, wheels, pulley and hoses; and
 - (c) in the case of repairs that cannot be resolved under the immediately preceding subsection, arranging for and overseeing third party service representatives to make necessary repairs provided that Project Co has obtained approval from HMQ Agencies, acting reasonably, for such third party repairs.
- 1.88 “**Demand Requisition**” means a requisition for Demand Maintenance.

- 1.89 “**Demolition**” means the removal of a building or structure, as the case may be, or of any material part of a building or structure.
- 1.90 “**Demolition Default Event**” has the meaning given in Section 9.8(b) of the Project Agreement.
- 1.91 “**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.
- 1.92 “**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.
- 1.93 “**Demolition Requirements**” has the meaning given in Section 9.8(a)(iv) of the Project Agreement.
- 1.94 “**Demolition Specifications**” means those specifications relating to any Demolition prepared by Project Co in accordance with Section 9.8(a)(iv)(A) of this Project Agreement.
- 1.95 “**Demolition Supervisor**” has the meaning given in Section 9.8(a)(ii) of the Project Agreement.
- 1.96 “**Design and Bid Fee**” has the meaning given in the Request for Proposals.
- 1.97 “**Design Data**” means all drawings, reports, documents, plans, software, formulae, calculations and other data prepared by Project Co relating to the design, construction or testing of the Facility, but excluding Intellectual Property Rights of third parties, such as CAD software, that is used only in the process of design and construction.
- 1.98 “**Design Development Submittals**” has the meaning given in Section 18.3(d)(i) of the Project Agreement.
- 1.99 “**Design Quality Plan**” means such document included in Schedule 11 – Quality Management.
- 1.100 “**Design Review Meetings**” has the meaning given in Section 18.5(a) of the Project Agreement.
- 1.101 “**Design Team**” means [REDACTED].
- 1.102 “**Design Workshops**” has the meaning given in Section 18.5(a) of the Project Agreement.

- 1.103 “**Designated Substance Reports**” mean Designated Substances & Hazardous Materials Survey [REDACTED].
- 1.104 “**Detect**” (when used in the GO Transit Design Requirements Manual regarding CCTV) means a figure occupies at least [REDACTED]% of the available screen height.
- 1.105 “**Development Approval**” 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 Facility.
- 1.106 “**Direct Agreements**” means the Construction Contractor’s Direct Agreement and the Service Provider’s Direct Agreement.
- 1.107 “**Direct Cost**” has the meaning given in Schedule 22 -Variation Procedure.
- 1.108 “**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.
- 1.109 “**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.
- 1.110 “**Discount Rate**” has the meaning given in Schedule 23 - Compensation on Termination.
- 1.111 “**Discriminatory Change in Law**” means any Change in Law the effect of which is to discriminate directly against or impose additional Taxes which apply specifically to:

- (a) facilities whose design, construction, financing and facilities management are procured by a contract similar to the Project Agreement in relation to other similar facilities;
- (b) the Facility in relation to other facilities similar to a maintenance and storage facility;
- (c) Project Co in relation to other persons; or
- (d) persons undertaking projects for design, construction, financing and facilities management that are procured by a contract similar to the Project Agreement in relation to other persons undertaking similar projects procured on a different basis,

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

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

1.112 “**Dispute**” has the meaning given in Schedule 27 - Dispute Resolution Procedure.

1.113 “**Dispute Resolution Procedure**” means the procedure set out in Schedule 27 - Dispute Resolution Procedure.

1.114 “**Distribution**” has the meaning given in Schedule 28 - Refinancing.

1.115 “**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.

1.116 “**Elevator Availability Failure**” has the meaning given in Schedule 20 - Payment Mechanism.

1.117 “**Elevator Availability Failure Deduction**” has the meaning given in Schedule 20 - Payment Mechanism.

1.118 “**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 or any part of or the whole of the Facility;
- (ii) causes or may cause damage or harm to property, buildings and/or equipment; or
- (iii) materially interferes with or prejudices or may materially interfere with or prejudice the safe operation of the Facility, any part of the Site, the conduct of Project Operations, the conduct of the Maintenance and Storage Activities or the conduct of the HMQ FM Services;

and which, in the opinion of HMQ Agencies, 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) the police, the armed forces, fire or ambulance services.

1.119 “**Emergency Maintenance Work**” is a type of Unscheduled Maintenance Work and is described in Section 26.5(a) of the Project Agreement.

1.120 “**Emergency Management Services**” means those emergency and fire management services to be carried out pursuant to the Emergency Management Services Specification.

1.121 “**Employee Termination Payments**” has the meaning given in Schedule 23 - Compensation on Termination.

1.122 “**Encumbrance**” means any mortgage, lien, pledge, judgment, execution, charge, security interest, restriction, claim or encumbrance of any nature whatsoever, including claims of the Workplace Safety and Insurance Board, Canada Revenue Agency, and other Governmental Authorities.

1.123 “**Energy**” has the meaning given in Schedule 8– Energy Matters.

1.124 “**Environmental and Sustainability Services**” means those environmental and sustainability services to be carried out pursuant to the Environmental and Sustainability Services Specification.

1.125 “**Environmental and Sustainability Services Specification**” means Section 3.5 of Part 6 of Schedule 15 - Output Specifications.

1.126 “**Environmental Reports**” means [REDACTED].

1.127 “**Equity Capital**” means the aggregate (without double counting) of all subscribed share capital, shareholder loans and other contributed capital of Project Co, excluding, for greater certainty, any amounts advanced to Project Co under the Lending Agreements

which has a fixed return without equity participation, step-up rights or rights to share in Project Co's excess cash flow and a coupon equal to or less than [REDACTED]% of the coupon payable to the Senior Lenders.

- 1.128 **“Equity Commitment Agreement”** means the equity commitment agreement between [REDACTED]
- 1.129 **“Equity IRR”** has the meaning given in Schedule 28 - Refinancing.
- 1.130 **“Equity Sale IRR”** means the Equity IRR calculated to the date of any sale of Equity Capital calculated by taking into account the full Implied Equity Value, together with all Distributions paid in respect of the Equity Capital, and the actual timing of payment of all such amounts.
- 1.131 **“Escalation Factor”** has the meaning given in Schedule 20 - Payment Mechanism.
- 1.132 **“Escrow Account”** has the meaning given in Schedule 24 - Expiry Transition Procedure.
- 1.133 **“Estimate”** has the meaning given in Schedule 22 - Variation Procedure.
- 1.134 **“Estimated Fair Value”** has the meaning given in Schedule 23 - Compensation on Termination.
- 1.135 **“Estimated Increased Maintenance Costs”** has the meaning given in Section 26.3(b) of the Project Agreement.
- 1.136 **“Event”** has the meaning given in Schedule 20 - Payment Mechanism.
- 1.137 **“Excess Equity Gain”** means an amount equal to the greater of zero and the difference between:
- (a) the amount paid in consideration of the percentage of Equity Capital (as at Financial Close) sold in a particular sale of Equity Capital; and
 - (b) the Threshold Equity Sale Amount.
- 1.138 **“Excusing Cause”** has the meaning given in Section 39.1(a) of the Project Agreement.
- 1.139 **“Exempt Refinancing”** has the meaning given in Schedule 28 - Refinancing.
- 1.140 **“Exercise Date”** has the meaning given in Schedule 4 - Lenders' Direct Agreement.
- 1.141 **“Expert”** has the meaning given in Schedule 27 - Dispute Resolution Procedure.
- 1.142 **“Expiry Date”** means the 30th anniversary of the original Scheduled Substantial Completion Date, without taking into account any extensions to such date pursuant to Section 37 of the Project Agreement.

- 1.143 “**Expiry Lifecycle Costs**” has the meaning given in Schedule 24 - Expiry Transition Procedure.
- 1.144 “**Expiry Transition Amount**” has the meaning given in Schedule 24 - Expiry Transition Procedure.
- 1.145 “**Expiry Transition Procedure**” means the procedure for Expiry Transition described in Schedule 24 - Expiry Transition Procedure.
- 1.146 “**Expiry Transition Requirements**” has the meaning given in Schedule 24 - Expiry Transition Procedure.
- 1.147 “**Expiry Transition Security**” has the meaning given in Schedule 24 - Expiry Transition Procedure.
- 1.148 “**Expiry Transition Works**” has the meaning given in Schedule 24 - Expiry Transition Procedure.
- 1.149 “**Expiry Transition Works Costs**” has the meaning given in Schedule 24 - Expiry Transition Procedure.
- 1.150 “**External Track Works**” means, collectively, Track Equipment and Signal, Communications and Yard Systems Equipment, each as defined in Part 6 of Schedule 15 – Output Specifications.
- 1.151 “**Facilities Management Committee**” has the meaning given in Section 12.1(a) of the Project Agreement.
- 1.152 “**Facility**” means:
- (a) all buildings, facilities and other structures;
 - (b) the Plant;
 - (c) all site services, utilities, roadways and parking areas required to support such buildings, facilities and structures;
 - (d) all supporting systems, infrastructure and improvements; and
 - (e) all other works, improvements, and demolitions to occur on the Site,
- in each case required to meet the Output Specifications and the requirements under the Permits, Licences, Approvals and Agreements and whether or not in the course of construction, installation or completion.
- 1.153 “**Facility Condition Report**” has the meaning given in Schedule 24 - Expiry Transition Procedure.

- 1.154 “**Facility Co-ordination Agreement**” means the interface agreement made between Project Co, the Construction Contractor and the Service Provider dated on or about the date of the Project Agreement.
- 1.155 “**Facility Design Acceptability Report**” has the meaning given in Section 18.6(b) of the Project Agreement.
- 1.156 “**Facility Operator**” means [REDACTED].
- 1.157 “**Failure Event**” means a Quality Failure, an Availability Failure, or a Service Failure.
- 1.158 “**Failure Points**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.159 “**Failure Type**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.160 “**FF&E**” means all items of fixtures, fittings, furnishings, chattels and equipment located from time to time at the Facility or the Site which Project Co procures on behalf of [REDACTED] and installs into the Facility in accordance with Section 21 of the Project Agreement and includes the types of items identified in Schedule 21 – FF&E List.
- 1.161 “**FF&E Procurement Documentation**” has the meaning given in Section 21.6(a)(v) of the Project Agreement.
- 1.162 “**FF & E Services**” has the meaning given in Section 3.13 of Part 6 of Schedule 15 – Output Specifications.
- 1.163 “**FF&E Steering Committee**” has the meaning given in Section 21.1(a) of the Project Agreement.
- 1.164 “**Final Commissioning Program**” means the program to be jointly developed and agreed by HMQ Agencies and Project Co in accordance with Section 24.2 of the Project Agreement.
- 1.165 “**Final Completion**” means the completion of the Works in accordance with the Project Agreement, including completion of all Minor Deficiencies, other than any minor work that is seasonal in nature and cannot be completed by the Final Completion Date.
- 1.166 “**Final Completion Certificate**” means the certificate to be issued by the Independent Certifier in accordance with Section 24.11(d) of the Project Agreement.
- 1.167 “**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.
- 1.168 “**Final Completion Notice**” has the meaning given in Section 24.11(b) of the Project Agreement.
- 1.169 “**Final Design Development Submittals**” has the meaning given in Section 18.3(d)(i) of the Project Agreement.

- 1.170 “**Final Facility Condition Report**” has the meaning given in Schedule 24 - Expiry Transition Procedure.
- 1.171 “**Final Minor Deficiencies**” means any defect, deficiencies and items of outstanding work arising from or related to the Remaining Works, including any outstanding Minor Deficiencies, but not including any items of minor work that are seasonal in nature and cannot be completed by the Final Completion Date.
- 1.172 “**Financial Close**” means the first date that funding is available under the Lending Agreements.
- 1.173 “**Financial Close Target Date**” means March 27, 2015, as such date may be extended in accordance with the provisions of the Project Agreement.
- 1.174 “**Financial Model**” means the computer spreadsheet model for the Project incorporating statements of Project Co’s cashflows including all expenditure, revenues, financing and taxation of the Project Operations together with the profit and loss accounts and balance sheets for Project Co throughout the Project Term accompanied by details of all assumptions, calculations and methodology used in their compilation and any other documentation necessary or desirable to operate the model.
- 1.175 “**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 save and except for the HMQ Security Deposits.
- 1.176 “**FIPPA**” means the *Freedom of Information and Protection of Privacy Act* (Ontario).
- 1.177 “**Five Year Maintenance Plan**” means the rolling plan to be prepared by or on behalf of Project Co for the maintenance of the Facility in accordance with Part 6 of Schedule 15 - Output Specifications and the other provisions of the Project Agreement during each five year period.
- 1.178 “**FM Help Desk**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.179 “**FM Help Desk Services**” means those help desk services to be carried out pursuant to the FM Help Desk Services Specification.
- 1.180 “**FM Help Desk Services Specification**” means Section 3.3 of Part 6 of Schedule 15 – Output Specifications.
- 1.181 “**Force Majeure**” has the meaning given in Section 41.1(a) of the Project Agreement.
- 1.182 “**Fuel Storage**” means the area and specific facilities for the storage and dispensing of bulk diesel and other fuels for use in connection with the operation of the GO Transit rail system and includes the fuel pumps and associated equipment and controls.

- 1.183 “**Functional Area**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.184 “**Functional Part**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.185 “**Functional Unit**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.186 “**Gainshare Adjustment**” has the meaning given in Schedule 20 - Payment Mechanism/Schedule 8 – Energy Matters.
- 1.187 “**General Management Services**” means those general management services to be carried out pursuant to the General Management Services Specification.
- 1.188 “**General Management Services Specification**” means Section 3.2 of Part 6 of Schedule 15 - Output Specifications.
- 1.189 “**Geotechnical Reports**” means [REDACTED].
- 1.190 “**Gigajoule**” has the meaning given in Schedule 8 – Energy Matters.
- 1.191 “**GO Construction Management Office Construction Safety Management Program**” means “GO CMO Construction Safety Management Program” prepared by GO Transit dated May 1, 2014.
- 1.192 “**Good Industry Practice**” means using standards, practices, methods and procedures to a good commercial standard, conforming to Applicable Law and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a qualified, skilled and experienced person engaged in a similar type of undertaking under the same or similar circumstances.
- 1.193 “**Government Entity**” means any one or more of the Province, MEDEI, IO and Metrolinx.
- 1.194 “**Government Sensitive Information**” means any information which is designated as such by the Province from time to time, or which a reasonable person, having regard to the circumstances, would regard as sensitive, including (i) all confidential information that is designated as such by Applicable Law, (ii) all information that relates to the security systems of the Facility and of maintenance and storage facilities in Ontario generally, (iii) any record, the disclosure of which could be injurious to the interests of the Province; and (iv) any information that discloses the identity or whereabouts of a police informant or undercover officer.
- 1.195 “**Governmental Authority**” means any federal, provincial, territorial, regional, municipal or local governmental authority, quasi-governmental authority, court, government or self-regulatory organization, commission, board, tribunal, organization, or any regulatory, administrative or other agency, or any political or other subdivision, department, or branch of any of the foregoing, having legal jurisdiction in any way over HMQ Agencies, any aspect of the performance of the Project Agreement or the operation

of the Facility, the Maintenance and Storage Activities or the HMQ FM Services, in each case to the extent it has or performs legislative, judicial, regulatory, administrative or other functions within its jurisdiction.

- 1.196 “**Grounds**” means all external elements of the Facility.
- 1.197 “**H&S Certification Default Event**” has the meaning given in Section 9.6(b)(i) of the Project Agreement.
- 1.198 “**H&S Conviction**” has the meaning given in Section 42.1(a)(xix) of the Project Agreement.
- 1.199 “**H&S Inspection**” has the meaning given in Section 13(b) of the Project Agreement.
- 1.200 “**H&S Inspection Report**” has the meaning given in Section 13(b) of the Project Agreement.
- 1.201 “**Habitat Conservation Area Lands**” means the lands identified as “Habitat Conservation Area” in Exhibit 1 to this Schedule 1 – Definitions and Interpretation.
- 1.202 “**Hazardous Substances**” means any contaminant, pollutant, dangerous substance, toxic substance, liquid waste, industrial waste, gaseous waste, hauled liquid waste, hazardous material, or hazardous substance as defined or identified pursuant to any Applicable Law.
- 1.203 “**Health and Safety Certification**” means, in respect of a person, (a) such person having received its COR Certification or its OHSAS 18001 Accreditation, or (b) such person is a member of a group of persons to which a COR Certification extends and applies, or (c) such person is an Affiliate of a person who has received a COR Certification, and such person has implemented the same health and safety management system as its Affiliate.
- 1.204 “**Health and Safety Certification Maintenance Plan**” has the meaning given in Section 9.6(b)(iv)(B) of the Project Agreement.
- 1.205 “**Health and Safety Certification Reinstatement Plan**” has the meaning given in Section 9.6(b)(iii)(B) of the Project Agreement.
- 1.206 “**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.
- 1.207 “**Hedging Agreement**” means an agreement relating to interest rate risk entered into by Project Co and the Hedge Provider(s) pursuant to the Lending Agreements.
- 1.208 “**Heritage Guidelines and Protocols**” means those heritage guidelines established by Applicable Law.

- 1.209 “**HMQ**” means Her Majesty the Queen in Right of Ontario as represented by the Minister of Economic Development, Employment and Infrastructure, as represented by Ontario Infrastructure and Lands Corporation, a non-share capital corporation amalgamated and continued under the *Ontario Infrastructure and Lands Corporation Act, 2011*, S.O., c.9, Schedule 32, as amended.
- 1.210 “**HMQ Agencies**” means, collectively (i) HMQ and (ii) Metrolinx.
- 1.211 “**HMQ Commissioning**” means the commissioning activities to be carried out by any one or more of HMQ Agencies, HMQ Occupants and/or Non-HMQ Occupants in accordance with the Final Commissioning Program.
- 1.212 “**HMQ Commissioning Agent**” means the person appointed by HMQ Agencies as its commissioning agent.
- 1.213 “**HMQ Commissioning Period**” means the period during which any one or more of HMQ Agencies, HMQ Occupants and/or Non-HMQ Occupants are performing the HMQ Commissioning.
- 1.214 “**HMQ Commissioning Tests**” means all commissioning tests required to be performed by any one or more of HMQ Agencies, HMQ Occupants and/or Non-HMQ Occupants pursuant to the Final Commissioning Program.
- 1.215 “**HMQ Default Termination Sum**” has the meaning given in Schedule 23 - Compensation on Termination.
- 1.216 “**HMQ Design Team**” means any of HMQ Agencies, their agents, contractors and subcontractors of any tier and its or their directors, officers and employees, and other persons engaged in respect of design reviews, design evaluation, or design consultation processes with respect to the Facility, the HMQ FM Services and/or the Maintenance and Storage Activities on behalf of HMQ Agencies, but excluding Project Co and any Project Co Party.
- 1.217 “**HMQ Event of Default**” has the meaning given in Section 43.1(a) of the Project Agreement.
- 1.218 “**HMQ FM Services**” means all services and activities, other than Maintenance and Storage Activities, provided or performed at the Facility by HMQ Agencies or an HMQ Occupant or any contractor, employee or other person performing such services or activities at the Facility on behalf of HMQ Agencies or an HMQ Occupant from time to time.
- 1.219 “**HMQ Occupants**” means any of the following persons:
- (a) all Metrolinx Staff; and
 - (b) all contractors of Metrolinx and any subcontractors of such contractors of any tier;

while attending at the Facility or the Site in their official capacity.

- 1.220 “**HMQ Party**” means any of IO and Metrolinx and their respective agents, contractors and subcontractors of any tier and its or their directors, officers and employees, and other persons engaged in respect of the Maintenance and Storage Activities or the HMQ FM Services, but excluding Project Co and any Project Co Party, and the “**HMQ Parties**” shall be construed accordingly.
- 1.221 “**HMQ Permits, Licences, Approvals and Agreements**” means those permits, licences, approvals and agreements including those Development Approvals and Development Agreements which are the responsibility of HMQ Agencies to obtain as set out in Appendix 1 – Permits, Licences, Approvals and Agreements to this Schedule 1 – Definitions and Interpretation.
- 1.222 “**HMQ Project Documents**” has the meaning given in Schedule 4 – Lenders' Direct Agreement.
- 1.223 “**HMQ Representative**” means the person designated as such by HMQ Agencies on or prior to the date of Financial Close and any permitted replacement.
- 1.224 “**HMQ Security Deposits**” means any and all letters of credit, securities, prepaid fees, deposits and similar instruments paid or posted by, or on behalf of, HMQ Agencies in connection with the Project Operations including, but not limited to, those instruments listed in Appendix 2 –HMQ Security Deposits of this Schedule 1 – Definitions and Interpretation.
- 1.225 “**HMQ Service User**” means any person lawfully present at the Facility for any purpose, including to make use of the Maintenance and Storage Activities and/or Facility or any other services or activities provided or performed at the Facility by Government Entities, from time to time.
- 1.226 “**HMQ Trade-Marks**” means any and all Trade-Marks used by HMQ Agencies in any manner whatsoever.
- 1.227 “**HMQ Work**” has the meaning given in Schedule 22 - Variation Procedure.
- 1.228 “**Hopkins Street Lands**” means the lands identified as [REDACTED].
- 1.229 “**HST**” means the value-added tax imposed pursuant to Part IX of the *Excise Tax Act* (Canada), and any successor legislation thereto.
- 1.230 “**HVAC**” means the systems and equipment necessary to provide heating, ventilation and air conditioning.
- 1.231 “**Identify**” (when used in the GO Transit Design Requirements Manual, regarding CCTV) means when a figure occupies at least [REDACTED]% of the screen height.

- 1.232 “**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.
- 1.233 “**Implied Equity Value**” means the amount paid in consideration of a percentage of Equity Capital divided by the percentage of Equity Capital (as at Financial Close) sold in a particular sale of Equity Capital.
- 1.234 “**Improvements**” means structures, buildings, installations, fixtures, services and other such improvements.
- 1.235 “**Indemnifiable Taxes**” has the meaning given in Section 32.6(b) of the Project Agreement.
- 1.236 “**Indemnifier**” has the meaning given in Section 53.3(a) of the Project Agreement.
- 1.237 “**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.
- 1.238 “**Independent Certifier Agreement**” means the contract entered into between Project Co, HMQ Agencies and the Independent Certifier in substantially the form attached hereto as Schedule 6 - Independent Certifier Agreement.
- 1.239 “**Independent Inspector**” has the meaning given in Schedule 24 - Expiry Transition Procedure.
- 1.240 “**Indirect Losses**” has the meaning given in Section 54.1(a) of the Project Agreement.
- 1.241 “**Innovation Proposal**” has the meaning given in Section 36.2(b) of the Project Agreement.
- 1.242 “**Insurance Adjustment**” has the meaning given in Section 7.3 of Schedule 25 - Insurance and Performance Security Requirements.
- 1.243 “**Insurance Cost Differential**” has the meaning given in Section 7.1 of Schedule 25 - Insurance and Performance Security Requirements.
- 1.244 “**Insurance Review Date**” has the meaning given in Section 7.1 of Schedule 25 - Insurance and Performance Security Requirements.
- 1.245 “**Insurance Review Period**” has the meaning given in Section 7.1 of Schedule 25 - Insurance and Performance Security Requirements.

- 1.246 “**Insurance Trust Agreement**” means the insurance trust agreement to be entered into between HMQ Agencies, the Lenders’ Agent, Project Co and the Account Trustee in the form set out in Schedule 30 - Insurance Trust Agreement.
- 1.247 “**Intellectual Property**” means in connection with a specified subject matter, on a worldwide basis, all registered or unregistered Trade-Marks, trade names, patents, copyrights, trade secrets, designs, rights of publicity, mask work rights, utility models and other industrial or intangible property rights of a similar nature, all grants and registrations worldwide in connection with the foregoing and all other rights with respect thereto existing other than pursuant to grant or registration; all applications for any such grant or registration, all rights of priority under international conventions to make such applications and the right to control their prosecution, and all amendments, continuations, divisions and continuations-in-part of such applications; and all corrections, reissues, patents of addition, extensions and renewals of any such grant, registration or right.
- 1.248 “**Intellectual Property Rights**” means all Intellectual Property in or associated with the Project Data and all Intellectual Property which, or the subject matter of which, is at any time before or after the date of the Project Agreement created, brought into existence, acquired, used or intended to be used by Project Co, any Project Co Party 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 Facility (excluding Intellectual Property Rights of third parties, such as CAD software, that is used only in the process of design and construction);
 - (b) the Project Co Services, including the operation, maintenance, improvement and testing of the Facility;
 - (c) any other Project Operations; or
 - (d) the Project Agreement.
- 1.249 “**Invoice Date**” has the meaning given in Schedule 23 - Compensation on Termination.
- 1.250 “**IO**” or “**Infrastructure Ontario**” means Ontario Infrastructure and Lands Corporation, a non-share capital corporation continued and amalgamated under the *Ontario Infrastructure and Lands Corporation Act, 2011*, S.O. 2011, c. 9, Schedule 32, as amended and includes any successors thereto.
- 1.251 “**IPFP Framework**” has the meaning given in the recitals to the Project Agreement.
- 1.252 “**Issued For Construction**” or “**IFC**” has the meaning given in Section 3.2 of Appendix A of Schedule 10 - Review Procedure.
- 1.253 “**Irrecoverable Tax**” has the meaning given in Section 32.3(b) of the Project Agreement.

- 1.254 “**Joint Insurance Cost Report**” has the meaning given in Section 7.2 of Schedule 25 - Insurance and Performance Security Requirements.
- 1.255 “**Joint Technical Review**” means an assessment conducted by the Parties every 5 years to assess the performance and effectiveness of both the Preventive Maintenance and lifecycle works completed over the previous period and the work planned and scheduled for the upcoming five-year period in accordance with the Lifecycle Replacement Schedule and Section 3.2.3(p) of Part 6 of Schedule 15 – Output Specifications.
- 1.256 “**Jointly Developed Materials**” has the meaning given in Section 48.4(a) of the Project Agreement.
- 1.257 “**Junior Debt Amount**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.258 “**Junior Debt Makewhole**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.259 “**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.
- 1.260 “**Junior Lenders**” means [REDACTED].
- 1.261 “**LEED**” means Leadership in Energy & Environmental Design.
- 1.262 “**LEED Rating System**” means CaGBC’s Leadership in Energy and Environmental Design (LEED) Green Building Rating System For New Construction and Major Renovations (LEED® Canada-NC) 2009.
- 1.263 “**LEED Gold Rating**” means the achievement of a “Gold” rating from the CaGBC, with respect to the LEED Rating System.
- 1.264 “**LEED Silver Rating**” means the achievement of a “Silver” rating from the CaGBC, with respect to the LEED Rating System.
- 1.265 “**Lenders**” means all or any of the persons acting at all times at arm’s length to Project Co and each Project Co Party who provide financing to Project Co in respect of the Project Operations under the Lending Agreements, including without limitation the Senior Lenders and the Junior Lenders, and where the context so permits, prospective financiers or lenders, and for greater clarity, excludes any Affiliate of Project Co or of a Project Co Party.
- 1.266 “**Lenders’ Agent**” has the meaning given in Schedule 4 - Lenders’ Direct Agreement.

- 1.267 “**Lenders’ Direct Agreement**” means the direct agreement to be entered into between HMQ Agencies, the Lenders’ Agent and Project Co in the form set out in Schedule 4 - Lenders’ Direct Agreement.
- 1.268 “**Lending Agreements**” has the meaning given in Schedule 23 - Compensation on Termination.
- 1.269 “**Letter of Good Standing**” means the document issued by IHSA to a person confirming that the internal maintenance audit performed by such person regarding its health and safety management systems has been approved by ISHA, and that such person has successfully completed such internal audit pursuant to the terms and conditions of the COR Program.
- 1.270 “**Lifecycle Payment**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.271 “**Lifecycle Replacement and Refurbishment Services**” means those lifecycle replacement and refurbishment services to be carried out pursuant to the Lifecycle Replacement and Refurbishment Services Specification.
- 1.272 “**Lifecycle Replacement and Refurbishment Services Specification**” means Section 2.2 of Part 6 of Schedule 15 – Output Specifications.
- 1.273 “**Lifecycle Replacement Schedule**” means a program for the planned or scheduled replacement, refreshment and/or refurbishment of building systems, equipment and fixtures that have reached the end of their useful service life during the Project Term, as set out in Appendix A to Schedule 24 - Expiry Transition Procedure.
- 1.274 “**Liquid Market**” has the meaning given in Schedule 23 - Compensation on Termination.
- 1.275 “**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.
- 1.276 “**Load Test Cell**” means an exterior track location where stationary locomotives may be operated up to their full power output for extended periods of time in order to test the output and control systems of the locomotives.
- 1.277 “**Longstop Date**” has the meaning given in Section 42.1(a)(ii) of the Project Agreement.
- 1.278 “**Low Cost Measures**” has the meaning given in Schedule 8 – Energy Matters.
- 1.279 “**Main Building**” means the largest building on the Site in which the progressive maintenance bays, administration areas, heavy and light locomotive shops, heavy and light coach shops, stores, yard control, crew centre and other specific functions are located.

- 1.280 “**Maintenance and Storage Activities**” means the operational activities performed at the Facility by HMQ Agencies or a third party designated by HMQ Agencies.
- 1.281 “**Maintenance Work**” means any work performed or required to be performed after Substantial Completion for maintenance or repair of the Facility in accordance with the requirements of the Project Agreement.
- 1.282 “**Major Quality Failure**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.283 “**Major Quality Failure Deduction**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.284 “**Major Service Failure**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.285 “**Major Service Failure Deduction**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.286 “**Mandatory Refinancing**” has the meaning given in Schedule 28 – Refinancing.
- 1.287 “**Market Value Availability Deduction Amount**” has the meaning given in Schedule 23 - Compensation on Termination.
- 1.288 “**Material Services**” has the meaning given in Section 3.15 of Part 6 of Schedule 15 - Output Specifications.
- 1.289 “**Maximum Service Payment**” has the meaning given in Schedule 23 - Compensation on Termination.
- 1.290 “**MEDEI**” means Her Majesty the Queen in Right of Ontario as represented by the Minister of Economic Development, Employment and Infrastructure, and includes any successors thereto or persons exercising delegated power under the Minister of Economic Development, Employment and Infrastructure’s authority.
- 1.291 “**Medical Contamination**” means a disease carrying agent which cleaning and prevention of infection or contamination techniques in use in accordance with Good Industry Practice and the Project Agreement cannot substantially prevent or cannot substantially remove with the result that:
- (a) it is unsafe to admit HMQ Occupants, Non-HMQ Occupants and HMQ Service Users to the relevant area or to use the area for the purpose for which it is intended; and
 - (b) the area cannot be made safe for the admission of HMQ Occupants, Non-HMQ Occupants and HMQ Service Users.
- 1.292 “**Medium Quality Failure**” has the meaning given in Schedule 20 - Payment Mechanism.

- 1.293 “**Medium Quality Failure Deduction**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.294 “**Medium Service Failure**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.295 “**Medium Service Failure Deduction**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.296 “**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. c.48 and includes any successors thereto.
- 1.297 “**Metrolinx Lands**” means:
- (a) until and including November 30, 2016, the lands, including all Improvements thereon or therein, which are identified in the following PINs:
 - (i) [REDACTED]; and
 - (b) from and after December 1, 2016, the lands described in (a) together with the Hopkins Street Lands.
- 1.298 “**Metrolinx Staff**” means all persons who are employed or engaged by Metrolinx in connection with the conduct of Maintenance and Storage Activities by Metrolinx at or in connection with the Facility during the Project Term while attending at the Facility or the Site in their official capacity.
- 1.299 “**Minimum Agreed Availability Conditions**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.300 “**Minimum Unavailability Deduction**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.301 “**Mini-Perm Financing**” has the meaning given in Schedule 28 - Refinancing.
- 1.302 “**Minor Deficiencies**” means any defects, deficiencies and items of outstanding work (including in relation to seasonal work) arising from or related to the work required to achieve Substantial Completion and that would not materially impair HMQ Agencies’ use and enjoyment of the Facility (including the HMQ Commissioning) or the performance the HMQ FM Services or the performance of the Project Co Services by Project Co.
- 1.303 “**Minor Deficiencies List**” has the meaning given in Section 24.8(a) of the Project Agreement.
- 1.304 “**Minor Quality Failure**” has the meaning given in Schedule 20 - Payment Mechanism.

- 1.305 “**Minor Quality Failure Deduction**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.306 “**Minor Service Failure**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.307 “**Minor Service Failure Deduction**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.308 “**Monitor**” (when used in the GO Transit Design Requirements Manual, regarding CCTV) means a figure occupies at least [REDACTED]% of the screen height.
- 1.309 “**Monitoring Notice**” has the meaning given in Section 29.4(a) of the Project Agreement.
- 1.310 “**Monthly Previously Paid HST Amount**” means, if applicable, a monthly HST amount to be determined as provided for below, which in the aggregate is equal to the amount of the Section 32.1(c) Payment. The amount of each Monthly Previously Paid HST Amount shall be:
- (a) the amount of the Section 32.1(c) Payment amortized on a straight line basis over the Monthly Service Payments due over the remainder of the Operational Term following the payment of the Section 32.1(c) Payment, subject to an alternative basis on which to amortize the remaining unapplied Section 32.1(c) Payment as provided for by Applicable Law in which case HMQ Agencies shall determine the Monthly Previously Paid HST Amount in accordance with such Applicable Law, provided that HMQ Agencies may, at any time, proceed to obtain an advance ruling under the *Excise Tax Act* (Canada) (or rely upon an existing advance ruling under the *Excise Tax Act* (Canada)) in respect to some other basis for amortizing the remaining unapplied Section 32.1(c) Payment over the Monthly Service Payments due over the remainder of the Operational Term, and in such event, the remaining unapplied Section 32.1(c) Payment may be amortized over the Monthly Service Payments in a manner provided for in the advance ruling if HMQ Agencies so determines in their sole discretion;
 - (b) communicated by HMQ Agencies to Project Co in writing at the same time that HMQ Agencies pays Project Co the Section 32.1(c) Payment; and
 - (c) credited to HMQ Agencies in each Monthly Service Payment invoice sent by Project Co to HMQ Agencies following the payment of the Section 32.1(c) Payment.
- 1.311 “**Monthly Service Payment**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.312 “**MSDS**” means the material safety data sheets prescribed by the applicable WHMIS legislation.

- 1.313 “**New Agreement**” has the meaning given in Schedule 23 - Compensation on Termination.
- 1.314 “**New Project Co**” has the meaning given in Schedule 23 - Compensation on Termination.
- 1.315 “**No Cost Measures**” means energy saving measures, including those related to good housekeeping, involving no material additional expenditure and/or no Capital Expenditure.
- 1.316 “**No Default Payment Compensation Amount**” means, [REDACTED].
- 1.317 “**Non-Default Termination Sum**” has the meaning given in Schedule 23 - Compensation on Termination.
- 1.318 “**Non HMQ Occupants**” means an occupant of the Facility other than the HMQ Occupants and Project Co Parties, including any other persons authorized by HMQ Agencies to occupy the Facility, while attending at the Facility or the Site in their official capacity.
- 1.319 “**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).
- 1.320 “**Normal Wear and Tear**” means wear and tear that is reasonable given the use and age of the Facility (notwithstanding that any furniture, decorative fittings, finishes (including paintwork, fabric and special finishes), floor coverings and soft furnishings would be obsolete on the Expiry Date, but is still functional and operable), and consistent with wear and tear that could reasonably be expected to exist at a facility similar to the Facility, operating in a similar environment and similar circumstances and of a similar age, but does not include any degradation in the functionality or operability of the Facility, including furniture, decorative fittings, finishes (including paintwork, fabric and special finishes), floor coverings and soft furnishings (even if obsolete on the Expiry Date) so that the Facility or any element of the Facility (subject to the exceptions specified in Section 2.2 of Schedule 24 - Expiry Transition Procedure) fails to meet the Output Specifications, or fails to comply with Applicable Law.
- 1.321 “**Notice**” has the meaning given in Section 58.1(a) of the Project Agreement
- 1.322 “**Notice of Dispute**” has the meaning given in Schedule 27 - Dispute Resolution Procedure.
- 1.323 “**Occupancy Permit**” means all Permits, Licences, Approvals and Agreements required for the occupancy of the Facility as a maintenance and storage facility in compliance with Applicable Law.

- 1.324 “**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.
- 1.325 “**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.
- 1.326 “**OCPM**” has the meaning given in Section 20.5(b) of the Project Agreement.
- 1.327 “**Operational Term**” means the period from the Substantial Completion Date until the end of the Project Term.
- 1.328 “**Outline Commissioning Program**” means the schedule setting out the standards, specifications, procedures and other requirements for the performance and completion of the commissioning activities of the Parties outlined in Schedule 14 - Outline Commissioning Program.
- 1.329 “**Output Specifications**” means Schedule 15 - Output Specifications of the Project Agreement.
- 1.330 “**Painshare Adjustment**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.331 “**Parking Services**” means those parking services to be carried out pursuant to the Parking Services Specification.
- 1.332 “**Parking Services Specification**” has the meaning given in Section 3.11 of Part 6 of Schedule 15 – Output Specifications.
- 1.333 “**Party**” means either HMQ Agencies or Project Co, and “**Parties**” means collectively HMQ Agencies and Project Co, but, for greater certainty, such definitions do not include MEDEI.
- 1.334 “**Party Representative**” and “**Party Representatives**” have the meanings given in Schedule 27 - Dispute Resolution Procedure.
- 1.335 “**Payment Adjustment Report**” has the meaning given in Section 31.6(j)(ii) of the Project Agreement.
- 1.336 “**Payment Certifier**” means the DBA Payment Certifier under the Construction Contract.
- 1.337 “**Payment Commencement Date**” means the date that is 2 Business Days after the Substantial Completion Date.
- 1.338 “**Payment Compensation Amount**” means, [REDACTED].
- 1.339 “**Payment Mechanism**” means Schedule 20 – Payment Mechanism.

- 1.340 “**Payment Periods**” means the payment periods of one calendar month (as adjusted in this definition) established by HMQ Agencies for each Contract Year, provided that the first Payment Period in the first Contract Year, and the last Payment Period in the last Contract Year may be a shorter period as a result of the timing of the Payment Commencement Date and the Expiry Date within the Payment Periods otherwise established in accordance with the foregoing.
- 1.341 “**Performance Audit**” has the meaning given in Section 26.8(a) of the Project Agreement.
- 1.342 “**Performance Guarantees**” means the guarantees to Project Co in respect of the Construction Contract and the Service Contract provided by the Construction Guarantors and the Service Guarantor, respectively.
- 1.343 “**Performance Indicator**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.344 “**Performance Monitoring**” means those performance monitoring services to be carried out pursuant to Section 3.12.5 of Part 6 of Schedule 15 - Output Specifications.
- 1.345 “**Performance Monitoring Period**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.346 “**Performance Monitoring Program**” has the meaning given in Section 3.2.3(c)(ii) of Part 6 of Schedule 15 - Output Specifications.
- 1.347 “**Performance Monitoring Report**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.348 “**Performance Security**” means the performance security required pursuant to Article 19 of Schedule 25 - Insurance and Performance Security Requirements.
- 1.349 “**Performance Standards Regulation**” means Ontario Regulation 260/08 made under the *Professional Engineers Act* (Ontario).
- 1.350 “**Permanent Repair**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.351 “**Permanent Repair Deadline**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.352 “**Permits, Licences, Approvals and Agreements**” means, collectively, the HMQ Permits, Licences, Approvals and Agreements and the Project Co Permits, Licences, Approvals and Agreements.
- 1.353 “**Permitted Borrowing**” means:
- (a) any advance to Project Co under the Lending Agreements;

- (b) any additional financing approved by HMQ Agencies in accordance with Section 1.9 of Schedule 22 - Variation Procedure to the Project Agreement; and
 - (c) any amendment, waiver or exercise of a right under the Lending Agreements made during the Step-In Period that does not increase HMQ Agencies' liabilities under the Project Agreement whether actual or contingent, present or future, known or unknown.
- 1.354 **“Personal Information”** means all personal information (as the term **“personal information”** is defined in the *Personal Information Protection and Electronic Documents Act* (Canada)) in the custody or control of Project Co or its Project Co Parties other than personal information of the employees of Project Co or its Project Co Parties and other than personal information that is wholly unrelated to the Project Operations and not derived directly or indirectly from HMQ Agencies in respect of the Project.
- 1.355 **“Pest Control Services”** means those pest control services to be carried out pursuant to the Pest Control Services Specification.
- 1.356 **“Pest Control Services Specification”** has the meaning given in Section 3.10 of Part 6 of Schedule 15 – Output Specifications.
- 1.357 **“Planning, Design & Compliance Consultant”** means a consultant to HMQ Agencies to act as an advocate for HMQ Agencies throughout the design and construction stage of the Project.
- 1.358 **“Plant”** means all buildings, building services, infrastructure, building fabric, and mechanical and electrical services, which are required to meet the operational needs of HMQ Agencies as defined in Schedule 15 - Output Specifications.
- 1.359 **“Plant Services”** means those plant services to be carried out pursuant to the Plant Services Specification.
- 1.360 **“Plant Services Information Management”** has the meaning given in Section 2.1 of Part 6 of Schedule 15 – Output Specifications.
- 1.361 **“Plant Services Specification”** has the meaning given in Section 2.1 of Part 6 of Schedule 15 – Output Specifications.
- 1.362 **“Post Termination Service Amount”** has the meaning given in Schedule 23 - Compensation on Termination.
- 1.363 **“Pre-Existing Environmental Site Conditions”** means the environmental condition of the Site as set out in the Environmental Reports and Designated Substance Reports.
- 1.364 **“Pre-Final Design Development Submittals”** has the meaning given in Section 18.3(d)(i) of the Project Agreement

- 1.365 “**Preventive Maintenance**” means all maintenance, lifecycle replacement and other work which Project Co is to perform in accordance with the Project Agreement, including the Output Specifications and the Preventive Maintenance Plan, and the performance of any replacement, refreshment and/or refurbishment of building systems, equipment and fixtures in accordance with the Lifecycle Replacement Schedule.
- 1.366 “**Preventive Maintenance Plan**” means the plan to be prepared by or on behalf of Project Co for the maintenance of the Facility in accordance with Part 6 of Schedule 15 - Output Specifications and the other provisions of the Project Agreement during each Contract Year, which plan shall be based, in part, on the Project Co Proposal Extracts.
- 1.367 “**Prohibited Act**” has the meaning given in Section 57.1(a) of the Project Agreement.
- 1.368 “**Prohibited Acts Termination Sum**” has the meaning given in Schedule 23 - Compensation on Termination.
- 1.369 “**Project**” has the meaning given in the recitals to the Project Agreement.
- 1.370 “**Project Agreement**” has the meaning given in the recitals to the Project Agreement.
- 1.371 “**Project Agreement Arbitration**” has the meaning given in Schedule 27 - Dispute Resolution Procedure.
- 1.372 “**Project Co**” means [REDACTED].
- 1.373 “**Project Co Commissioning**” means the commissioning activities to be carried out by Project Co prior to the issuance of the Substantial Completion Certificate in accordance with the Final Commissioning Program.
- 1.374 “**Project Co Commissioning Coordinator**” means the person appointed by Project Co as its commissioning agent.
- 1.375 “**Project Co Commissioning Tests**” means all Commissioning Tests required to be performed by Project Co pursuant to the Final Commissioning Program.
- 1.376 “**Project Co Event of Default**” has the meaning given in Section 42.1(a) of the Project Agreement.
- 1.377 “**Project Co Group**” means Project Co and each of the Project Partners and any person or group of persons, who, either individually or collectively, have Direct or Indirect Power or Control of Project Co or any of the Project Co Partners.
- 1.378 “**Project Co HR Policy**” has the meaning given in Section 27.16(a) of the Project Agreement.
- 1.379 “**Project Co Partners**” means [REDACTED].

- 1.380 “**Project Co Partnership Agreement**” means the amended and restated partnership agreement of Project dated on or about the date of this Project Agreement.
- 1.381 “**Project Co Party**” means:
- (a) the Construction Contractor;
 - (b) the Service Provider;
 - (c) any person engaged by Project Co, the Construction Contractor, and/or the Service Provider from time to time as may be permitted by the Project Agreement to procure or manage the provision of the Project Operations (or any of them); and
 - (d) in respect of each of the above, their subcontractors of any tier, agents, employees, officers and directors, and “**Project Co Parties**” shall be construed accordingly.
- 1.382 “**Project Co Permits, Licences, Approvals and Agreements**” means all permissions, consents, approvals, certificates, permits, licences, agreements and authorizations to be obtained by Project Co in accordance with the Project Agreement and as required by Applicable Law, and all necessary consents and agreements from and with any third parties (including all Development Approvals and Development Agreements and the approval of the Fire Marshal of Ontario) needed to perform the Project Operations in accordance with the Project Agreement excluding any HMQ Permits, Licences, Approvals and Agreements.
- 1.383 “**Project Co Proposal Extracts**” means the documents attached as Schedule 13 - Project Co Proposal Extracts.
- 1.384 “**Project Co Representative**” means the person designated as such by Project Co on or prior to the date of the Project Agreement and any permitted replacement.
- 1.385 “**Project Co Services**” means the services to be performed by Project Co and referred to in Part 6 of Schedule 15 Output Specifications, as such services may from time to time be varied in accordance with the Project Agreement, but specifically excluding the services performed by the Facility Operator and the Maintenance and Storage Activities
- 1.386 “**Project Co Variation Notice**” has the meaning given in Schedule 22 - Variation Procedure.
- 1.387 “**Project Data**” means:
- (a) all Design Data;
 - (b) all drawings, reports, documents, plans, software, formulae, calculations and other data relating to the provision of the Project Co Services; and

- (c) any other materials, documents and/or data acquired, brought into existence or used in relation to the Project Operations or the Project Agreement,
- other than the Jointly Developed Materials and Background Information and other than Intellectual Property Rights of third parties, such as CAD software, that is used only in the process of design and construction.
- 1.388 “**Project Documents**” means the Ancillary Documents and the Lending Agreements.
- 1.389 “**Project Insurance Change**” has the meaning given in Section 7.1 of Schedule 25 - Insurance and Performance Security Requirements.
- 1.390 “**Project Operations**” means:
- (a) the performance of the Works;
 - (b) the delivery of the Project Co Services; and
 - (c) the performance of all other obligations of Project Co under the Project Agreement.
- 1.391 “**Project Term**” means the period commencing on the date of the Project Agreement and expiring at midnight on the Termination Date.
- 1.392 “**Proprietor**” has the meaning given in Section 49.6(a) of the Project Agreement.
- 1.393 “**Province**” means Her Majesty the Queen in Right of Ontario.
- 1.394 “**Province Persons**” mean HMQ Parties, HMQ Occupants, Non-HMQ Occupants, Government Entities, and, while attending in their official capacity at the Facility or the Site, any of the following:
- (c) any entity to which authority is designated pursuant to Section 59.1 and any agents and employees of any such entity; and
 - (d) contractors of HMQ Agencies or of any entity to which authority is delegated pursuant to Section 59.1 and subcontractors of any tier and its or their directors, officers and employees,
- but excluding Project Co and any Project Co Party.
- 1.395 “**Qualification Criteria**” has the meaning given in Schedule 23 - Compensation on Termination.
- 1.396 “**Qualifying Bank**” has the meaning in Schedule 28 - Refinancing.
- 1.397 “**Qualifying Bank Transaction**” has the meaning in Schedule 28 - Refinancing.

- 1.398 “**Qualifying Refinancing**” has the meaning given in Schedule 28 - Refinancing.
- 1.399 “**Qualifying Tender**” has the meaning given in Schedule 23 - Compensation on Termination.
- 1.400 “**Qualifying Tenderer**” has the meaning given in Schedule 23 - Compensation on Termination.
- 1.401 “**Quality Failure**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.402 “**Quality Failure Deduction**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.403 “**Quality Plans**” has the meaning given in Section 13.1(a) of the Project Agreement.
- 1.404 “**Recognize**” (when used in the GO Transit Design Requirements Manual, regarding CCYV) means when a figure occupies at least [REDACTED]% of screen height.
- 1.405 “**Record Drawings**” means signed and sealed drawings prepared by the inspecting Professional Engineer, using as-built information, after verifying in detail the actual conditions of the completed project or applicable components as they are constructed, including any changes that were initiated due to site conditions or other causes and where all such changes are clearly identified through redlines or by means of any other format agreed by HMQ Agencies.
- 1.406 “**Recoverable Tax**” has the meaning given in Section 32.3(c) of the Project Agreement.
- 1.407 “**Recovery Amount**” has the meaning given in Section 53.3(g) of the Project Agreement.
- 1.408 “**Rectification**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.409 “**Rectification Costs**” has the meaning given in Schedule 23 - Compensation on Termination.
- 1.410 “**Rectification Time**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.411 “**Refinancing**” has the meaning given in Schedule 28 - Refinancing.
- 1.412 “**Refinancing Financial Model**” has the meaning given in Schedule 28 - Refinancing.
- 1.413 “**Refinancing Gain**” has the meaning given in Schedule 28 - Refinancing.
- 1.414 “**Reimbursement Event**” has the meaning given in Section 30.5(a) of the Project Agreement.
- 1.415 “**Relevant Change in Law**” means a Discriminatory Change in Law or a Specific Change in Law.

- 1.416 “**Relevant Conviction**” means a conviction under the *Criminal Code* (Canada) for which no pardon has been granted.
- 1.417 “**Relevant Insurance**” has the meaning given in Section 7.1 of Schedule 25 - Insurance and Performance Security Requirements.
- 1.418 “**Relevant Insurance Inception Date**” has the meaning given in Section 7.1 of Schedule 25 - Insurance and Performance Security Requirements.
- 1.419 “**Relief Events**” has the meaning given in Section 40.1(a) of the Project Agreement.
- 1.420 “**Remedial Period**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.421 “**Replacement Lifecycle**” means the cycle, expressed in years, for which a material or system or other item is expected to remain in good condition and, if applicable, operating order, (Normal Wear and Tear excepted) before requiring complete replacement.
- 1.422 “**Request for Payment Approval**” has the meaning given in Section 18.12(d) of the Project Agreement.
- 1.423 “**Request for Proposals**” means the request for proposals issued by IO and Metrolinx in respect of the Project as RFP No. [REDACTED].
- 1.424 “**Rescue Refinancing**” has the meaning given in Schedule 28 - Refinancing.
- 1.425 “**Response**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.426 “**Response Time**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.427 “**Restricted Person**” means any person who, or any member of a group of persons acting together, any one of which:
- (a) has, directly or indirectly, its principal or controlling office in a country that is subject to any economic or political sanctions imposed by Canada or Ontario;
 - (b) has as its primary business the illegal manufacture, sale, distribution or promotion of narcotics substances or arms, or is or has been involved in terrorism;
 - (c) in the case of an individual, he or she (or in the case of a legal entity, any of the members of its board of directors or its senior executive managers) has been sentenced to imprisonment or otherwise given a custodial sentence, other than a suspended sentence, for any criminal offence or for any offence under any Provincial statute, other than offences under the *Highway Traffic Act* (Ontario) or corresponding legislation in any other jurisdiction, or under any municipal laws, less than five years prior to the date at which the consideration of whether such individual is a “Restricted Person” is made hereunder;

- (d) has as its primary business the acquisition of distressed assets or investments in companies or organizations which are or are believed to be insolvent or in a financial standstill situation or potentially insolvent;
 - (e) is subject to a material claim of HMQ Agencies or the Province under any proceedings (including regulatory proceedings) which have been concluded or are pending at the time at which the consideration of whether such person is a “Restricted Person” is made hereunder, and which (in respect of any such pending claim, if it were to be successful) would, in HMQ Agencies’ view, in either case, be reasonably likely materially to affect the ability of Project Co to perform its obligations under the Project Agreement; or
 - (f) has a material interest in the production of tobacco products.
- 1.428 “**Review Procedure**” means the procedure set out in Schedule 10 - Review Procedure.
- 1.429 “**Revised Facility Condition Report**” has the meaning given in Schedule 24 - Expiry Transition Procedure.
- 1.430 “**Roads and Grounds Maintenance Services**” means those roads and grounds maintenance services to be carried out pursuant to the Roads and Grounds Maintenance Services Specification.
- 1.431 “**Roads and Grounds Maintenance Services Specification**” has the meaning given in Section 3.8 of Part 6 of Schedule 15 - Output Specifications.
- 1.432 “**Rolling Stock**” means locomotives, passenger coaches, cab coaches and accessible coaches.
- 1.433 “**Safety Condition**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.434 “**Safety Plan**” means the safety plan included in the Project Co Proposal Extracts.
- 1.435 “**Schedule**” means a schedule to the Project Agreement.
- 1.436 “**Scheduled Final Completion Date**” means the date that is 75 days following the Scheduled Substantial Completion Date.
- 1.437 “**Scheduled Substantial Completion Date**” means December 29, 2017, as such date may be extended pursuant to Section 37 of the Project Agreement.
- 1.438 “**Seasonal Bedding-In Period**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.439 “**Section 32.1(c) Payment**” has the meaning given in Section 32.1(c) of the Project Agreement.
- 1.440 “**Security**” has the meaning given in Schedule 4 - Lenders’ Direct Agreement.

- 1.441 “**Security Documents**” has the meaning given in Schedule 4 - Lenders’ Direct Agreement.
- 1.442 “**Senior Debt Amount**” has the meaning given in Schedule 23 - Compensation on Termination.
- 1.443 “**Senior Debt Makewhole**” has the meaning given in Schedule 23 - Compensation on Termination.
- 1.444 “**Senior Debt Service Amount**” means, for any period, the principal and interest payable by Project Co or any Project Co Party to the Senior Lenders in the normal course under the Lending Agreements.
- 1.445 “**Senior Lenders**” means the Senior Creditors (as defined in the Common Terms Agreement).
- 1.446 “**Sensitive Information**” means financial or commercial information which would, if disclosed to a competitor of Project Co or any Project Co Party, give that competitor a competitive advantage over Project Co or such Project Co Party and thereby prejudice the business of Project Co or such Project Co Party.
- 1.447 “**Service Contract**” means the facility maintenance and services agreement between Project Co and the Service Provider dated on or about the date of the Project Agreement.
- 1.448 “**Service Failure**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.449 “**Service Failure Deduction**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.450 “**Service Failure Performance Indicator**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.451 [REDACTED]
- 1.452 “**Service Provider**” means Honeywell Limited, engaged by Project Co to perform the Project Co Services and any substitute service provider engaged by Project Co as may be permitted by the Project Agreement.
- 1.453 “**Service Provider’s Direct Agreement**” means the direct agreement between HMQ Agencies, Project Co, the Service Provider and [REDACTED], in the form set out in Schedule 5-2 - Service Provider’s Direct Agreement.
- 1.454 “**Service Quality Plan**” means such plan to be developed pursuant to the Output Specifications and the Final Commissioning Program.
- 1.455 “**Service Standards**” means the performance standards ascribed to each Project Co Service in Part 6 of Schedule 15 - Output Specifications.

- 1.456 “**Service Submittal**” has the meaning given in Section 11.1 of Schedule 10 - Review Procedure.
- 1.457 “**Severe Market Disruption**” means any occurrence of exceptional circumstances in financial markets in Europe, the United States of America and/or Canada, which:
- (a) result in the suspension or cessation of all or substantially all lending activity in national or relevant international capital or interbank markets; and
 - (b) adversely affect access by Project Co to such markets.
- 1.458 “**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.
- 1.459 “**Signage Work**” means the work to be performed by Project Co in respect of signage, as detailed in Section 4.3 of Part 3 of the Output Specifications. and that is not required pursuant to Ontario Regulation 332/12 made under the *Building Code Act, 1992*, S.O. 1992, c.23.
- 1.460 “**Site**” means the Metrolinx Lands, the Town and Region Works Lands, the Hopkins Street Lands, the South Blair Grade Separation Site Area Lands, the South Blair Grade Separation Laydown Area Lands and the Habitat Conservation Area Lands.
- 1.461 “**Site Conditions**” means the condition of the Site, including the physical, geophysical, climatic, ecological, environmental, geotechnical and archaeological conditions.
- 1.462 “**Small Works**” means any works, including facilities and equipment, of a minor nature that are requested by HMQ Agencies to be performed having an individual cost or aggregate cost with other linked works, including facilities and equipment, of a minor nature, not exceeding [REDACTED] (index linked), or as otherwise agreed from time to time, but excluding any works, including facilities and equipment, which will increase the likelihood of a Failure Event occurring, will increase the cost to Project Co of performing the Project Operations or will materially hinder Project Co in the performance of the Project Co Services.
- 1.463 “**South Blair Grade Separation Laydown Area Lands**” means the lands identified as “South Blair Grade Separation Laydown Area” in Exhibit 1 to this Schedule 1 – Definitions and Interpretation.
- 1.464 “**South Blair Grade Separation Site Area Lands**” means the lands identified as “South Blair Grade Separation Site Area” in Exhibit 1 to this Schedule 1 – Definitions and Interpretation.

- 1.465 “**Special Projects Services**” means those special projects services to be carried out pursuant to the Special Projects Services Specification.
- 1.466 “**Special Projects Services Specification**” has the meaning given in Section 3.12 of Part 6 of Schedule 15 - Output Specifications.
- 1.467 “**Specific Change in Law**” means any Change in Law which principally affects, or principally relates only to the provision or operation of maintenance and storage facilities in the Province.
- 1.468 “**Specific Services Specification**” means any one of the Cleaning Services Specification, the Environmental and Sustainability Services Specification, the FF & E Services Specification, the General Management Services Specification, the Help Desk Services Specification, the Lifecycle Replacement and Refurbishment Services Specification, the Parking Services Specification, the Pest Control Services Specification, the Plant Services Specification, the Roads and Grounds Maintenance Services Specification, the Special Projects Services Specification, the Sustainability Services Specification, the Utilities Management Services Specification, the Waste Management and Recycling Services Specification.
- 1.469 “**Standby Letter of Credit**” has the meaning given in Section 2.2(a) of the Project Agreement.
- 1.470 “**Start-Up Meeting**” has the meaning given in Section 18.4(a) of the Project Agreement.
- 1.471 “**Step-In Period**” has the meaning given in Schedule 4 - Lenders’ Direct Agreement.
- 1.472 “**Storm Water Management**” has the meaning given in Section 5.4 of Part 2 of Schedule 15 - Output Specifications.
- 1.473 “**Subcontractor**” means any subcontractor of Project Co engaged by or through Project Co to perform any of the Project Operations, including the Construction Contractor, the Service Provider, any Supplier or consultant, and any subcontractor of any other subcontractor at any tier.
- 1.474 “**Subcontractor Losses**” has the meaning given in Schedule 23 - Compensation on Termination.
- 1.475 “**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 the Service Provider, and any other Subcontractor at any tier in relation to any aspect of the Project Operations.
- 1.476 “**Submittal**” means either a Works Submittal or a Service Submittal.
- 1.477 “**Substantial Completion**” means the point at which: (i) the Facility has been completed in accordance with the Project Agreement; (ii) the Occupancy Permit has been issued;

- (iii) the Payment Certifier appointed pursuant to Section 15.3(e) of the Project Agreement has certified the substantial performance of the Construction Contract and the related certificate of substantial performance has been published, each in accordance with the CLA; and (iv) all requirements for Substantial Completion described in the Final Commissioning Program, other than in respect of Minor Deficiencies, have been satisfied.
- 1.478 “**Substantial Completion Certificate**” means the certificate to be issued by the Independent Certifier in accordance with Section 24.4(d) of the Project Agreement.
- 1.479 “**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.
- 1.480 “**Substantial Completion Notice**” has the meaning given in Section 24.4(b) of the Project Agreement.
- 1.481 “**Substantial Completion Payment**” means [REDACTED].
- 1.482 “**Suitable Substitute**” has the meaning given in Schedule 4 - Lenders’ Direct Agreement.
- 1.483 “**Supplier**” means a person who supplies to Project Co, or to any Subcontractor any equipment, materials, supplies or services as part of, or for, the Project Operations.
- 1.484 “**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.
- 1.485 “**Technical Reports**” means the Environmental Reports and Designated Substance Reports and the Geotechnical Reports.
- 1.486 “**Temporary Repair**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.487 “**Tender Costs**” has the meaning given in Schedule 23 - Compensation on Termination.
- 1.488 “**Tender Process**” has the meaning given in Schedule 23 - Compensation on Termination.
- 1.489 “**Tender Process Monitor**” has the meaning given in Schedule 23 - Compensation on Termination.
- 1.490 “**Termination Date**” means the earlier of the Expiry Date and such earlier date, if any, on which termination of the Project Agreement takes effect in accordance with its terms.
- 1.491 “**Third Party Arbitration**” has the meaning given in Schedule 27 - Dispute Resolution Procedure.

- 1.492 “**Third Party Beneficiaries**” has the meaning given in Section 59.17(a)(i) of the Project Agreement.
- 1.493 “**Third Party Litigation**” has the meaning given in Schedule 27 - Dispute Resolution Procedure.
- 1.494 “**Threshold Equity Sale Amount**” means the amount which, if paid in consideration of the percentage of Equity Capital (as at Financial Close) sold in a particular sale of Equity Capital, would result in an Implied Equity Value that, if received in full on the day of the sale of Equity Capital, taken together with all Distributions paid in respect of the Equity Capital, and taking account of the actual timing of payment of all such amounts, would result in an Equity Sale IRR equal to the Threshold Equity Sale IRR.
- 1.495 “**Threshold Equity Sale IRR**” means [REDACTED].
- 1.496 “**Title Encumbrances**” means the Encumbrances listed in Schedule 16 - Title Encumbrances and any other Encumbrance consented to by HMQ Agencies and reasonably required in connection with the development of the Facility and the Project Operations.
- 1.497 “**Town and Region Works Lands**” means the portions of those parcels of land currently owned by the Town of Whitby or the Region or Durham, other than the Hopkins Street Lands, on, under and/or over which the Works described in Sections 3.3, 3.5, 3.6 and 3.7 of Part 2 of Schedule 15 – Output Specifications are to be constructed, and such additional portions of such parcels as may be required for staging and construction of such Works.
- 1.498 “**Track Maintenance Building**” has the meaning give in Section 4.5(d)(i) of Part 3 of Schedule 15 – Output Specifications.
- 1.499 “**Trade-Marks**” means any registered or unregistered mark, trade-mark, service mark, distinguishing guise, logo, insignia, seal, design or symbol.
- 1.500 “**Unavailable**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.501 “**Uninsurable Risk**” has the meaning given in Section 8.1 of Schedule 25 - Insurance and Performance Security Requirements to the Project Agreement.
- 1.502 “**Unit Weighting Percentage**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.503 “**Unscheduled Maintenance**” means all Ad-Hoc Services, Emergency Maintenance Work, first response maintenance and/or other maintenance that is not scheduled (and excludes Preventive Maintenance) to the Site, the Facility and the FF&E, which includes the response to malfunctions and provision of minor repairs, adjustments and general maintenance as follows:

- (a) first response to equipment malfunctions and assessment of the problem (e.g., initial assessment of rolling stock, operator error, utility problem, minor or major failure), and required response;
 - (b) performance of minor repairs and general maintenance, including filter changes, topping-up fluids, adjustments, resets, clearing blockages, minor carpentry and replacing minor parts such as rollers, wheels, pulleys and hoses; and
 - (c) in the case of repairs that cannot be resolved under the immediately preceding subsection, arranging for and overseeing third party service representatives to make necessary repairs provided that Project Co has obtained approval from HMQ Agencies, acting reasonably, for such third party repairs.
- 1.504 “**Use Condition**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.505 “**Use Parameters**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.506 “**Utilities**” means energy/power supplies and waste recovery, including electricity, natural gas/fuel oil, water, sanitary waste, storm water, heat and steam.
- 1.507 “**Utilities Management Services**” means those utilities management services to be carried out pursuant to the Utilities Management Services Specification.
- 1.508 “**Utilities Management Services Specification**” has the meaning given in Section 3.4 of Part 6 of Schedule 15 - Output Specifications.
- 1.509 “**Utility Company**” means any company or companies designated by Project Co to provide Utilities.
- 1.510 “**Utility User(s)**” means those persons using Utilities at the Facility or on the Site.
- 1.511 “**Variation**” has the meaning given in Schedule 22 - Variation Procedure.
- 1.512 “**Variation Confirmation**” has the meaning given in Schedule 22 - Variation Procedure.
- 1.513 “**Variation Directive**” has the meaning given in Schedule 22 - Variation Procedure.
- 1.514 “**Variation Enquiry**” has the meaning given in Schedule 22 - Variation Procedure.
- 1.515 “**Variation Procedure**” means the procedure set out in Schedule 22 - Variation Procedure.
- 1.516 “**VOR**” has the meaning given in Section 21.6(a)(iv) of the Project Agreement.
- 1.517 “**Warning Notice**” has the meaning given in Section 29.3(a) of the Project Agreement.
- 1.518 “**Warranty Period**” has the meaning given in Section 18.15(a)(iii) of the Project Agreement.

- 1.519 “**Waste Management and Recycling Services**” means those waste management and recycling services to be carried out pursuant to the Waste Management and Recycling Services Specification.
- 1.520 “**Waste Management and Recycling Services Specification**” means Section 3.9 of Part 6 of Schedule 15 – Output Specifications.
- 1.521 “**WHMIS**” means the system for the labelling and warning of Hazardous Substances used in the workplace, commonly referred to as a workplace hazardous materials information system, prescribed by Applicable Law over the delivery, storage and use of Hazardous Substances in the Province of Ontario.
- 1.522 “**Works**” means the design, construction, installation, testing, commissioning and completion of the Facility, including rectification of any Minor Deficiencies, and any other activities required to enable or facilitate the commencement of the Project Co Services, including all work under the Permits, Licences, Approvals and Agreements, except for (i) all work which is expressly described in Appendix 1 – Permits, Licences, Approvals and Agreements, to this Schedule 1 – Definitions and Interpretation as being the responsibility of HMQ Agencies, and (ii) the HMQ Commissioning.
- 1.523 “**Works Change in Law**” means any Change in Law that:
- (a) is not a Relevant Change in Law;
 - (b) occurs after the date of the Project Agreement;
 - (c) requires Project Co to perform any work of alteration, addition, demolition, extension or variation in the quality or function of the Facility which is not Works, Maintenance Work 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 date of the Project Agreement 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.
- 1.524 “**Works Committee**” has the meaning given in Section 11.1(a) of the Project Agreement.
- 1.525 “**Works Report**” has the meaning given in Section 20.5(a) of the Project Agreement.
- 1.526 “**Works Schedule**” has the meaning given in Section 20.2(c) of the Project Agreement.
- 1.527 “**Works Submittal**” has the meaning given in Section 1.1 of Schedule 10 - Review Procedure.

1.528 “WSIB” means the Ontario Workplace Safety and Insurance Board that is responsible for administering the *Workplace Safety and Insurance Act, 1997* (Ontario).

2. Interpretation

The Project Agreement shall be interpreted according to the following provisions, unless the context requires a different meaning:

- 2.1 The tables of contents, headings, marginal notes and references to them in the Project Agreement are for convenience of reference only, shall not constitute a part of the Project Agreement, and shall not be taken into consideration in the interpretation of, or affect the meaning of, the Project Agreement.
- 2.2 Except where the context requires otherwise (irrespective of whether some, but not all, references in a Schedule specifically refer to that Schedule or to other portions of the Project Agreement) references to specific Sections, Clauses, Paragraphs, Subparagraphs, Schedules, and other divisions of the Project Agreement are references to such Sections, Clauses, Paragraphs, or Subparagraphs of, Schedules to, or divisions of the Project Agreement and the terms “Section” and “Clause” are used interchangeably and are synonymous.
- 2.3 Except where the context requires otherwise, references to specific Sections, Clauses, Paragraphs, Subparagraphs, Schedules, and other divisions of the Project Agreement followed by a number are references to the whole of the Section, Clause, Paragraph, Subparagraphs, Schedule or other division of the Project Agreement as applicable, bearing that number, including all subsidiary provisions containing that same number as a prefix.
- 2.4 Except where the context requires otherwise, references in the Output Specifications to specific Parts, Sections, Clauses, Paragraphs, Subparagraphs, Schedules, and other divisions of the Output Specifications shall be construed such that each such reference on a page of the Output Specifications will be read to be preceded by and to include the prefix Section number or other reference at the top of the applicable page, and all cross-references to any Section in Schedule 15 - Output Specifications shall be interpreted to include the applicable prefix Section number or other reference.
- 2.5 The Schedules to the Project Agreement are an integral part of the Project Agreement and a reference to the Project Agreement includes a reference to the Schedules.
- 2.6 All references in the Project Agreement to a Schedule shall be to a Schedule of the Project Agreement.
- 2.7 All capitalized terms used in a Schedule shall have the meanings given to such terms in Schedule 1, 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 Persons and Project Co and further having regard to:
- (a) acts contemplated by the Output Specifications;
 - (b) acts or omissions in the ordinary course of the Maintenance and Storage Activities and HMQ FM Services and expressly or reasonably inferred from the Output Specifications to be taken into account by Project Co in the performance of the Project Co Services; or
 - (c) acts otherwise provided for in the Project Agreement.
- 2.18 The words in the Project Agreement shall bear their natural meaning.
- 2.19 Each of Project Co’s and HMQ Agencies’ 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 “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 Whitby, Ontario.
- 2.26 Unless otherwise indicated, time periods will be strictly construed.
- 2.27 Whenever the terms “will” or “shall” are used in the Project Agreement in relation to Project Co or HMQ Agencies they shall be construed and interpreted as synonymous and to read “Project Co shall” or “HMQ Agencies shall” as the case may be.
- 2.28 Any reference to currency is to Canadian currency and any amount advanced, paid or calculated is to be advanced, paid or calculated in Canadian currency.
- 2.29 Unless otherwise identified in the Project Agreement, all units of measurement in any documents submitted by Project Co to HMQ Agencies 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 sector in Ontario will be construed as having that meaning unless the context otherwise requires.
- 2.31 Save where expressly stated otherwise, references to amounts or sums expressed to be “indexed” or “index linked” are references to amounts or sums which require adjustment to reflect the effects of inflation. Such adjustment shall be calculated in accordance with the following formula:
- $$\text{Adjusted amount or sum} = \text{Amount or sum} \times \frac{\text{CPI}_n}{\text{CPI}_o}$$
- 2.32 The terms “properly inferable”, “readily apparent” and “readily discoverable” as used in this 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 of the Site 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 Unless the Project Agreement expressly provides otherwise, to the extent that a consent, approval, waiver or exercise of discretion is to be provided by or on behalf of HMQ Agencies, such consent, approval, waiver or exercise of discretion, as applicable, shall be

evidenced by a direction or instrument in writing, executed by a duly authorized representative from each of IO and Metrolinx.

22694702.2

APPENDIX 1

PERMITS, LICENCES, APPROVALS AND AGREEMENTS

HMQ AGENCIES AND PROJECT CO RESPONSIBILITY TABLE

[REDACTED].

22694700.2

SCHEDULE 2

COMPLETION DOCUMENTS

In this Schedule 2, “certified” shall mean that the relevant document is certified as a true and complete copy in full force and effect and unamended as of the date of the relevant certificate by an officer or director of the relevant corporation.

1. DOCUMENTS TO BE DELIVERED BY PROJECT CO

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

- 1.1 an original of the Project Agreement;
- 1.2 an original of the Custody Agreement;
- 1.3 an original of the Lenders’ Direct Agreement;
- 1.4 an original of the Construction Contractor’s Direct Agreement;
- 1.5 an original of the Service Provider’s Direct Agreement;
- 1.6 an original of the Independent Certifier Agreement;
- 1.7 an original of the Insurance Trust Agreement;
- 1.8 an original notice of appointment of the Project Co Representative;
- 1.9 an original of the acknowledgement and undertaking in the form attached as Appendix A to this Schedule 2;
- 1.10 the Lending Agreements;
- 1.11 of the Construction Contract;
- 1.12 of the Service Contract;
- 1.13 a certificate of insurance and draft policies of insurance for the insurances required to be taken out by the Construction Contractor for the period prior to the Substantial Completion Date in accordance with the Project Agreement;
- 1.14 one (1) printed copy of the Financial Model (as revised pursuant to Section 2.3(d) of the Project Agreement, if applicable) and two (2) copies on CD-Rom;
- 1.15 a certificate of an officer of Project Co certifying:

- (a) a true copy of the Financial Model audit report to be dated [REDACTED] prepared by [REDACTED]; and
 - (b) that the Financial Model algorithms have not changed from the audit report referred to in (a) above;
- 1.16 a certificate of an officer of Project Co substantially in the form attached as Appendix B to this Schedule 2;
- 1.17 a certificate of an officer of each member of the Construction Contractor substantially in the form attached as Appendix B to this Schedule 2;
- 1.18 a certificate of an officer of the Service Provider substantially in the form attached as Appendix B to this Schedule 2;
- 1.19 [REDACTED];
- 1.20 [REDACTED];
- 1.21 originals of the opinions from counsel to Project Co, the Construction Contractor, the Service Provider, [REDACTED] and such other Project Co Parties as HMQ Agencies may reasonably require substantially in the form attached as Appendix C to this Schedule 2 and otherwise acceptable to HMQ Agencies and their counsel;
- 1.22 the Project Co Partnership Agreement and the constating documents of each Project Co Partner;
- 1.23 the Performance Guarantees;
- 1.24 an original of the Energy Target Letter;
- 1.25 evidence that the Construction Contractor has its Health and Safety Certification (or to the extent that the Construction Contractor does not have its Health and Safety Certification by Financial Close, evidence that the Construction Contractor has made an application to IHSA for its Health and Safety Certification); and
- 1.28 such other documents as the Parties may agree, each acting reasonably.

2. DOCUMENTS TO BE DELIVERED BY HMQ AGENCIES

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

- 2.1 an original of the Project Agreement;

- 2.2 an original of the Custody Agreement;
- 2.3 an original of the Lenders' Direct Agreement;
- 2.4 an original of the Construction Contractor's Direct Agreement;
- 2.5 an original of the Service Provider's Direct Agreement;
- 2.6 an original of the Independent Certifier Agreement;
- 2.7 an original of the Insurance Trust Agreement;
- 2.8 an original notice of appointment of the HMQ Representative;
- 2.9 a certificate of an officer of IO and a declaration of management signed by an officer of IO substantially in the forms attached as Appendix D-1 and Appendix E, respectively, to this Schedule 2;
- 2.10 a certificate of an officer of Metrolinx signed by an officer of Metrolinx substantially in the form attached as Appendix D-2 to this Schedule 2;
- 2.11 a final and executed reliance letter that has been delivered to HMQ Agencies from **[REDACTED]** (i) Environmental Report and Designated Substance Report, and/or (ii) Geotechnical Report issued by such Person; and
- 2.12 such other documents as the Parties may agree, each acting reasonably.

APPENDIX A

FORM OF UNDERTAKING AND ACKNOWLEDGEMENT

- TO:** Ontario Infrastructure and Lands Corporation, as agent for Her Majesty The Queen in right of Ontario, as represented by the Minister of Economic Development, Employment and Infrastructure (“**IO**”)
- TO:** Metrolinx, a non-share capital corporation continued under the *Metrolinx Act, 2006*, S.O. 2006, c.16 and a Crown agency in accordance with the *Crown Agency Act*, R.S.O. 1990, c.48 (“**Metrolinx**”)
- (collectively, the “**HMQ Agencies**”)
- TO:** The Minister of Economic Development, Employment and Infrastructure (the “**Minister**”)
- RE:** Project agreement (as amended, supplemented or modified from time to time, the “**Project Agreement**”) dated the <*> day of March, 2015 between HMQ Agencies and [REDACTED] (“**Project Co**”)
-

1. The undersigned acknowledges that:
- (a) The Project will proceed as an alternative financing and procurement project under the MEDEI's *ReNew Ontario* infrastructure investment plan, and complies with the principles set out in the IPFP Framework.
 - (b) The IPFP Framework establishes 5 fundamental principles which guide the financing and procurement of public infrastructure projects in Ontario:
 - (i) The public interest is paramount.
 - (ii) Value for money must be demonstrable.
 - (iii) Appropriate public control/ownership must be preserved.
 - (iv) Accountability must be maintained.
 - (v) All processes must be fair, transparent and efficient.
 - (c) The IPFP Framework states that, consistent with the principle of appropriate public ownership/control, public ownership of assets will be preserved in the public sector.

2. The undersigned undertakes to comply, in all material respects, with all Applicable Law in any direction or order issued by HMQ Agencies to the extent that the direction or order affects the Project Operations.
3. Capitalized terms used but not defined herein have the respective meanings ascribed thereto in the Project Agreement.

[Remainder of Page Intentionally Left Blank]

DATED this ____ day of _____, 2015.

[REDACTED]

I/We have authority to bind the corporation.

APPENDIX B

FORM OF PROJECT CO/PROJECT CO PARTY OFFICER'S CERTIFICATE

Certificate of an Officer of

<*>

(the "Corporation")

TO: HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO (“HMQ”)
AND TO: THE MINISTER OF ECONOMIC DEVELOPMENT, EMPLOYMENT AND INFRASTRUCTURE (“HMQ”)
AND TO: ONTARIO INFRASTRUCTURE AND LANDS CORPORATION
AND TO: METROLINX
AND TO: [COUNSEL TO <*>]
AND TO: [COUNSEL TO <*>]
AND TO: [LENDERS’ AGENT]
AND TO: [COUNSEL TO LENDERS]

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

1. **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 HMQ Agencies made as of [●], 201<*> (as the same may be amended, supplemented, restated or otherwise modified from time to time, the "**Project Agreement**") pursuant to which the Corporation will design, build, finance and maintain a new maintenance and storage facility;
 - (2) a lenders' direct agreement between the Corporation, HMQ Agencies and the Lenders' Agent;
 - (3) a direct agreement between [●] (the "**Construction Contractor**"), the Corporation, the Construction Guarantor and HMQ Agencies;
 - (4) a direct agreement between [●] (the "**Service Provider**"), the Corporation, the Service Guarantor and HMQ Agencies; and
 - (5) **[NTD: 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 is no claim, action, suit, proceedings, arbitration, investigation or inquiry before any governmental agency, court or tribunal, foreign or domestic, or before any private arbitration tribunal, pending or threatened against the Corporation, or involving its properties or business. To the best of my knowledge and belief after due diligence, no administrative or court decree is outstanding in respect of the Corporation or its assets.
- (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 (without limitation) securities convertible or exchangeable into shares and/or securities in respect of debt, other than such issued and outstanding shares as are listed above.

DATED this _____ day of _____, 201<*>.

Name:
Title:

APPENDIX C

FORM OF PROJECT CO/PROJECT CO PARTY OPINION

[INSERT DATE]

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

Metrolinx
20 Bay Street, 6th Floor
Toronto, Ontario
M5J 2W3

Aird & Berlis LLP
Brookfield Place, 181 Bay Street
Suite 1800. Box 754
Toronto, Ontario
M5J 2T9

Dear Sirs/Mesdames:

Re: East Rail Maintenance Facility Project

We have acted as counsel to [●] ("**Project Co**"), [●] (the "**Construction Contractor**") and [●] (the "**Service Provider**") in connection with the alternative financing and procurement transaction whereby Project Co has agreed to enter into a design, build, finance and maintain agreement for a new maintenance and storage facility in Toronto, Ontario. [NTD: **Additional Parties to be added depending on consortium structure and/or the financing package.**]

This opinion is being delivered to Her Majesty the Queen in Right of Ontario as represented, jointly and severally, by the Minister of Economic Development, Employment and Infrastructure, as represented by Ontario Infrastructure and Lands Corporation and Metrolinx ("**HMQ Agencies**") and their counsel pursuant to Section [1.21] of Schedule 2 to the project agreement made as of [●], 201<*> between HMQ Agencies and Project Co (as the same may be amended, supplemented, restated or otherwise modified from time to time, the "**Project Agreement**").

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

In our capacity as counsel to Project Co, the Construction Contractor and the Service Provider, we have participated in the preparation and negotiation, and have examined an executed copy, of

each of the following documents (unless otherwise indicated, all documents are dated as of [●], 201<*>):

1. the Project Agreement; and
2. the following project documents (collectively, the "**Implementation Documents**"):
 - (a) the Construction Contract;
 - (b) the Service Contract;
 - (c) the Lenders' Direct Agreement;
 - (d) the Insurance Trust Agreement;
 - (e) the Construction Contractor's Direct Agreement;
 - (f) the Service Provider's Direct Agreement;
 - (g) the Lending Agreements;
 - (h) the Performance Guarantees;
 - (i) the Custody Agreement; and
 - (j) Independent Certifier 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**". [NTD: **Additional documents to be added depending on consortium structure and/or the financing package.**]

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

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

Searches and Reliance

We have conducted, or have caused to be conducted, the searches identified in Schedule "A" (the "**Searches**") for filings or registrations made in those offices of public record listed in Schedule "A". The Searches were conducted against the current name and all former names of Project Co, the Construction Contractor and the Service Provider (including, in each case, both the English and French versions, if any). The results of the Searches are set out in Schedule "A".

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

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

In connection with the opinions set forth in paragraphs 1, 2 and 3 below, we have relied exclusively on Certificates of Status issued by the [**Ministry of Government Services (Ontario)**] of even date, copies of which are attached as Schedule "B".

In connection with the opinions set forth in paragraphs 5, 8, 11, 17 and 20 below, we have relied exclusively, and without any independent investigation or enquiry, upon the opinion of [●] dated [●], 201<*> (the "[**REDACTED**]"), a copy of which has been delivered to you. To the extent that the [**REDACTED**] contains assumptions, qualifications, limitations or definitions, or is expressed as relying on any certificate(s) or other documents identified therein, the opinions herein expressed in reliance on the [**REDACTED**] should be read as incorporating the identical assumptions, qualifications, limitations, definitions and reliances.

In connection with the opinions set forth in paragraphs 6, 9, 12, 18 and 21 below, we have relied exclusively, and without any independent investigation or enquiry, upon the opinion of [●] dated [●], 201<*> (the "[**REDACTED**]"), a copy of which has been delivered to you. To the extent that the [**REDACTED**] contains assumptions, qualifications, limitations or definitions, or is expressed as relying on any certificate(s) or other documents identified therein, the opinions herein expressed in reliance on the [**REDACTED**] should be read as incorporating the identical assumptions, qualifications, limitations, definitions and reliances.

Assumptions

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

1. The genuineness of all signatures, the authenticity of all documents submitted to us as originals, the conformity to originals of all documents submitted to us as certified, true, conformed, photostatic or notarial copies or facsimiles thereof and the authenticity of the originals of such certified, true, conformed, photostatic or notarial copies or facsimiles.

2. Each of the parties (other than Project Co, the Construction Contractor and the Service Provider) to each of the Documents is and was, at all relevant times, a subsisting corporation, partnership, limited partnership, limited liability company or trust, as applicable, under the laws of its jurisdiction of formation.
3. Each of the Parties (other than Project Co, the Construction Contractor and the Service Provider) has (and had) the corporate power, authority and capacity to own its property and assets and to carry on its business as such business is now (or as was then) being carried on by it, has (or had) all requisite corporate power, authority and capacity to execute and deliver each Document to which it is party and to perform its obligations thereunder, has taken all necessary corporate action, as applicable, to authorize the execution and delivery of each Document to which it is a party and the performance of its obligations thereunder, and has duly executed and delivered each Document to which it is a party and each Document to which it is a party is a legal, valid and binding obligation of such party enforceable against it in accordance with its terms.
4. The completeness, truth and accuracy of all facts set forth in the Officer's Certificates.
5. The completeness, truth and accuracy of all facts set forth in official public records and certificates and other documents supplied by public officials.
6. Value has been given by each of the Parties (other than Project Co, the Construction Contractor and the Service Provider) to Project Co, the Construction Contractor and the Service Provider.

Opinions

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

Incorporation and Existence

1. Project Co is a corporation incorporated under the laws of **[the Province of Ontario]** and has not been dissolved.
2. The Construction Contractor is a corporation incorporated under the laws of **[the Province of Ontario]** and has not been dissolved.
3. The Service Provider is a corporation incorporated under the laws of **[the Province of Ontario]** and has not been dissolved.

Corporate Power and Capacity

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

5. The Construction Contractor has the corporate power and capacity to own or lease its properties and assets, to carry on its business as it is currently being conducted and as it is contemplated to be conducted under the Documents, and to enter into and perform its obligations under each of the Documents to which it is a party.
6. The Service Provider has the corporate power and capacity to own or lease its properties and assets, to carry on its business as it is currently being conducted and as it is contemplated to be conducted under the Documents, and to enter into and perform its obligations under each of the Documents to which it is a party.

Corporate Authorization

7. Project Co has taken all necessary corporate action to authorize the execution and delivery of, and the performance of its obligations under, each of the Documents to which it is a party.
8. The Construction Contractor has taken all necessary corporate action to authorize the execution and delivery of, and the performance of its obligations under, each of the Documents to which it is a party.
9. The Service Provider has taken all necessary corporate action to authorize the execution and delivery of, and the performance of its obligations under, each of the Documents to which it is a party.

Execution and Delivery

10. Project Co has duly executed and delivered each of the Documents to which it is a party.
11. The Construction Contractor has duly executed and delivered each of the Documents to which it is a party.
12. The Service Provider has duly executed and delivered each of the Documents to which it is a party.

Enforceability

13. Each of the Documents to which Project Co is a party constitutes a legal, valid and binding obligation of Project Co, enforceable against it in accordance with its terms.
14. Each of the Documents to which the Construction Contractor is a party constitutes a legal, valid and binding obligation of the Construction Contractor, enforceable against it in accordance with its terms.
15. Each of the Documents to which the Service Provider is a party constitutes a legal, valid and binding obligation of the Service Provider, enforceable against it in accordance with its terms.

No Breach or Default

16. The execution and delivery by Project Co of the Documents to which it is a party does not, and the performance by Project Co of its obligations under each such Document in accordance with its terms will not, breach or constitute a default under (i) its articles, by-laws or unanimous shareholders' agreement, or (ii) the provisions of any law, statute, rule or regulation to which Project Co is subject.
17. The execution and delivery by the Construction Contractor of the Documents to which it is a party does not, and the performance by the Construction Contractor of its obligations under each such Document in accordance with its terms will not, breach or constitute a default under (i) its articles, by-laws or unanimous shareholders' agreement, or (ii) the provisions of any law, statute, rule or regulation to which the Construction Contractor is subject.
18. The execution and delivery by the Service Provider of the Documents to which it is a party does not, and the performance by the Service Provider of its obligations under each such Document in accordance with its terms will not, breach or constitute a default under (i) its articles, by-laws or unanimous shareholders' agreement, or (ii) the provisions of any law, statute, rule or regulation to which the Service Provider is subject.

Regulatory Approvals

19. No authorization, consent, permit or approval of, or other action by, or filing with or notice to, any governmental agency or authority, regulatory body, court, tribunal or other similar entity having jurisdiction is required in connection with the execution and delivery by Project Co of the Documents to which it is a party and the performance of its obligations thereunder.
20. No authorization, consent, permit or approval of, or other action by, or filing with or notice to, any governmental agency or authority, regulatory body, court, tribunal or other similar entity having jurisdiction is required in connection with the execution and delivery by the Construction Contractor of the Documents to which it is a party and the performance of its obligations thereunder.
21. No authorization, consent, permit or approval of, or other action by, or filing with or notice to, any governmental agency or authority, regulatory body, court, tribunal or other similar entity having jurisdiction is required in connection with the execution and delivery by the Service Provider of the Documents to which it is a party and the performance of its obligations thereunder.

Qualifications

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

1. The enforceability of any Document and the rights and remedies set out therein or any judgment arising out of or in connection therewith is subject to and may be limited by

- any applicable bankruptcy, reorganization, winding-up, insolvency, moratorium or other laws of general application affecting creditors' rights from time to time in effect.
2. The enforceability of each of the Documents and the rights and remedies set out therein is subject to and may be limited by general principles of equity, and no opinion is given as to any specific remedy that may be granted, imposed or rendered, including equitable remedies such as those of specific performance and injunction, or the availability of equitable defences.
 3. The enforceability of any Document will be subject to the limitations contained in the *Limitations Act, 2002* (Ontario), and we express no opinion as to whether a court may find any provision of any Document to be unenforceable as an attempt to vary or exclude a limitation period under that Act.
 4. Pursuant to the *Currency Act* (Canada), a judgment in money rendered by a Court in the Province of Ontario must be awarded in Canadian currency and such judgment may be based on a rate of exchange in effect other than the day of payment of the judgment.
 5. To the extent that a particular contractual provision is characterized by a Court as a penalty and not as a genuine pre-estimate of damages, it will not be enforceable.
 6. A Court may not treat as conclusive those certificates and determinations which the Documents state are to be so treated.
 7. A receiver or receiver and manager appointed pursuant to the provisions of any Document, for certain purposes, may not be treated by a Court as being solely the agent of Project Co notwithstanding any agreement to the contrary.
 8. The ability to recover or claim for certain costs or expenses may be subject to judicial discretion.
 9. With respect to any provisions of the Documents pursuant to which the Parties to such Documents are permitted or required to submit a dispute arising out of such Documents to arbitration, we express no opinion as to the enforceability of such arbitration provisions in all circumstances since under the *Arbitration Act, 1991* (Ontario) a court of competent jurisdiction in Ontario may, in its discretion and upon certain grounds, refuse to stay judicial proceedings in which event an arbitration under such arbitration provisions may not be commenced or continued. In addition, the *Arbitration Act, 1991* (Ontario) provides that a court may hear an appeal of an arbitration award on a question of law, or set aside an arbitration award or declare it invalid, in each case on certain prescribed grounds.
 10. Any requirement in any of the Documents that interest be paid at a higher rate after than before default may not be enforceable.
 11. The effectiveness of provisions which purport to relieve a person from a liability or duty otherwise owed may be limited by law, and provisions requiring indemnification or

reimbursement may not be enforced by a Court, to the extent that they relate to the failure of such person to perform such duty or liability.

12. No opinion is expressed as to the enforceability of any provision contained in any Document which purports to sever from the Document any provision therein which is prohibited or unenforceable under applicable law without affecting the enforceability or validity of the remainder of the document.
13. No opinion is expressed regarding any waiver of service of process, presentment, demand, protest or notice of dishonour which may be contained in any of the Documents.
14. Any award of costs is in the discretion of a Court of competent jurisdiction.
15. The enforceability of rights of indemnity set out in the Documents may be limited under applicable law to the extent that they directly or indirectly relate to liabilities imposed by law on HMQ Agencies for which it would be contrary to public policy to require Project Co to indemnify HMQ Agencies or to the extent that they constitute the indirect enforcement of a foreign revenue or penal law.
16. We express no opinion as to the enforceability by any person who is not a party to the Documents of any provision therein that purports to bind or affect or confer a benefit on such person.

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

Yours very truly,

[INSERT NAME OF LAW FIRM]

APPENDIX D-1

**FORM OF
CERTIFICATE OF AN OFFICER OF
ONTARIO INFRASTRUCTURE AND LANDS CORPORATION
(the “Corporation”)**

TO: [PROJECT CO]

AND TO: [COUNSEL TO PROJECT CO]

AND TO: [LENDERS’ AGENT]

AND TO: [LENDERS' COUNSEL]

RE: Project agreement (as amended, supplemented or modified from time to time, the "**Project Agreement**") dated the [●] day of [●], 201<*> between the Corporation, as agent for Her Majesty The Queen in right of Ontario, as represented by the Minister of Economic Development, Employment and Infrastructure, Metrolinx, a non-share capital corporation continued under the *Metrolinx Act, 2006*, S.O. 2006, c.16 and a Crown agency in accordance with the *Crown Agency Act*, R.S.O. 1990, c.48, and [REDACTED] ("**Project Co**").

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

1. Attached hereto as **Schedule “A”** is a true and complete copy of (i) the resolutions of the directors of the Corporation regarding the execution of public works projects undertaken by the Corporation and certain other matters set forth therein; and (ii) an excerpt of the resolutions of the directors of the Corporation relating to delegation of signing authority (collectively, the “**Execution Resolutions**”), which have been duly and validly passed in accordance with applicable law. The Execution Resolutions are the only resolutions of the Corporation pertaining to the subject matter thereof and the same are in full force and effect, unamended as of the date hereof.
2. Attached hereto as **Schedule “B”** is a true and complete copy of the resolutions of the directors of the Corporation approving the selection of Project Co as the successful bidder for the East Rail Maintenance Facility Project (the “**Project Resolutions**”). The Project Resolutions are the only resolutions of the Corporation pertaining to the subject matter thereof and the same is in full force and effect, unamended as of the date hereof.
3. To the knowledge of the undersigned, after due inquiry as of the date hereof, the Minister of Economic Development, Employment and Infrastructure (the “**Minister**”) has not given a direction pursuant to Subsection 4(3) of the *Ontario Infrastructure and Lands*

Corporation Act, 2011, S.O. 2011, c.9, Schedule 32, as amended (the “Act”) that limits the scope of the objects of the Corporation as they are set out in Subsection 4(1) of the Act.

- 4. The following named persons, on or as of the date hereof, are duly elected or appointed officers of the Corporation, as evidenced by the holding of the office or offices set forth opposite their names, are proper signing officers of the Corporation and are authorized to execute and deliver Project Documents (as such a term is defined in the Execution Resolutions referenced in item 1(i) above) relating to the East Rail Maintenance Facility Project on behalf of the Corporation. The signatures set forth opposite their respective names are the true signatures of those persons.

Table with 3 columns: Name, Position, Signature. Each row starts with a bullet point [•] followed by a blank line for each column.

DATED this ____ day of _____, 201<*>.

Name: [•]
Title: Secretary

**APPENDIX D-2
FORM OF CERTIFICATE
OF AN OFFICER OF METROLINX
(the “Corporation”)**

TO: [PROJECT CO]

AND TO: [COUNSEL TO PROJECT CO]

AND TO: [LENDER’S AGENT]

AND TO: [LENDER’S COUNSEL]

RE: Project Agreement (as amended, supplemented or modified from time to time, the “**Project Agreement**”) dated the <*> day of <*>, 201<*>, between the Corporation, a non-share capital corporation continued under the *Metrolinx Act, 2006*, c. 16 and a Crown agency in accordance with the *Crown Agency Act*, R.S.O. c. 48, and 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 agent for Her Majesty The Queen in Right of Ontario, as represented by the Minister of Economic Development, Employment and Infrastructure, and [REDACTED] (“**Project Co**”).

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

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

DATED this _____ day of _____, 201<*>.

Name: <*>
Title: <*>

APPENDIX E

FORM OF DECLARATION OF MANAGEMENT

ONTARIO INFRASTRUCTURE AND LANDS CORPORATION

(the “Corporation”)

DECLARATION OF MANAGEMENT

WHEREAS HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, as represented by the Minister of Economic Development, Employment and Infrastructure, as represented by the Corporation; Metrolinx, a non-share capital corporation continued under the *Metrolinx Act, 2006*, S.O. 2006, c. 16 and a Crown agency in accordance with the *Crown Agency Act*, R.S.O. c.48; and <*> propose to enter into a Project Agreement relating to the East Rail Maintenance Facility Project in Whitby, Ontario (the “**East Rail Maintenance Facility Project**”);

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

NOW THEREFORE THE CORPORATION’S MANAGEMENT HEREBY DECLARES THAT:

1. by resolution of the board of directors of the Corporation passed on <*>, the board of directors of the Corporation has authorized the Corporation’s management (for and in the name of and on behalf of the Corporation) to execute and deliver the Project Documents and do all such other acts and things as the Corporation’s management may determine to be necessary or advisable to carry out the transactions contemplated by the applicable Project Documents;
2. the Corporation’s management may execute and deliver the Project Documents to which the Corporation may become a party and any other documents, instruments or agreements delivered in connection with the Project Documents from time to time (collectively, together with the Project Documents, the “**Documents**”) all in such form and on such terms as the management of the Corporation executing such Documents in accordance with this declaration may approve, such approval to be evidenced conclusively by the execution of such Documents by the Corporation’s management; and
3. the Project Documents to be executed and delivered by the Corporation in connection with the East Rail Maintenance Facility Project and the transactions and obligations contemplated thereunder are for the purpose of carrying out the objects of the

Corporation and the Corporation shall not and will not assert the contrary against any person dealing with the Corporation or any person who has acquired an interest in the East Rail Maintenance Facility Project from the Corporation.

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

DATED this _____ day of _____, 201<*>.

Name: [•]
Title: Secretary

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SCHEDULE 3

CUSTODY AGREEMENT

THIS AGREEMENT is made as of the _____ day of March, 2015

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

AND:

METROLINX, a non-share capital corporation continued under the *Metrolinx Act, 2006*, S.O. 2006, c.16 and a Crown agency in accordance with the Crown Agency Act, R.S.O. c.48

(collectively, “**HMQ Agencies**”)

AND:

PLENARY INFRASTRUCTURE ERMF GP, a general partnership existing under the laws of the Province of Ontario

(“**Project Co**”)

AND:

[REDACTED], a trust company incorporated under the laws of Canada

(the “**Custodian**”)

AND:

[REDACTED], in its capacity as collateral trustee under the Common Terms Agreement

(the “**Lenders’ Agent**”)

WHEREAS:

- A. HMQ Agencies and Project Co (collectively, the “**PA Parties**” and each, a “**PA Party**”) have entered into the Project Agreement.

- B. Pursuant to the terms of the Project Agreement, the PA Parties wish to appoint the Custodian, and the Custodian wishes to accept such appointment, to perform certain services in connection with the Project Agreement.
- C. The PA Parties and the Custodian wish to enter into this Custody Agreement in order to record the terms by which the Custodian shall perform such services.
- D. IO and Metrolinx intend to enter into this Custody Agreement as agents of Her Majesty the Queen in right of Ontario, in accordance with Applicable Law, and to be liable, on a joint and several basis, for all of the obligations of HMQ Agencies pursuant to this Custody Agreement, save and except as provided for in this Custody Agreement.

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

1. Definitions

In this Custody Agreement, including the recitals and appendices, unless the context indicates a contrary intention, terms which are defined in the Project Agreement (and not otherwise defined in this Custody Agreement) shall have meanings given to them in the Project Agreement and the following terms shall have the following meanings:

- (a) “**Common Terms Agreement**” has the meaning given in the Project Agreement.
- (b) “**HMQ Signatories**” has the meaning given in Section 6(a)(i).
- (c) “**Lenders’ Agent**” means the meaning given in the preamble.
- (d) “**Material**” means hard and electronic copies of the Financial Model.
- (e) “**PA Parties**” means HMQ Agencies and Project Co, and “**PA Party**” means either HMQ Agencies or Project Co, as the context requires.
- (f) “**Party**” means HMQ Agencies, the Custodian, Project Co or the Lenders’ Agent, and “**Parties**” means HMQ Agencies, the Custodian, Project Co and the Lenders’ Agent.
- (g) “**Privacy Laws**” has the meaning given in Section 8(d).
- (h) “**Project Agreement**” means the project agreement made on or about the 24th day of March, 2015 between HMQ Agencies and Project Co.
- (i) “**Project Co**” has the meaning given in the preamble.
- (j) “**Project Co Signatory**” has the meaning given in Section 6(a)(ii).

(k) “**Step-Out Date**” has the meaning given in Section 14(e).

2. Interpretation

This Custody Agreement shall be interpreted according to the following provisions, unless the context requires a different meaning:

- (a) The headings in this Custody Agreement are for convenience of reference only, shall not constitute a part of this Custody Agreement, and shall not be taken into consideration in the interpretation of, or affect the meaning of, this Custody Agreement.
- (b) Unless the context otherwise requires, references to specific Sections, Paragraphs, Subparagraphs, and other divisions are references to such Sections, Paragraphs, Subparagraphs, or divisions of this Custody Agreement and the terms “Section” and “Section” 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 Custody Agreement concerning amendments) a reference to that standard, principle, agreement or document as amended, supplemented, restated, substituted, replaced, novated or assigned.
- (f) The words in this Custody Agreement shall bear their natural meaning.
- (g) References containing terms such as:
 - (i) “hereof”, “herein”, “hereto”, “hereinafter”, and other terms of like import are not limited in applicability to the specific provision within which such references are set forth but instead refer to this Custody Agreement taken as a whole; and
 - (ii) “includes” and “including”, whether or not used with the words “without limitation” or “but not limited to”, shall not be deemed limited by the specific enumeration of items but shall, in all cases, be deemed to be without limitation and construed and interpreted to mean “includes without limitation” and “including without limitation”.

- (h) In construing this Custody Agreement, the rule known as the *ejusdem generis* rule shall not apply nor shall any similar rule or approach to the construction of this Custody Agreement and, accordingly, general words introduced or followed by the word “other” or “including” or “in particular” shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words.
- (i) Where this Custody Agreement states that an obligation shall be performed “no later than” or “within” or “by” a stipulated date or event which is a prescribed number of days after a stipulated date or event, the latest time for performance shall be 5:00 p.m. on the last day for performance of the obligation concerned, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- (j) Where this Custody Agreement states that an obligation shall be performed “on” a stipulated date, the latest time for performance shall be 5:00 p.m. on that day, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- (k) Any reference to time of day or date means the local time or date in Whitby, Ontario.
- (l) Unless otherwise indicated, time periods will be strictly construed.
- (m) Whenever the terms “will” or “shall” are used in this Custody Agreement they shall be construed and interpreted as synonymous and to read “shall”.

3. Project Co’s Duties and Warranties

- (a) HMQ Agencies will, together with Project Co, verify the identity and consistency of two copies of the Material, which shall be delivered by Project Co to the Custodian on the date of this Custody Agreement.
- (b) Project Co shall at all times ensure that the Material as delivered to the Custodian is capable of being used to generate the latest version of the Financial Model issued to HMQ Agencies and shall deliver further copies of the Material to the Custodian as and when necessary.
- (c) Upon creation of any new versions of the Financial Model and within 30 days from receipt of a notice served upon it by the Custodian under the provisions of Section 4(a)(v), the replacement copy of the Material shall be verified by the PA Parties in accordance with Section 3(a) and delivered by Project Co to the Custodian.
- (d) Project Co warrants that:
 - (i) it owns the Intellectual Property Rights in the Material and has authority to enter into this Custody Agreement;

- (ii) the use of the Materials by HMQ Agencies under the terms of this Custody Agreement shall not infringe any Intellectual Property Rights of any person; and
- (iii) the Material delivered under Section 3(a) shall contain all information in human-readable form and on suitable media to enable a reasonably skilled programmer or analyst to understand, maintain and correct the Material without the assistance of any other person.

4. Custodian's Duties

- (a) The Custodian shall:
 - (i) hold in safe custody all versions of the Financial Model delivered to it pursuant to the terms hereof, and the provisions of this Custody Agreement shall apply (with any necessary changes being made) to any revised Financial Model;
 - (ii) hold the Material in a safe and secure environment;
 - (iii) inform Project Co and HMQ Agencies of the receipt of any copy of the Material;
 - (iv) at all times retain a copy of the latest verified deposit of the Material; and
 - (v) promptly notify Project Co and HMQ Agencies if it becomes aware at any time during the term of this Custody Agreement that any copy of the Material held by it has been lost, damaged or destroyed.
- (b) The Custodian shall not be responsible for procuring the delivery of the Material in the event of failure by Project Co to do so.
- (c) In accordance with Section 10, the Custodian shall allow the PA Parties, the Lenders' Agent, and the auditor retained by the Lenders' Agent to inspect and audit the Financial Model from time to time.

5. Payment

- (a) In consideration of the Custodian performing the services contemplated by this Custody Agreement, Project Co shall pay the Custodian's fees as agreed from time to time between the Custodian and Project Co.

6. Release Events

- (a) The Custodian shall hold the Material to the order of the PA Parties and shall honour the instructions and signatures of:

- (i) the President and CEO and designated signing officers of HMQ Agencies or such other persons nominated by them and notified to the Custodian and Project Co in writing (the “**HMQ Signatories**”); and
- (ii) the President, Vice-President and Chief Financial Officer of Plenary Infrastructure GP Inc. and designated signatories of Project Co or such other person nominated by the Project Co Partners and notified to the Custodian and HMQ Agencies in writing (the “**Project Co Signatory**”);

and shall, subject to Section 6(b), upon receiving signed joint instructions from the HMQ Signatories and the Project Co Signatory, release one copy of the Material to the person either named in such instructions or previously identified in writing by the HMQ Signatories and the Project Co Signatory.

- (b) The PA Parties each agree that they shall give joint instructions to the Custodian for the release of the Material, in accordance with Section 6(a), on each occasion that the Material is required to be released pursuant to the Project Agreement or that the Material must be released to allow the Material to be maintained and/or corrected.
- (c) The Custodian shall release the Material to a duly authorized officer of HMQ Agencies on any termination of the Project Agreement prior to the Expiry Date.

7. Records

- (a) The PA Parties shall be entitled, at reasonable hours and upon giving the Custodian reasonable notice, to inspect any records kept by the Custodian in accordance with this Custody Agreement.

8. Confidentiality

- (a) The Material shall remain the confidential property of Project Co and, in the event that the Custodian provides a copy of the Material to HMQ Agencies, HMQ Agencies shall be permitted to use the Material only in accordance with the intellectual property and confidentiality obligations in the Project Agreement.
- (b) The Custodian agrees for itself, its directors, officers, employees, subcontractors and agents, to maintain all information and/or documentation in whatever form coming into its possession or to its knowledge under or in connection with this Custody Agreement in strictest confidence and secrecy. The Custodian further agrees not to make use of such information and/or documentation other than for the purposes of this Custody Agreement and will not disclose or release it other than in accordance with the terms of this Custody Agreement.
- (c) In the event that the Material is released under Section 6, HMQ Agencies shall:

- (i) use the Material only for the purpose of understanding, maintaining and correcting the Financial Model exclusively on behalf of HMQ Agencies;
 - (ii) not use the Material for any other purpose nor disclose it to any person, save such of its employees or contractors who need to know the same in order to understand, maintain and correct the Financial Model exclusively on behalf of HMQ Agencies;
 - (iii) hold all media containing the Material in a safe and secure environment when not in use; and
 - (iv) forthwith destroy the same should HMQ Agencies cease to be entitled to use the Financial Model.
- (d) The Parties acknowledge that federal and/or provincial legislation that addresses the protection of individuals' personal information (collectively, "**Privacy Laws**") may apply to obligations and activities under this Custody Agreement. Despite any other provision of this Custody Agreement, no Party shall take or direct any action that would contravene, or cause the other to contravene, applicable Privacy Laws. Project Co, the Lenders' Agent and HMQ Agencies shall, prior to transferring or causing to be transferred personal information to the Custodian, obtain and retain required consents of the relevant individuals to the collection, use and disclosure of their personal information, or shall have determined that such consents either have previously been given upon which the Parties can rely or are not required under the Privacy Laws. The Custodian shall use commercially reasonable efforts to ensure that its services hereunder comply with Privacy Laws. Specifically, the Custodian agrees: (a) to have a designated chief privacy officer; (b) to maintain policies and procedures to protect personal information and to receive and respond to any privacy complaint or inquiry; (c) to use personal information solely for the purposes of providing its services under or ancillary to this Custody Agreement and not to use it for any other purpose except with the consent of or direction from Project Co or HMQ Agencies or the individual involved; (d) not to sell or otherwise improperly disclose personal information to any third party; and (e) to employ administrative, physical and technological safeguards to reasonably secure and protect personal information against loss, theft, or unauthorized access, use or modification.

9. Intellectual Property Rights

- (a) The release of the Material to HMQ Agencies and to the Custodian will not act as an assignment of any Intellectual Property Rights that Project Co possesses in the Material.

10. Inspection

- (a) Subject to the following provisions of this Section 10, the Custodian shall bear no obligation or responsibility to any person, firm, company or entity whatsoever to

determine the existence, relevance, completeness, accuracy, effectiveness or any other aspect of the Financial Model.

- (b) The PA Parties shall be entitled, at reasonable hours and upon giving the Custodian reasonable notice, to inspect and audit or to procure the inspection and audit of the Financial Model in accordance with this Section 10.
- (c) The Custodian shall, upon receiving duly signed instructions from the PA Parties (but only upon receiving such instructions), provide facilities for HMQ Agencies and/or Project Co and/or such person identified in the duly signed written instructions to inspect and audit the Financial Model.
- (d) The Custodian shall maintain a record of any inspection and audit made pursuant to Section 10(b), including details of the person who made the inspection and/or audit and the date of the same.

11. Custodian’s Liability and Insurance

11.1 Custodian’s Liability

- (a) The Custodian shall not be liable for any loss or damage caused to Project Co or HMQ Agencies either jointly or severally except to the extent that such loss or damage is caused by the negligent acts or omissions of or a breach of any contractual duty by the Custodian, its employees, agents or sub-contractors, and in such event, the Custodian’s total liability in respect of all claims arising under or by virtue of this Custody Agreement shall not (except in the case of claims for personal injury or death) exceed the sum of [REDACTED] (index-linked).
- (b) The Custodian shall in no circumstances be liable to Project Co or HMQ Agencies for indirect or consequential loss of any nature whatsoever whether for loss of profit, loss of business or otherwise.
- (c) Subject to complying with the provisions of Section 6, and save in the case of manifest error, the Custodian shall be protected in acting upon any written request, waiver, consent, receipt or other document furnished to it pursuant to this Custody Agreement, not only in assuming its due execution and the validity and effectiveness of its provisions but also as to the truth and acceptability of any information contained in it, which the Custodian in good faith believes to be genuine and what it purports to be.
- (d) The duties, responsibilities and obligations of the Custodian shall be limited to those expressly set forth herein and no duties, responsibilities or obligations shall be inferred or implied. The Custodian shall not be subject to, nor required to comply with, any other agreement between or among any or all of the other Parties or to which any Party is a party, even though reference thereto may be made herein, or to comply with any direction or instruction (other than those contained herein or delivered in accordance herewith).

The Custodian shall not be required to expend or risk any of its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder except ordinary corporate costs incurred in the performance of such duties.

- (e) If at any time the Custodian is served with any judicial or administrative order, judgment, decree, writ or other form of judicial or administrative process which in any way affects the Material (including, but not limited to, orders of attachment or garnishment or other forms of levies or injunctions or stays relating to the transfer of property), the Custodian is authorized to comply therewith in any manner as it or its legal counsel deems appropriate, acting reasonably; provided that the Custodian, when so served, shall promptly notify Project Co and HMQ Agencies, in writing, of such process and the Custodian's intended action in order to provide Project Co and HMQ Agencies a reasonable opportunity to intervene or challenge such process in a court or tribunal of competent jurisdiction.
- (f) The Custodian may consult with legal counsel at the expense of Project Co and HMQ Agencies as to any matter relating to this Custody Agreement, and the Custodian shall not incur any liability in acting in good faith in accordance with any advice from such counsel. All reasonable fees and disbursements incurred by the Custodian shall be added to the fees otherwise payable hereunder.
- (g) The Custodian shall not incur any liability for not performing any act or fulfilling any duty, obligation or responsibility hereunder by reason of any occurrence beyond the control of the Custodian (including, but not limited to, any act or provision of any present or future law or regulation or governmental authority, any act of God or war, or the unavailability of any wire or communication facility).
- (h) The Custodian shall not be responsible in any respect for the form or content of the Material delivered to it hereunder.
- (i) In the event of any ambiguity or uncertainty hereunder or in any notice, instruction or other communication received by the Custodian hereunder, the Custodian shall notify Project Co and HMQ Agencies in writing of such ambiguity or uncertainty and request instructions to eliminate such ambiguity or uncertainty. The Custodian may, acting reasonably, refrain from taking any action other than to retain possession of the Material, unless the Custodian receives written instructions, signed by Project Co and HMQ Agencies, which eliminates such ambiguity or uncertainty.
- (j) In the event of any dispute between or conflicting claims by or among the PA Parties and/or any other person or entity with respect to the Material, the Custodian shall be entitled, acting reasonably, to refuse to comply with any and all claims, demands or instructions with respect to the Material so long as such dispute or conflict shall continue, and the Custodian shall promptly notify Project Co and HMQ Agencies of its intention to do so. In such circumstances, the Custodian shall not be or become liable in any way to Project Co or HMQ Agencies for failure or refusal to comply with such conflicting

claims, demands or instructions. The Custodian shall be entitled to refuse to act until, acting reasonably, either (i) such conflicting or adverse claims or demands shall have been determined by a final order, judgment or decree of a court of competent jurisdiction, which order, judgment or decree is not subject to appeal, or settled by agreement between the conflicting parties as evidenced in writing satisfactory to the Custodian or (ii) the Custodian shall have received security or an indemnity satisfactory to it acting reasonably sufficient to hold it harmless from and against any and all losses which it may incur by reason of so acting. The Custodian may, in addition, elect, acting reasonably, to commence an interpleader action or seek other judicial relief or orders as it may deem, acting reasonably, necessary, including, without limiting the generality of the foregoing, depositing all or any part of the Material into court. The costs and expenses (including reasonable attorneys' fees and expenses) incurred in connection with such proceeding shall be paid by, and shall be deemed a joint and several obligation of, Project Co and HMQ Agencies.

- (k) Each of Project Co and HMQ Agencies shall provide to the Custodian an incumbency certificate setting out the names and sample signatures of persons authorized to give instructions to the Custodian hereunder. The Custodian shall be entitled to rely on such certificate until a revised certificate is provided to it hereunder. The Custodian shall be entitled to refuse to act upon any instructions given by a party which are signed by any person other than a person described in the incumbency certificate provided to it pursuant to this section.
- (l) The Custodian shall be entitled to rely, and act upon, on any direction, order, instruction, notice or other communication provided to it hereunder which is sent to it by facsimile transmission.
- (m) This Section 11 shall survive the termination of this Custody Agreement.

11.2 Insurance

- (a) The Custodian must have in place at all times during the term of this Custody Agreement such insurance as is customarily maintained by a reputable Canadian financial institution performing services similar to those provided by the Custodian pursuant to this Custody Agreement.

12. Indemnity

- (a) Save for any claim falling within the provisions of Section 11.1(a), Project Co and HMQ Agencies, on a joint and several basis, shall be liable for and shall indemnify and hold harmless the Custodian, and its officers, directors and employees, from and against any and all claims, losses, liabilities, costs, damages or expenses (including reasonable attorneys' fees and expenses) arising from or in connection with or related to this Custody Agreement or acting as Custodian hereunder (including, but not limited to, losses incurred by the Custodian in connection with its successful defense of any claim of

negligence or willful misconduct on its part), provided, however, that nothing contained herein shall require the Custodian to be indemnified for losses caused by its negligence or willful misconduct.

- (b) The indemnity provided in this Section 12 shall not extend to:
 - (i) losses caused by the negligence or willful misconduct of the Custodian;
 - (ii) any action taken by the Custodian outside the scope of authority set forth in this Custody Agreement, or any part or parts hereof; or
 - (iii) any debt, cost, expense, claim or demand for which insurance proceeds are recoverable by the Custodian or would have been recoverable by the Custodian if it had complied with its obligations under this Custody Agreement.
- (c) Claims made by a third person against a party having, or claiming to have, the benefit of an indemnity pursuant to this Custody Agreement, shall be conducted in accordance with the conduct of claims procedure described in Appendix A – Conduct of Claims to this Custody Agreement.

13. Termination

- (a) The Custodian may terminate this Custody Agreement for failure by Project Co to pay any outstanding fee provided for herein within 30 days of receipt of written notice in respect thereof.
- (b) The Custodian may terminate this Custody Agreement by giving 120 days prior written notice to Project Co and HMQ Agencies. In that event, Project Co and HMQ Agencies shall appoint a mutually acceptable new custodian on terms similar to those contained in this Custody Agreement.
- (c) If the Custodian is not notified of the new custodian within the notice period given in Section 13(b), the Custodian will destroy the Material.
- (d) HMQ Agencies may terminate this Custody Agreement by giving 30 days prior written notice to the Custodian and Project Co.
- (e) Project Co may, with the prior written consent of HMQ Agencies, terminate this Custody Agreement by giving 30 days prior written notice to the Custodian and HMQ Agencies.
- (f) This Custody Agreement shall terminate upon release of the Material to HMQ Agencies in accordance with Section 6(c).
- (g) Upon termination under the provisions of Sections 13(d) or 13(e), the Custodian will deliver the Material to Project Co. If the Custodian is unable to trace Project Co within

- 60 days of writing to the last registered address notified by Project Co to the Custodian, the Custodian will destroy the Material.
- (h) Upon termination under the provisions of Section 13(a), the Material will be available for collection by Project Co from the Custodian for 60 days from the date of termination. After such 60-day period, the Custodian will destroy the Material.
 - (i) The Custodian may forthwith terminate this Custody Agreement and destroy the Material if it is unable to trace Project Co within 60 days of writing to the last registered address notified by Project Co to the Custodian having used all reasonable endeavours to do so.
 - (j) The provisions of Sections 8, 11 and 12 shall continue in full force and effect after termination of this Custody Agreement.
 - (k) The Agreement shall terminate on the Expiry Date, at which time Project Co will write to the Custodian requesting the release of the Materials to it. The Custodian agrees that it will notify HMQ Agencies of Project Co's request and, failing receipt of any notice of objection from HMQ Agencies within 30 days of the receipt of the notice by HMQ Agencies, it shall release the Materials to Project Co.
 - (l) On termination of this Custody Agreement, Project Co shall remain liable to the Custodian for payment in full of any fee which has become due but which has not been paid as at the date of termination.

14. Step-In Rights

- (a) The Custodian shall, from time to time:
 - (i) permit HMQ Agencies to perform or discharge any obligation of Project Co under this Custody Agreement, where Project Co is in breach of the same;
 - (ii) permit Project Co to perform or discharge any obligation of HMQ Agencies under this Custody Agreement, where HMQ Agencies are in breach of the same; and
 - (iii) following notification by the Lenders' Agent (who at the same time shall provide a copy of any such notification to HMQ Agencies), permit the Lenders' Agent or another person specified in such notice with effect from the date specified in the same to perform or discharge all the obligations of Project Co under this Custody Agreement, provided that the Lenders' Agent shall have the benefit of and be entitled to enforce against the Custodian any and all of the Custodian's obligations to Project Co under this Custody Agreement and the Custodian undertakes to perform such obligations in favour of the Lenders' Agent.
- (b) Project Co consents to the performance or discharge of its obligations by HMQ Agencies pursuant to Section 14(a)(i).

- (c) HMQ Agencies consent to the performance or discharge of their obligations by Project Co pursuant to Section 14(a)(ii).
- (d) The PA Parties consent to the performance or discharge of Project Co's obligations by the Lenders' Agent pursuant to Section 14(a)(iii).
- (e) HMQ Agencies or the Lenders' Agent shall be entitled to terminate the Lenders' Agent's obligations pursuant to Section 14(a)(iii) on giving the Custodian prior notice (HMQ Agencies or the Lenders' Agent at the same time shall provide a copy of any such notification to HMQ Agencies) of at least 15 Business Days. On and from the date of expiry of such notice (the "**Step-Out Date**"), the Lenders' Agent shall be automatically released from all obligations pursuant to this Custody Agreement, except for any which have fallen due for performance or discharge on or before the Step-Out Date and which have not been fully and unconditionally performed or discharged.
- (f) The occurrence of the Step-Out Date shall not affect the continuation of Project Co's obligations towards the Custodian under this Custody Agreement.
- (g) The Lenders' Agent is a Party to this Custody Agreement solely for the purposes of taking the benefit of its rights under Section 4(c) of this Custody Agreement and this Section 14 and shall have no rights or obligations or liabilities hereunder, except pursuant to the operation of Section 4(c) of this Custody Agreement and this Section 14.

15. Assignment

- (a) This Custody Agreement shall be binding on, and enure to the benefit of, the Custodian, Project Co and HMQ Agencies and their respective successors and permitted transferees and assigns.
- (b) Project Co may assign, transfer or otherwise dispose of the benefit of this Custody Agreement to any person to whom Project Co assigns, transfers or otherwise disposes of its interest in the Project Agreement pursuant to Section 56.1 of the Project Agreement.
- (c) HMQ Agencies may assign, transfer or otherwise dispose of the benefit of this Custody Agreement to any person to whom HMQ Agencies assign, transfer or otherwise dispose of their interest in the Project Agreement pursuant to Section 56.2 of the Project Agreement.
- (d) The Custodian shall not, without the prior written consent of the PA Parties assign, transfer or otherwise dispose of the benefit of this Custody Agreement to any person.
- (e) The Custodian acknowledges that Project Co has granted a security interest over its rights under this Custody Agreement to the Lenders' Agent.

16. Notices

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

If to HMQ Agencies:

Metrolinx
20 Bay Street, Suite 600
Toronto, Ontario M5J 2W3

Fax: **[REDACTED]**
Attn.: Manager, Rail Facilities

with a copy to:

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

Fax No.: **[REDACTED]**
Attn.: Project Manager, East Rail Maintenance Facility
Project

If to Project Co:

[REDACTED]

Attention: **[REDACTED]**
Facsimile: **[REDACTED]**
Email: **[REDACTED]**

with a copy (by facsimile) to:

[REDACTED]

Attention: **[REDACTED]**
Facsimile: **[REDACTED]**
Email: **[REDACTED]**

and:

Attention: Chief Financial Officer
Facsimile: **[REDACTED]**

and with a copy to:

[REDACTED]

Attention: **[REDACTED]**

Facsimile: **[REDACTED]**

Email: **[REDACTED]**

If to the Custodian: **[REDACTED]**

Fax: **[REDACTED]**

Attn.: **[REDACTED]**

If to the Lenders' Agent: **[REDACTED]**

Fax: **[REDACTED]**

Attn.: **[REDACTED]**

- (b) Where any notice is provided or submitted to a Party via facsimile, an original of the notice sent via facsimile shall promptly be sent by regular mail or registered mail. For greater certainty, a notice given via facsimile shall not be invalid by reason only of a Party's failure to comply with this Section 16(b).
- (c) Any Party to this Custody Agreement may, from time to time, change any of its contact information set forth in Section 16(a) by prior notice to the other Parties, and such change shall be effective on the Business Day that next follows the recipient Party's receipt of such notice unless a later effective date is given in such notice.
- (d) Subject to Sections 16(e), 16(f) and 16(g):
 - (i) a notice given by registered mail shall be deemed to have been received on the third Business Day after mailing;
 - (ii) a notice given by hand delivery shall be deemed to have been received on the day it is delivered; and
 - (iii) a notice given by facsimile shall be deemed to have been received on the day it is transmitted by facsimile.
- (e) If the Party giving the notice knows or ought reasonably to know of difficulties with the postal system which might affect negatively the delivery of mail, any such notice shall not be mailed but shall be made or given by personal delivery or by facsimile transmission in accordance with this Section 16.
- (f) If any notice delivered by hand or transmitted by facsimile is so delivered or transmitted, as the case may be, either on a day that is not a Business Day or on a Business Day after

4:00 p.m. (recipient's local time), then such notice shall be deemed to have been received by such recipient on the next Business Day.

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

17. Right to Designate

- (a) At any time and from time to time, the Crown may designate any ministry, branch, agency, division, department or office of the Government of Ontario to carry out administrative responsibility for the rights and obligations of HMQ Agencies under this Custody Agreement and Project Co, the Custodian and the Lenders' Agent may deal exclusively with the designated person in respect of all such matters and are entitled to rely on the actions, directions, requests, notices, consents, approvals, waivers, comments relating to the review of documentation and other administrative matters and decisions determined by such designated person from time to time, until the Crown has notified Project Co, the Custodian and the Lenders' Agent in writing that such designated person is no longer the person designated by HMQ Agencies hereunder and such notice shall have effect on the later of the date of delivery of such notice and the date specified in the written notice. The Crown shall advise Project Co, the Custodian and the Lenders' Agent in writing of any designation hereunder. The rights and obligations of the Parties to this Custody Agreement shall be in no way affected by reason of any such designation. Project Co, the Custodian and the Lenders' Agent acknowledge the right of the Crown to delegate administrative responsibilities hereunder as set forth in this Section 17.

18. Amendments

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

19. Waiver

- (a) No waiver made or given by a Party under or in connection with this Custody Agreement shall be binding or effective unless the waiver is in writing, signed by an authorized representative of the Party giving such waiver, and delivered by such Party to the other Parties. No waiver made with respect to any right, power or remedy in one instance will be deemed to be a waiver with respect to any other instance involving the exercise of such right, power, or remedy or with respect to any other right, power, or remedy.
- (b) Failure by any Party to exercise any of its rights, powers or remedies hereunder or its delay to do so shall not constitute a waiver of those rights, powers or remedies. The

single or partial exercise of a right, power or remedy shall not prevent its subsequent exercise or the exercise of any other right, power or remedy.

20. Relationship Between the Parties

- (a) The Parties are independent contractors. This Custody Agreement is not intended to and does not create or establish between the Parties any relationship as partners, joint venturers, trustee and beneficiary, employer and employee, master and servant, or principal and agent.

21. Entire Agreement

- (a) Except where provided otherwise in this Custody Agreement, this Custody Agreement and the Project Agreement constitute the entire agreement between the Parties in connection with the subject matter of this Custody Agreement and supersede all prior representations, communications, negotiations and understandings, whether oral, written, express or implied, concerning the subject matter of this Custody Agreement.

22. Severability

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

23. Enurement

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

24. Governing Law and Jurisdiction

- (a) This Custody Agreement shall be governed by and construed in accordance with the laws of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract, without regard to conflict of laws principles.
- (b) The Parties agree that the courts of the Province of Ontario and all courts competent to hear appeals therefrom shall have exclusive jurisdiction to hear and settle any action, suit, proceeding or dispute in connection with this Custody Agreement and hereby irrevocably attorn to the exclusive jurisdiction of such courts.

- (c) Nothing in this Custody Agreement affects the rights, protections and immunities of the Crown under the *Proceedings Against the Crown Act* (Ontario).

25. Further Assurance

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

26. Language of Agreement

- (a) Each Party acknowledges having requested and being satisfied that this Custody Agreement and related documents be drawn in English. Chacune des parties reconnaît avoir demandé que ces documents soient rédigés en anglais et s'en declare satisfaite.

27. Proof of Authority

- (a) HMQ Agencies reserve the right to require any person executing this Custody Agreement on behalf of Project Co or the Lenders' Agent to provide proof, in a form acceptable to HMQ Agencies, that such person has the requisite authority to execute this Custody Agreement on behalf of and to bind Project Co or the Lenders' Agent, respectively.

28. Counterparts

- (a) This Custody Agreement may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all the Parties shall constitute a full, original and binding agreement for all purposes. Counterparts may be executed either in original or faxed form provided that any Party providing its signature in faxed form shall promptly forward to such Party an original signed copy of this Custody Agreement which was so faxed.

29. Joint and Several

- (a) IO and Metrolinx shall be liable, on a joint and several basis, for all of the obligations of HMQ Agencies under this Custody Agreement and for each covenant of the other under this Custody Agreement.

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

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

Per: _____
Name: [REDACTED]
Title: [REDACTED]

Per: _____
Name: [REDACTED]
Title: [REDACTED]

I/We have authority to bind the corporation.

METROLINX

Per: _____
Name: [REDACTED]
Title: [REDACTED]

I/We have authority to bind the corporation.

**PLENARY INFRASTRUCTURE ERMF GP
by its partners:**

[REDACTED]

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

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

I/We have authority to bind the corporation.

[REDACTED]

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

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

I/We have authority to bind the corporation.

[REDACTED]

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

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

I/We have authority to bind the corporation.

[REDACTED]

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

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

I/We have authority to bind the corporation.

[REDACTED]

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

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

I/We have authority to bind the corporation.

Appendix A

CONDUCT OF CLAIMS

This Appendix A shall apply to the conduct of claims, made by a third person against a party having, or claiming to have, the benefit of an indemnity pursuant to this Custody Agreement. The party having, or claiming to have, the benefit of the indemnity is referred to as the “**Beneficiary**” and HMQ Agencies and Project Co are referred to, collectively, as the “**Indemnifier**”.

- (1) If the Beneficiary receives any notice, demand, letter or other document concerning any claim for which it appears that the Beneficiary is, or may become entitled to, indemnification under Section 12 of the Custody Agreement, the Beneficiary shall give written notice to both of the Indemnifiers as soon as reasonably practicable and in any event within 10 Business Days of receipt of the same. Such notice shall specify with reasonable particularity, to the extent that information is available, the factual basis for the claim and the amount of the claim.
- (2) Subject to Sections (3), (4) and (5) of this Appendix A, on the giving of such notice by the Beneficiary, where it appears that the Beneficiary is or may be entitled to indemnification from the Indemnifier in respect of all, but not part only, of the liability arising out of the claim, the Indemnifier shall be entitled to dispute the claim in the name of the Beneficiary at the Indemnifier’s own expense and take conduct of any defence, dispute, compromise, or appeal of the claim and of any incidental negotiations. In such case, HMQ Agencies may, but shall not be obligated to, assume (on prior written notice to Project Co) control of any such defence for and on behalf of itself and Project Co, and Project Co hereby consents to such assumption. The Beneficiary shall give the Indemnifier all reasonable cooperation, access and assistance for the purposes of considering and resisting such claim. The Beneficiary shall have the right to employ separate counsel in respect of such claim at its own cost and expense.
- (3) With respect to any claim conducted by the Indemnifier:
 - (i) the Indemnifier shall keep the Beneficiary fully informed and consult with it about material elements of the conduct of the claim;
 - (ii) the Indemnifier shall not bring the name or reputation of the Beneficiary into disrepute;
 - (iii) the Indemnifier shall not pay, compromise or settle such claims without the prior consent of the Beneficiary, such consent not to be unreasonably withheld or delayed;

- (iv) the Indemnifier shall not admit liability or fault to any third party without the prior consent of the Beneficiary, such consent not to be unreasonably withheld or delayed; and
 - (v) the Indemnifier shall use commercially reasonable efforts to have the Beneficiary named as a beneficiary under any release given by the persons bringing the claim to which this Section (3) relates.
- (4) The Beneficiary shall be free to pay or settle any such claim on such terms as it thinks fit and without prejudice to its rights and remedies under this Custody Agreement if:
- (i) the Indemnifier is not entitled to take conduct of the claim in accordance with Section (2); or
 - (ii) the Indemnifier fails to notify the Beneficiary of its intention to take conduct of the relevant claim as soon as reasonably practicable and in any event within 10 Business Days of the notice from the Beneficiary under Section (1) or the Indemnifier notifies the Beneficiary that the Indemnifier does not intend to take conduct of the claim.
- (5) The Beneficiary shall be free at any time to give notice to the Indemnifier that the Beneficiary is retaining or taking over, as the case may be, the conduct of any defence, dispute, compromise or appeal of any claim, or of any incidental negotiations, to which Section (2) applies. On receipt of such notice the Indemnifier shall promptly take all steps necessary to transfer the conduct of such claim to the Beneficiary, and shall provide to the Beneficiary all relevant documentation and all reasonable cooperation, access and assistance for the purposes of considering and resisting such claim. If the Beneficiary gives any notice pursuant to this Section (5), then the Indemnifier shall be released from any liabilities arising under the applicable indemnity hereunder in respect of the applicable claim.
- (6) If the Indemnifier pays to the Beneficiary an amount in respect of an indemnity and the Beneficiary subsequently recovers, whether by payment, discount, credit, saving, relief or other benefit or otherwise, a sum or anything else of value (the “**Recovery Amount**”), the Beneficiary shall forthwith repay to the Indemnifier whichever is the lesser of:
- (i) an amount equal to the Recovery Amount less any out-of-pocket costs and expenses properly incurred by the Beneficiary in recovering the same; and
 - (ii) the amount paid to the Beneficiary by the Indemnifier in respect of the claim under the relevant indemnity,

provided that there shall be no obligation on the Beneficiary to pursue any Recovery Amount and that the Indemnifier shall be repaid only to the extent that the Recovery Amount, aggregated with any sum recovered from the Indemnifier, exceeds the loss

sustained by the Beneficiary except, however, that if the Beneficiary elects not to pursue a Recovery Amount, the Indemnifier shall be entitled to require an assignment to it of the right to do so.

- (7) Any person taking any of the steps contemplated by this Appendix A shall comply with the requirements of any insurer who may have an obligation to provide an indemnity in respect of any liability arising under this Custody Agreement.

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SCHEDULE 4

LENDERS' DIRECT AGREEMENT

THIS AGREEMENT is made as of the _____ day of March, 2015

AMONG:

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

(“**IO**”)

AND:

METROLINX, a non-share capital corporation continued under the *Metrolinx Act, 2006*, S.O. 2006, c.16 and a Crown agency in accordance with the *Crown Agency Act*, R.S.O. c.48

(“**Metrolinx**” and, together with IO, collectively, “**HMQ Agencies**”)

AND:

PLENARY INFRASTRUCTURE ERMF GP, a general partnership existing under the laws of the Province of Ontario

(“**Project Co**”)

AND:

[REDACTED], in its capacity as collateral trustee under the Common Terms Agreement

(the “**Lenders' Agent**”)

WHEREAS:

- A. HMQ Agencies and Project Co have entered into the Project Agreement.
- B. The overriding priorities of HMQ Agencies in entering into and implementing the Project Agreement are enabling HMQ Agencies, HMQ Occupants and Non-HMQ Occupants and

other HMQ Parties to carry out all maintenance and storage operations in in a secure, safe and efficient manner.

- C. Under the Lending Agreements, financing is to be provided to Project Co by the Lenders to finance the Project Operations, conditional on, among other things, Project Co granting the Security to the Lenders' Agent.
- D. The Lenders' Agent has agreed to enter into this lenders' direct agreement (the "**Lenders' Direct Agreement**") with HMQ Agencies in relation to the Security, the exercise of its rights under the Security Documents and the remedying of breaches by Project Co under the Project Agreement.
- E. With a view to ensuring that HMQ Agencies are able to properly and effectively discharge their duties, functions and responsibilities under Applicable Law, Project Co, the Lenders' Agent and the Lenders commit to working collaboratively, responsibly and cooperatively with HMQ Agencies throughout the Project Term.
- F. IO and Metrolinx intend to enter into this Lenders' Direct Agreement as agents of Her Majesty the Queen in right of Ontario, in accordance with Applicable Law, and to be liable, on a joint and several basis, for all of the obligations of HMQ Agencies pursuant to this Lenders' Direct Agreement, save and except as provided for in this Lenders' Direct Agreement.

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

1. DEFINITIONS

In this Lenders' Direct Agreement, unless the context otherwise requires:

- (a) "**Affiliate**" has the meaning given in the Project Agreement.
- (b) "**Appointed Representative**" means any of the following to the extent so identified in an Appointed Representative Notice:
 - (i) the Lenders' Agent, any Lender or any of their Affiliates;
 - (ii) a receiver or receiver and manager of Project Co appointed under the Security Documents;
 - (iii) a trustee in bankruptcy or court-appointed receiver of Project Co;
 - (iv) an administrator of Project Co;

- (v) a person directly or indirectly owned or controlled by the Lenders' Agent and/or any of the Lenders; or
- (vi) any other person approved by HMQ Agencies (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) “**Common Terms Agreement**” has the meaning given in the Project Agreement.
- (f) “**Construction Contract**” has the meaning given in the Project Agreement.
- (g) “**Construction Contractor**” has the meaning given in the Project Agreement.
- (h) “**Crown**” has the meaning given in the Project Agreement.
- (i) “**Default Notice**” has the meaning given in Section 7(b)(i).
- (j) “**Direct Agreements**” has the meaning given in the Project Agreement.
- (k) “**Enforcement Action**” means any acceleration of amounts due and owing to the Lenders under any of the Lending Agreements and/or any enforcement proceeding or enforcement action commenced or taken under any of the Security Documents.
- (l) “**Enforcement Event**” means an event of default as defined in the Lending Agreements, or any other event which permits an Enforcement Action.
- (m) “**Exercise Date**” has the meaning given in Section 12(b).
- (n) “**Facility**” has the meaning given in the Project Agreement.
- (o) “**Failure Points**” has the meaning given in the Project Agreement.
- (p) “**Governmental Authority**” has the meaning given in the Project Agreement.
- (q) “**HMQ Agencies**” has the meaning given in the recitals.
- (r) “**HMQ Project Documents**” means the Project Agreement and all other documents to which HMQ Agencies and Project Co are parties pursuant to or in connection with the Project Agreement.
- (s) “**Indebtedness Notice**” has the meaning given in Section 7(b)(ii).

- (t) “**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.
- (u) “**Lenders**” has the meaning given in the Project Agreement.
- (v) “**Lenders’ Agent**” has the meaning given in the preamble.
- (w) “**Lenders’ Direct Agreement**” means this lenders’ direct agreement.
- (x) “**Lending Agreements**” has the meaning given in the Project Agreement.
- (y) “**Longstop Date**” has the meaning given in the Project Agreement.
- (z) “**Metrolinx**” has the meaning given in the Project Agreement.
- (aa) “**Monitoring Notice**” 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 ending 120 days later.
- (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 HMQ Agencies, Project Co or the Lenders’ Agent, and “**Parties**” means all of HMQ Agencies, Project Co and the Lenders’ Agent.
- (ff) “**person**” has the meaning given in the Project Agreement.
- (gg) “**Proceeds Account**” means [REDACTED].
- (hh) “**Project**” has the meaning given in the Project Agreement.
- (ii) “**Project Agreement**” means the project agreement made on or about the 24th day of March, 2015 between HMQ Agencies and Project Co.
- (jj) “**Project Co**” has the meaning given in the preamble.
- (kk) “**Project Co Event of Default**” has the meaning given in the Project Agreement.
- (ll) “**Project Co Party**” has the meaning given in the Project Agreement.
- (mm) “**Project Documents**” has the meaning given in the Project Agreement.
- (nn) “**Project Operations**” has the meaning given in the Project Agreement.

- (oo) “**Province**” has the meaning given in the Project Agreement.
- (pp) “**Refinancing**” has the meaning given in the Project Agreement.
- (qq) “**Restricted Person**” has the meaning given in the Project Agreement.
- (rr) “**Scheduled Substantial Completion Date**” has the meaning given in the Project Agreement.
- (ss) “**Security**” means the security interests granted by Project Co to the Lenders’ Agent pursuant to the Security Documents.
- (tt) “**Security Documents**” means all documents pursuant to which security is granted by Project Co to the Lenders (or any trustee or agent thereof, including the Lenders’ Agent) pursuant to or in connection with the Lending Agreements, including but not limited to:

[REDACTED]
- (uu) “**Service Contract**” has the meaning given in the Project Agreement.
- (vv) “**Service Provider**” has the meaning given in the Project Agreement.
- (ww) “**Step-In Date**” means the date on which HMQ Agencies receives a Step-In Notice from the Lenders’ Agent.
- (xx) “**Step-In Notice**” means the notice given by the Lenders’ Agent to HMQ Agencies pursuant to Section 8(a) stating that the Lenders’ Agent is exercising its step-in rights under this Lenders’ Direct Agreement.
- (yy) “**Step-In Period**” means the period from the Step-In Date up to and including the earlier of:
 - (i) the Step-Out Date;
 - (ii) the Termination Date (provided that HMQ Agencies have complied with their obligations in Section 7 of this Lenders’ Direct Agreement);
 - (iii) the date that a transfer of Project Co’s rights and obligations under the HMQ Project Documents to a Suitable Substitute pursuant to Section 10 becomes effective; and
 - (iv) if the Step-In Date occurs prior to the Substantial Completion Date, the earlier of:
 - A. the date falling 180 days after the Longstop Date, or

- B. the date falling 2 years after the Step-In Date.
- (zz) “**Step-Out Date**” means the date falling 30 days after the date on which HMQ Agencies receive a Step-Out Notice.
- (aaa) “**Step-Out Notice**” has the meaning given in Section 9(a).
- (bbb) “**Subsequent Indebtedness Notice**” has the meaning given in Section 7(c).
- (ccc) “**Substantial Completion Date**” has the meaning given in the Project Agreement.
- (ddd) “**Suitable Substitute**” means a person, approved in writing by HMQ Agencies in accordance with Sections 10(b) and 10(c), which:
- (i) has the legal capacity, power and authority to become a party to and perform the obligations of Project Co under the HMQ Project Documents; and
 - (ii) employs individuals having the appropriate qualifications, experience and technical competence, and having the resources available to it (including committed financial resources and subcontracts) that are sufficient to enable it to perform the obligations of Project Co under the HMQ Project Documents.
- (aaa) “**Termination Date**” has the meaning given in the Project Agreement.
- (bbb) “**Warning Notice**” has the meaning given in the Project Agreement.
- (ccc) “**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.

- (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) References containing terms such as:
 - (i) “hereof”, “herein”, “hereto”, “hereinafter”, and other terms of like import are not limited in applicability to the specific provision within which such references are set forth but instead refer to this Lenders' Direct Agreement taken as a whole; and
 - (ii) “includes” and “including”, whether or not used with the words “without limitation” or “but not limited to”, shall not be deemed limited by the specific enumeration of items but shall, in all cases, be deemed to be without limitation and construed and interpreted to mean “includes without limitation” and “including without limitation”.
- (h) In construing this Lenders' Direct Agreement, the rule known as the *ejusdem generis rule* shall not apply nor shall any similar rule or approach to the construction of this Lenders' Direct Agreement and, accordingly, general words introduced or followed by the word “other” or “including” or “in particular” shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words.
- (i) Where this Lenders' Direct Agreement states that an obligation shall be performed “no later than” or “within” or “by” a stipulated date or event which is a prescribed number of days after a stipulated date or event, the latest time for performance shall be 5:00 p.m. on the last day for performance of the obligation

concerned, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.

- (j) Where this Lenders' Direct Agreement states that an obligation shall be performed "on" a stipulated date, the latest time for performance shall be 5:00 p.m. on that day, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- (k) Any reference to time of day or date means the local time or date in Toronto, Ontario.
- (l) Unless otherwise indicated, time periods will be strictly construed.
- (m) Whenever the terms "will" or "shall" are used in this Lenders' Direct Agreement they shall be construed and interpreted as synonymous and to read "shall".

3. CONFLICT OF DOCUMENTS

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

4. TERM

- (a) This Lenders' Direct Agreement shall terminate automatically on the earliest of:
 - (i) the date on which all amounts which may be or become owing to the Lenders under the Lending Agreements have been irrevocably paid in full;
 - (ii) the Termination Date (provided that HMQ Agencies have complied with their obligations in Section 7 of this Lenders' Direct Agreement); and
 - (iii) the date that any transfer of Project Co's rights and obligations under the HMQ Project Documents to a Suitable Substitute pursuant to Section 10 becomes effective and the agreements contemplated in Section 10(e)(iii) are executed and delivered by the parties thereto.
- (b) Within 30 days following its occurrence, the Lenders' Agent shall provide notice to HMQ Agencies of the date referred to in Section 4(a)(i).

5. AGREEMENTS AND SECURITY

- (a) Project Co and the Lenders' Agent shall not amend or modify the Lending Agreements, or any of them, except where Project Co is permitted to do so pursuant to Section 7.3(a) of the Project Agreement.

- (b) Project Co represents and warrants that the Lending Agreements have been entered into and negotiated on an arm's length basis.
- (c) Project Co and HMQ Agencies shall not amend or modify the HMQ Project Documents (other than in accordance with the terms of those agreements) without the prior written consent of the Lenders' Agent, not to be unreasonably withheld or delayed, which consent shall not be withheld if the relevant amendment or modification shall not (i) materially adversely affect the ability of the Lenders to exercise their rights under the Security, (ii) materially adversely affect the value of the Security, or (iii) increase the liability of the Lenders or Project Co under the relevant agreement. The Lenders' Agent shall respond to any request for consent under this Section 5(c) within 30 days of receipt thereof.
- (d) Project Co acknowledges and consents to the arrangements set out in this Lenders' Direct Agreement, and agrees not to do or omit to do anything that may prevent any other Party from enforcing its rights under this Lenders' Direct Agreement.
- (e) The Lenders' Agent acknowledges having received a copy of the Project Agreement.
- (f) HMQ Agencies acknowledge having received copies of the Lending Agreements, and confirm that they are in form and substance satisfactory to HMQ Agencies as at the date of Financial Close.
- (g) HMQ Agencies acknowledge notice of and consent to the Security, and confirm that they have not received notice of any other security interest granted over Project Co's rights under any of the HMQ Project Documents.
- (h) HMQ Agencies agree that any enforcement by the Lenders' Agent of a security interest in the Equity Capital of Project Co granted in favour of the Lenders' Agent as part of the Security following an Enforcement Event shall not constitute a Change in Ownership, Change in Control or Project Co Event of Default, under the Project Agreement.
- (i) Project Co and the Lenders' Agent hereby authorize and instruct HMQ Agencies (and HMQ Agencies agree) to pay all sums payable to Project Co under the Project Agreement to the Proceeds Account, and Project Co and HMQ Agencies agree that upon the occurrence of an Enforcement Event, if so directed in writing by the Lenders' Agent upon giving reasonable notice, HMQ Agencies 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) HMQ Agencies shall provide the Lenders' Agent with copies of any Warning Notice, Monitoring Notice or notice of default given to Project Co under the Project Agreement at the same time such notice is given to Project Co.
- (k) Prior to the irrevocable payment in full of all amounts owing to the Lenders under the Lending Agreements, HMQ Agencies shall not take any action to wind-up, liquidate, dissolve or appoint a receiver or receiver and manager of Project Co or to institute or sanction a voluntary arrangement or any other bankruptcy or insolvency proceedings in relation to Project Co.

6. ENFORCEMENT OF SECURITY BY LENDERS' AGENT

- (a) The Lenders' Agent shall promptly notify HMQ Agencies of any Enforcement Event, any Enforcement Action, any notice from the Lenders to Project Co to accelerate the maturity of any amounts owing by Project Co to the Lenders under the Lending Agreements or any notice from the Lenders to Project Co to demand repayment of any amounts owing by Project Co to the Lenders under the Lending Agreements.
- (b) The Lenders' Agent may assign, transfer or otherwise dispose of any right, title or interest it may have in, or rights or obligations it may have pursuant to, the Security Documents to a successor agent in accordance with the terms of the Lending Agreements except where:
 - (i) such assignment, transfer or other disposition would constitute a Refinancing and the provisions of Schedule 28 - Refinancing to the Project Agreement have not been complied with in connection therewith; or
 - (ii) the person to whom such assignment, transfer or other disposition is to be made, or an Affiliate of such person, is a Restricted Person or a person whose standing or activities may compromise (1) the Province's reputation or integrity, or (2) the nature of the Province's transportation system, so as to affect public confidence in that system.
- (c) Any Lender may assign, transfer or otherwise dispose of any right, title or interest it may have in, or rights or obligations it may have pursuant to, the Lending Agreements in accordance with the terms of the Lending Agreements.

7. TERMINATION OF PROJECT AGREEMENT BY HMQ AGENCIES

- (a) Subject only to the rights expressly afforded to the Lenders' Agent pursuant to, and the restrictions set forth in, this Section 7, HMQ Agencies may, at any time, serve notice terminating the Project Agreement if they are entitled to do so under the terms of the Project Agreement.

- (b) At any time other than during the Step-In Period (with the restriction on termination during the Step-In Period set out in Section 7(d)), HMQ Agencies 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) HMQ Agencies promptly deliver written notice (a “**Default Notice**”) to the Lenders’ Agent setting out the Project Co Event of Default in reasonable detail;
 - (ii) not later than 30 days after the date of a Default Notice, HMQ Agencies deliver written notice (an “**Indebtedness Notice**”) to the Lenders’ Agent setting out:
 - A. all amounts owed by Project Co to HMQ Agencies and any other existing liabilities and unperformed obligations of Project Co to HMQ Agencies of which HMQ Agencies are aware (having made reasonable enquiry), in each case, as of the date on which HMQ Agencies sent the Default Notice; and
 - B. all amounts which will become owing by Project Co to HMQ Agencies and any other liabilities and obligations of Project Co to HMQ Agencies of which HMQ Agencies are aware (having made reasonable enquiry), in each case, on or before the end of the Notice Period; and
 - (iii) the Notice Period has expired and the Lenders’ Agent has not delivered a Step-In Notice.
- (c) At any time after HMQ Agencies send an Indebtedness Notice but before HMQ Agencies receive a Step-In Notice, if HMQ Agencies discover amounts that have become owing by Project Co to HMQ Agencies or any other liabilities or obligations of Project Co to HMQ Agencies that have come due but which were not included in the Indebtedness Notice, HMQ Agencies shall deliver written notice (a “**Subsequent Indebtedness Notice**”) to the Lenders’ Agent setting out those amounts, liabilities or obligations.
- (d) During the Step-In Period, HMQ Agencies 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 HMQ Agencies were aware (having made due inquiry) and whether or not continuing at the Step-In Date unless:

- A. the grounds arose prior to the Substantial Completion Date, and the Substantial Completion Date does not occur on or before the date falling 180 days after the Longstop Date; or
- B. the grounds arose after the Substantial Completion Date, and neither the Appointed Representative nor Project Co, as the case may be, is diligently proceeding to cure any breach of the Project Agreement that:
 - (1) arose prior to the Step-In Date;
 - (2) is continuing and capable of being cured; and
 - (3) would have entitled HMQ Agencies to terminate the Project Agreement; or
- C. the grounds (whenever they first arose) did not give rise to any right to terminate the Project Agreement until after the Step-In Date; or
 - (iii) arising solely in relation to Project Co.
- (e) HMQ Agencies shall be entitled to terminate the Project Agreement by written notice to Project Co and the Appointed Representative:
 - (i) if any amount referred to in Section 7(b)(ii)A has not been paid to HMQ Agencies on or before the Step-In Date;
 - (ii) if any amount referred to in Section 7(b)(ii)B has not been paid on or before the last day of the Notice Period;
 - (iii) if amounts included in a Subsequent Indebtedness Notice have not been paid on or before the date falling 30 days after the date on which the Subsequent Indebtedness Notice is delivered to the Lenders' Agent; or
 - (iv) on grounds arising after the Step-In Date in accordance with the terms of the Project Agreement, provided that, except as otherwise provided in Section 10, Failure Points and/or Warning Notices that arose prior to the Step-In Date shall not be taken into account during the Step-In Period but such Failure Points and Warning Notices (to the extent applicable under the terms of the Project Agreement) shall be taken into account after the Step-Out Date.

8. STEP-IN RIGHTS

- (a) Subject to Section 8(b) and without prejudice to rights of the Lenders' Agent to enforce the Security, the Lenders' Agent may give HMQ Agencies a Step-In Notice at any time:
 - (i) during which a Project Co Event of Default is subsisting (whether or not a Default Notice has been served);
 - (ii) during the Notice Period; or
 - (iii) during which an Enforcement Event is subsisting.
- (b) At least 5 Business Days before the Lenders' Agent delivers a Step-In Notice, the Lenders' Agent shall deliver written notice (an "**Appointed Representative Notice**") to HMQ Agencies of:
 - (i) its intention to deliver a Step-In Notice; and
 - (ii) the identity of its proposed Appointed Representative.
- (c) Upon issuance of a Step-In Notice, the Appointed Representative shall assume, jointly with Project Co, all of Project Co's rights under the HMQ Project Documents.
- (d) During the Step-In Period, HMQ Agencies shall deal with the Appointed Representative instead of Project Co in connection with all matters related to the HMQ Project Documents. Project Co agrees to be bound by all such dealings between HMQ Agencies and the Appointed Representative to the same extent as if they had been between HMQ Agencies and Project Co.

9. STEP-OUT RIGHTS

- (a) The Appointed Representative may, at any time during the Step-In Period, deliver written notice (a "**Step-Out Notice**") to HMQ Agencies to terminate the Step-In Period on the Step-Out Date.
- (b) On expiry of the Step-In Period:
 - (i) the rights and obligations of the Appointed Representative in relation to HMQ Agencies under the HMQ Project Documents arising prior to the expiry of the Step-In Period will be assumed by Project Co to the exclusion of the Appointed Representative;

- (ii) HMQ Agencies will no longer deal with the Appointed Representative and will deal with Project Co in connection with all matters related to the HMQ Project Documents; and
 - (iii) the Appointed Representative and HMQ Agencies shall be and hereby are released from all obligations and liabilities to one another under the HMQ Project Documents.
- (c) There will not be more than one Step-In Period in respect of any one Default Notice.

10. NOVATION TO SUITABLE SUBSTITUTE

- (a) Subject to Section 10(b), at any time:
- (i) after an Enforcement Event has occurred;
 - (ii) during the Notice Period; or
 - (iii) during the Step-In Period,

the Lenders' Agent may deliver to HMQ Agencies and any Appointed Representative written notice (a "**Novation Notice**") that it wishes to transfer Project Co's rights and obligations under the HMQ Project Documents to a proposed transferee, together with all information reasonably necessary for HMQ Agencies to decide whether the proposed transferee is a Suitable Substitute. The Novation Notice shall specify a Business Day not less than 30 days from the date on which HMQ Agencies receive the Novation Notice ("**Novation Date**") for the transfer of Project Co's rights and obligations under the HMQ Project Documents to the proposed transferee in accordance with the provisions of Section 10(e).

- (b) HMQ Agencies shall promptly notify the Lenders' Agent of any additional information they require in order to assess whether the proposed transferee is a Suitable Substitute. HMQ Agencies shall notify the Lenders' Agent, in writing, as to whether the person to whom the Lenders' Agent proposes to transfer Project Co's rights and liabilities under the HMQ Project Documents is approved by HMQ Agencies as a Suitable Substitute, on or before the date falling 30 days after the later of the date of receipt by HMQ Agencies of the Novation Notice and the date of receipt of any additional information requested by HMQ Agencies. For greater certainty, if HMQ Agencies fail to respond within such period, HMQ Agencies shall be deemed not to have approved the proposed transferee.
- (c) HMQ Agencies shall not unreasonably withhold or delay their approval of a proposed transferee as a Suitable Substitute, but it shall, without limitation, be reasonable for HMQ Agencies to withhold their approval if:

- (i) there are unremedied breaches under the Project Agreement which are capable of being remedied by the Appointed Representative or the Suitable Substitute and there is no rectification plan acceptable to HMQ Agencies, acting reasonably, in respect of such breaches;
 - (ii) the proposed transferee is a Restricted Person or other person who is not permitted to be a Project Co Party pursuant to the Project Agreement; or
 - (iii) the proposed security interests to be granted by the Suitable Substitute to the Lender Representative are materially different from the Security, materially adversely affect the ability of the Suitable Substitute to perform under the HMQ Project Documents or have the effect of increasing any liability of HMQ Agencies, whether actual or potential.
- (d) If HMQ Agencies withhold their 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 HMQ Agencies, acting reasonably, provided that only one Novation Notice may be outstanding at any one time.
- (e) On the Novation Date:
- (i) Project Co and HMQ Agencies will be released from their obligations under the HMQ Project Documents to each other, and the Suitable Substitute and HMQ Agencies will assume those same obligations towards each other;
 - (ii) each of the rights of Project Co against HMQ Agencies under the HMQ Project Documents and the rights of HMQ Agencies against Project Co under the HMQ Project Documents will be cancelled, and the Suitable Substitute and HMQ Agencies 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 HMQ Agencies and the Suitable Substitute, on substantially the same terms as the Project Agreement; and
 - B. an agreement among HMQ Agencies, the Suitable Substitute and the Lender Representative on substantially the same terms as this Lenders' Direct Agreement;

- (iv) any Failure Points and Warning Notices that arose prior to the Novation Date shall be cancelled, provided that, where HMQ Agencies were entitled to make Deductions under Schedule 20 - Payment Mechanism arising from such Failure Points and Warning Notices and those Deductions have not yet been made against any payments to Project Co preceding the Novation Date, those outstanding Deductions shall still apply; and
- (v) any subsisting ground for termination by HMQ Agencies of the Project Agreement will be deemed to have no effect and any subsisting Default Notice will be automatically revoked.

11. TRANSFERS

HMQ Agencies shall, at Project Co's cost and expense, take whatever action the Lenders' Agent, the Appointed Representative or a Suitable Substitute may reasonably require for perfecting any assumption or transfer of or release pursuant to Sections 8, 9 or 10, including the execution of any transfer or assignment, and the giving of any notice, order or direction and the making of any registration which, in each case, the Lenders' Agent, the Appointed Representative or the Suitable Substitute reasonably requires.

12. DIRECT AGREEMENTS

- (a) Notwithstanding any provision in the Direct Agreements, HMQ Agencies hereby undertake that they will not exercise any rights it may have under or arising out of any of the Direct Agreements, except as provided in Sections 12(b) to 12(f) inclusive.
- (b) Following termination of the Project Agreement (other than as a result of a novation pursuant to this Lenders' Direct Agreement) in accordance with this Lenders' Direct Agreement, HMQ Agencies shall from such date (the "**Exercise Date**") be entitled to exercise their rights under the Direct Agreements to step in to and/or novate the Construction Contract and/or the Service Contract in accordance with the Direct Agreements.
- (c) Following the Exercise Date, HMQ Agencies shall not do anything to prejudice the rights which are not transferred to them pursuant to the Direct Agreements.
- (d) Where all amounts which may be or become owing by Project Co to the Lenders under the Lending Agreements have been irrevocably paid in full, the Lenders' Agent shall promptly release and discharge all Security in respect of any Construction Contract or Service Contract assumed or novated by HMQ Agencies pursuant to a Direct Agreement.
- (e) Notwithstanding the terms of the Direct Agreements and any other provisions of this Section 12, each of the Construction Contractor and the Service Provider (and any guarantors thereof) shall remain responsible, and be liable, to Project Co in

respect of all costs, claims, damages, losses and liabilities which shall have arisen out of or in connection with the Construction Contract and/or the Service Contract in respect of the period prior to the Exercise Date.

- (f) Without prejudice to Sections 12(a) to 12(e) inclusive, HMQ Agencies shall not, prior to the date on which this Lenders' Direct Agreement terminates:
- (i) claim, recover, retain or receive (or seek to claim, recover, retain or receive) any amount under the Direct Agreements (and/or the Construction Contract and/or the Service Contract) from the Construction Contractor or the Service Provider;
 - (ii) take any action to wind-up, liquidate, dissolve or appoint a receiver or receiver and manager of the Construction Contractor and/or the Service Provider or to institute or sanction a voluntary arrangement or any other bankruptcy or insolvency proceedings in relation to the Construction Contractor and/or the Service Provider; or
 - (iii) compete with the rights of the Lenders' Agent on a winding-up or other insolvency or bankruptcy of the Construction Contractor or the Service Provider, nor claim to be subrogated to any rights of the Lenders' Agent or any Lender.

HMQ Agencies agree and undertake that if they receive any amount in contravention of the provisions of this Section 12(f), they will immediately make a payment of an equal amount 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. ASSIGNMENT

- (a) No Party to this Lenders' Direct Agreement may assign, transfer or otherwise dispose of any part of its rights or obligations under this Lenders' Direct Agreement save as provided in this Section 13.
- (b) Project Co may assign, transfer or otherwise dispose of the benefit of this Lenders' Direct Agreement to any person to whom Project Co assigns, transfers or otherwise disposes of its interest in the Project Agreement pursuant to Section 56.1 of the Project Agreement and the provisions of the Lending Agreements, and shall provide written notice to HMQ Agencies 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, HMQ Agencies and the Lenders' Agent, each acting reasonably. HMQ

Agencies and the Lenders' Agent shall, at Project Co's cost and expense, do all things and execute all further documents as may be necessary in connection therewith.

- (c) HMQ Agencies may assign, transfer or otherwise dispose of the whole or part of the benefit of this Lenders' Direct Agreement to any person to whom HMQ Agencies assign, transfer or otherwise dispose of their interest in the Project Agreement pursuant to Section 56.2 of the Project Agreement, and shall provide written notice to Project Co and the Lenders' Agent of such assignment, transfer or other disposition.
- (d) The Lenders' Agent may only assign, transfer or otherwise dispose of any interest in this Lenders' Direct Agreement as permitted by the Lending Agreements, and shall provide written notice to Project Co and HMQ Agencies 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 HMQ Agencies on substantially the same terms as this Lenders' Direct Agreement and Project Co and HMQ Agencies shall enter into such new agreement with the assignee. Project Co and HMQ Agencies shall, at the Lenders' Agent's cost and expense, do all things and execute all further documents as may be necessary in connection therewith.

14. NOTICES

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

If to HMQ Agencies:

Metrolinx
20 Bay Street, Suite 600
Toronto, Ontario M5J 2W3

Fax: [REDACTED]
Attn.: Manager, Rail Facilities

with a copy to:

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

Fax No.: [REDACTED]
Attn.: Project Manager, East Rail Maintenance Facility
Project

If to Project Co: [REDACTED]

Attention: [REDACTED]
Facsimile: [REDACTED]
Email: [REDACTED]

with a copy (by facsimile) to:

[REDACTED]

Attention: [REDACTED]
Facsimile: [REDACTED]
Email: [REDACTED]

and:

Attention: Chief Financial Officer
Facsimile: [REDACTED]

and with a copy to:

[REDACTED]

Attention: [REDACTED]
Facsimile: [REDACTED]
Email: [REDACTED]

If to the Lenders' Agent: [REDACTED]

Fax: [REDACTED]
Attn.: Corporate Trust Administration

(b) Any Party to this Lenders' Direct Agreement may, from time to time, change any of its contact information set forth in Section 14(a) by prior notice to the other Parties, and such change shall be effective on the Business Day that next follows the recipient Party's receipt of such notice unless a later effective date is given in such notice.

(c) Subject to Sections 14(d) and 14(e):

- (i) a notice given by registered mail shall be deemed to have been received on the third Business Day after mailing; and
 - (ii) a notice given by hand delivery shall be deemed to have been received on the day it is delivered.
- (d) If the Party giving the notice knows or ought reasonably to know of difficulties with the postal system which might affect negatively the delivery of mail, any such notice shall not be mailed but shall be made by personal delivery in accordance with this Section 14.
- (e) If any notice delivered by hand is so delivered either on a day that is not a Business Day or on a Business Day after 4:00 p.m. (recipient's local time), then such notice shall be deemed to have been received by such recipient on the next following Business Day.

15. HMQ DESIGNATE

At any time and from time to time, the Crown may designate any ministry, branch, agency, division, department or office of the Government of Ontario to carry out administrative responsibility for the rights and obligations of HMQ Agencies 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 HMQ Agencies hereunder and such notice shall have effect on the later of the date of delivery of such notice and the date specified in the written notice. The Crown shall advise Project Co and the Lenders' Agent in writing of any designation hereunder. The rights and obligations of the parties to this Lenders' Direct Agreement shall be in no way affected by reason of any such designation. Project Co and the Lenders' Agent acknowledge the right of the Crown to delegate administrative responsibilities hereunder as set forth in this Section **Error! Reference source not found..**

16. AMENDMENTS

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

17. WAIVER

- (a) No waiver made or given by a Party under or in connection with this Lenders' Direct Agreement shall be binding or effective unless the waiver is in writing, signed by an authorized representative of the Party giving such waiver, and

delivered by such Party to the other Parties. No waiver made with respect to any right, power or remedy in one instance will be deemed to be a waiver with respect to any other instance involving the exercise of such right, power, or remedy or with respect to any other right, power, or remedy.

- (b) Failure by any Party to exercise any of its rights, powers or remedies hereunder or its delay to do so shall not constitute a waiver of those rights, powers or remedies. The single or partial exercise of a right, power or remedy shall not prevent its subsequent exercise or the exercise of any other right, power or remedy.

18. RELATIONSHIP BETWEEN THE PARTIES

The Parties are independent contractors. This Lenders' Direct Agreement is not intended to and does not create or establish between the Parties any relationship as partners, joint venturers, employer and employee, master and servant, or, except as provided in this Lenders' Direct Agreement, of principal and agent.

19. ENTIRE AGREEMENT

Except where provided otherwise in this Lenders' Direct Agreement, this Lenders' Direct Agreement constitutes the entire agreement between the Parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings, whether oral, written, express or implied, concerning the subject matter of this Lenders' Direct Agreement.

20. SEVERABILITY

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

21. ENUREMENT

This Lenders' Direct Agreement shall enure to the benefit of, and be binding on, each of the Parties and their respective successors and permitted transferees and assigns.

22. GOVERNING LAW AND JURISDICTION

- (a) This Lenders' Direct Agreement shall be governed by and construed in accordance with the laws of Ontario and the laws of Canada applicable therein

and shall be treated in all respects as an Ontario contract, without regard to conflict of laws principles.

- (b) The Parties agree that the courts of the Province of Ontario and all courts competent to hear appeals therefrom shall have exclusive jurisdiction to hear and settle any action, suit, proceeding or dispute in connection with this Lenders' Direct Agreement and hereby irrevocably attorn to the exclusive jurisdiction of such courts.
- (c) Nothing in this Lenders' Direct Agreement affects the rights, protections and immunities of the Crown under the *Proceedings Against the Crown Act* (Ontario).

23. DISPUTE RESOLUTION PROCEDURE

The Parties agree that the dispute resolution procedure provided for in Schedule 27 - Dispute Resolution Procedure to the Project Agreement shall not apply to any dispute under this Lenders' Direct Agreement.

24. FURTHER ASSURANCE

Each Party shall do all things, from time to time, and execute all further documents necessary to give full effect to this Lenders' Direct Agreement.

25. LANGUAGE OF AGREEMENT

Each Party acknowledges having requested and being satisfied that this Lenders' Direct Agreement and related documents be drawn in English. Chacune des parties reconnaît avoir demandé que ce document et ses annexes soient rédigés en anglais et s'en déclare satisfaite.

26. COUNTERPARTS

This Lenders' Direct Agreement may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all the Parties shall constitute a full, original and binding agreement for all purposes. Counterparts may be executed either in original or faxed form provided that any Party providing its signature in faxed form shall promptly forward to such Party an original signed copy of this Lenders' Direct Agreement which was so faxed.

27. JOINT AND SEVERAL

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

28. CONFIDENTIALITY

The Lenders' Agent agrees to comply with the obligations imposed on Project Co by the provisions of Section 49 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.

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

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

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

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

I/We have authority to bind the corporation.

METROLINX

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

I/We have authority to bind the corporation.

[REDACTED]

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

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

I/We have authority to bind the [**<*>**].

**PLENARY INFRASTRUCTURE ERMF
GP,**

by its partners:

[REDACTED]

By: _____

Name: **[REDACTED]**

Title: **[REDACTED]**

By: _____

Name: **[REDACTED]**

Title: **[REDACTED]**

I/We have authority to bind the corporation.

[REDACTED]

By: _____

Name: **[REDACTED]**

Title: **[REDACTED]**

By: _____

Name: **[REDACTED]**

Title: **[REDACTED]**

I/We have authority to bind the corporation.

[REDACTED]

By: _____

Name: **[REDACTED]**

Title: **[REDACTED]**

By: _____

Name: **[REDACTED]**

Title: **[REDACTED]**

I/We have authority to bind the corporation.

SCHEDULE 5-1

CONSTRUCTION CONTRACTOR’S DIRECT AGREEMENT

THIS AGREEMENT is made as of the _____ day of March, 2015

AMONG:

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

(“**IO**”)

AND:

METROLINX, a non-share capital corporation continued under the *Metrolinx Act, 2006*, S.O. 2006, c.16 and a Crown agency in accordance with the *Crown Agency Act*, R.S.O. c.48

(“**Metrolinx**” and, together with IO, collectively, “**HMQ Agencies**”)

AND:

PLENARY INFRASTRUCTURE ERMF GP, a general partnership existing under the laws of the Province of Ontario

(“**Project Co**”)

AND:

[REDACTED]

(“[REDACTED]Construction”)

AND:

[REDACTED]

(“[REDACTED]”, and together with Bird Construction, collectively the “**Construction Contractor**”)

AND:

[REDACTED], a corporation incorporated under the laws of the Province of Ontario

(the “[REDACTED] Guarantor”)

AND:

[REDACTED], a corporation incorporated under the laws of the Province of Ontario

(the “[REDACTED] Guarantor”, and together with the Bird Guarantor, collectively the “**Construction Guarantor**”)

WHEREAS:

- A. HMQ Agencies 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 Guarantor to enter into, this Construction Contractor’s Direct Agreement with HMQ Agencies.
- B. Project Co and the Construction Contractor have entered into the Construction Contract, which requires the Construction Contractor and the Construction Guarantor to enter into this Construction Contractor’s Direct Agreement with HMQ Agencies.
- C. IO and Metrolinx intend to enter into this Construction Contractor’s Direct Agreement as agents of Her Majesty the Queen in right of Ontario, in accordance with Applicable Law, and to be liable, on a joint and several basis, for all of the obligations of HMQ Agencies pursuant to this Construction Contractor’s Direct Agreement, save and except as provided for in this Construction Contractor’s Direct Agreement.

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

1. DEFINITIONS

In this Construction Contractor’s Direct Agreement, unless the context otherwise requires:

- (a) “**Approved Purposes**” has the meaning given in the Project Agreement.
- (b) “**Business Day**” has the meaning given in the Project Agreement.
- (c) “**Construction Contract**” has the meaning given in the Project Agreement.
- (d) “**Construction Contractor**” has the meaning given to it in the preamble.
- (e) “**Construction Guarantor**” has the meaning given to it in the preamble.

- (f) “**Crown**” has the meaning given in the Project Agreement.
- (g) “**Default Notice**” has the meaning given in Section 5(a).
- (h) “**Governmental Authority**” has the meaning given in the Project Agreement.
- (i) “**HMQ Agencies**” has the meaning given in the recitals.
- (j) “**Lenders**” has the meaning given in the Project Agreement.
- (k) “**Lenders’ Direct Agreement**” has the meaning given in the Project Agreement.
- (l) “**Party**” means HMQ Agencies, the Construction Contractor, the Construction Guarantor or Project Co, and “**Parties**” means HMQ Agencies, the Construction Contractor, the Construction Guarantor and Project Co.
- (m) “**Project**” has the meaning given in the Project Agreement.
- (n) “**Project Agreement**” means the project agreement made on or about the 24th day of March, 2015 between HMQ Agencies and Project Co.
- (o) “**Project Co**” has the meaning given to it in the preamble.
- (p) “**Step-In Notice**” has the meaning given in Section 6(a).
- (q) “**Substitute**” has the meaning given in Section 6(a).
- (r) “**Works**” has the meaning given in the Project Agreement.

2. INTERPRETATION

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

- (a) The headings in this Construction Contractor’s Direct Agreement are for convenience of reference only, shall not constitute a part of this Construction Contractor’s Direct Agreement, and shall not be taken into consideration in the interpretation of, or affect the meaning of, this Construction Contractor’s Direct Agreement.
- (b) Unless the context otherwise requires, references to specific Sections, Clauses, Paragraphs, Subparagraphs, and other divisions are references to such Sections, Clauses, Paragraphs, Subparagraphs, or divisions of this Construction Contractor’s Direct Agreement and the terms “Section” and “Clause” are used interchangeably and are synonymous.
- (c) Words importing persons or parties are to be broadly interpreted and include an individual, corporation, 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 Whitby, Ontario.
- (l) Unless otherwise indicated, time periods will be strictly construed.
- (m) Whenever the terms "will" or "shall" are used in this Construction Contractor's Direct Agreement they shall be construed and interpreted as synonymous and to read "shall".

3. CONFLICT IN DOCUMENTS

- (a) In the event of ambiguities, conflicts or inconsistencies between or among this Construction Contractor's Direct Agreement, the Project Agreement and the Construction Contract, this Construction Contractor's Direct Agreement shall prevail.
- (b) In the event of ambiguities, conflicts or inconsistencies between or among this Construction Contractor's Direct Agreement and the Lenders' Direct Agreement, the Lenders' Direct Agreement shall prevail.

4. AGREEMENTS

- (a) Project Co and the Construction Contractor shall not amend, modify, or depart from the terms of the Construction Contract without the prior written consent of HMQ Agencies, acting reasonably, which consent shall not be withheld or delayed where such amendment, modification or departure does not materially and adversely affect the ability of Project Co to perform its obligations under this Construction Contractor's Direct Agreement and does not have the effect of increasing any liability of HMQ Agencies, whether actual or potential. Project Co and the Construction Contractor shall provide to HMQ Agencies a written copy of all such amendments, modifications or departures. The Parties acknowledge and agree that this Section 4(a) shall not apply to Variations provided for under the Project Agreement.
- (b) Each of the Parties acknowledges having received a copy of the Project Agreement and the Construction Contract.
- (c) If the Construction Contractor gives Project Co any notice of any default(s) under the Construction Contract that may give the Construction Contractor a right to terminate the Construction Contract or to treat it as having been repudiated by Project Co or to discontinue the Construction Contractor's performance

thereunder, then the Construction Contractor shall concurrently provide HMQ Agencies with a copy of such notice and set out in reasonable detail the default(s).

5. NO TERMINATION BY CONSTRUCTION CONTRACTOR WITHOUT DEFAULT NOTICE

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

- (a) the Construction Contractor first delivers a written notice (a “**Default Notice**”) to HMQ Agencies setting out in reasonable detail the default(s) on which the Construction Contractor intends to rely in terminating the Construction Contract or to treat it as having been repudiated by Project Co or to discontinue the Construction Contractor’s performance thereunder; and
- (b) within a period of 5 Business Days of HMQ Agencies receiving the Default Notice:
 - (i) the default(s) on which the Construction Contractor intends to rely in terminating the Construction Contract or to treat it as having been repudiated by Project Co or to discontinue the Construction Contractor’s performance thereunder have not been remedied; and
 - (ii) the Construction Contractor has not received a Step-In Notice from HMQ Agencies,

provided that if, within such period of 5 Business Days, HMQ Agencies agree to pay the Construction Contractor’s reasonable costs of continued performance, such period of 5 Business Days shall be extended to 45 days.

6. STEP-IN RIGHTS

- (a) HMQ Agencies may at any time:
 - (i) within 5 Business Days or, if such period has been extended in accordance with Section 5, 45 days of HMQ Agencies receiving a Default Notice; or
 - (ii) if HMQ Agencies have not received a Default Notice and if the right of HMQ Agencies to terminate the Project Agreement has arisen and is continuing,

deliver a notice (a “**Step-In Notice**”) electing to replace Project Co under the Construction Contract either with HMQ Agencies or a third party designated by HMQ Agencies in the Step-In Notice (the “**Substitute**”), provided that HMQ Agencies can demonstrate to the Construction Contractor, acting reasonably, that the Substitute shall have sufficient financial resources, or shall be supported by a

satisfactory guarantee, to carry out the obligations of the Substitute under the Construction Contract.

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

- (iv) at HMQ Agencies' request, the Construction Contractor shall enter into, and shall cause the Construction Guarantor and any other guarantor, covenantor or surety under any guarantee, bond, covenant, letter of credit or similar performance security referred to in Section 6(b)(iii) to enter into, and HMQ Agencies 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, without limitation, an agreement between HMQ Agencies or the Substitute, as applicable, and the Construction Contractor, acceptable to HMQ Agencies and the Construction Contractor, each acting reasonably, on substantially the same terms as the Construction Contract.
- (c) Subject to Section 6(d), Project Co shall, at its own cost, cooperate fully with HMQ Agencies and the Substitute in order to achieve a smooth transfer of the Construction Contract to HMQ Agencies or the Substitute, as applicable, and to avoid or mitigate in so far as reasonably practicable any inconvenience, including the administration of the Construction Contract, ongoing supervisory activities and scheduling.
- (d) The rights granted by Sections 6(b) and 6(c) shall be of no force or effect if, at any time the Construction Contractor receives a Step-In Notice, the Construction Contractor has already received notice in writing from another entity entitled to the benefit of step-in rights relating to the Construction Contract that it is or has validly exercised those step-in rights. If the Construction Contractor receives any such notice on the same day as a Step-In Notice, the Step-In Notice shall be effective, except where the other notice is given by the Lenders, in which case such other notice and not the Step-In Notice shall be effective.
- (e) If HMQ Agencies give a Step-In Notice within the time provided hereunder at any time after the Construction Contractor has terminated the Construction Contract or treated it as having been repudiated by Project Co or discontinued the Construction Contractor's performance thereunder in accordance with the terms of this Construction Contractor's Direct Agreement, the Construction Contractor agrees that the Construction Contract shall be reinstated and deemed to have continued despite any termination or treatment as having been repudiated, and HMQ Agencies shall pay the Construction Contractor's reasonable costs for re-commencing the obligations it has under the Construction Contract and the Construction Contractor shall be entitled to reasonable compensation and/or relief for re-commencing such obligations, having regard to the additional costs and delays incurred as a result of having terminated the Construction Contract or having treated it as being repudiated by Project Co or having discontinued its performance thereunder.

7. CONSTRUCTION CONTRACTOR LIABILITY

- (a) The liability of the Construction Contractor hereunder shall not be modified, released, diminished or in any way affected by:
 - (i) any independent inspection, investigation or enquiry into any matter which may be made or carried out by or for HMQ Agencies, or by any failure or omission to carry out any such inspection, investigation or enquiry; or
 - (ii) the appointment by HMQ Agencies of any other person to review the progress of or otherwise report to HMQ Agencies in respect of the Project, or by any action or omission of such person whether or not such action or omission might give rise to any independent liability of such person to HMQ Agencies,

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

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

8. PROJECT CO AS PARTY

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

9. CONSTRUCTION GUARANTOR AS PARTY

The Construction Guarantor agrees with HMQ Agencies that the Construction Guarantor has entered into a guarantee or covenant referred to in Section 6(b)(iii), hereby consents to the assignment, novation or grant (including any conditional assignment, novation or grant) as provided herein immediately upon receipt by the Construction Contractor of a Step-In Notice and without the requirement of any further action on the part of HMQ Agencies, and agrees that the Construction Guarantor shall in accordance with Section 6 enter into all such agreements or other documents as reasonably necessary to give effect to the foregoing. The Construction Guarantor enters into this Construction Contractor's Direct Agreement solely for the purposes of this Section 9.

10. ASSIGNMENT

- (a) Project Co shall not, without the prior written consent of HMQ Agencies, assign, transfer, charge, subcontract, subparticipate or otherwise dispose of any interest in

this Construction Contractor's Direct Agreement except to the extent entitled to do so under the Project Agreement.

- (b) HMQ Agencies may assign or otherwise dispose of the benefit of the whole or part of this Construction Contractor's Direct Agreement to any person to whom HMQ Agencies may assign or otherwise dispose of their interest in the Project Agreement pursuant to Section 56.2 of the Project Agreement but only in conjunction therewith, and shall provide written notice to Project Co and the Construction Contractor of such assignment or disposition.
- (c) The Construction Contractor shall not, without the prior written consent of HMQ Agencies and Project Co, assign, transfer, charge, subcontract, subparticipate or otherwise dispose of any interest in this Construction Contractor's Direct Agreement except as may be permitted under the Construction Contract.

11. NOTICES

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

If to HMQ Agencies:

Metrolinx
20 Bay Street, Suite 600
Toronto, Ontario M5J 2W3

Fax: **[REDACTED]**
Attn.: Manager, Rail Facilities

with a copy to:

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

Fax No.: **[REDACTED]**
Attn.: Project Manager, East Rail Maintenance Facility
Project

If to Project Co:

[REDACTED]

Attention: **[REDACTED]**
Facsimile: **[REDACTED]**
Email: **[REDACTED]**

with a copy (by facsimile) to:

[REDACTED]

Attention: **[REDACTED]**
Facsimile: **[REDACTED]**
Email: **[REDACTED]**

and:

Attention: Chief Financial Officer
Facsimile: **[REDACTED]**

and with a copy to:

[REDACTED]

Attention: **[REDACTED]**
Facsimile: **[REDACTED]**
Email: **[REDACTED]**

If to [REDACTED]: [REDACTED]
Attn: [REDACTED]
Email: [REDACTED]

with a copy to:

[REDACTED]

If to [REDACTED]: [REDACTED]
Fax : [REDACTED]
Attn: [REDACTED]

If to the [REDACTED] Guarantor: [REDACTED]
Attn: Chief Financial Officer

with a copy to:

[REDACTED]

If to the [REDACTED] Guarantor: [REDACTED]
Attn: General Counsel
[REDACTED]
Fax: [REDACTED]
Attn.: [REDACTED]

- (b) Where any notice is provided or submitted to a Party via facsimile, an original of the notice sent via facsimile shall promptly be sent by regular mail or registered mail. For greater certainty, a notice given via facsimile shall not be invalid by reason only of a Party's failure to comply with this Section 11(b).
- (c) Any Party to this Construction Contractor's Direct Agreement may, from time to time, change any of its contact information set forth in Section 11(a) by prior notice to the other Parties, and such change shall be effective on the Business Day that next follows the recipient Party's receipt of such notice unless a later effective date is given in such notice.
- (d) Subject to Sections 11(e), 11(f) and 11(g):
 - (i) a notice given by registered mail shall be deemed to have been received on the third Business Day after mailing;
 - (ii) a notice given by hand delivery shall be deemed to have been received on the day it is delivered; and

- (iii) a notice given by facsimile shall be deemed to have been received on the day it is transmitted by facsimile.
- (e) If the Party giving the notice knows or ought reasonably to know of difficulties with the postal system which might affect negatively the delivery of mail, any such notice shall not be mailed but shall be made or given by personal delivery or by facsimile transmission in accordance with this Section 11.
- (f) If any notice delivered by hand or transmitted by facsimile is so delivered or transmitted, as the case may be, either on a day that is not a Business Day or on a Business Day after 4:00 p.m. (recipient's local time), then such notice shall be deemed to have been received by such recipient on the next Business Day.
- (g) A notice given by facsimile shall be deemed to have been received by the recipient on the day it is transmitted only if a facsimile transmission report (maintained by the sender) indicates that the transmission of such notice was successful.

12. AMENDMENTS

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

13. WAIVER

- (a) No waiver made or given by a Party under or in connection with this Construction Contractor's Direct Agreement shall be binding or effective unless the waiver is in writing, signed by an authorized representative of the Party giving such waiver, and delivered by such Party to the other Parties. No waiver made with respect to any right, power or remedy in one instance will be deemed to be a waiver with respect to any other instance involving the exercise of such right, power, or remedy or with respect to any other right, power, or remedy.
- (b) Failure by any Party to exercise any of its rights, powers or remedies hereunder or its delay to do so shall not constitute a waiver of those rights, powers or remedies. The single or partial exercise of a right, power or remedy shall not prevent its subsequent exercise or the exercise of any other right, power or remedy.

14. RELATIONSHIP BETWEEN THE PARTIES

The Parties are independent contractors. This Construction Contractor's Direct Agreement is not intended to and does not create or establish between the Parties any relationship as partners, joint venturers, employer and employee, master and servant, or, except as provided in this Construction Contractor's Direct Agreement, of principal and agent.

15. ENTIRE AGREEMENT

Except where provided otherwise in this Construction Contractor’s Direct Agreement, this Construction Contractor’s Direct Agreement constitutes the entire agreement between the Parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings, whether oral, written, express or implied, concerning the subject matter of this Construction Contractor’s Direct Agreement.

16. SEVERABILITY

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

17. ENUREMENT

This Construction Contractor’s Direct Agreement shall enure to the benefit of, and be binding on, each of the Parties and their respective successors and permitted transferees and assigns.

18. GOVERNING LAW AND JURISDICTION

- (a) This Construction Contractor’s Direct Agreement shall be governed by and construed in accordance with the laws of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract, without regard to conflict of laws principles.
- (b) The Parties agree that the courts of the Province of Ontario and all courts competent to hear appeals therefrom shall have exclusive jurisdiction to hear and settle any action, suit, proceeding or dispute in connection with this Construction Contractor’s Direct Agreement and hereby irrevocably attorn to the exclusive jurisdiction of such courts.
- (c) Nothing in this Construction Contractor’s Direct Agreement affects the rights, protections and immunities of the Crown under the *Proceedings Against the Crown Act* (Ontario).

19. HMQ DESIGNATE

At any time and from time to time, the Crown may designate any ministry, branch, agency, division, department or office of the Government of Ontario to carry out administrative responsibility for the rights and obligations of HMQ Agencies under this Construction Contractor's Direct Agreement and Project Co, the Construction Contractor and the Construction Guarantor may deal exclusively with the designated person in respect of all such matters and is entitled to rely on the actions, directions, requests, notices, consents, approvals, waivers, comments relating to the review of documentation and other administrative matters and decisions determined by such designated person from time to time, until the Crown has notified Project Co, the Construction Contractor and the Construction Guarantor in writing that such designated person is no longer the person designated by HMQ Agencies 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 Guarantor 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 Guarantor acknowledge the right of the Crown to delegate administrative responsibilities hereunder as set forth in this Section 19.

20. FURTHER ASSURANCE

Each Party shall do all things, from time to time, and execute all further documents necessary to give full effect to this Construction Contractor's Direct Agreement.

21. LANGUAGE OF AGREEMENT

Each Party acknowledges having requested and being satisfied that this Construction Contractor's Direct Agreement and related documents be drawn in English. Chacune des parties reconnaît avoir demandé que ce document et ses annexes soient rédigés en anglais et s'en declare satisfaite.

22. COUNTERPARTS

This Construction Contractor's Direct Agreement may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all the Parties shall constitute a full, original and binding agreement for all purposes. Counterparts may be executed either in original or faxed form provided that any Party providing its signature in faxed form shall promptly forward to such Party an original signed copy of this Construction Contractor's Direct Agreement which was so faxed.

23. JOINT AND SEVERAL

- (a) IO and Metrolinx shall be liable, on a joint and several basis, for all of the obligations of HMQ Agencies under this Construction Contractor's Direct Agreement and for each covenant of the other under this Construction Contractor's Direct Agreement.

- (b) Bird Construction and Kiewit Infrastructure shall be liable, on a joint and several basis, for all of the obligations of the Construction Contractor under this Construction Contractor's Direct Agreement and for each covenant of the other under this Construction Contractor's Direct Agreement.

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

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

Per: _____

Name: [REDACTED]

Title: [REDACTED]

Per: _____

Name: [REDACTED]

Title: [REDACTED]

I/We have authority to bind the corporation.

METROLINX

Per: _____

Name: [REDACTED]

Title: [REDACTED]

I/We have authority to bind the corporation.

**PLENARY INFRASTRUCTURE ERMF
GP,**

by its partners:

[REDACTED]

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

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

I/We have authority to bind the corporation.

[REDACTED]

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

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

I/We have authority to bind the corporation.

[REDACTED]

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

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

I/We have authority to bind the corporation.

CONSTRUCTION CONTRACTOR

[REDACTED]

Per: _____

Name: **[REDACTED]**

Title: **[REDACTED]**

Per: _____

Name: **[REDACTED]**

Title: **[REDACTED]**

I/We have authority to bind the corporation.

[REDACTED]

Per: _____

Name: **[REDACTED]**

Title: **[REDACTED]**

Per: _____

Name: **[REDACTED]**

Title: **[REDACTED]**

I/We have authority to bind the corporation.

CONSTRUCTION GUARANTORS

[REDACTED]

Per: _____

Name: **[REDACTED]**

Title: **[REDACTED]**

Per: _____

Name: **[REDACTED]**

Title: **[REDACTED]**

I/We have authority to bind the corporation.

[REDACTED]

Per: _____

Name: **[REDACTED]**

Title: **[REDACTED]**

Per: _____

Name: **[REDACTED]**

Title: **[REDACTED]**

I/We have authority to bind the corporation.

SCHEDULE 5-2

SERVICE PROVIDER’S DIRECT AGREEMENT

THIS AGREEMENT is made as of the _____ day of March, 2015

AMONG:

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

(“**IO**”)

AND:

METROLINX, a non-share capital corporation continued under the *Metrolinx Act, 2006*, S.O. 2006, c.16 and a Crown agency in accordance with the *Crown Agency Act*, R.S.O. c.48

(“**Metrolinx**” and, together with IO, collectively, “**HMQ Agencies**”)

AND:

[REDACTED]

(“**Project Co**”)

AND:

[REDACTED]

(the “**Service Provider**”)

AND:

[REDACTED]

(the “**Service Guarantor**”)

WHEREAS:

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- A. HMQ Agencies and Project Co have entered into the Project Agreement, which requires Project Co to enter into, and to cause the Service Provider and the Service Guarantor to enter into, this Service Provider’s Direct Agreement with HMQ Agencies.
- B. Project Co and the Service Provider have entered into the Service Contract, which requires the Service Provider and the Service Guarantor to enter into this Service Provider’s Direct Agreement with HMQ Agencies.
- C. IO and Metrolinx intend to enter into this Service Provider’s Direct Agreement as agents of Her Majesty the Queen in right of Ontario, in accordance with Applicable Law, and to be liable, on a joint and several basis, for all of the obligations of HMQ Agencies pursuant to this Service Provider’s Direct Agreement, save and except as provided for in this Service Provider’s Direct Agreement.

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

1. DEFINITIONS

In this Service Provider’s Direct Agreement, unless the context otherwise requires:

- (a) “**Approved Purposes**” has the meaning given in the Project Agreement.
- (b) “**Business Day**” has the meaning given in the Project Agreement.
- (c) “**Crown**” has the meaning given in the Project Agreement.
- (d) “**Default Notice**” has the meaning given in Section 5(a).
- (e) “**Governmental Authority**” has the meaning given in the Project Agreement.
- (f) “**HMQ Agencies**” has the meaning given in the recitals.
- (g) “**Lenders**” has the meaning given in the Project Agreement.
- (h) “**Lenders’ Direct Agreement**” has the meaning given in the Project Agreement.
- (i) “**Party**” means HMQ Agencies, the Service Provider, the Service Guarantor or Project Co, and “**Parties**” means HMQ Agencies, the Service Provider, the Service Guarantor and Project Co.
- (j) “**Project**” has the meaning given in the Project Agreement.
- (k) “**Project Agreement**” means the project agreement made on or about the 24th day of March, 2015 between HMQ Agencies and Project Co.
- (l) “**Project Co**” has the meaning given to it in the preamble.

- (m) “**Project Co Services**” has the meaning given in the Project Agreement.
- (n) “**Service Contract**” has the meaning given in the Project Agreement.
- (o) “**Service Guarantor**” has the meaning given to it in the preamble.
- (p) “**Service Provider**” has the meaning given to it in the preamble.
- (q) “**Step-In Notice**” has the meaning given in Section 6(a).
- (r) “**Substitute**” has the meaning given in Section 6(a).

2. INTERPRETATION

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

- (a) The headings in this Service Provider’s Direct Agreement are for convenience of reference only, shall not constitute a part of this Service Provider’s Direct Agreement, and shall not be taken into consideration in the interpretation of, or affect the meaning of, this Service Provider’s Direct Agreement.
- (b) Unless the context otherwise requires, references to specific Sections, Clauses, Paragraphs, Subparagraphs, and other divisions are references to such Sections, Clauses, Paragraphs, Subparagraphs, or divisions of this Service Provider’s Direct Agreement and the terms “Section” and “Clause” are used interchangeably and are synonymous.
- (c) Words importing persons or parties are to be broadly interpreted and include an individual, corporation, 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 Service Provider’s Direct Agreement concerning amendments) a reference to that standard, principle, agreement or document as amended, supplemented, restated, substituted, replaced, novated or assigned.
- (f) The words in this Service Provider’s Direct Agreement shall bear their natural meaning.

- (g) References containing terms such as:
 - (i) “hereof”, “herein”, “hereto”, “hereinafter”, and other terms of like import are not limited in applicability to the specific provision within which such references are set forth but instead refer to this Service Provider’s Direct Agreement taken as a whole; and
 - (ii) “includes” and “including”, whether or not used with the words “without limitation” or “but not limited to”, shall not be deemed limited by the specific enumeration of items but shall, in all cases, be deemed to be without limitation and construed and interpreted to mean “includes without limitation” and “including without limitation”.
- (h) In construing this Service Provider’s Direct Agreement, the rule known as the ejusdem generis rule shall not apply nor shall any similar rule or approach to the construction of this Service Provider’s Direct Agreement and, accordingly, general words introduced or followed by the word “other” or “including” or “in particular” shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words.
- (i) Where this Service Provider’s Direct Agreement states that an obligation shall be performed “no later than” or “within” or “by” a stipulated date or event which is a prescribed number of days after a stipulated date or event, the latest time for performance shall be 5:00 p.m. on the last day for performance of the obligation concerned, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- (j) Where this Service Provider’s Direct Agreement states that an obligation shall be performed “on” a stipulated date, the latest time for performance shall be 5:00 p.m. on that day, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- (k) Any reference to time of day or date means the local time or date in Whitby, Ontario.
- (l) Unless otherwise indicated, time periods will be strictly construed.
- (m) Whenever the terms “will” or “shall” are used in this Service Provider’s Direct Agreement they shall be construed and interpreted as synonymous and to read “shall”.

3. CONFLICT IN DOCUMENTS

- (a) In the event of ambiguities, conflicts or inconsistencies between or among this Service Provider’s Direct Agreement, the Project Agreement and the Service Contract, this Service Provider’s Direct Agreement shall prevail.

- (b) In the event of ambiguities, conflicts or inconsistencies between or among this Service Provider’s Direct Agreement and the Lenders’ Direct Agreement, the Lenders’ Direct Agreement shall prevail.

4. AGREEMENTS

- (a) Project Co and the Service Provider shall not amend, modify, or depart from the terms of the Service Contract without the prior written consent of HMQ Agencies, acting reasonably, which consent shall not be withheld or delayed where such amendment, modification or departure does not materially and adversely affect the ability of Project Co to perform its obligations under this Service Provider’s Direct Agreement and does not have the effect of increasing any liability of HMQ Agencies, whether actual or potential. Project Co and the Service Provider shall provide a written copy of all such amendments, modifications or departures. The Parties acknowledge and agree that this Section 4(a) shall not apply to Variations provided for under the Project Agreement.
- (b) Each of the Parties acknowledges having received a copy of the Project Agreement and the Service Contract.
- (c) If the Service Provider gives Project Co any notice of any default(s) under the Service Contract that may give the Service Provider a right to terminate the Service Contract or to treat it as having been repudiated by Project Co or to discontinue the Service Provider’s performance thereunder, then the Service Provider shall concurrently provide HMQ Agencies with a copy of such notice and set out in reasonable detail the default(s).

5. NO TERMINATION BY SERVICE PROVIDER WITHOUT DEFAULT NOTICE

The Service Provider shall not exercise any right it may have to terminate the Service Contract or to treat it as having been repudiated by Project Co or to discontinue the Service Provider’s performance thereunder unless:

- (a) the Service Provider first delivers a written notice (a “**Default Notice**”) to HMQ Agencies setting out in reasonable detail the default(s) on which the Service Provider intends to rely in terminating the Service Contract or to treat it as having been repudiated by Project Co or to discontinue the Service Provider’s performance thereunder; and
- (b) within the period ending 30 days after the Service Provider notifies HMQ Agencies of the expiry of any relevant period for the exercise of step-in or similar rights by the Lenders, or, if the Lenders have no such step-in or similar rights, then 30 days after the later of HMQ Agencies receiving Default Notice or the expiry of the applicable cure period under the Service Contract:
 - (i) the default(s) on which the Service Provider intends to rely in terminating the Service Contract or to treat it as having been repudiated by Project Co

or to discontinue the Service Provider’s performance thereunder have not been remedied; and

- (ii) the Service Provider has not received a Step-In Notice from HMQ Agencies,

provided that, until such time as HMQ Agencies give the Service Provider a notice that HMQ Agencies will not be exercising their step-in rights, HMQ Agencies shall pay the Service Provider’s reasonable costs of continued performance.

6. STEP-IN RIGHTS

- (a) HMQ Agencies may at any time:
 - (i) within the period referred to in Section 5(b); or
 - (ii) if HMQ Agencies have not received a Default Notice and if the right of HMQ Agencies to terminate the Project Agreement has arisen and is continuing,

deliver a notice (a “**Step-In Notice**”) electing to replace Project Co under the Service Contract either with HMQ Agencies or a third party designated by HMQ Agencies in the Step-In Notice (the “**Substitute**”), provided that HMQ Agencies can demonstrate to the Service Provider, acting reasonably, that the Substitute shall have sufficient financial resources, or shall be supported by a satisfactory guarantee, to carry out the obligations of the Substitute under the Service Contract.

- (b) Subject to Section 6(d), upon receipt by the Service Provider of a Step-In Notice:
 - (i) Project Co and the Service Provider will be deemed to be released from their existing and future obligations under the Service Contract to each other (except with respect to any and all indemnities from Project Co or the Service Provider to the other in respect of the period prior to the receipt of the Step-In Notice), and HMQ Agencies or the Substitute, as applicable, and the Service Provider will be deemed to assume those same existing and future obligations towards each other (except in respect of the aforesaid indemnities);
 - (ii) the existing and future rights of Project Co against the Service Provider under the Service Contract and vice versa will be deemed to be cancelled (except with respect to any and all indemnities from Project Co or the Service Provider to the other in respect of the period prior to the receipt of the Step-In Notice), and HMQ Agencies or the Substitute, as applicable, and the Service Provider will be deemed to acquire those same existing and future rights against each other (except in respect of the aforesaid

indemnities), subject to any applicable credit from the Service Provider to HMQ Agencies if HMQ Agencies pay for the Service Provider'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 Service Provider to be performed, observed or carried out by the Service Provider as contained in, referred to, or inferred from the Service Contract shall be assigned, novated or granted, as required by HMQ Agencies or the Substitute, as applicable, each acting reasonably, to HMQ Agencies or the Substitute, as applicable, and the Service Provider shall cause such assignment, novation or grant on substantially the same terms and conditions as the original guarantee, bond, covenant, letter of credit or similar performance security, provided however that where Project Co shall continue to hold, or shall continue to be entitled to have rights under, such guarantee, bond, covenant, letter of credit or similar performance security as security for any obligations of the Service Provider, the assignment, novation or grant of the guarantee, bond, covenant, letter of credit or similar performance security to the extent of any such obligations to Project Co shall be conditional on the satisfaction of those obligations to Project Co; and
 - (iv) at HMQ Agencies' request, the Service Provider shall enter into, and shall cause the Service Guarantor and any other guarantor, covenantor or surety under any guarantee, bond, covenant, letter of credit or similar performance security referred to in Section 6(b)(iii) to enter into, and HMQ Agencies 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, without limitation, an agreement between HMQ Agencies or the Substitute, as applicable, and the Service Provider, acceptable to HMQ Agencies and the Service Provider, each acting reasonably, on substantially the same terms as the Service Contract.
- (c) Subject to Section 6(d), Project Co shall, at its own cost, cooperate fully with HMQ Agencies and the Substitute in order to achieve a smooth transfer of the Service Contract to HMQ Agencies or the Substitute, as applicable, and to avoid or mitigate in so far as reasonably practicable any inconvenience, including the administration of the Service Contract, ongoing supervisory activities and scheduling.
 - (d) The rights granted by Sections 6(b) and 6(c) shall be of no force or effect if, at any time the Service Provider receives a Step-In Notice, the Service Provider has already received notice in writing from another entity entitled to the benefit of step-in rights relating to the Service Contract that it is or has validly exercised

those step-in rights. If the Service Provider receives any such notice on the same day as a Step-In Notice, the Step-In Notice shall be effective, except where the other notice is given by the Lenders, in which case such other notice and not the Step-In Notice shall be effective.

- (e) If HMQ Agencies give a Step-In Notice within the time provided hereunder at any time after the Service Provider has terminated the Service Contract or treated it as having been repudiated by Project Co or discontinued the Service Provider's performance thereunder in accordance with the terms of this Service Provider's Direct Agreement, the Service Provider agrees that the Service Contract shall be reinstated and deemed to have continued despite any termination or treatment as having been repudiated, and HMQ Agencies shall pay the Service Provider's reasonable costs for re-commencing the obligations it has under the Service Contract and the Service Provider shall be entitled to reasonable compensation and/or relief for re-commencing such obligations, having regard to the additional costs and delays incurred as a result of having terminated the Service Contract or having treated it as being repudiated by Project Co or having discontinued its performance thereunder.

7. SERVICE PROVIDER LIABILITY

- (a) The liability of the Service Provider hereunder shall not be modified, released, diminished or in any way affected by:
 - (i) any independent inspection, investigation or enquiry into any matter which may be made or carried out by or for HMQ Agencies, or by any failure or omission to carry out any such inspection, investigation or enquiry;
 - (ii) the appointment by HMQ Agencies of any other person to review the progress of or otherwise report to HMQ Agencies in respect of the Project, or by any action or omission of such person whether or not such action or omission might give rise to any independent liability of such person to HMQ Agencies,

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

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

8. PROJECT CO AS PARTY

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

9. SERVICE GUARANTOR AS PARTY

The Service Guarantor agrees with HMQ Agencies that the Service Guarantor has entered into a guarantee or covenant referred to in Section 6(b)(iii), hereby consents to the assignment, novation or grant (including any conditional assignment, novation or grant) as provided herein immediately upon receipt by the Service Provider of a Step-In Notice and without the requirement of any further action on the part of HMQ Agencies, and agrees that the Service Guarantor shall in accordance with Section 6 enter into all such agreements or other documents as reasonably necessary to give effect to the foregoing. The Service Guarantor enters into this Service Provider’s Direct Agreement solely for the purposes of this Section 9.

10. ASSIGNMENT

- (a) Project Co shall not, without the prior written consent of HMQ Agencies, assign, transfer, charge, subcontract, subparticipate or otherwise dispose of any interest in this Service Provider’s Direct Agreement except to the extent entitled to do so under the Project Agreement.
- (b) HMQ Agencies may assign or otherwise dispose of the benefit of the whole or part of this Service Provider’s Direct Agreement to any person to whom HMQ Agencies may assign or otherwise dispose of their interest in the Project Agreement pursuant to Section 56.2 of the Project Agreement but only in conjunction therewith, and shall provide written notice to Project Co and the Service Provider of such assignment or disposition.
- (c) The Service Provider shall not, without the prior written consent of HMQ Agencies and Project Co, assign, transfer, charge, subcontract, subparticipate or otherwise dispose of any interest in this Service Provider’s Direct Agreement, except as may be permitted under the Service Contract.

11. NOTICES

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

| | |
|---------------------|---|
| If to HMQ Agencies: | Metrolinx 20 Bay Street, Suite 600 Toronto, Ontario M5J 2W3 |
|---------------------|---|

Fax: **[REDACTED]**
Attn.: Manager, Rail Facilities

with a copy to:

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

Fax No.: **[REDACTED]**
Attn.: Project Manager, East Rail Maintenance Facility
Project

If to Project Co:

[REDACTED]

Attention: **[REDACTED]**
Facsimile: **[REDACTED]**
Email: **[REDACTED]**

with a copy (by facsimile) to:

[REDACTED]

Attention: **[REDACTED]**
Facsimile: **[REDACTED]**
Email: **[REDACTED]**

and:

Attention: Chief Financial Officer
Facsimile: **[REDACTED]**

and with a copy to:

[REDACTED]

Attention: **[REDACTED]**
Facsimile: **[REDACTED]**
Email: **[REDACTED]**

If to the Service Provider:

[REDACTED]

Fax No.: [REDACTED]

Attn.: [REDACTED]

If to the Service Guarantor:

[REDACTED]

Fax No.: [REDACTED]

Attn.: Assistant Treasurer

- (b) Where any notice is provided or submitted to a Party via facsimile, an original of the notice sent via facsimile shall promptly be sent by regular mail or registered mail. For greater certainty, a notice given via facsimile shall not be invalid by reason only of a Party's failure to comply with this Section 11(b).
- (c) Any Party to this Service Provider's Direct Agreement may, from time to time, change any of its contact information set forth in Section 11(a) by prior notice to the other Parties, and such change shall be effective on the Business Day that next follows the recipient Party's receipt of such notice unless a later effective date is given in such notice.
- (d) Subject to Sections 11(e), 11(f) and 11(g):
 - (i) a notice given by registered mail shall be deemed to have been received on the third Business Day after mailing;
 - (ii) a notice given by hand delivery shall be deemed to have been received on the day it is delivered; and
 - (iii) a notice given by facsimile shall be deemed to have been received on the day it is transmitted by facsimile.
- (e) If the Party giving the notice knows or ought reasonably to know of difficulties with the postal system which might affect negatively the delivery of mail, any such notice shall not be mailed but shall be made or given by personal delivery or by facsimile transmission in accordance with this Section 11.
- (f) If any notice delivered by hand or transmitted by facsimile is so delivered or transmitted, as the case may be, either on a day that is not a Business Day or on a Business Day after 4:00 p.m. (recipient's local time), then such notice shall be deemed to have been received by such recipient on the next Business Day.
- (g) A notice given by facsimile shall be deemed to have been received by the recipient on the day it is transmitted only if a facsimile transmission report

(maintained by the sender) indicates that the transmission of such notice was successful.

12. AMENDMENTS

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

13. WAIVER

- (a) No waiver made or given by a Party under or in connection with this Service Provider’s Direct Agreement shall be binding or effective unless the waiver is in writing, signed by an authorized representative of the Party giving such waiver, and delivered by such Party to the other Parties. No waiver made with respect to any right, power or remedy in one instance will be deemed to be a waiver with respect to any other instance involving the exercise of such right, power, or remedy or with respect to any other right, power, or remedy.
- (b) Failure by any Party to exercise any of its rights, powers or remedies hereunder or its delay to do so shall not constitute a waiver of those rights, powers or remedies. The single or partial exercise of a right, power or remedy shall not prevent its subsequent exercise or the exercise of any other right, power or remedy.

14. RELATIONSHIP BETWEEN THE PARTIES

The Parties are independent contractors. This Service Provider’s Direct Agreement is not intended to and does not create or establish between the Parties any relationship as partners, joint venturers, employer and employee, master and servant, or, except as provided in this Service Provider’s Direct Agreement, of principal and agent.

15. ENTIRE AGREEMENT

Except where provided otherwise in this Service Provider’s Direct Agreement, this Service Provider’s Direct Agreement constitutes the entire agreement between the Parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings, whether oral, written, express or implied, concerning the subject matter of this Service Provider’s Direct Agreement.

16. SEVERABILITY

Each provision of this Service Provider’s Direct Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Service Provider’s Direct Agreement is declared invalid, unenforceable or illegal by the courts of a competent jurisdiction, such provision may be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions

of this Service Provider's Direct Agreement. If any such provision of this Service Provider's Direct Agreement is invalid, unenforceable or illegal, the Parties shall, acting in good faith, promptly negotiate new provisions to eliminate such invalidity, unenforceability or illegality and to restore this Service Provider's Direct Agreement as near as possible to its original intent and effect.

17. ENUREMENT

This Service Provider's Direct Agreement shall enure to the benefit of, and be binding on, each of the Parties and their respective successors and permitted transferees and assigns.

18. GOVERNING LAW AND JURISDICTION

- (a) This Service Provider's Direct Agreement shall be governed by and construed in accordance with the laws of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract, without regard to conflict of laws principles.
- (b) The Parties agree that the courts of the Province of Ontario and all courts competent to hear appeals therefrom shall have exclusive jurisdiction to hear and settle any action, suit, proceeding or dispute in connection with this Service Provider's Direct Agreement and hereby irrevocably attorn to the exclusive jurisdiction of such courts.
- (c) Nothing in this Service Provider's Direct Agreement affects the rights, protections and immunities of the Crown under the *Proceedings Against the Crown Act* (Ontario).

19. HMQ DESIGNATE

At any time and from time to time, the Crown may designate any ministry, branch, agency, division, department or office of the Government of Ontario to carry out administrative responsibility for the rights and obligations of HMQ Agencies under this Service Provider's Direct Agreement and Project Co, the Service Provider and the Service Guarantor may deal exclusively with the designated person in respect of all such matters and is entitled to rely on the actions, directions, requests, notices, consents, approvals, waivers, comments relating to the review of documentation and other administrative matters and decisions determined by such designated person from time to time, until the Crown has notified Project Co, the Service Provider and the Service Guarantor in writing that such designated person is no longer the person designated by HMQ Agencies hereunder and such notice shall have effect on the later of the date of delivery of such notice and the date specified in the written notice. The Crown shall advise Project Co, the Service Provider and the Service Guarantor in writing of any designation hereunder. The rights and obligations of the parties to this Service Provider's Direct Agreement shall be in no way affected by reason of any such designation. Project Co, the Construction Contractor and the Construction Guarantor acknowledge the right of the Crown to delegate administrative responsibilities hereunder as set forth in this Section 19 **Error! Reference source not found.**

20. FURTHER ASSURANCE

Each Party shall do all things, from time to time, and execute all further documents necessary to give full effect to this Service Provider’s Direct Agreement.

21. LANGUAGE OF AGREEMENT

Each Party acknowledges having requested and being satisfied that this Service Provider’s Direct Agreement and related documents be drawn in English. Chacune des parties reconnaît avoir demandé que ce document et ses annexes soient rédigés en anglais et s’en declare satisfaite.

22. COUNTERPARTS

This Service Provider’s Direct Agreement may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all the Parties shall constitute a full, original and binding agreement for all purposes. Counterparts may be executed either in original or faxed form provided that any Party providing its signature in faxed form shall promptly forward to such Party an original signed copy of this Service Provider’s Direct Agreement which was so faxed.

23. JOINT AND SEVERAL

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

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IN WITNESS WHEREOF the Parties have executed this Service Provider’s Direct Agreement as of the date first above written.

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

Per: _____
Name: [REDACTED]
Title: [REDACTED]

Per: _____
Name: [REDACTED]
Title: [REDACTED]

I/We have authority to bind the corporation.

METROLINX

Per: _____
Name: [REDACTED]
Title: [REDACTED]

I/We have authority to bind the corporation.

**PLENARY INFRASTRUCTURE ERMF
GP,**

by its partners:

[REDACTED]

By: _____

Name: **[REDACTED]**

Title: **[REDACTED]**

By: _____

Name: **[REDACTED]**

Title: **[REDACTED]**

I/We have authority to bind the corporation.

[REDACTED]

By: _____

Name: **[REDACTED]**

Title: **[REDACTED]**

By: _____

Name: **[REDACTED]**

Title: **[REDACTED]**

I/We have authority to bind the corporation.

[REDACTED]

By: _____

Name: **[REDACTED]**

Title: **[REDACTED]**

By: _____

Name: **[REDACTED]**

Title: **[REDACTED]**

I/We have authority to bind the corporation.

[REDACTED]

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

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

I/We have authority to bind the corporation.

[REDACTED]

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

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

I/We have authority to bind the corporation.

22694694.2

INDEPENDENT CERTIFIER AGREEMENT

THIS AGREEMENT is made as of the _____ day of March, 2015

AMONG:

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

AND:

METROLINX, a non-share capital corporation continued under the *Metrolinx Act, 2006*, S.O. 2006, c.16 and a Crown agency in accordance with the *Crown Agency Act*, R.S.O. c.48

(collectively, “**HMQ Agencies**”)

AND:

PLENARY INFRASTRUCTURE ERMF GP, a general partnership existing under the laws of Ontario

(“**Project Co**”)

AND:

[REDACTED]

(the “**Independent Certifier**”)

WHEREAS:

- A. **HMQ Agencies 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. HMQ and Metrolinx intend to enter into this Independent Certifier Agreement and to be liable, on a joint and several basis for all of the obligations of HMQ Agencies pursuant to this Independent Certifier Agreement, save and except as provided for in this Independent Certifier Agreement.

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

1. DEFINITIONS

1.1 Definitions

- (a) In this Independent Certifier Agreement, including the recitals and appendices, unless the context indicates a contrary intention, terms which are defined in the Project Agreement (and not otherwise defined in this Independent Certifier Agreement) shall have meanings given to them in the Project Agreement and the following terms shall have the following meanings:
- (i) **“Certification Services”** means:
- (A) all of the functions and obligations described in the Project Agreement as being the responsibility of the Independent Certifier;
 - (B) all of the functions and obligations conferred on the Independent Certifier under this Independent Certifier Agreement, including the functions described in Appendix A to this Independent Certifier Agreement; and
 - (C) all other things or tasks which the Independent Certifier must do to comply with its obligations under this Independent Certifier Agreement.
- (ii) **“Certification Services Variation”** means any change to the Certification Services.
- (iii) **“Contract Material”** means all material:
- (A) provided to the Independent Certifier or created or required to be created by either PA Party; and
 - (B) provided by or created or required to be created by the Independent Certifier as part of, or for the purpose of, performing the Certification Services,

including documents, equipment, reports, technical information, plans, charts, drawings, calculations, tables, schedules and data (stored and recorded by any means).

- (iv) “**Fee**” means the fees payable by HMQ Agencies and Project Co to the Independent Certifier for the Certification Services, as such fees are specified and made payable in accordance with Appendix B to this Independent Certifier Agreement.
- (v) “**HST**” means the value-added tax payable and imposed pursuant to Part IX of the Excise Tax Act (Canada), and any successor legislation thereto.
- (vi) “**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.
- (vii) “**PA Parties**” and “**PA Party**” have the meanings given in the recitals to this Independent Certifier Agreement.
- (viii) “**Project Agreement**” means that certain project agreement made on or about March 24th, 2015 between HMQ Agencies and Project Co with respect to the design, construction, financing and facilities management of the Facility.

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 of this Independent Certifier Agreement.

3.2 Acknowledgement of Independent Certifier

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

3.3 Standard of Care

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

3.4 Duty of Independent Judgment

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

- (c) The Independent Certifier acknowledges that the PA Parties may rely on the Certification Services, including determinations, findings and certifications made by the Independent Certifier, and accordingly, the Independent Certifier will use its best skill and judgment in providing the Certification Services.

3.5 Authority to Act

- (a) The Independent Certifier:
- (i) is an independent consultant and is not, and must not purport to be, a partner, joint venturer or agent of either PA Party;
 - (ii) other than as expressly set out in this Independent Certifier Agreement or the Project Agreement, has no authority to give any directions to a PA Party or its officers, directors, members, employees, contractors, consultants or agents; and
 - (iii) has no authority to waive or alter any terms of the Project Agreement, nor to discharge or release a party from any of its obligations under the Project Agreement unless jointly agreed by the PA Parties in writing.

3.6 Knowledge of the PA Parties' Requirements

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

3.7 Co-ordination and Information by Independent Certifier

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

3.8 Conflict of Interest

- (a) The Independent Certifier warrants that:
 - (i) at the date of this Independent Certifier Agreement, no conflict of interest exists or is likely to arise in the performance of its obligations under this Independent Certifier Agreement, and the Independent Certifier further warrants that it has not been retained as 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.

3.9 Independent Certifier Personnel

- (a) The Independent Certifier shall make reasonable efforts to ensure that the individuals listed in Appendix C remain involved in the performance of the Certification Services and, in particular, will not, for the duration of this Independent Certifier Agreement, require or request any such person to be involved in any other project on behalf of the Independent Certifier if, in the reasonable opinion of the PA Parties, such involvement would have a material adverse effect on the performance of the Certification Services.
- (b) The Independent Certifier shall ensure that its personnel providing the Certification Services in respect of the Commissioning Tests, the Outline Commissioning Program and the Final Commissioning Program shall:

- (i) possess a current professional designation of not less than membership in Professional Engineers Ontario, the Ontario Association of Certified Engineering Technicians and Technologists or such similar professional designation recognized in North America;
 - (ii) have demonstrated competence in the commissioning of comparable facilities and in having completed or monitored the commissioning for comparable facilities to the Facility; and
 - (iii) have an understanding of the commissioning process and the reports to be provided pursuant to this Independent Certifier Agreement and the Project Agreement, including not only the start-up procedures but also the pre-commissioning and post-commissioning activities.
- (c) The Independent Certifier shall furnish HMQ Agencies with evidence satisfactory to HMQ Agencies of any such personnel's compliance with the foregoing requirements within a reasonable time prior to the proposed commencement of the Certification Services in respect of the Commissioning Tests, the Outline Commissioning Program and the Final Commissioning Program.

3.10 Minimize Interference

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

4. ROLE OF THE 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 Substantial Completion and Final Completion have occurred, and shall provide copies of all such information, documents and particulars to the other party hereto.

4.4 Additional Information

- (a) If any information, documents or particulars are reasonably required to enable the Independent Certifier to perform the Certification Services and have not been provided by the PA Parties, then:
 - (i) the Independent Certifier must give notice in writing to the Project Co Representative or the HMQ Representative, as the case may be, of the details of the information, documents or particulars demonstrating the need and the reasons why they are required; and
 - (ii) Project Co or HMQ Agencies, 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 Site, Facility or Works at any reasonable time in connection with the exercise or proposed exercise of rights under this Independent Certifier Agreement, subject to:
 - (i) observance of the reasonable rules of Project Co as to safety and security for the Site, the Facility and the Works;
 - (ii) not causing unreasonable delay to the carrying out of the Works by reason of its presence at the Site, the Facility and the Works; and
 - (iii) not causing any damage to the Site, the Facility 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 that complies with all requirements of the Independent Certifier’s quality assurance accreditation, and is otherwise satisfactory to each of the HMQ Representative and the Project Co Representative;
 - (ii) within 14 days after the date of this Independent Certifier Agreement, provide such certification quality plan to each of the HMQ Representative and the Project Co Representative;
 - (iii) if satisfactory to each of the HMQ Representative and the Project Co Representative, implement such certification quality plan; and
 - (iv) if not satisfactory to each of the HMQ Representative and the Project Co Representative, within 7 days after receiving notice thereof from either PA Party to that effect, revise and resubmit the certification quality plan to each of the HMQ Representative and the Project Co Representative, and implement it if satisfactory to each of the HMQ Representative and the Project Co Representative.

5.2 Certification Quality Plan not to Relieve Independent Certifier

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

6. SUSPENSION

6.1 Notice

- (a) The Certification Services (or any part) may be suspended at any time by the PA Parties:

- (i) if the Independent Certifier fails to comply with its obligations under this Independent Certifier Agreement, immediately by the PA Parties giving joint notice in writing to the Independent Certifier; or
- (ii) in any other case, by the PA Parties giving 7 days joint notice in writing to the Independent Certifier.

6.2 Costs of Suspension

- (a) The Independent Certifier will:
 - (i) subject to the Independent Certifier complying with Article 9, be entitled to recover the extra costs incurred by the Independent Certifier by reason of a suspension directed under Section 6.1(a)(ii) valued as a Certification Services Variation under Section 9; and
 - (ii) have no entitlement to be paid any costs, expenses, losses or damages arising from a suspension under Section 6.1(a)(i).

6.3 Recommencement

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

7. INSURANCE AND LIABILITY

7.1 Independent Certifier's Insurance

- (a) The Independent Certifier must have in place at all times during the term of this Independent Certifier Agreement:
 - (i) professional liability insurance:
 - (A) in the amount of [REDACTED] per claim and [REDACTED] in the aggregate, a deductible of not more than [REDACTED] per claim and from an insurer and on terms satisfactory to each of the PA Parties; and
 - (B) covering liability which the Independent Certifier might incur as a result of a breach by it of its obligations owed by the Independent Certifier in a professional capacity to the PA Parties, or either of them, under or in connection with this Independent Certifier Agreement or the provision of the Certification Services; and
 - (ii) comprehensive general liability insurance in the amount of [REDACTED] per claim and in the aggregate, no deductible for personal injury or bodily injury, a

deductible of not more than [REDACTED] per occurrence for property damage and from an insurer and on terms satisfactory to each of the PA Parties.

- (b) The Independent Certifier must provide copies of its insurance policies to each of the PA Parties upon execution of this Independent Certifier Agreement, and, at least 5 Business Days prior to the expiry date of any such insurance policy, the Independent Certifier must provide evidence of the renewal of any such insurance policy satisfactory to the PA Parties, acting reasonably.

7.2 Workers' Compensation Insurance

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

8. PAYMENT FOR SERVICES

8.1 Payment of Fee

- (a) In consideration of the Independent Certifier performing the Certification Services in accordance with this Independent Certifier Agreement, each PA Party shall pay [REDACTED] of the Fee to the Independent Certifier in accordance with the payment schedule specified in Appendix B.
- (b) The obligation of each PA Party to pay [REDACTED] of the Fee to the Independent Certifier is a several obligation, and neither PA Party shall have any liability in respect of the non-payment by the other PA Party of any fees or costs payable by such other PA Party under this Independent Certifier Agreement. The Fee includes all taxes (except for HST), overheads and profit, all labour and materials, insurance costs, travel, hospitality, food and incidental expenses and all other overhead including any fees or other charges required by law to perform the Certification Services. The Independent Certifier shall not be reimbursed for any disbursements or any travel, hospitality, food or incidental expenses. For greater certainty, disbursements and any travel, hospitality, food or incidental expenses shall not appear on invoices to HMQ Agencies.
- (c) The PA Parties acknowledge and agree that if any approved amount due and payable by the PA Parties to the Independent Certifier in excess of [REDACTED] is outstanding for more than 60 days, the Independent Certifier shall not have any obligation to make any certification under the Project Agreement.

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

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

9.2 No Adjustment

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

9.3 External Services

- (a) In the event that external personnel or consultants are required for expert opinion with respect to a Certification Services Variation, then, with the prior written approval of the PA Parties, any additional fees relating to such external personnel or consultants will be payable by the PA Parties at the agreed upon amount.

9.4 Certification Services Variation Procedure

- (a) The HMQ Representative and the Project Co Representative may jointly issue a document titled “Certification Services Variation Price Request” to the Independent Certifier which will set out details of a proposed Certification Services Variation which the PA Parties are considering.
- (b) Within 7 days after the receipt of a “Certification Services Variation Price Request”, the Independent Certifier must provide each of the HMQ Representative and the Project Co Representative with a written notice in which the Independent Certifier sets out the effect which the proposed Certification Services Variation will have on the Fee.

- (c) Each of the HMQ Representative and the Project Co Representative may then jointly direct the Independent Certifier to carry out a Certification Services Variation by written document titled “Certification Services Variation Order” which will state either that:
 - (i) the Fee is adjusted as set out in the Independent Certifier’s notice; or
 - (ii) the adjustment (if any) to the Fee will be determined under Section 9.5.

9.5 Cost of Certification Services Variation

- (a) Subject to Section 9.2, the Fee will be adjusted for all Certification Services Variations carried out by the Independent Certifier by:
 - (i) the amount (if any) stated in the “Certification Services Variation Order” in accordance with Section 9.4(c);
 - (ii) if Section 9.5(a)(i) is not applicable, an amount determined pursuant to the fee schedule in Appendix B; or
 - (iii) where such rates or prices are not applicable, a reasonable amount to be agreed between the PA Parties and the Independent Certifier or, failing agreement, determined by the HMQ Representative and the Project Co Representative jointly.
- (b) Any reductions in the Fee shall be calculated on the same basis as any increases.

10. TERM AND TERMINATION

10.1 Term

- (a) Subject to earlier termination, this Independent Certifier Agreement will commence on the date of the Project Agreement and continue in full force until:
 - (i) the completion of the Works and the performance of the Certification Services set forth herein; or
 - (ii) such other date as may be mutually agreed between the PA Parties and the Independent Certifier.

10.2 Notice of Breach

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

10.3 Termination for Breach

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

10.4 Termination for Financial Difficulty or Change in Control

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

10.5 Termination for Convenience

- (a) Notwithstanding anything to the contrary in this Independent Certifier Agreement, the PA Parties may, at any time, jointly terminate this Independent Certifier Agreement upon 30 days written notice to the Independent Certifier. The PA Parties and the Independent Certifier agree that, notwithstanding the 30 days' notice of termination, the Independent Certifier shall continue on a day-to-day basis thereafter until a new Independent Certifier is appointed.

10.6 Independent Certifier's Rights upon Termination for Convenience

- (a) Upon a termination under Section 10.5, the Independent Certifier will:
- (i) be entitled to be reimbursed by the PA Parties for the value of the Certification Services performed by it to the date of termination; and
 - (ii) not be entitled to any damages or other compensation in respect of the termination and (without limitation) any amount in respect of:
 - (A) the lost opportunity to earn a profit in respect of the Certification Services not performed at the date of termination; and
 - (B) any lost opportunity to recover overheads from the turnover which would have been generated under this Independent Certifier Agreement but for it being terminated.

10.7 Procedure upon Termination

- (a) Upon completion of the Independent Certifier’s engagement under this Independent Certifier Agreement or earlier termination of this Independent Certifier Agreement (whether under 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, 10.6, 10.7, 11, 12.7, 12.8, 12.9 and this Section 10.9 or under any other provision which is expressed to survive termination or which is required to give effect to such termination or the consequences of such termination.

11. INDEMNITY

11.1 PA Parties to Save Independent Certifier Harmless

- (a) The PA Parties hereby indemnify and save the Independent Certifier completely harmless from any actions, causes of action, suits, debts, costs, damages, expenses, claims and demands whatsoever, at law or in equity, arising directly or indirectly in whole or in part out of any action taken by the Independent Certifier within the scope of its duties or authority hereunder.
- (b) The indemnity provided under this Section 11.1 shall not extend:

- (i) to any breach of this Independent Certifier Agreement, or any part or parts hereof, by the Independent Certifier, its employees, servants, agents or persons for whom it is in law responsible, or any negligent or unlawful act or omission or willful misconduct of the Independent Certifier, its employees, servants or persons for whom it is in law responsible (in respect of which the Independent Certifier shall indemnify the PA Parties, as referred to in Section 11.2);
 - (ii) to any action taken by the Independent Certifier outside the scope of authority set forth in this Independent Certifier Agreement, or any part or parts hereof; or
 - (iii) to any debt, cost, expense, claim or demand for which insurance proceeds are recoverable by the Independent Certifier.
- (c) This indemnity shall survive the termination of this Independent Certifier Agreement.

11.2 Independent Certifier to Save PA Parties Harmless

- (a) The Independent Certifier hereby indemnifies and saves the PA Parties, and their affiliated entities, subsidiaries and their respective directors, officers, employees, agents, permitted successors and assigns, completely harmless from any actions, causes of action, suits, debts, costs, damages, expenses, claims and demands whatsoever, at law or in equity, arising directly or indirectly in whole or in part out of any breach of this Independent Certifier Agreement, or any part or parts hereof, by the Independent Certifier, its employees, servants, agents or persons for whom it is in law responsible, or any negligent or unlawful act or omission or willful misconduct of the Independent Certifier, its employees, servants or persons for whom it is in law responsible.
- (b) The indemnity provided under this Section 11.2 to a PA Party shall not extend:
- (i) to any negligent or unlawful act or omission or willful misconduct of such PA Party, its employees, servants or persons for whom it is in law responsible (in respect of which such PA Parties shall indemnify the Independent Certifier, as referred to in Section 11.1); or
 - (ii) to any debt, cost, expense, claim or demand for which insurance proceeds are recoverable by such PA Party.
- (c) This indemnity shall survive the termination of this Independent Certifier Agreement.
- (d) 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.

Toronto, Ontario M5J 2W3

Fax: [REDACTED]
Attn.: Manager, Rail Facilities

with a copy to:

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

Fax No.: [REDACTED]
Attn.: Project Manager, East Rail Maintenance Facility
Project

If to Project Co:

[REDACTED]

Attention: [REDACTED]
Facsimile: [REDACTED]
Email: [REDACTED]

with a copy (by facsimile) to:

[REDACTED]

Attention: [REDACTED]
Facsimile: [REDACTED]
Email: [REDACTED]

and:

Attention: Chief Financial Officer
Facsimile: [REDACTED]

and with a copy to:

[REDACTED]

Attention: [REDACTED]
Facsimile: [REDACTED]
Email: [REDACTED]

If to the Independent Certifier:

[REDACTED]

Attn.: [REDACTED]
Email: [REDACTED]

- (b) Where any notice is provided or submitted to a party via facsimile, an original of the notice sent via facsimile shall promptly be sent by regular mail or registered mail. For greater certainty, a notice given via facsimile shall not be invalid by reason only of a party's failure to comply with this Section 12.4(b).
- (c) Any party to this Independent Certifier Agreement may, from time to time, change any of its contact information set forth in Section 12.4(a) by prior notice to the other Parties, and such change shall be effective on the Business Day that next follows the recipient party's receipt of such notice unless a later effective date is given in such notice.
- (d) Subject to Sections 12.4(e), 12.4(f) and 12.4(g):
 - (i) a notice given by registered mail shall be deemed to have been received on the third Business Day after mailing;
 - (ii) a notice given by hand delivery shall be deemed to have been received on the day it is delivered; and
 - (iii) a notice given by facsimile shall be deemed to have been received on the day it is transmitted by facsimile.
- (e) If the party giving the notice knows or ought reasonably to know of difficulties with the postal system which might affect negatively the delivery of mail, any such notice shall not be mailed but shall be made or given by personal delivery or by facsimile transmission in accordance with this Section 12.4.
- (f) If any notice delivered by hand or transmitted by facsimile is so delivered or transmitted, as the case may be, either on a day that is not a Business Day or on a Business Day after 4:00 p.m. (recipient's local time), then such notice shall be deemed to have been received by such recipient on the next Business Day.
- (g) A notice given by facsimile shall be deemed to have been received by the recipient on the day it is transmitted only if a facsimile transmission report (maintained by the sender) indicates that the transmission of such notice was successful.

12.5 Transfer and Assignment

- (a) The Independent Certifier:
 - (i) must not assign, transfer, mortgage, charge or encumber any right or obligation under this Independent Certifier Agreement without the prior written consent of the PA Parties, which each PA Party may give or withhold in its absolute discretion; and

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

12.6 Governing Laws and Jurisdictions

- (a) This Independent Certifier Agreement shall be governed by and construed in accordance with the laws of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract, without regard to conflict of laws principles.
- (b) The PA Parties and the Independent Certifier agree that the courts of the Province of Ontario and all courts competent to hear appeals therefrom shall have exclusive jurisdiction to hear and settle any action, suit, proceeding or dispute in connection with this Independent Certifier Agreement and hereby irrevocably attorn to the exclusive jurisdiction of such courts.
- (c) Nothing in this Independent Certifier Agreement affects the rights, protections and immunities of the *Crown under the Proceedings Against the Crown Act* (Ontario).

12.7 HMQ Designate

- (a) At any time and from time to time, the Crown may designate any ministry, branch, agency, division, department or office of the Government of Ontario to carry out administrative responsibility for the rights and obligations of HMQ Agencies 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 HMQ Agencies 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 **Error! Reference source not found.**

12.8 Confidentiality

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

12.9 Contract Material

- (a) The PA Parties and the Independent Certifier agree that the Independent Certifier does not and will not have any rights, including any Intellectual Property, in any Contract Material provided to the Independent Certifier or created or required to be created by either PA Party.
- (b) As between the PA Parties and the Independent Certifier, all title and ownership, including all Intellectual Property, in and to the Contract Material created or required to be created by the Independent Certifier as part of, or for the purposes of performing the Certification Services, is hereby assigned jointly to the PA Parties on creation, or where such title, ownership and Intellectual Property cannot be assigned before creation of the Contract Material, it will be assigned to the PA Parties on creation. In addition, to the extent that copyright may subsist in such Contract Material so created by the Independent Certifier, the Independent Certifier hereby waives all past, present and future moral rights therein and the Independent Certifier shall ensure that any agent or employee of Independent Certifier shall have waived all such moral rights. The PA Parties acknowledge and agree that as between the PA Parties, title, ownership and other rights to the foregoing shall be governed by the Project Agreement.
- (c) The Independent Certifier will do all such things and execute all such documents as reasonably requested by either of the PA Parties in order to confirm or perfect the assignment of Intellectual Property in the Contract Material referred to in Section 12.9(b).

12.10 Amendment

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

12.11 Severability

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

12.12 Enurement

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

12.13 Counterparts

- (a) This Independent Certifier Agreement may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all the parties shall constitute a full, original and binding agreement for all purposes. Counterparts may be executed either in original or faxed form provided that any party providing its signature in faxed form shall promptly forward to such party an original signed copy of this Independent Certifier Agreement which was so faxed.

12.14 Joint and Several

- (a) HMQ and Metrolinx shall be liable, on a joint and several basis, for all of the obligations of HMQ Agencies under this Independent Certifier Agreement and for each covenant of the other under this Independent Certifier Agreement.

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

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

Per: _____

Name: [REDACTED]

Title: [REDACTED]

Per: _____

Name: [REDACTED]

Title: [REDACTED]

I/We have authority to bind the corporation.

METROLINX

Per: _____

Name: [REDACTED]

Title: [REDACTED]

I/We have authority to bind the corporation.

**PLENARY INFRASTRUCTURE ERMF
GP,**

by its partners:

[REDACTED]

By: _____

Name: **[REDACTED]**

Title: **[REDACTED]**

By: _____

Name: **[REDACTED]**

Title: **[REDACTED]**

I/We have authority to bind the corporation.

[REDACTED]

By: _____

Name: **[REDACTED]**

Title: **[REDACTED]**

By: _____

Name: **[REDACTED]**

Title: **[REDACTED]**

I/We have authority to bind the corporation.

[REDACTED]

By: _____

Name: **[REDACTED]**

Title: **[REDACTED]**

By: _____

Name: **[REDACTED]**

Title: **[REDACTED]**

I/We have authority to bind the corporation.

[REDACTED]

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

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

I/We have authority to bind the corporation.

APPENDIX A

CERTIFICATION SERVICES

Without limiting the other provisions of this Independent Certifier Agreement and the Project Agreement, the Independent Certifier shall do the following:

- (a) Receive and monitor drawings and documents related to the development of the design as necessary for the Independent Certifier to be informed as to the progress of the Works and to provide an opinion in the event of a Dispute related to the development of the design.
- (b) Receive and monitor progress reports as necessary for the Independent Certifier to be informed as to the progress of the Works.
- (c) Review information relating to Delay Events and Compensation Events.
- (d) Review information relating to Variation Enquiries, Project Co Variation Notices, Variations, Estimates, claims for extension of time and compensation and consult with the relevant party.
- (e) In accordance with Section 11.1(b) of the Project Agreement, attend meetings and participate, as necessary, in the activities of the Works Committee.
- (f) Review the draft Final Commissioning Program and the detailed tests, test methodology and expected test results proposed by Project Co and provide comments, including to report on the effectiveness of the Final Commissioning Program, to identify any errors or omissions, and to report any risks.
- (g) Monitor the Commissioning Tests (as indicatively described in Schedule 14 - Outline Commissioning Program to the Project Agreement) and other tests, including re-tests, to be performed as set out in the Final Commissioning Program or as otherwise required for Project Co to achieve Substantial Completion and Final Completion.
- (h) Prior to any certification, consider the views and comments of both Project Co and HMQ Agencies in relation to the satisfaction of the conditions for certification.
- (i) Conduct inspections of the Works as necessary for the Independent Certifier to be satisfied that the Works are proceeding in accordance with the requirements of the Project Agreement. The Independent Certifier shall provide a plan, within 14 days of the Independent Certifier Agreement, which outlines their workplan in respect of the items required in this Appendix A to both Project Co and HMQ Agencies.
- (j) Review relevant documentation, including floor area schedules, certificates and approvals, Permits, Licences, Approvals and Agreements, certifications, test results, quality assurance audits, letters of assurance from professionals, schedules of equipment and staff profile schedules provided to the Independent Certifier pursuant to the Project Agreement.

- (k) Monitor the requirements, progress and results of all Project Co Commissioning and HMQ Commissioning.
- (l) Monitor the conduct of the Commissioning Tests during the Seasonal Performance Testing prescribed in Schedule 14 – Outline Commissioning Program and the Final Commissioning Program including, without limitation, any re-tests, review of Commissioning Tests and results, copies of any certificates or other permits, licenses and approvals received by Project Co in connection with any Commissioning Tests conducted during the Seasonal Performance Testing, review and accepting Performance Testing forms required to be delivered pursuant to Schedule 14 – Outline Commissioning Program of the Project Agreement and the Final Commissioning Program and to perform such other similar responsibilities (other than performing Commissioning Tests or performance of inspections) with respect to any matter relating to commissioning of the Facility after Substantial Completion, as applicable as either party may request and to report to each of the parties thereon.
- (m) Identify any errors or omissions made during the conduct of any such Commissioning Tests referenced in item (l) above and to advise Project Co and HMQ Agencies with respect to the implications of those errors and omissions, to the extent that the Independent Certifier may reasonably be aware.
- (n) Upon receipt of notice from Project Co requesting the issuance of the Substantial Completion Certificate and the Final Completion Certificate, as applicable, consider such request and, within the time period set out in the Project Agreement and in accordance with the Project Agreement, either:
 - (i) issue the applicable certificate; or
 - (ii) issue a report detailing the matters that the Independent Certifier considers are required to be performed prior to issuing the applicable certificate.
- (o) Upon notice from Project Co that the matters required to be performed prior to issuing the applicable certificate have been completed, re-inspect the Works or re-consider the matters specified to be performed, and repeat the procedures in Section (k) of this Appendix A until the issuance of the applicable certificate.
- (p) Prepare, in consultation with Project Co and HMQ Agencies, as soon as reasonably practicable and, in any event within, the time period specified in Section 24.8(c) of the Project Agreement, the Minor Deficiencies List, which Minor Deficiencies List will include an estimate of the cost and the time for rectifying the Minor Deficiencies and a schedule for the completion and rectification of the Minor Deficiencies.
- (q) Both prior to and after Substantial Completion, reconcile Project Co invoices for expenditure recovery against HMQ Agencies' budgets and the Cash Allowance Amount.
- (r) Review and observe installation of all equipment, furniture, fixtures, information technology, communication equipment, telephone equipment and anything similar to the

foregoing (collectively, the “**Installed Equipment**”) into the Facility by HMQ Agencies or any agent or contractor of HMQ Agencies either before or after Substantial Completion. If damaged is observed the Independent Certifier shall notify Project Co and HMQ Agencies immediately outlining the extent of damage observed. Once installation is completed the Independent Certifier shall provide a report to HMQ Agencies and Project Co identifying any damage to the Facility which has been caused as a result of the installation of such Installed Equipment into the Facility by HMQ Agencies, their contractors and/or agents.

- (s) Provide any determinations contemplated in the Project Agreement, which determinations may be subject to final resolution between the PA Parties pursuant to Schedule 27 - Dispute Resolution Procedure to the Project Agreement.
- (t) Participate in and give the PA Parties and their counsel reasonable cooperation, access and assistance (including providing or making available documents, information and witnesses for attendance at hearings and other proceedings) in connection with any proceedings between the PA Parties that relate to the Certification Services.
- (u) Provide periodic reports to the PA Parties, copying Infrastructure Ontario, as follows:
 - (i) A progress report within fifteen Business Days after each month’s end or as otherwise agreed by the PA Parties (the “**Monthly Report**”) which outlines, at minimum, the following items and provides relevant Project Agreement references and background material as required:
 - (A) Project status and observations from the reporting period including but not limited to design, construction, schedule, quality management, permits, licenses and approvals and commissioning;
 - (B) Disputes;
 - (C) Variations;
 - (D) Certifications; and
 - (E) Delay and Compensation Events.
 - (ii) accompanying the Monthly Reports delivered for the months May, August, November and December, a quarterly report (the “**Quarterly Report**”) for the quarters ending June 30th, September 30th, December 31st and March 31st respectively, in substantially the form as that in Appendix E and that contains the following information confirmed to the best of the Independent Certifier’s professional knowledge and judgment:
 - (A) the extent (expressed as a percentage) of completion of the Works as of the date of the Quarterly Report;

- (B) the value of the Works completed as of the date of the Quarterly Report;
 - (C) the forecasted extent (expressed as a percentage) of completion of the Works as of the end 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 end of the applicable quarter and for the next four quarters.
- (v) Provide advice on other matters that may arise that both PA Parties may jointly require.

APPENDIX B
INDEPENDENT CERTIFIER FEE

[REDACTED]

APPENDIX C

INDEPENDENT CERTIFIER PERSONNEL

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

[REDACTED]

APPENDIX D

CONDUCT OF CLAIMS

This Appendix D shall apply to the conduct of claims, made by a third person against a party having, or claiming to have, the benefit of an indemnity pursuant to this Independent Certifier Agreement. The party having, or claiming to have, the benefit of the indemnity is referred to as the “**Beneficiary**” and a party giving the indemnity is referred to as an “**Indemnifier**”.

- (1) If the Beneficiary receives any notice, demand, letter or other document concerning any claim for which it appears that the Beneficiary is, or may become entitled to, indemnification under Section 11 of the Independent Certifier Agreement, the Beneficiary shall give written notice to each Indemnifier potentially obligated in respect thereof, as soon as reasonably practicable and in any event within 10 Business Days of receipt of the same. Such notice shall specify with reasonable particularity, to the extent that information is available, the factual basis for the claim and the amount of the claim.
- (2) Subject to Sections (3), (4) and (5) of this Appendix D, on the giving of such notice by the Beneficiary, where it appears that the Beneficiary is or may be entitled to indemnification from an Indemnifier in respect of all, but not part only, of the liability arising out of the claim, such Indemnifier shall (subject to providing the Beneficiary with a secured indemnity to the Beneficiary’s reasonable satisfaction against all costs and expenses that the Beneficiary may incur by reason of such action) be entitled to dispute the claim in the name of the Beneficiary at the Indemnifier’s own expense and take conduct of any defence, dispute, compromise, or appeal of the claim and of any incidental negotiations. The Beneficiary shall give such Indemnifier all reasonable cooperation, access and assistance for the purposes of considering and resisting such claim. The Beneficiary shall have the right to employ separate counsel in respect of such claim and the reasonable fees and expenses of such counsel shall be to the account of the Indemnifier only where representation of both the Indemnifier and the Beneficiary by common counsel would be inappropriate due to any actual or potential conflicting interests between the Indemnifier and the Beneficiary. If and to the extent that both HMQ Agencies 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;

East Rail Maintenance Facility Project

- (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 (3) 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);
 - (ii) none of the Indemnifiers notifies the Beneficiary of its intention to take conduct of the relevant claim as soon as reasonably practicable and in any event within 10 Business Days of the notice from the Beneficiary under Section (1) 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).
- (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) applies. For greater certainty, the Independent Certifier acknowledges and agrees that where HMQ Agencies are the Beneficiaries, HMQ Agencies may retain or take over such conduct in any matter involving Personal Information (as it is defined in the Project Agreement) or any matter involving public policy. On receipt of such notice each Indemnifier shall promptly take all steps necessary to transfer the conduct of such claim to the Beneficiary, and shall provide to the Beneficiary all relevant documentation and all reasonable cooperation, access and assistance for the purposes of considering and resisting such claim. If the Beneficiary gives any notice pursuant to this Section (5), then each 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:

East Rail Maintenance Facility Project

- (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 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 QUARTERLY REPORT

[ON THE INDEPENDENT CERTIFIER'S LETTERHEAD]

[date]

Metrolinx
20 Bay St.
Suite 600
Toronto, ON M5J 2W3
Attn.: [REDACTED], Project Manager

And to:

[REDACTED]

with a copy to:

Ontario Infrastructure and Lands Corporation
777 Bay Street, 6th floor
Toronto, ON M5G 2C8
Attention: Vice President, Civil Infrastructure

Dear • and •:

This report for the quarter ending •, is delivered to you pursuant to Section (u)(ii) of Appendix A of the Independent Certifier Agreement between Her Majesty the Queen in right of Ontario as represented by the Minister of Economic Development, Employment and Infrastructure, as represented by Ontario Infrastructure and Lands Corporation, Metrolinx, Plenary Group and us dated • (the “**Agreement**”). Terms not otherwise defined herein have the meaning ascribed to them in the 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.

East Rail Maintenance Facility Project

- At the end of this quarter, the value of the Works will be \$• and the Works will 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, **[Project Co]** and Her Majesty the Queen in right of Ontario as represented by the Minister of Economic Development, Employment and Infrastructure, as represented by the Ontario Infrastructure and Lands Corporation. This letter is not intended for general circulation, publication or reproduction for any other person or purpose without express written permission to each specific instance.

Yours truly

[Name and Signature of Independent Certifier]

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SCHEDULE 7

INTENTIONALLY DELETED

22694691.2

SCHEDULE 8

ENERGY MATTERS

1. Definitions

The following definitions shall have the following meanings:

- 1.1 **“Aggregate Actual Consumption”** means the actual consumption of all Energy Utilities as invoiced by the relevant utility companies for each Energy Year, excluding all Energy Utilities consumed by Wayside Power;
- 1.2 **“Aggregate Energy Target”** means the total planned energy consumption, excluding the energy consumption by Wayside Power, set forth in the Energy Target Letter submitted by Project Co at Commercial Close and which has been accepted by HMQ Agencies. The Aggregate Energy Target shall include and account for all requirements of Schedule 15 – Output Specifications of the Project Agreement including standard HVAC and lighting loads, and any systems that are installed by Project Co as part of the Works and that will be maintained by Project Co as part of the Project Co Services;
- 1.3 **“Aggregate Energy Model”** means the energy model used for determining the Aggregate Energy Target;
- 1.4 **“Annual Energy Target”** means the planned consumption of Energy in any Energy Year in respect of the Regulated Load and the Non-Regulated Load;
- 1.5 **“Annual Review Date”** means each anniversary of the end of the Initial Period;
- 1.6 **“Annual Review Meeting”** means meetings between HMQ Representatives and Project Co Representatives to occur within 90 days of each anniversary of the Substantial Completion Date (or such other date as may be agreed between HMQ Agencies and Project Co) to discuss Energy Services;
- 1.7 **“Average Unit Rate Price”** means the average price for each standard unit of each discrete Energy Utility in an Energy Year as reported by the applicable utility companies responsible for the supply of such Energy Service;
- 1.8 **“Corrected Aggregate Energy Consumption”** means, for an Energy Year, the sum of CAECH for each discrete Energy Service and CAECC for each discrete Energy Service plus all non-heating and non-cooling Energy consumption at the Facility for such Energy Year, excluding all non-heating and non-cooling Energy consumed by Wayside Power for such Energy Year;

- 1.9 “**Corrected Discrete Energy Consumption**” means the Discrete Energy Service Actual Consumption for each discrete Energy Service (calculated for each discrete Energy Service) corrected for each Energy Year in accordance with this Schedule 8 to reflect the climatic conditions for that Energy Year;
- 1.10 “**Discrete Energy Service Actual Consumption**” means the consumption of an individual Energy Service at the Facility as invoiced by the relevant utility company for each Energy Year;
- 1.11 “**Discrete Energy Targets**” or “**DET**” means the planned consumption of an individual Energy System (e.g. Air-side, Plant-side, process, lighting, etc.), which are combined to determine the Aggregate Energy Target.
- 1.12 “**Energy Analysis Report**” has the meaning given to it in Section 3 of this Schedule 8;
- 1.13 “**Energy Service**” means any metered provision of Energy Utilities at the Facility, other than the metered provision of Energy Utilities for the Wayside Power;
- 1.14 “**Energy Target Letter**” means the letter submitted by Project Co at Commercial Close setting forth the Aggregate Energy Target and the DET;
- 1.15 “**Energy**” means energy/power including electricity, natural gas, oil and any other energy source used at the Facility.
- 1.16 “**Energy Year**” means the period of 12 months beginning on the day after the expiry of the Initial Period and ending on the first Annual Review Date and each subsequent period of 12 months beginning on the day after an Annual Review Date;
- 1.17 “**Gainshare Adjustment**” means the amount payable by HMQ Agencies to Project Co (which amount will be included in the calculation of the Monthly Service Payment for the Contract Month following the date in which such adjustment has been determined in accordance with this Schedule 8) based on Energy Utilities consumption for each discrete Energy Service that falls outside the set bands set out in Section 5 of this Schedule 8;
- 1.18 “**Heating and Cooling Degree-Days**” are defined as the sum of the differences between daily average temperatures and the base temperature;
- 1.19 “**High Cost Measures**” means, in respect of an Energy Year, energy saving measures that incur capital expenditure with a Simple Payback of greater than 36 months;
- 1.20 “**Initial Period**” means the period beginning on the first day of the first full calendar month immediately after the Substantial Completion Date and ending two (2) years thereafter
- 1.21 “**IPMVP**” means the International Performance Measurement and Verification Protocol;

- 1.22 “**Low Cost Measures**” means, in respect of an Energy Year, energy saving measures that incur capital expenditure with a Simple Payback of no greater than 36 months and are considered to be revenue items as opposed to capital investment measures;
- 1.23 “**No Cost Measures**” means energy savings measures, including those related to good house-keeping, involving no material additional expenditure and/or no capital expenditure to carry out;
- 1.24 “**Non-Regulated Load**” means the metered provision of Energy other than Regulated Load as defined in this Schedule 8 including, but not limited to, vertical transportation, domestic water booster pumps, sump pumps, domestic hot water recirculation pumps, irrigation system pumps, process-related pumps including for; sanding system, diesel fueling, diesel exhaust fluid, lubricants, antifreeze distribution systems, main engine coolant, waste oil recovery system, waste engine coolant, vacuum sewer system, compressed air system, locomotive exhaust fans, air curtains, exterior lighting, security systems, any built-in audio visual systems provided by Project Co, Facility automation systems, IT server room cooling and ventilation and heat tracing. Refer to Parts 4 and 5 of Schedule 3 for more information.
- 1.25 “**Painshare Adjustment**” means the deduction which may be claimed by HMQ Agencies from Project Co (which amount will be deducted from the calculation of the Monthly Service Payment for the Contract Month following the date in which such adjustment has been determined in accordance with this Schedule 8) based on Energy Utilities consumption for each discrete Energy Service which falls outside the bands set out in Section 5 of this Schedule 8.
- 1.26 “**Receptacle Loads**” means the receptacle loads and non-HVAC process loads at the Facility. For clarity, the following loads are considered receptacle and non-HVAC process loads: (i) receptacle loads (standard 120 VAC receptacles for office equipment, including any kitchen appliances); (ii) central computer server; (iii) communication/IT equipment; and (iv) any built-in audio visual systems provided by HMQ Agencies or the Facility Operator.
- 1.27 “**Regulated Load**” means the metered provision of Energy for the following end-uses: (i) space heating; (ii) humidification; (iii) space cooling; (iv) dehumidification; (v) heat rejection; (vi) fans; (vii) lighting; (viii) domestic hot water; and (ix) all pumps except for those pumps that are classified as Non-Regulated Load.
- 1.28 “**Simple Payback**” means the number of years after which an investment will have paid for itself. Simple Payback is calculated by dividing the initial cost of the retrofit by the energy cost savings. Those projects with the shortest paybacks are assumed to be the most cost effective. Simple Payback = initial cost of energy retrofit / energy savings.
- 1.28 “**Wayside Power**” means the wayside power system that provides electrical power to trains during layover periods, when the locomotive is not in operation. It supplies the

energy required for heating, air conditioning, lighting and other auxiliary functions of train systems during the layover period.

2. Procedures for Determining Energy Cost Sharing

- 2.1 HMQ Agencies will reimburse Project Co for the cost of consumption and use by Project Co of Energy Utilities at the Facility based on service invoices provided to HMQ Agencies as part of the Monthly Service Payment invoices; such amount to be paid by HMQ Agencies as part of the invoice issued for each Monthly Service Payment in accordance with the Project Agreement. For purposes of optimizing Energy Utilities costs, HMQ Agencies may, at any time and from time to time, direct Project Co to use a particular type of fuel energy source at the Facility.
- 2.2 All Energy Utilities consumed or used for Wayside Power shall not be subject to the calculation of the Gainshare Adjustment or the Painshare Adjustment as provided in Section 5 of this Schedule 8.
- 2.3 The Discrete Energy Targets shall form the normalized 30 year benchmark for calculating the Energy Services cost sharing in respect of each discrete Energy Service at the Facility. The Discrete Energy Service Actual Consumption for each discrete Energy Service shall be corrected to reflect actual degree days for each Energy Year. The Corrected Discrete Energy Consumption for each discrete Energy Service shall be used to calculate Painshare Adjustments and Gainshare Adjustments. The Aggregate Energy Target and the Discrete Energy Targets shall not be altered or adjusted except by the process described in Section 4 of this Schedule 8.
- 2.4 The measurement and verification of energy use in the Facility must adhere to IPMVP 2003. At Final Completion, Project Co shall provide HMQ Agencies with a Measurement and Verification Plan, as described in IPMVP Volume III, Section 3.2, including, without limitation, a metering schedule of all proposed energy end-uses. All subsequent Energy Analysis Reports are to be based on this plan.
- 2.5 Project Co shall provide HMQ Agencies with a draft Energy Analysis Report within 60 days following the end of each Energy Year, which report shall include copies of all working papers to fully support the draft Energy Analysis Report. The draft Energy Analysis Report shall be consistent with the format and content requirements set out in Section 3 of this Schedule 8.
- 2.6 As soon as practicable and in any event within 80 days following the end of each Energy Year, Project Co and HMQ Agencies shall convene an Annual Review Meeting to be attended by the Project Co Representative and the HMQ Representative. At the Annual Review Meeting Project Co shall present the draft Energy Analysis Report to HMQ Agencies, and HMQ Agencies and Project Co shall discuss the Aggregate Actual Consumption and the Discrete Energy Service Actual Consumption for each discrete Energy Service for the preceding Energy Year.

- 2.7 Project Co shall assist the HMQ Representative and afford the HMQ Representative such information and access to the Facility, building management system records, utility meters, and FM Help Desk Services (as such services are described in the Output Specifications and by other means as may reasonably be required for the HMQ Representative to confirm the draft Energy Analysis Report provided by Project Co to determine the Aggregate Actual Consumption and the Discrete Energy Service Actual Consumption for each separate Energy Service at the Facility for the Energy Year. HMQ Agencies shall promptly notify Project Co of the details of any disagreement of all or any aspect of the Energy Analysis Report, and the Parties shall then seek to agree to any matters in dispute, but where matters cannot be resolved within such 20 Business Day period (or such other period as may be otherwise agreed by the HMQ Representative, acting reasonably) it shall be dealt with in accordance with the Dispute Resolution Procedure.
- (a) Within 20 Business Days following each Annual Review Meeting, or within such period as may be otherwise agreed between the HMQ Representative and the Project Co Representative, acting reasonably:
 - (i) HMQ Agencies shall confirm their acceptance of all or any aspect of the Energy Analysis Report; and
 - (ii) Subject to Section 4 of this Schedule 8, Project Co and HMQ Agencies shall agree to any adjustments to the Aggregate Energy Target and the Discrete Energy Target(s) after taking into account load or usage changes as a result of any changes in occupancy.
 - (b) Subject to Section 2.7(c), Project Co or HMQ Agencies, as the case may be, shall be entitled annually to a Gainshare Adjustment or a Painshare Adjustment, as the case may be, calculated in accordance with this Schedule 8.
 - (c) Claims made by either Project Co or HMQ Agencies for a Gainshare Adjustment or a Painshare Adjustment shall be made at an Annual Review Meeting. If Project Co makes a claim for Gainshare Adjustment, Project Co shall within 10 Business Days after acceptance of the Energy Analysis Report by the HMQ Representative or within such other period as may be agreed by the HMQ Representative and Project Co, acting reasonably, submit an account to HMQ Agencies setting out its calculation and justifying the quantification of the Gainshare Adjustment. If HMQ Agencies make a claim for a Painshare Adjustment, HMQ Agencies shall, within 10 Business Days after acceptance of the Energy Analysis Report by the HMQ Representative or within such other period as may be agreed by the HMQ Representative and Project Co, acting reasonably, submit an account to Project Co setting out its calculations and justifying the quantification of the Painshare Adjustment.

- (d) If either Project Co or HMQ Agencies wish to dispute any account presented pursuant to Section 2.7(c) of this Schedule 8, it must do so by notice to the other Party within 10 Business Days of receipt of such account. The HMQ Representative and the Project Co Representative shall use reasonable efforts to resolve the dispute for an additional 10 Business Days. If there is no agreement within a further 10 Business Days then either Party may refer the matter to the Dispute Resolution Procedure. If neither Party objects in accordance with this Section 2.7(d) or, following final determination of the disputed account in accordance with this Section 2.7(d), Project Co shall include the relevant Gainshare Adjustment or Painshare Adjustment as a separate item within the next invoice prepared by Project Co in accordance with Section 32.6(a) of the Project Agreement. No adjustments shall be made to the Monthly Service Payment for any claimed Gainshare Adjustment or Painshare Adjustment except in accordance with the procedure set out in Section 5 of this Schedule 8.

- 2.8 At Commercial Close, Project Co shall deliver to HMQ Agencies an Energy Target Letter in form and substance satisfactory to HMQ Agencies, which such Energy Target Letter shall reflect the development of the design of the Facility as at Commercial Close. In addition, Project Co shall deliver to HMQ Agencies for review in accordance with Schedule 10 – Review Procedure, an updated final Energy Target Letter together with a supporting Aggregate Energy Model 3 months prior to the Substantial Completion. Any changes to the Energy Target Letter after Commercial Close shall be approved by HMQ Agencies and shall constitute a Variation.

3. Content and Format of the Energy Analysis Report

- 3.1 The Energy Analysis Report shall adhere to the IPMVP.
- 3.2 The Energy Analysis Report shall present findings of Aggregate Actual Consumption and the Discrete Energy Service Actual Consumption for each separate Energy Service for the relevant Energy Year and shall include the following:
- (a) a summary of monthly actual usage, degree days, and breakdown by utility in megajoules and cubic meters, or other utility rate units. The summary should also highlight any exceptional changes (being changes of plus or minus **[REDACTED]**% in consumption or pattern of use) in consumption or pattern of use since any previous survey, with a proposed corrective action plan to address those changes in energy consumptions.
 - (b) accurate and precise consumption data.
 - (c) identification of potential cost savings in respect of Energy Utilities usage at the Facility, other than the Wayside Power and provide an estimate of potential Energy Service consumption savings broken down by fuel type, implementation costs, Simple Payback periods and projected savings along with identifying

potential risks associated with each proposed cost savings measure. Project Co shall categorize these cost savings measures in the following categories: No Cost Measures, Low Cost Measures and High Cost Measures. Project Co shall also advise HMQ Agencies of projected Energy Utilities usage at the Facility, other than the Wayside Power for the next 5 years and cost projections in respect of such projected Energy Utilities usage along with pricing trends and potential risks associated with each.

- 3.3 The objectives of the Energy Analysis Report is to confirm Aggregate Actual Consumption and Discrete Energy Service Actual Consumption for each individual Energy Service at the Facility in the relevant Energy Year and to provide data to calculate Corrected Aggregate Energy Consumption, Corrected Discrete Energy Consumption for each individual Energy Service and Gainshare Adjustment or Painshare Adjustment for each individual Energy Service.
- 3.4 Consistent with the objectives set out in Section 3.3 of this Schedule 8, Project Co shall ensure that the Energy Analysis Report has the following components:
- (a) presentation of Aggregate Actual Consumption, Discrete Energy Service Actual Consumption for each individual Energy Service, and calculation of Corrected Discrete Energy Consumption for each individual Energy Service and the Corrected Aggregate Energy Consumption;
 - (b) presentation of degree day data for the relevant Energy Year;
 - (c) establishment of a basis for continued monitoring of energy and utility consumption and adjustments to the Aggregate Energy Target and/or the Discrete Energy Targets;
 - (d) utility data collected by Project Co shall be presented in the table set out in Appendix A to this Schedule 8;
 - (e) Detailed analysis of all submetered end-uses, including a comparison between current and previously reported data;
 - (f) Procedure for determining the Corrected Discrete Energy Consumption for each individual Energy Service will be calculated using the following formula (with separate calculations to be conducted and provided for each discrete Energy Service):
 - (i) Corrected Discrete Energy Consumption for the Discrete Energy Service for heating energy (“CAECH”) = Discrete Energy Service Actual Consumption (Mega Joules) x Annual Heating Degree Days / heating degree days published by Environment Canada for the Energy Year.

- (ii) Corrected Discrete Energy Consumption for the Discrete Energy Service for cooling energy (“CAECC”) = Discrete Energy Services Actual Consumption (Mega Joules) x Annual Cooling Degree Days / cooling degree days published by Environment Canada for the Energy Year.
- (iii) Corrected Discrete Energy Consumption for the Discrete Energy Service for the possibly changes to the scope by HMQ during the construction period.
- (g) Outline any outstanding issues from any previous Energy Analysis Report;
- (h) Adjustments to the Aggregate Energy Target and Discrete Energy Target(s);
- (i) Table showing the percentage variation in Energy Utilities consumption against the Discrete Energy Target(s) and the Discrete Actual Energy Consumption for each discrete Energy Service;
- (j) Tables and graphs showing the consumption, unit costs, and total costs for all purchased Energy Utilities for the previous 12 months. Breakdown of Energy Utilities types and costs for each energy use described in Section 3.3 and 3.4 of this Schedule 8 and any other major energy use for the previous 12 months;
- (k) Appendices - The appendices shall include graphs, calculations and miscellaneous data that are relevant to the Energy Analysis Report; and
- (l) Summary tables from all previous Energy Analysis Reports delivered by Project Co to HMQ Agencies.

4. Corrected Discrete Energy Consumption and Process for Amending the Aggregate Energy Target and the Discrete Energy Targets

- 4.1 In all cases, corrections to energy consumption targets must be consistent with the principles outlined in the IPMVP.
- 4.2 Following the acceptance of the Energy Analysis Report by the HMQ Representative in accordance with Section 2.7 of this Schedule 8, the data set out in the Energy Analysis Report will be used to determine the Painshare Adjustments or Gainshare Adjustments.
- 4.3 For each Energy Year the Corrected Discrete Energy Consumption for each Energy Service shall be compared to the Discrete Energy Target for each Energy Service, and:
 - (a) if the Corrected Discrete Energy Consumption in respect of any discrete Energy Service is greater than [REDACTED]% of the Discrete Energy Target in respect of such Energy Service then Project Co shall calculate the Painshare Adjustment

and credit HMQ Agencies' Monthly Service Payments accordingly in accordance with Schedule 20 – Payment Mechanism; or

if the Corrected Discrete Energy Consumption in respect of a discrete Energy Service is less than **[REDACTED]**% of the Discrete Energy Target in respect of such Energy Service then Project Co shall calculate the Gainshare Adjustment;

- 4.4 At any time commencing after the first anniversary of the Completion Date, Project Co and HMQ Agencies shall, acting reasonably, agree to make any adjustments to the Aggregate Energy Target and the Discrete Energy Target(s) only in the event of:
- (a) Substantial climate change for the relevant time period as reported by Environment Canada compared to the 1980 to 2010 30 year average meteorological data for Toronto, Ontario as reported by Environment Canada. Climate change can only be evidenced by a climatic authority such as Environment Canada and must be presented to HMQ Agencies with documented evidence of increased consumption trends in similar facilities in the Southern Ontario;
 - (b) changes implemented in accordance with the Project Agreement that would cause load changes or other changes in Energy Utilities usage;
 - (c) changes in the utilization of the Facility from that generally described in the Project Agreement;
- 4.5 The Party requesting an amendment to the Aggregate Energy Target and the Discrete Energy Target(s) shall appoint, subject to the other Party's approval (acting reasonably) and pay for a complete energy audit to be conducted by a third party auditor. The energy audit shall include a detailed computer simulation of Energy Utilities use by function and a comprehensive evaluation of Energy Utilities use patterns. The energy auditor shall prepare a report making a recommendation regarding amendments to the Aggregate Energy Target and Discrete Energy Target(s). Both HMQ Agencies and Project Co must agree to the amended Aggregate Energy Target and Discrete Energy Target(s) within 20 Business Days following receipt of such report. If there is no agreement within a further 10 Business Day period, then either Party may refer the matter to Dispute Resolution Procedure.
- 4.6 Any amendment to the Aggregate Energy Target and the Discrete Energy Target(s) shall only affect the Monthly Service Payment (as a result of any Painshare Adjustments or Gainshare Adjustments) from the date on which the amendment is effective and shall not, for greater certainty, have a retrospective effect on any other previous Monthly Service Payments.

5. Calculation of Gainshare Adjustment or Painshare Adjustment

5.1 Comparing Annual Energy Target

(a) After the acceptance of the Energy Analysis Report as described in Section 3 for each Energy Year, the Discrete Energy Service Actual Consumption for each Energy Service shall be compared to the Adjusted Discrete Annual Energy Target for each Energy Service, and:

(i) if the Discrete Energy Service Actual Consumption in respect of any discrete Energy Service is greater than [REDACTED] of the Adjusted Discrete Annual Energy Target in respect of such Energy Service then Project Co shall calculate the Painshare Adjustment set out in Section 5.2 and credit the Monthly Service Payments accordingly in accordance with Schedule 20 – Payment Mechanism; or

The table below shows the banding mechanism used for calculating the Painshare Adjustment to Project Co and HMQ Agencies for each Energy Service.

| Energy Service | Year “X” | Painshare then equals: |
|--|------------|------------------------|
| If the Variance from DET for the purposes of calculating Painshare in the previous year was: | [REDACTED] | 0 |
| If the Variance from DET for the purposes of calculating Painshare in the previous year was: | [REDACTED] | 100% |

(ii) if the Discrete Energy Service Actual Consumption in respect of any Energy Service is less than [REDACTED] % of the Adjusted Discrete Annual Energy Target in respect of such Energy Service, then Project Co shall calculate the Gainshare Adjustment set out in Section 5.2.

The table below shows the banding mechanism used for calculating the Gainshare Adjustment to Project Co and HMQ Agencies for each Energy Service.

| Energy Service | Year “X” | Gainshare then equals: |
|--|------------|------------------------|
| If the Variance from DET for the purposes of calculating Gainshare in the previous year was: | [REDACTED] | 0 |

| | | |
|---|------------|------|
| If the Variance from DET for from the purposes of calculating Gainshare in the previous year was: | [REDACTED] | 50% |
| If the Variance from DET for from the purposes of calculating Gainshare in the previous year was: | [REDACTED] | 100% |

(iii) Non-Regulated Loads and Receptacle Loads are to be sub-metered, subtracted from the Annual Energy Target and therefore excluded from the gainshare/painshare.

- (b) If Project Co is subject to a Painshare Adjustment with respect to an Energy Year, then Project Co shall submit a detailed remediation plan within fourteen (14) days of the calculation of the Painshare Adjustment to explain how it will reduce the relevant Discrete Energy Service Actual Consumption such that it will not exceed the [REDACTED]% threshold established in Section 5.1(a)(i) above, for the subsequent Energy Year. If Project Co is not successful in its remediation plan such that the Painshare Adjustment in Section 5.1(a)(i) is applied with respect to such Discrete Energy Service Actual Consumption for such Energy Year, then the Painshare Adjustment set out in Section 5.2 will apply.

5.2 The formulae are to calculate the Gainshare Adjustment and the Painshare Adjustment set out in this Section 5.2 are based on the table in Section 5.1 of this Schedule 8. For the avoidance of doubt, if Corrected Discrete Energy Consumption in respect of a discrete Energy Utility falls within a set band above or below the relevant Discrete Energy Utility Target (i.e.: no more than [REDACTED]% above or below the benchmark) no Gainshare Adjustment or Painshare Adjustment will be made for that Energy Utility in that year.

- (a) For the purposes of Section 5.2(b):

A = the Corrected Discrete Energy Consumption during the relevant year for a particular Energy Service in units e.g. megajoules; m³, etc.

B = the Discrete Energy Target for the relevant year for a discrete Energy Service in units e.g. megajoules; m³, etc.

- (b) In respect of every year following the Substantial Completion Date:

IF: $A < \frac{95B}{100}$ then Project Co shall be entitled to claim and be paid a Gainshare Adjustment ('GS') for that year, where

if $\frac{80B}{100} < A < \frac{95B}{100}$ then $GS = 0.5 \left(\frac{95B}{100} - A \right) *$ Average Unit Rate Price

but if $A < \frac{80B}{100}$ then $GS = \left[\left(\frac{80B}{100} - A \right) + \frac{B}{13.3} \right] *$ Average Unit Rate Price

(In the above formula, a factor of 13.3333 is used to divide B. This is obtained by multiplying the range of the 2nd band by the percentage of Project Co pain/gain. The range of the 2nd band is 20%-5%= 15% and the Project Co gain percentage is 50%. The product is 7.5% which results in the factor of 13.3333.)

BUT IF: $A > \frac{105B}{100}$ then HMQ Agencies shall be entitled to deduct a Painshare Adjustment ('PS') where

if $A > \frac{105B}{100}$ then $PS = \left[A - \frac{105B}{100} \right] *$ Average Unit Rate Price

APPENDIX A

| | For Whitby, ON | Energy Year | % variance between Annual Heating Days/ Annual Cooling Days and Energy Year |
|---------------------|------------------------|---|---|
| Heating Degree Days | Annual Heating Days: ● | Energy Year Heating Days (as provided by Environment Canada): ● | |
| Cooling Degree Days | Annual Cooling Days: ● | Energy Year Cooling Days (as provided by Environment Canada): ● | |

| Total Energy Summary | Discrete Energy Targets | | Actual Consumption | | Corrected Discrete Energy Consumption | | Percent Variance between vi and ii | Painshare Adjustment or Gainshare Adjustment |
|----------------------|--------------------------------------|--|-----------------------------------|----------------------|---|---|------------------------------------|--|
| | Usage (Units of Energy) | Cost for Energy Year (calculated based on Discrete Energy Targets multiplied by average unit cost of each discrete Energy) | Usage (Units of Energy) | Cost for Energy Year | Usage (Units of Energy) | Corrected Cost for Energy Year (calculated based on Corrected Discrete Energy Consumption for each of the discrete Energy Utilities multiplied by average unit cost of each such discrete Energy) | | |
| | i | ii | iii | iv | v | vi | vii | viii |
| Electricity | | | | | | | | |
| Natural Gas | | | | | | | | |
| Oil / Other | | | | | | | | |
| Aggregate sums | [To include Aggregate Energy Target] | | [Aggregate Actual Consumption: ●] | | [Corrected Aggregate Energy Consumption: ●] | | | |

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| | | |
|-------------------------|------------|------------|
| Construction Contractor | [REDACTED] | [REDACTED] |
| Project Co | [REDACTED] | [REDACTED] |

B. Key Individuals – Services

| Project Co Party | Position/Function | Name and Contact Information |
|-------------------------|--------------------------|-------------------------------------|
| Service Provider | [REDACTED] | [REDACTED] |
| Service Provider | [REDACTED] | [REDACTED] |
| Project Co | [REDACTED] | [REDACTED] |
| Project Co | [REDACTED] | [REDACTED] |

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SCHEDULE 10

REVIEW PROCEDURE

PART A – WORKS PHASE

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 this Project Agreement, including all Works Submittals listed in Appendix A to this Schedule 10, in respect of the Works to be submitted to, reviewed or otherwise processed by HMQ Agencies in accordance with the Review Procedure prior to Substantial Completion or after Substantial Completion in respect of the completion of Minor Deficiencies, including any and all subsequent revisions, amendments and changes thereto (collectively and individually, “**Works Submittal**” or “**Works Submittals**” as applicable in Part A of this Schedule 10).

2. SCHEDULE FOR WORKS SUBMITTALS

- 2.1 The Works Schedule shall provide for a progressive and orderly flow of Works Submittals from Project Co to the HMQ Representative to allow sufficient time for review of each Works Submittal by the HMQ Representative, taking into account both the resources necessary to be available to the HMQ Representative to conduct such review and whether delay in the review of the subject matter of the Works Submittal shall have a material impact on Project Co’s ability to progress future anticipated Works Submittals and the Works in accordance with the Works Schedule.
- 2.2 The Works Schedule and any amendment to the Works Schedule shall allow a period of 15 Business Days (or such longer period as the Parties may agree) from the date of receipt for review of and response to each Works Submittal, provided that if Project Co has made major changes to the grouping and volume of Works Submittals, such period of time shall be adjusted by Project Co, acting reasonably, taking into account the factors set forth in Section 2.1 of this Schedule 10.
- 2.3 Project Co shall, in scheduling Works Submittals and in the performance of the Project Operations, allow adequate time prior to performing the Project Operations that are the subject of the Works Submittals, for review of the Works Submittals and for Project Co to make changes to Works Submittals that may be required if comments are received on the Works Submittals, such review and required changes to be in accordance with Part A of this Schedule 10.
- 2.4 If the Works Schedule indicates that a large number of Works Submittals will be made at one time, the HMQ Representative may, at the HMQ Representative’s discretion, request a longer period for review or a staggering of the Works Submittals, and Project Co shall review and revise the Works Schedule accordingly, taking into account both the

resources necessary to be available to the HMQ Representative to conduct such review and whether delay in the review of the subject matter of the Works Submittal shall have a material impact on Project Co's ability to progress future anticipated Works Submittals and the Works in accordance with the Works Schedule.

- 2.5 Project Co shall submit all Works Submittals to HMQ Agencies in accordance with the current Works Schedule.
- 2.6 If, at any time, Project Co submits an unusually large number or volume of Works Submittals not contemplated by the Works Schedule, such that the HMQ Representative cannot review the Works Submittals within the time permitted in the Works Schedule, the HMQ Representative will, within 5 Business Days of receipt of such Works Submittals, provide Project Co with an estimate of the time necessary for processing such Works Submittals.

3. GENERAL REQUIREMENTS FOR WORKS SUBMITTALS

- 3.1 Unless otherwise specified by the HMQ Representative, Project Co shall issue 3 printed copies of all Works Submittals to HMQ Agencies, together with an electronic copy in a format agreed by the Parties acting reasonably and one printed copy of each Works Submittal to the Independent Certifier.
- 3.2 Project Co shall compile and maintain a register of the date and contents of the submission of all Works Submittals and the date of receipt and content of all returned Works Submittals and comments thereon. [Project Co shall establish a Web Based Project Management System at Commercial Close which shall be operational and managed by Project Co until Final Completion. The system is to be capable of archiving all Works Submittals (including for certainty, Project Co site instructions, deficiency reviews, etc.) in a format that can be viewed by HMQ Agencies and the Planning, Design & Compliance Consultant electronically either on the system or downloaded and viewed as a PDF file. The system must also be capable of archiving all Planning, Design & Compliance Consultant's correspondence related to the review of the Works Submittals and Site review reports. All Works Submittals shall be uploaded by Project Co to the Web Based Project Management System in PDF format at the same time that the Works Submittals are forwarded to HMQ Agencies. The system must be capable of automatically informing the Planning, Design & Compliance Consultant and HMQ Agencies (via electronic mail) that Works Submittals have been uploaded. The system is to have a dedicated 'request for information' (RFI) module to allow communication between Project Co and the Planning, Design & Compliance Consultant to resolve any questions and or comments with respect to the Output Specifications. A total of 25 users from HMQ Agencies, the users and the Planning, Design & Compliance Consultant will be required to access the system.
- 3.3 All Works Submittals shall be in English.
- 3.4 All Works Submittals required by this Project Agreement or by Applicable Law to be signed or sealed by persons with professional designations (including, where applicable,

- by registered professional architects or engineers) shall, where applicable, be so signed and sealed.
- 3.5 All Works Submittals shall include copies of all documents to be reviewed and shall clearly identify the purpose of the Works Submittal and Project Co's proposed course of action relating to the Works Submittal and the Project Operations that are the subject of the Works Submittal.
- 3.6 All Works Submittals shall, where applicable, refer to the relevant provisions of the Output Specifications, and to any Design Data that has previously been subject to review.
- 3.7 When Project Co submits a Facility Design Acceptability Report, Project Co shall specifically identify all elements of Facility Design Acceptability, including where applicable, references to the Output Specifications.
- 3.8 All Works Submittals shall be clearly identified as a Works Submittal and shall be delivered with appropriate covering documentation, which shall include a list of all attached Works Submittals and for each Works Submittal:
- (a) the document number(s) or drawing number(s);
 - (b) revision numbers (if applicable);
 - (c) document or drawing title(s);
 - (d) identification of work by discipline and location on the Site;
 - (e) name of entity that prepared the Works Submittal;
 - (f) the Works Submittal history showing date and delivery information and/or log number of all previous submissions of that Works Submittal; and
 - (g) identification of any previous Works Submittal superseded by the current Works Submittal.

4. COMMENTS

- 4.1 The HMQ Representative shall review and respond to each Works Submittal in accordance with the time periods specified in Section 2.2 of this Schedule 10. The HMQ Representative shall return Works Submittals to Project Co with a copy to the Independent Certifier and assign one of the following 3 comments:
- (a) "REVIEWED";
 - (b) "REVIEWED AS NOTED"; or
 - (c) "REJECTED".

- 4.2 The comment “REVIEWED” will be assigned to those Works Submittals that, in the opinion of the HMQ Representative, conform to the requirements of this Project Agreement. Project Co shall comply with and implement such Works Submittals.
- 4.3 The comment “REVIEWED AS NOTED” will be assigned to those Works Submittals that, in the opinion of the HMQ Representative, generally conform to the requirements of this Project Agreement, but in which immaterial deficiencies have been found by the HMQ Representative’s review. Project Co shall correct these Works Submittals and provide a copy of the corrected Works Submittals to the HMQ Representative no later than twenty (20) Business Days after the comment has been provided to Project Co, or such other time period as determined by the HMQ Representative, acting in its sole discretion and as set out in writing. Project Co shall comply with and implement such Works Submittals after correction, including in accordance with the comments. If at any time it is discovered that Project Co has not corrected the deficiencies on Works Submittals stamped “REVIEWED AS NOTED”, then Project Co will be required to modify the Works Submittals and Project Operations, as required to ensure that the Works comply with the Output Specifications, any other applicable Schedule to the Project Agreement, and the Project Co Proposal Extracts and Project Co may be required, at the HMQ Representative’s discretion, to resubmit relevant Works Submittals. In such circumstances the HMQ Representative shall act promptly in considering whether such deficiencies have been corrected. No extension of time will be given or additional compensation paid in respect of any such modification or re-submittal.
- 4.4 The comment “REJECTED” will be assigned to those Works Submittals that, in the opinion of the HMQ Representative, contain significant deficiencies or do not generally conform with the requirements of this Project Agreement, including this Schedule 10. Project Co shall correct and re-submit these Works Submittals within 10 Business Days after the comment has been provided to Project Co, or such other time period, as determined by the HMQ Representative, acting in its sole discretion and as set out in writing, or such longer period as Project Co may reasonably require, and (unless the Works Submittal is re-submitted within 5 Business Days) shall give the HMQ Representative not less than 5 Business Days’ notice of when the Works Submittals shall be resubmitted. The HMQ Representative will then review such re-submitted Works Submittals and assign a comment to the corrected Works Submittal. The Works Submittals shall be corrected, revised and resubmitted as often as may be required to obtain a comment that permits Project Co to proceed. No extension of time will be given or additional compensation paid in respect of any such modification or re-submittal.
- 4.5 Where the HMQ Representative issues the comment “REVIEWED AS NOTED” or “REJECTED”, the HMQ Representative shall provide reasons for the comment, referencing the particulars of the Section(s) of this Project Agreement that the Works Submittal fails to satisfy, and, if requested by the Project Co Representative, the HMQ Representative shall meet with the Project Co Representative to discuss the reasons for the comment.

- 4.6 If, at any time after assigning any comment to a Works Submittal, the HMQ Representative or Project Co discovers any significant deficiencies or any failure to conform to the requirements of this Project Agreement, the HMQ Representative may revise the comment assigned to any Works Submittal. If the Parties agree or it is determined in accordance with Section 5 of this Schedule 10 that the revised comment is correct, Project Co shall make all such corrections to the Works Submittals and the Project Operations. No extension of time will be given or additional compensation paid in respect of any such modification or re-submittal.
- 4.7 For the purpose of facilitating and expediting the review and correction of Works Submittals, the HMQ Representative and the Project Co Representative shall meet as may be mutually agreed to discuss and review any outstanding Works Submittals and any comments thereon.
- 4.8 Where a Works Submittal is voluminous, the HMQ Representative at his or her discretion may elect to stamp only the cover page or first sheet of the Works Submittal with the appropriate comment, if any, and return to Project Co the cover page or first page together with individual pages or sheets on which comments are made, together with an explanation of the status of all pages not returned to Project Co. Any pages returned without such an explanation as to their status shall be deemed to be “REVIEWED” by HMQ Agencies.
- 4.9 In lieu of returning a Works Submittal, the HMQ Representative may by letter notify Project Co of the comment assigned to the Works Submittal and if such comment is “REVIEWED AS NOTED” or “REJECTED” the letter shall contain comments in sufficient detail for Project Co to identify the correction sought.

5. DISPUTES

- 5.1 If Project Co disputes any act of HMQ Agencies or the HMQ Representative in respect of a Works Submittal under this Part A, Project Co shall promptly notify the HMQ Representative and the Independent Certifier of the details of such Dispute and shall submit the reasons why Project Co believes a different comment should be assigned, together with appropriate supporting documentation. The HMQ Representative shall review the Works Submittal, the reasons and supporting documentation and within 5 Business Days after receipt thereof shall either confirm the original comment or notify Project Co of a revised comment. If the HMQ Representative confirms the original comment, Project Co may request the Independent Certifier to resolve the Dispute and render a decision within 5 Business Days of such request.
- 5.2 If either Party is not satisfied, acting reasonably, with the resolution of the Independent Certifier, subject to Section 10.2 of this Schedule 10 either Party may refer the matter for determination in accordance with Schedule 27 - Dispute Resolution Procedure.
- 5.3 Notwithstanding the provisions of Sections 5.1 and 5.2, the HMQ Representative may direct that Project Co revise the Works Submittal in accordance with the comments of the HMQ Representative and proceed to perform and complete the Works on the basis of

such revised Works Submittal. For clarity, such direction shall be considered a Dispute and Project Co may proceed in accordance with Section 55 and Schedule 27 - Dispute Resolution Procedure of the Project Agreement.

6. EFFECT OF REVIEW

6.1 Subject to Section 18.6 of this Project Agreement, any review and comment by HMQ Agencies or the HMQ Representative of any Works Submittals is for general conformity to the obligations and requirements of this Project Agreement, and any such review and comment shall not relieve Project Co of the risk and responsibility for the Project Operations and for meeting all of its obligations under and requirements of this Project Agreement, and shall not create any new or additional obligations or liabilities for HMQ Agencies. 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 this Project Agreement or exclude or limit HMQ Agencies' rights in respect of the Works under this Project Agreement.

7. WORKS SUBMITTAL EXPLANATION

7.1 At any time, the HMQ Representative may, acting reasonably, require Project Co, the Project Co Parties and any other relevant personnel, at no additional cost to HMQ Agencies, to explain to the HMQ Representative and HMQ Agencies' 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.

8. REVISIONS

8.1 Project Co shall ensure that Works Submittals keep the same, unique reference number throughout the review process, and that subsequent revisions of the same Works Submittal are identified by a sequential revision number. Correspondence related to such Works Submittal shall reference the reference number and revision number.

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

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

the Works Submittal. All such revisions must be able to be integrated into the As Built Drawings.

- 8.4 Project Co shall keep all Design Data current. If any Design Data is revised as part of a Works Submittal, all other Design Data relying on or based on that Design Data shall also be revised accordingly. All such revised Design Data shall also be submitted with the Works Submittal to which it relates.

9. AUDIT BY THE HMQ REPRESENTATIVE

- 9.1 Without limiting any other right under this Project Agreement, the HMQ Representative shall have the right to audit all Works Submittals, including comparing all Works Submittals to previous Works Submittals.

- 9.2 If during an audit or at any other time it is discovered by HMQ Agencies or Project Co (or resolved pursuant to Section 9.3 of this Schedule 10) that any Works Submittals were not correctly implemented, Project Co shall at its sole cost immediately take all necessary steps to correct and modify the applicable Works Submittals and the Project Operations to which they relate and shall advise the HMQ Representative of all such corrections and modifications.

- 9.3 Any Dispute concerning the implementation of a Works Submittal, subject to Section 5.1 of this Schedule 10, shall be referred in the first instance to the Independent Certifier for resolution.

10. VARIATIONS

- 10.1 No alteration or modification to the design, quality and quantity of the Project Operations arising from the development of detailed design or from the co-ordination of the design in connection with any Works Submittal shall be construed or regarded as a Variation.

- 10.2 If, having received comments from the HMQ Representative on any Works Submittal, Project Co considers that compliance with those comments would amount to a Variation, Project Co shall, within 10 Business Days of receipt of and before complying with the comments, provide written notice to HMQ Agencies of the same and, if it is agreed by the Parties that a Variation would arise if the comments were complied with, HMQ Agencies 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 of this Schedule 10 including for clarity, the exercise by the HMQ Representative of its right under Section 5.3 of this Schedule 10. Subject to the foregoing sentence, any failure by Project Co to notify HMQ Agencies in accordance with this Section 10.2 of this Schedule 10 that Project Co considers compliance with any comments of the HMQ Representative would amount to a Variation shall constitute an irrevocable acceptance by Project Co that any compliance with the HMQ

Representative's comments shall be without cost to HMQ Agencies and without any extension of time.

SCHEDULE 10

REVIEW PROCEDURE

PART B – SERVICES PHASE

11. SERVICE SUBMITTALS

- 11.1 The provisions of Part B of this Schedule 10 shall apply to any and all items, documents and anything else required or specified by this Project Agreement, other than the Design Development Submittals, the Construction Document Submittals and the Design Data, to be submitted to, reviewed or otherwise processed by HMQ Agencies in accordance with the Review Procedure after Substantial Completion except in respect of the completion of Minor Deficiencies, including any and all subsequent revisions, amendments and changes thereto (collectively and individually, “**Service Submittal**” or “**Service Submittals**” as applicable in Part B of this Schedule 10).
- 11.2 Project Co shall allow a period of 10 Business Days (or such longer period as the Parties may agree) from the date of receipt for review of and response to each Service Submittal.
- 11.3 Project Co shall, in scheduling Service Submittals and in the performance of the Project Operations, allow adequate time prior to performing the Project Operations that are the subject of the Service Submittals, for review of the Service Submittals and for Project Co to make changes to Service Submittals that may be required if comments are received on the Service Submittals, such review and required changes to be in accordance with Part B of this Schedule 10.

12. GENERAL REQUIREMENTS FOR SERVICE SUBMITTALS

- 12.1 Unless otherwise specified by the HMQ Representative, Project Co shall issue 3 printed copies of all Service Submittals to HMQ Agencies, together with an electronic copy in a format agreed by the Parties acting reasonably.
- 12.2 Project Co shall compile and maintain a register of the date and contents of the submission of all Service Submittals and the date of receipt and content of all returned Service Submittals and comments thereon.
- 12.3 All Service Submittals shall be in English.
- 12.4 All Service Submittals required by this Project Agreement or by Applicable Law to be signed or sealed by persons with professional designations (including, where applicable, by registered professional architects or engineers) shall, where applicable, be so signed and sealed.
- 12.5 All Service Submittals shall include copies of all documents to be reviewed and shall clearly identify the purpose of the Service Submittal and Project Co’s proposed course of

action relating to the Service Submittal and the Project Operations that are the subject of the Service Submittal.

- 12.6 All Service Submittals shall, where applicable, refer to the relevant provisions of the Output Specifications.
- 12.7 All Service Submittals shall be clearly identified as a Service Submittal and shall be delivered with appropriate covering documentation, which shall include a list of all attached Service Submittals and for each Service Submittal:
- (a) the document number(s) or drawing number(s);
 - (b) revision numbers (if applicable);
 - (c) document or drawing title(s);
 - (d) name of entity that prepared the Service Submittal;
 - (e) the Service Submittal history showing date and delivery information and/or log number of all previous submissions of that Service Submittal; and
 - (f) identification of any previous Service Submittal superseded by the current Service Submittal.

13. COMMENTS

- 13.1 The HMQ Representative shall review and respond to each Service Submittal in accordance with the time periods specified in Section 11.2 of this Schedule 10. The HMQ Representative shall return Service Submittals to Project Co and assign one of the following 3 comments:
- (a) “REVIEWED”;
 - (b) “REVIEWED AS NOTED”; or
 - (c) “REJECTED”.
- 13.2 The comment “REVIEWED” will be assigned to those Service Submittals that, in the opinion of the HMQ Representative, conform to the requirements of this Project Agreement. Project Co shall comply with and implement such Service Submittals.
- 13.3 The comment “REVIEWED AS NOTED” will be assigned to those Service Submittals that, in the opinion of the HMQ Representative, generally conform to the requirements of this Project Agreement, but in which immaterial deficiencies have been found by the HMQ Representative’s review. Project Co shall correct these Service Submittals and provide a copy of the corrected Service Submittals to the HMQ Representative. Project Co shall comply with and implement such Service Submittals after correction, including in accordance with the comments. If at any time it is discovered that Project Co has not

- corrected the deficiencies on Service Submittals stamped “REVIEWED AS NOTED”, then Project Co will be required to modify the Service Submittals and Project Operations as required to ensure that the Project Operations comply with the Output Specifications and Project Co may be required, at the HMQ Representative’s discretion, to resubmit relevant Service Submittals. In such circumstances the HMQ Representative shall act promptly in considering whether such deficiencies have been corrected. No extension of time will be given or additional compensation paid in respect of any such modification or re-submittal.
- 13.4 The comment “REJECTED” will be assigned to those Service Submittals that, in the opinion of the HMQ Representative, contain significant deficiencies or do not generally conform with the requirements of this Project Agreement, including this Schedule 10. Project Co shall correct and re-submit these Service Submittals within 10 Business Days after the comment has been provided to Project Co, or such longer period as Project Co may reasonably require, and (unless the Service Submittal is re-submitted within 5 Business Days) shall give the HMQ Representative not less than 5 Business Days’ notice of when the Service Submittals shall be resubmitted. The HMQ Representative will then review such re-submitted Service Submittals and assign a comment to the corrected Service Submittal. The Service Submittals shall be corrected, revised and resubmitted as often as may be required to obtain a comment that permits Project Co to proceed. No extension of time will be given or additional compensation paid in respect of any such modification or re-submittal.
- 13.5 Where the HMQ Representative issues the comment “REVIEWED AS NOTED” or “REJECTED”, the HMQ Representative shall provide reasons for the comment, referencing the particulars of the Section(s) of this Project Agreement that the Service Submittal fails to satisfy, and, if requested by the Project Co Representative, the HMQ Representative shall meet with the Project Co Representative to discuss the reasons for the comment.
- 13.6 If, at any time after assigning any comment to a Service Submittal, the HMQ Representative or Project Co discovers any significant deficiencies or any failure to conform to the requirements of this Project Agreement, the HMQ Representative may revise the comment assigned to any Service Submittal. If the Parties agree or it is determined in accordance with Section 14 of this Schedule 10 that the revised comment is correct, Project Co shall make all such corrections to the Service Submittals and the Project Operations. No extension of time will be given or additional compensation paid in respect of any such modification or re-submittal.
- 13.7 For the purpose of facilitating and expediting the review and correction of Service Submittals, the HMQ Representative and the Project Co Representative shall meet as may be mutually agreed to discuss and review any outstanding Service Submittals and any comments thereon.
- 13.8 Where a Service Submittal is voluminous, the HMQ Representative at his or her discretion may elect to stamp only the cover page or first sheet of the Service Submittal

with the appropriate comment, if any, and return to Project Co the cover page or first page together with individual pages or sheets on which comments are made, together with an explanation of the status of all pages not returned to Project Co. Any pages returned without such an explanation as to their status shall be deemed to be “REVIEWED” by HMQ Agencies.

- 13.9 In lieu of returning a Service Submittal, the HMQ Representative may by letter notify Project Co of the comment assigned to the Service Submittal and if such comment is “REVIEWED AS NOTED” or “REJECTED” the letter shall contain comments in sufficient detail for Project Co to identify the correction sought.

14. DISPUTES

- 14.1 If Project Co disputes any act of HMQ Agencies or the HMQ Representative in respect of a Service Submittal under this Part B, Project Co shall promptly notify the HMQ Representative of the details of such Dispute and shall submit the reasons why Project Co believes a different comment should be assigned, together with appropriate supporting documentation. The HMQ Representative shall review the Service Submittal, the reasons and supporting documentation and within 5 Business Days after receipt thereof shall either confirm the original comment or notify Project Co of a revised comment.
- 14.2 If after such review by the HMQ Representative Project Co disputes the comment on a Service Submittal, subject to Section 19.1 of this Schedule 10, Project Co may refer the matter for determination in accordance with Schedule 27 - Dispute Resolution Procedure.

15. EFFECT OF REVIEW

- 15.1 Any review and comment by HMQ Agencies or the HMQ Representative of any Service Submittals is for general conformity to the obligations and requirements of this Project Agreement, and any such review and comment shall not relieve Project Co of the risk and responsibility for the Project Operations and for meeting all of its obligations under and requirements of this Project Agreement, and shall not create any new or additional obligations or liabilities for HMQ Agencies. Without limiting the generality of the foregoing any and all errors or omissions in Service Submittals or of any review and comment shall not exclude or limit Project Co’s obligations or liabilities under this Project Agreement in respect of matters related to the Service Submittal or exclude or limit HMQ Agencies’ rights under this Project Agreement in respect of matters related to the Service Submittal.

16. SERVICE SUBMITTAL EXPLANATION

- 16.1 At any time, the HMQ Representative may, acting reasonably, require Project Co, the Project Co Parties and any other relevant personnel, at no additional cost to HMQ Agencies, to explain to the HMQ Representative and HMQ Agencies’ advisors the intent of Project Co’s Service Submittals, including as to its satisfaction of the Output Specifications.

17. REVISIONS

- 17.1 Project Co shall ensure that Service Submittals keep the same, unique reference number throughout the review process, and that subsequent revisions of the same Service Submittal are identified by a sequential revision number. Correspondence related to such Service Submittal shall reference the reference number and revision number.
- 17.2 Re-submittals shall clearly show all revisions from the previous Service Submittal. Bound documents, including reports and manuals, shall contain a preface that clearly states how revisions are marked and the previous revision number against which the revisions have been marked. A consistent format for mark-ups of documents shall be used (e.g. deletions struck out and additions underscored). Revised portions of drawings shall be clearly marked (with appropriate means to visually distinguish between the parts of the drawing that are revised and the parts that are not revised) and the revision number and description of the revision shall be included on the drawing.
- 17.3 All revisions on print media shall be initialled by hand by the individual designer, design checker and, where applicable, by the drafter and the drafting checker and shall identify the persons who initialled the Service Submittal. Electronic versions of the Service Submittal shall identify the persons who initialled the revisions to the printed version of the Service Submittal.

18. AUDIT BY THE HMQ REPRESENTATIVE

- 18.1 Without limiting any other right under this Project Agreement, the HMQ Representative shall have the right to audit all Service Submittals, including comparing all Service Submittals to previous Service Submittals.
- 18.2 If during an audit or at any other time it is discovered by HMQ Agencies or Project Co that any Service Submittals were not correctly implemented, Project Co shall at its sole cost immediately take all necessary steps to correct and modify the applicable Service Submittals and the Project Operations to which they relate and shall advise the HMQ Representative of all such corrections and modifications.

19. VARIATIONS

- 19.1 If, having received comments from the HMQ Representative on any Service Submittal, Project Co considers that compliance with those comments would amount to a Variation, Project Co shall, within 10 Business Days of receipt of and before complying with the comments, provide written notice to HMQ Agencies of the same and, if it is agreed by the Parties, or is determined pursuant to Schedule 27 - Dispute Resolution Procedure, that a Variation would arise if the comments were complied with, HMQ Agencies may at their election, either issue a Variation Enquiry and it shall be dealt with in accordance with Schedule 22 - Variation Procedure or amend its comment on the Service Submittal. Any failure by Project Co to notify HMQ Agencies in accordance with this Section 19.1 that Project Co considers compliance with any comments of the HMQ Representative would amount to a Variation shall constitute an irrevocable acceptance by Project Co that

any compliance with the HMQ Representative's comments shall be without cost to HMQ Agencies and without any extension of time.

APPENDIX A

MINIMUM DESIGN AND CONSTRUCTION

SUBMITTAL REQUIREMENTS

1. FORMAT FOR WORKS SUBMITTALS

The following is a breakdown of the contents of each Works Submittal as well as the format for each. All Works Submittals shall be submitted in 3 hole ring binders. Large format drawings are to be provided separately (bound) and reduced format (11" x 17", fold-outs, folded to 8.5" x 11") and included in a 3 hole ring binder. In addition to hard copies all Works Submittals shall be included in electronic format (PDF and CAD file) on a CD. All Works Submittals shall be uploaded to the Web Based Project Management System in PDF format at the same time that the Submittals are forwarded to HMQ Agencies. All Works Submittals shall also be provided in the format set forth below.

2. DESIGN MANAGEMENT PLAN

2.1. Submission of Design Management Plan

- (a) Within 90 days following Financial Close, Project Co shall submit a Design Management Plan to the HMQ Representative in accordance with the Review Procedure. The Design Management Plan shall include:
 - (i) the organization chart, including the Design Manager, for all design activities;
 - (ii) the procedures to be used for designing and checking each of the designs;
 - (iii) the form of design review to be undertaken by the Service Provider;
 - (iv) the contents and format of Pre-Final Design Development Submittals and Final Design Development Submittals, as well as the Construction Document Submittals;
 - (v) a design review and audit schedule, indicating dates that Project Co plans to:
 - A. conduct internal audits of the design verification process;
 - B. submit Design Development Submittals and Construction Document Submittals; and
 - C. undertake Design Review Meetings in accordance with Section 18.5 of the Project Agreement;

- (vi) a work breakdown structure for design indicating the Design Team and associated designers;
 - (vii) a drawing tree indicating the organization and hierarchy of Project Co's drawings;
 - (viii) appropriate metrics to measure the progress of the design for each discipline; and
 - (ix) the process for certifying construction including the identification and organization of the personnel responsible for verifying construction compliance with the Design Data and the provisions of the Project Agreement to enable the Design Team principal to sign and seal the Construction Certificates
- (b) Any subsequent amendments or updates to the Design Management Plan shall be submitted by Project Co to the HMQ Representative in accordance with the Review Procedure.

2.2. Compliance with Design Management Plan

- (a) Project Co shall implement and comply with the initial Design Management Plan which has been reviewed by the HMQ Representative in accordance with the Review Procedure, and any subsequent amendments or updates to the initial Design Management Plan made following a review by the HMQ Representative in accordance with the Review Procedure, in connection with all Design Data prepared or adopted in connection with the Output Specifications, and any other design or Construction Activities in the Project Agreement.

3. DESIGN AND CONSTRUCTION SUBMISSIONS, REVIEW AND REPORTS

3.1. Design and Construction Certification

- (a) The following terms shall have the following meanings:
- (i) "**Construction Certificate**" means the form of certificate to be issued by Project Co pursuant to section 3.1(d) of this Appendix A of Schedule 10 Review Procedure;
 - (ii) "**Design Certificate (Environmental)**" means the form of certificate entitled "Design Certificate (Environmental)" to be issued by Project Co pursuant to section 3.1(c) of Appendix A of Schedule 10 Review Procedure;
 - (iii) "**Design Certificate (General)**" means the form of certificate entitled "Design Certificate (General)" to be issued by Project Co pursuant to Section 3.1(c) of this Appendix A of Schedule 10 Review Procedure;

- (iv) "**Design Certificates**" means the Design Certificate (General) and the Design Certificate (Environmental) and "**Design Certificate**" means any one of them.

- (b) Design and Construction Certification Procedure
 - (i) Project Co shall implement and enforce the procedure set out in this Section 3.1 (the "Design and Construction Certification Procedure"), throughout the Works.
 - (ii) The Design and Construction Certification Procedure shall apply to all Design Data prepared or adopted in connection with the Works and any other construction activities taking place, including any further design development.
 - (iii) Project Co shall ensure that all certification procedures referred to in the Design and Construction Certification Procedure are complied with by the appropriate persons referred to therein, including the Design Team, and any independent team or engineer within the Design Team, as the case may be (together, the "**Appropriate Persons**"), and that all Appropriate Persons are at all relevant times duly authorized and qualified to carry out such procedures and to sign the relevant certificates. Any failure by any Appropriate Person to fulfil the obligations required of them under the Design and Certification Procedure shall be a breach of the Project Co's obligations under the Project Agreement.
 - (iv) Project Co shall submit all Design and Construction Certificates, together with the supporting documentation, to the HMQ Representative for review, acting reasonably, in accordance with the Review Procedure. The submitted Design and Construction Certificates shall have original signatures, seals and registration numbers (as required in the form provided in Attachment 1 and 2 to this Schedule 10 Review Procedure), and shall be in such form as to allow the HMQ Representative to perform its review function in respect of such Certificate without delay.

- (c) Design Certificates
 - (i) Project Co shall prepare and issue a separate Design Certificate (in the form as provided in Attachment 1 to this Schedule 10 Review Procedure) for each submitted Construction Document Submittal review package, to the HMQ Representative for review in accordance with the Review Procedure. All Design Certificates prepared and issued by Project Co shall be:
 - A. either the Design Certificate (General) or Design Certificate (Environmental), as applicable;

- B. signed and sealed by the responsible professional, who shall be a Professional Engineer or a registered Architect, and a principal of the Design Team;
 - C. signed by the Project Co Representative and,
 - D. in the case only of Design Certificates for environmental works incorporated into the Works, signed by the Environmental Director.
- (ii) Any person who signs a Design Certificate shall clearly print his or her name and the position held in his or her organization on the Design Certificate.
- (d) Construction Certificates
- (i) Project Co shall prepare and issue Construction Certificates (in the form as provided in Attachment 1) for each substantially completed component and all finally completed components of the Works to the HMQ Representative for review in accordance with the Review Procedure. All Construction Certificates prepared and issued by Project Co shall be:
 - A. signed by the Construction Contractor representative;
 - B. signed and sealed by the responsible professional, who shall be a Professional Engineer or a registered Architect, and a principal of the Design Team;
 - C. signed by the Project Co Representative; and
 - D. signed by the Independent Certifier, acknowledging receipt.
 - (ii) Any person who signs a Construction Certificate shall clearly print his or her name and the position held in his or her organization on the Construction Certificate.

3.2. Issued for Construction Drawings

- (a) Construction Document Submittals submitted in accordance with this Schedule 10 - Review Procedure and assigned comments “REVIEWED” or “REVIEWED AS NOTED” with all of the comments addressed, shall become Issued for Construction and shall be stamped “**Issued For Construction**”. Works Submittals used for the construction of any part or parts of the Works prior to being entitled to proceed, as noted above, shall not be stamped as Issued For Construction.

- (b) Project Co shall submit copies of all drawings that are Issued For Construction, together with manuals, instructions to the Construction Contractor along with any other relevant information as requested by the HMQ Representative, to the HMQ Representative and to the Independent Certifier.
- (c) Revisions to Issued For Construction documents shall be submitted for review as Construction Document Submittals, being stamped “Issued For Construction” upon being entitled to proceed in accordance with this Schedule 10 - Review Procedure. Issued For Construction documents are required for the certification of construction detailed in Appendix A of this Schedule 10.

4. PRE-FINAL DESIGN DEVELOPMENT SUBMITTALS

4.1. General

- (a) In accordance with the Design Management Plan and requirements of the Design and Construction Certification Procedure, Project Co and the HMQ Representative shall agree on the 50% design information (or 75% design information, as the case may be) to be submitted for review in the Pre-Final Design Development Submittals, the schedule of such submissions and the scope of the review.
- (b) The content of such Pre-Final Design Development Submittals shall be appropriate to the subject and discipline. The information provided shall be adequate to show that the design is proceeding in compliance with the Project Agreement for all disciplines and is taking into consideration the relevant constructions activities.
- (c) Pre-Final Design Development Submittals shall be prepared and shall have indices and sectional dividers. The design folders shall contain pertinent correspondence, shall be arranged by subject matter in chronological order, and shall include the design criteria, design development calculations and backup information. Design submissions shall include, without limitation, copies of all approvals, design reports, correspondence and calculations.

5. FINAL DESIGN DEVELOPMENT SUBMITTALS

5.1. General

- (a) Final Design Development Submittals shall be prepared and shall have indexes and sectional dividers. The design folders shall contain pertinent correspondence, shall be arranged by subject matter in chronological order, and shall include the design criteria, design calculations and backup information. Design submissions shall include, without limitation, copies of all approvals, design reports, correspondence and calculations.

- (b) Final design drawings and reports shall be developed to a stage that is ready to be signed and sealed by the responsible engineer or architect who shall be a duly experienced Professional Engineer of an appropriate discipline or as applicable an architect licensed to practice in Ontario.
- (c) Project Co shall document changes and describe the design work that has been developed since the Pre-Final Design Development Submittals.

6. CONSTRUCTION DOCUMENT SUBMITTALS

6.1. General

- (a) Construction Document Submittals shall be prepared and shall have indices and sectional dividers. The folders shall contain pertinent correspondence, shall be arranged by subject matter in chronological order, and shall include the final calculations, reports and backup information. Submissions shall include, without limitation, copies of all final approvals, design reports, correspondence and calculations.
- (b) Construction Document Submittals for all drawings, reports, and other applicable design data shall be signed and sealed by the responsible engineer, who shall be a duly experienced Professional Engineer of the appropriate discipline, or as applicable an Architect licensed to practice in Ontario. These disciplines shall include, as a minimum, all that are identified in the Final Design Development Submittals.

7. SUBMITTALS

The following is a detailed list of the Works Submittals that Project Co is required to provide to HMQ Agencies for review and comment in accordance with this Schedule 10. Additional Works Submittals may be requested by the HMQ Representative at any time during the Project Term in order to understand the Works, and Project Co shall be required to provide same to HMQ Agencies for review in accordance with this Schedule 10. A description of the content of each submittal provided is (as set forth in this Appendix A of Schedule 10) the minimum required for each Works Submittal.

| Item # | Title | Description | Format |
|---------------|--|--|---|
| S-100 | Project Co Design Brief <i>(Submitted at the 50%, 75% and 100% Design Development Stage.)</i> | Updated Project Co Design Brief to be issued at 50%, 75% and 100% design development stage. Design Brief to include a detailed table of contents with tabs provided for major sections (i.e. architectural, landscape, interiors, structural, mechanical, electrical, industrial, safety and security, LEED, etc.). (a) Submissions: (i) S-100A (50%); (ii) S-100B (75%); and | 8.5" x 11" with 11" x 17" fold-outs, black and white. |

Project Agreement – Schedule 10
East Rail Maintenance Facility Project **Execution Version**

| Item # | Title | Description | Format |
|--------|--|--|---------------------------------|
| | | (iii) S-100C (100%) | |
| S-101 | Site Plan Application | <p>Sufficient design documentation (including but not limited to: civil, landscape, rail, traffic and architectural disciplines) necessary to satisfy the Town of Whitby and all other authorities having jurisdiction for the approval of the Site Plan Application.</p> <p>Provide all necessary documentation and attend / organize meetings as required with the Town of Whitby as required.</p> <p>Provide proof of Site Plan Application submission (copy of receipt) and final approval (copy of approval documentation from the Town of Whitby.)</p> | 11" x 17" (reduced, fold-outs). |
| S-102 | Design Development <i>(Submitted at the 50%, 75% and 100% Design Development Stage)</i> | <p>Minimum Submissions Required for Review in Design Development Stage</p> <p>Project Co shall provide the following Design Development Submittals in respect of the 50%, 75% and 100% Design Development Stage to HMQ Agencies for review and comment in accordance with this Schedule 10:</p> <p>(a) Design Development Submittal documents in accordance with the requirements set forth in Section 18.3 of the Project Agreement, including, but not limited to, the following documentation:</p> <p style="margin-left: 40px;">(i) Civil, Architectural and Electrical Site plans at scale 1:500 illustrating site property lines, lines of municipal conveyances, lines of required setbacks, lines of minimum required security stand-off, landscape plan and features, hard and soft surfacing, site furnishings, site features, vehicle access/egress driveways including parking, loading docks, ramps, site services and details;</p> <p style="margin-left: 40px;">(ii) Context plan at 1:1000 scale;</p> <p style="margin-left: 40px;">(iii) Track alignments and configuration drawings;</p> <p style="margin-left: 40px;">(iv) Complete site details 1:100, 1:50 and greater scales as appropriate;</p> <p style="margin-left: 40px;">(v) Updated storm water management plan;</p> <p style="margin-left: 40px;">(vi) Landscaping plans and details;</p> <p style="margin-left: 40px;">(vii) Architectural drawings at 1:100 scale minimum illustrating all program and non-program interior rooms, areas and spaces with their corresponding alphanumeric Space Codes and room names designated in Schedule 15, Part 1, Accommodation Schedule, and showing all structural elements, partitions, interior doors, glazing, millwork and FF&E;</p> | Half size reduction |

| Item # | Title | Description | Format |
|--------|-------|--|--------|
| | | (viii) Building sections and elevations and identifying all finishes; | |
| | | (ix) Reflected ceiling plans showing all levels except parking, electrical and mechanical rooms indicating all ceiling materials and finishes, configuration of lighting, mechanical diffusers and grills and above finished floor clear ceiling heights as designated in the Space Data Sheets for all rooms and areas; | |
| | | (x) Interior elevations of Main Entrance, Lobby, Reception, and adjoining spaces, Boardroom, Meeting and Training Rooms, Lunch rooms, Security Offices, Security Open Office Area, CCTV Office, Yard Control Centre, washrooms, locker rooms, , break rooms, or other spaces with millwork or floor to ceiling glass, identifying all finishes as designated in the space data sheets; | |
| | | (xi) Interior communication stair(s) plans, sections, elevations and details; | |
| | | (xii) Interior finishes colour and materials selection boards and interior finish schedule; | |
| | | (xiii) Drawings of all millwork elements shown in Space Layouts (as per Schedule 15, Part I) including those in self-service kitchen, washrooms, lunch room, etc. that show all dimensions, key elevations, and all fixed and moving elements (1:50 scale) and details (1:10 or 1:20 scale) as appropriate; | |
| | | (xiv) Exterior wall sections and cladding details; | |
| | | (xv) Material sample boards of exterior finishes; | |
| | | (xvi) Building science report reviewing envelope design and details; | |
| | | (xvii) Preliminary door and hardware schedules and hardware cut sheets; | |
| | | (xviii) Structural drawings at 1:200 scale minimum, indicating all vertical structural elements at each level, fully dimensioned; | |
| | | (xix) Structural plans of all floors and roofs; | |
| | | (xx) Structural drawings of ground floor slabs; | |
| | | (xxi) Structural drawings of foundations, pits, turntables and other below grade structures; | |
| | | (xxii) Structural details; | |
| | | (xxiii) Structural notes, design loads, deflection limits, | |

| Item # | Title | Description | Format |
|--------|-------|---|--------|
| | | <p>snow load diagrams and references to pertinent geotechnical reports;</p> <p>(xxiv) Waterproofing and drainage drawings and details;</p> <p>(xxv) Mechanical drawings, consisting of at minimum single line schematic diagrams for: plumbing systems including but not limited to the sanitary drainage system, storm drainage system, domestic hot / cold water distribution, non-potable water system, and rainwater harvesting system; single line schematic diagram for HVAC systems, including but not limited to natural gas, heating water or glycol distribution, chilled water distribution, and air distribution, etc.; single line schematic diagram of systems and distribution for fire protection systems including but not limited to sprinkler system, standpipe system, clean agent fire suppression system and portable fire extinguisher system;</p> <p>(xxvi) Process drawings, indicating at a minimum, single line schematic diagrams for vehicle servicing systems including but not limited to: sanding, fuel, diesel exhaust fluid, lubricants, coolant, antifreeze, toilet chemicals, compressed air, breathing air, high pressure hot water, and de-ionized water distribution systems etc.; single line schematic diagrams for used oil, used antifreeze, used coolant, toilet waste recovery systems and also the industrial central vacuum cleaning system;</p> <p>(xxvii) P&ID process drawings for vehicle servicing control and management system to illustrate graphical representations of the processes complete with all controls and instrumentation components, and including control narratives;</p> <p>(xxviii) Industrial drawings, indicating at a minimum major rolling stock maintenance equipment layouts and sections, transfer table, turntables, connections with plant utilities, control schematics, limits of travel for hoists, bridge and monorail cranes in plan and elevation, process piping;</p> <p>(xxix) Electrical drawings indicating at minimum substation layout and grounding, single line electrical power and lighting distribution diagram showing point-of- entry, transformers, switchgears, switchboards, DC power systems, distribution panels, and surge protection; riser diagram of emergency power distribution scheme, including switchgear, cabling and fuel storage and supply system; single line diagram of fire alarm systems including zoning scheme diagram of PA and intercom systems, diagram of power monitoring system;</p> | |

Project Agreement – Schedule 10
East Rail Maintenance Facility Project **Execution Version**

| Item # | Title | Description | Format |
|--------|-------|---|--------|
| | | <ul style="list-style-type: none"> (xxx) Lighting design report including analysis of illumination, reflectance, room cavity ratios, plane heights; (xxxi) Lighting fixture schedules and fixture cut sheets; (xxxii) Communications drawings indicating at minimum single line diagrams of structured cabling system showing vertical and horizontal distribution schemes, telecom point-of-entry, riser rooms, telephone equipment rooms, ancillary rooms; (xxxiii) Consolidated floor layouts showing electrical power, voice and data outlets and power outlets required for equipment supplied by HMQ Agencies, and other cabled systems; (xxxiv) Security drawings indicating at minimum single line schematic diagrams for security systems, including but not limited to building exterior, building entrances, perimeter video surveillance, video surveillance of all other areas, door control systems, intercom system, public address system and master clock system; (xxxv) Security equipment details; (xxxvi) Elevator details; (xxxvii) Specifications, draft table of contents and draft of each division section; (xxxviii) Mock up design packages in accordance with Schedule 15, Part 1, Design Brief; (xxxix) Building vibration analysis; and (xl) Comprehensive building acoustical design report reviewing all acoustical conditions and design solutions to meet requirements set out in the Output Specifications. | |
| | | (b) LEED credits trading documentation; | |
| | | (c) Pedestrian level wind study to demonstrate that the development will not create unacceptable wind and snow accumulation conditions at building entrances, exits, landscaped open spaces and street sidewalks; | |
| | | (d) Updated FF&E Procurement and Coordination Plan which shall include, for certainty, an updated FF&E Procurement and Existing Inventory Sub-Plan and an updated FF&E Design and Construction Coordination Sub-Plan; | |
| | | (e) Updated Commissioning Plan, which shall include, for certainty, an updated Outline Commissioning Sub-Plan and an | |

Project Agreement – Schedule 10
East Rail Maintenance Facility Project **Execution Version**

| Item # | Title | Description | Format |
|--------|---|--|---|
| | | <p style="text-align: center;">updated Operational Start-Up Plan;</p> <p>(f) Updated Outline Commissioning Program;</p> <p>(g) Any other Works Submittals HMQ Agencies reasonably require to understand the Works; and</p> <p>(h) Submissions:</p> <p style="padding-left: 40px;">(i) S-102A (50%);</p> <p style="padding-left: 40px;">(ii) S-102B (75%); and</p> <p style="padding-left: 40px;">(iii) S-102C (100%)</p> | |
| S-103 | <p>Construction Document Submittals</p> <p><i>(Submitted at the 50%, 75% and 100% Construction Documents Stage)</i></p> | <p>Minimum Submissions Required for Review in the Construction Documents Stage</p> <p>Project Co shall provide the following Construction Document Submittals in respect of the 50%, 75% and 100% Construction Documents Stage to HMQ Agencies for review and comment in accordance with this Schedule 10:</p> <p>(a) Construction Document Submittals in accordance with the requirements set forth in Section 18.3 of the Project Agreement and that provides resolution of design concepts developed during the design development stage, including but not limited to:</p> <p style="padding-left: 40px;">(i) Site plan, site services and details;</p> <p style="padding-left: 40px;">(ii) Landscaping plans and details;</p> <p style="padding-left: 40px;">(iii) Architectural, structural, mechanical, process, electrical, industrial, security, communications and audio-visual system drawings including floor plans, reflected ceiling plans, sections, elevations, details, P&IDs, and identifying all finishes as designated in the finishes schedule, etc.;</p> <p style="padding-left: 40px;">(iv) Interior finish schedules;</p> <p style="padding-left: 40px;">(v) Millwork plans, elevations, sections and details and identifying all finishes;</p> <p style="padding-left: 40px;">(vi) Door and hardware schedules;</p> <p style="padding-left: 40px;">(vii) Lighting fixture schedules;</p> <p style="padding-left: 40px;">(viii) Exterior wall sections and cladding details;</p> <p style="padding-left: 40px;">(ix) Elevator and escalator plans, sections and details;</p> | <p>Half size reduction.</p> <p>8.5" x 11", black and white.</p> |

Project Agreement – Schedule 10
East Rail Maintenance Facility Project **Execution Version**

| Item # | Title | Description | Format |
|--------|-------|---|---|
| | | <ul style="list-style-type: none"> (x) Updated specifications. (b) Report on review and adjustments of mock-ups; (c) Progress report on LEED credit tracking demonstration; (d) Updated FF&E Procurement and Coordination Plan, which shall include, for certainty an updated FF&E Procurement and Existing Inventory Sub-Plan and an updated FF&E Design and Construction Coordination Sub-Plan; (e) Updated Commissioning Plan, which shall include, for certainty, an updated Outline Commissioning Sub-Plan and an updated Operational Start-Up Plan; (f) Updated Outline Commissioning Program; (g) Draft of Final Commissioning Program; (h) Works Schedule, Risk Register, updated monthly, showing complete sequence of construction by activity, identifying Works of separate stages and other logically grouped activities and indicating: <ul style="list-style-type: none"> (i) dates for submission, review time, resubmission time and last date for meeting fabrication schedule of all required Shop Drawings and samples; (ii) the early and late start, early and late finish, float dates and duration of all activities; (iii) estimated percentage of completion for each item of the Works at each submission of schedule; (iv) changes occurring since previous submission of schedule; and (v) a narrative report defining: <ul style="list-style-type: none"> (i) problem areas, anticipated delays, and impact on schedule; (ii) corrective action recommended and its effect; and (iii) effect of changes on schedules of Subcontractors; (i) Any other Works Submittals HMQ Agencies reasonably require to understand the Works; and (j) Submissions: <ul style="list-style-type: none"> (i) S-103A (50%); | <p>In accordance with Project Agreement requirements.</p> |

| Item # | Title | Description | Format |
|--------|---|---|---|
| | | <p>(ii) S-103B (75%); and</p> <p>(iii) S-103C (100%).</p> | |
| S-104 | Building Permit Application | <p>Provide sufficient working drawing (construction) documentation necessary to satisfy the Town of Whitby and all other authorities having jurisdiction for the approval of the Building Permit.</p> <p>Provide proof of Building Permit Application submission (copy of receipt) and final approval (copy of building permit from the Town of Whitby).</p> | 8.5" x 11", black and white. |
| S-105 | Specifications <i>(Submitted at the 50%, 75% and 100% Construction Documents Stage.)</i> | <p>Detailed specification sections (Masterformat system) for all components of the Facility.</p> <p>(a) Submissions:</p> <p>(i) S-105A (50%);</p> <p>(ii) S-105B (75%); and</p> <p>(iii) S-105C (100%)</p> | 8.5" x 11", black and white. |
| S-106 | Issued for Construction Documents | Contract Documents issued for Construction (representing all trades, contracts, sub-contracts, etc.) including Specifications. | Half size reduction. 8.5" x 11", black and white (Specifications). |
| S-107 | Shop Drawings | <p>Shop drawings for all systems and components of the Facility in accordance with industry standards. The following is a specific list of shop drawings that are required to be submitted by Project Co for review by the Planning, Design & Compliance Consultant:</p> <p>(a) Complete list of shop drawings to be provided to the Planning, Design & Compliance Consultant within 1 month after Commercial Close.</p> <p>At any time during the course of the Project additional shop drawings may be requested by HMQ Agencies and shall be provided by Project Co for review by HMQ Agencies pursuant to this Schedule 10.</p> <p>Shop drawings are to be submitted by Project Co to the Planning, Design & Compliance Consultant only after they have been reviewed by the Project Co Representative. Shop drawings noted as Rejected by Project Co Representative are not to be submitted to the Planning, Design & Compliance Consultant for review until they have been resubmitted and accepted by the Project Co Representative.</p> | To suit format provided by the manufacturer and or supplier of the system and or component. |
| S-108 | Samples and Mock-ups | <p>Samples are to be provided for all systems and components of the Facility in accordance with industry standards. The following is a specific list of samples that are required to be submitted by Project Co for review by the Planning, Design & Compliance Consultant:</p> <p>(a) Complete list of samples to be provided to the Planning, Design & Compliance Consultant within 1 month after Commercial Close.</p> <p>(b) Provide a complete list of mock-ups and other sample</p> | To suit format provided by the manufacturer and or supplier of the system and or component. |

Project Agreement – Schedule 10
East Rail Maintenance Facility Project **Execution Version**

| Item # | Title | Description | Format |
|--------|---------------------------|--|------------------------------|
| | | <p style="text-align: center;">installations that require review by the sponsors for operational or aesthetic issues.</p> <p>At any time during the course of the Project, additional samples may be requested by HMQ Agencies and shall be provided by Project Co for review by HMQ Agencies pursuant to this Schedule 10.</p> | |
| S-109 | Approvals | <p>Provide proof of the following by copy of certification or approval letter, as applicable:</p> <ul style="list-style-type: none"> (a) Electrical Safety Authority (ESA) Certificate of Inspection; (b) Ministry of the Environment (MOE) Certificate of Approval (Air & Noise); (c) Third party approval of Fire Protection System; (d) Technical Standards and Safety Authority (TSSA) approval for fuel systems; (e) Technical Standards and Safety Authority (TSSA) approval for boilers and pressure vessels; and (f) Technical Standards and Safety Authority (TSSA) approval for elevating devices including elevators, lifts, etc. | 8.5" x 11", black and white. |
| S-110 | Construction Quality Plan | Provide Construction Quality Plan and updated Construction Quality Plan (at various stages), including any changes to the previous version, if any, and including a statement of how the proposed matter has changed from previous matter reviewed by HMQ Agencies. | 8.5" x 11", black and white. |
| S-111 | Monthly Progress Reports | <p>Monthly progress reports are to be prepared and submitted in accordance with industry standards. The following is a specific list of items that are required to be included in the monthly progress report:</p> <ul style="list-style-type: none"> (a) Photographs of the construction, including aerial, exterior, interior and main mechanical, industrial and electrical components. An average of 10 photographs are to be included in each monthly progress report; (b) Project schedule identifying all key milestone dates. Original milestone dates (if revised) are to be provided; (c) Commissioning schedule identifying the dates for all equipment and components that will be tested off site; (d) List of work yet to be tendered and awarded; (e) Quantity of construction personnel on site with the projected workforce per month to Final Completion; (f) Block diagram type floor plans showing completion of work - in colour coded format; (g) List of all site instructions and deficiency reviews completed by Project Co and the status with respect to completion of all | 8.5" x 11", colour. |

Project Agreement – Schedule 10
East Rail Maintenance Facility Project **Execution Version**

| Item # | Title | Description | Format |
|--------|---|--|------------------------------|
| | | <p style="text-align: center;">deficiencies; and</p> <p style="text-align: center;">(h) List of all site review reports issued by the HMQ Representative and status with respect to completion of all deficiencies noted in the site review reports.</p> | |
| S-112 | Commissioning Program | <p>Submissions for Commissioning Program to be prepared and submitted in accordance with industry standards and contractual requirements.</p> <p style="text-align: center;">(a) Outline Commissioning Program</p> <p style="text-align: center;">(b) Draft Final Commissioning Program</p> <p style="text-align: center;">(c) Final Commissioning Program</p> | 8.5" x 11", black and white. |
| S-113 | Commissioning Reports | Monthly commissioning reports are to be prepared and submitted in accordance with industry standards. Commissioning reports to be submitted no later than 6 months after commencement of construction. | 8.5" x 11", black and white. |
| S-114 | Preventive Maintenance Plan | <p>Submissions for the Preventive Maintenance Plan to be prepared and submitted in accordance with industry standards and contractual requirements.</p> <p style="text-align: center;">(a) Preventive Maintenance Plan for the first Contract Year.</p> <p style="text-align: center;">(b) The Five Year Maintenance Plan for the first 5 Contract Years.</p> | 8.5" x 11", black and white. |
| S-115 | Facilities Management Plan | Detailed submission of a facilities management plan that includes operating procedures for all Project Co. Services. | 8.5" x 11", black and white. |
| S-116 | Substantial Completion and Final Completion | <p>Detailed submissions for Substantial Completion and Final Completion and prepared and submitted in accordance with industry standards and contractual requirements.</p> <p style="text-align: center;">(a) Substantial Completion</p> <p style="text-align: center;">(b) Final Completion</p> | 8.5" x 11", black and white. |
| S-117 | As-built Documents & Operations Manuals | <p>Detailed log (spreadsheet format) identifying all as-built documents and operations manuals. Detailed log to include as a minimum the following:</p> <p style="text-align: center;">(a) Drawing number for all as-built documents with a summary of the changes made during construction;</p> <p style="text-align: center;">(b) List of all systems and components included in the operations manuals; and</p> <p style="text-align: center;">(c) Any other information HMQ Agencies reasonably require to understand the Works.</p> | 8.5" x 11", black and white. |
| S-118 | Fixtures, Furnishings & Equipment | Provide catalogue cuts and samples if required of all fixtures, furnishings and equipment required for the Project. Organize a tour to review samples of furniture proposed to be used in the Facility. Provide cost of all items including an | 8.5" x 11", colour. |

Project Agreement – Schedule 10
East Rail Maintenance Facility Project **Execution Version**

| Item # | Title | Description | Format |
|--------|--|--|------------------------------|
| | | itemized price for upgrades such as fabrics and other components. | |
| S-119 | 1 Year Post Occupancy Review | Prior to the one year post-occupancy date, as determined by HMQ Agencies and Project Co, a detailed Facility report is to be provided identifying any deficiency issues with the Facility experienced since occupancy. | 8.5" x 11", black and white. |
| S-120 | Testing and Balancing Reports | Final Testing and Balancing Report prepared in accordance with industry standards. | 8.5" x 11", black and white. |
| S-121 | Acoustics Report | Written report with Octave Band sound level plots and overall A-weighted sound levels for each space measured. Reconcile with NC levels specified in Room Data Sheets. | 8.5" x 11", black and white. |
| S-122 | System Test Report | System test reports of the following key components: (a) Complete list of system test reports to be provided to the Planning, Design & Compliance Consultant within 1 month after Commercial Close. | 8.5" x 11", black and white. |
| S-123 | Project Co Annual Energy Report | Provide Annual Energy Report as per Schedule 8 of the Project Agreement. | 8.5" x 11", black and white. |
| S-124 | LEED General Requirements: Annotated LEED Scorecard available from the Canada Green Building Council (CaGBC) | Provide LEED Canada 2009 project checklist provided by the CaGBC with all credits annotated as to whether they are: Targeted or Not. For those credits defined as Targeted, provide a description of how that credit will be obtained for this project in accordance with Section 22 of the Project Agreement | |
| S-125 | LEED Sustainability | Provide a detailed LEED sustainability plan that addresses but is not limited to the following key areas: (a) How the project will achieve the recommended LEED points. (b) LEED mission statement for the Project. (c) Short term vision (design and construction). (d) Long term vision (30 year concession period). | |
| S-126 | LEED Submission | Provide all LEED documents required to be submitted to the Canadian Green Building Council (as one complete bound document) prior to actual submission to the CaGBC. | |
| S-127 | LEED Gold Rating Accreditation | Provide proof of obtaining LEED Gold Rating certification / accreditation. | |

ATTACHMENT 1

SAMPLE DESIGN CERTIFICATE

[SEE ATTACHED]

Certificate Ref No. [●]

DESIGN CERTIFICATE (GENERAL)

In respect of [●] (Provide submittal details e.g. Architectural, Structural, Mechanical, Electrical, etc.)

Project Agreement between HMQ Agencies and Project Co dated [●] ("the Project Agreement") relating to the Project. Defined terms and expressions used in this Certificate have the same meanings in the Project Agreement.

Form of Certificate to be used by the Design Team and Project Co for certifying the design of the Works to the extent that such Works components have been constructed, installed, altered, upgraded, and/or augmented, in accordance with Schedule 15 Parts 1-5 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:

- i. complies with all applicable Output Specifications, as amended by the following:
[List, if any, the changes made by the issue of Variation(s)];
- ii. complies with all applicable design requirements of the Project Agreement;
- iii. complies with Applicable Law and Good Industry Practice; and
- iv. accurately describes and depicts the 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: _____

Project Co Representative

Name: _____

Date: _____

Certificate Ref No. [●]

DESIGN CERTIFICATE (ENVIRONMENTAL)

In respect of [●] (Provide submittal details e.g. Architectural, Structural, Mechanical, Electrical, etc.)

Project Agreement between HMQ Agencies and Project Co dated [●] ("the Project Agreement") relating to the Project. Defined terms and expressions used in this Certificate have the same meanings in the Project Agreement.

Form of certificate to be used by the Design Team, Environmental Director and Project Co for certifying the design of environmental works incorporated in the Works in accordance with the Project Agreement.

1. We certify that we have the requisite professional qualifications, skill and experience to prepare the Design Data referred to herein in accordance with the requirements of the Project Agreement and all relevant Output Specifications.

2. We certify that we have prepared the Design Data for [●] **[Name and list of all elements of the environmental works]** in the Schedule hereto in accordance with all applicable requirements contained in the Design Quality Management Plan and utilizing the standards of care, skill and diligence that, in accordance with the standards of our profession, are required of experienced professionals undertaking the preparation of such Design Data, and that in our professional opinion such Design Data:

- i. complies with all Output Specifications, amended by the following:
[List, if any, the changes made by the issue of Variation(s)];
- ii. complies with all applicable design requirements of the Project Agreement;
- iii. complies with Applicable Law and Good Industry Practice; and
- iv. accurately describes and depicts the 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: _____

Certified by: _____

Environmental director

Name: _____

Title: _____

Date: _____

Professional Registration Number: _____

Affix Professional Seal

Signed: _____

Project Co Representative

Name: _____

Date: _____

Certificate Ref No. [●]

CONSTRUCTION CERTIFICATE

Project Agreement between HMQ Agencies and Project Co dated [●] ("the Project Agreement") relating to the Project. Defined terms and expressions used in this Certificate have the same meanings in the Project Agreement.

Form of certificate to be used by the Design Team for certifying, as applicable:

- (a) the substantial completion of construction activities in respect of those components of the Works set out in paragraph 1 of this Construction Certificate;
- (b) the Final Completion of construction activities in respect of the Works, including Minor Deficiencies.

in accordance with Schedule 15 Parts 1-5 - Output Specifications, to the Project Agreement.

Construction Contractor's Statement

1. We certify that **[name and element of the Works in respect of the Substantial Completion Certificate][the Works in respect of the Final Completion Certificate]** has been designed, constructed, **[substantially completed], [totally completed]**, commissioned and tested in all respects in accordance with: **[NTD: Inapplicable language to be deleted.]**

- i. the relevant Design Data and Design Certificates in each case to which there has been no objection under the Review Procedure;
- ii. the-said-Design Data complies with Applicable Law and Good Industry Practice; and
- iii. the provisions of the Project Agreement, including all applicable Output Specifications as amended by the following Variation(s): [●]

Certified by: _____

Construction Contractor representative

Name: _____

Title: _____

Date: _____

Professional Registration Number: _____

Affix Professional Seal

Signed: _____

Design Team's Statement

2. We certify that we have examined the **[name and element of the Works in respect of the Substantial Completion Certificate][the Works in respect of the Final Completion Certificate]** in accordance with the requirements for examination of the Works contained in the Design Quality Management Plan and the Construction Quality Management Plan and utilizing the standards of care, skill and diligence that, in accordance with the standards of our profession, are required of experienced professionals undertaking such examinations, and that in our professional opinion **[the said element of the Works][the Works]** has been designed, constructed, **[substantially completed][totally completed]**, commissioned and tested in all respects in accordance with: **[NTD: Inapplicable language to be deleted.]**

- i. the relevant Design Data and Design Certificates in each case to which there has been no objection under the Review Procedure;
- ii. the-said-Design Data complies with Applicable Law and Good Industry Practice; and
- iii. the provisions of the Project Agreement, including all applicable Output Specifications as amended by the following Variation(s): [•]

Certified by: _____

Design team (principal)

Name: _____

Title: _____

Date: _____

Professional Registration Number: _____

Affix Professional Seal

Signed: _____

Signed: _____

Project Co Representative

Name: _____

Date: _____

Receipt of this Certificate is acknowledged.

Signed: _____

Independent Certifier

Name: _____

Title: _____

Date: _____

Professional Registration Number: _____

Affix Professional Seal

22694687.2

**SCHEDULE 11
QUALITY MANAGEMENT**

[REDACTED]

SCHEDULE 12

SERVICE QUALITY PLAN OUTLINE

[INTENTIONALLY DELETED]

22694685.2

SCHEDULE 13

PROJECT CO PROPOSAL EXTRACTS

[REDACTED]

SCHEDULE 14

COMMISSIONING

[REDACTED]

TABLE OF CONTENTS

SCHEDULE 15

OUTPUT SPECIFICATIONS

[REDACTED]

**SCHEDULE 15, PART 6
FACILITIES MAINTENANCE OUTPUT SPECIFICATIONS**

[REDACTED]

[Intentionally Deleted]

- 22694682.2

DRAFT

SCHEDULE 16

TITLE ENCUMBRANCES

“Title Encumbrances” means:

[REDACTED]

All Parcels

1. Liens, charges or prior claims for taxes (which term includes charges, rates, levies and assessments) or utilities (including levies or imposts for sewers and other municipal utility services) not yet due or if due, the validity of which is being contested in good faith, and liens or charges for the excess of the amount of any past due taxes or utilities charges for which a final assessment or account has not been received over the amount of such taxes or utilities charges as estimated and paid by HMQ Agencies.
2. Inchoate liens incidental to construction, renovations or current operations, a claim for which shall not at the time have been registered against the Site or of which notice in writing shall not at the time have been given to HMQ Agencies pursuant to *the Construction Lien Act (Ontario)* or otherwise or any lien or charge, a claim for which, although registered, or notice of which, although given, relates to obligations not overdue or delinquent and in respect of any of the foregoing cases, HMQ Agencies have, where applicable, complied with the holdback or other similar provisions or requirements of the relevant construction contracts so as to protect the Site therefrom.
3. The rights reserved to or vested in any municipality or governmental or other public authority by any statutory provision.
4. Any subsisting reservations, limitations, provisions and conditions contained in any original grants from the Crown of any land or interests therein, reservations of undersurface rights to mines and minerals of any kind.
5. Zoning (including, without limitation, airport zoning regulations), use and building by-laws and ordinances, federal, provincial or municipal by-laws and regulations as to the use of the Site, which do not materially impair the value of the Site or materially interfere with the use of the Site for the purposes of the Project.
6. Servitudes, easements, rights-of-way, or other similar rights in land for sewers, electric lines, telegraphs and telephone lines and other utilities and services which do not materially impair the value of the Site or materially interfere with the use of the Site for the purposes of the Project.

7. Minor encroachments onto or from neighboring lands which are permitted under agreements with the owners of such lands and which do not materially impair the value of the Site or materially interfere with the use of the Site for the purposes of the Project.
8. Any encroachments, easements, rights of way or similar interests which would be revealed by an up-to-date survey of the Site.
9. Registered subdivision, site-plan, development or other municipal agreements, if any, provided such are complied with and which do not materially impair the value of the Site or materially interfere with the use of the Site for the purposes of the Project.
10. The exceptions and qualifications contained in subsection 44(1) of the *Land Titles Act* (Ontario) except for paragraphs 11 and 14, Provincial Succession Duties and Escheats or Forfeiture to the Crown; and (b) the rights of any person who would, but for the *Land Titles Act*, be entitled to the land or any part of it through length of adverse possession, prescription, misdescription, or boundaries settled by convention.

22694679.2

SCHEDULE 17

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SCHEDULE 18

COMMUNICATIONS PROTOCOL

1. GENERAL

1.1 Communications Principles

The Project represents an important infrastructure commitment by the Province. Accordingly, a comprehensive communications and stakeholder relations plan is required to ensure the security aspects of the Facility are protected and the public is informed and engaged where necessary and to meet HMQ Agencies' requirements. This plan will support effective communications between Project Co and HMQ Agencies, and with HMQ Agencies' stakeholders and the local community.

2. HMQ AGENCIES' RESPONSIBILITIES

2.1 Lead Communications Role

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

- (a) providing identified, dedicated lead communications contacts with applicable skills and experience with 24/7 availability on applicable aspects of communications and issues management;
- (b) providing an identified, dedicated media-trained lead media spokesperson, with back-up media-trained personnel, as required with 24/7 availability on applicable aspects of communications;
- (c) acting as primary media contact for the Project;
- (d) providing final review and approval of all public communications materials;
- (e) communicating promptly with all relevant parties on crisis issues and communicating within 24 hours on general issues;
- (f) maintaining and updating the Project website, as required; and
- (g) providing coordinated updates to internal/ external stakeholders, as required.

2.2 HMQ Agencies' Communications Responsibilities During the Works Phase

In the period up to the Substantial Completion Date, HMQ Agencies will be responsible for the following matters:

- (a) Communications: To develop a comprehensive communications strategy and program that includes community relations, media relations, marketing, special

events, employee communications and government relations regarding issues related to the Project.

- (b) Crisis Communications: To undertake, in cooperation with Project Co, required planning for potential crisis issues related to the Project. A plan will be developed within 30 days following Financial Close outlining the roles and responsibilities of HMQ Agencies and Project Co during a crisis situation.
- (c) HMQ FM Services-Related Communications: To provide all communications related to the provision of the Maintenance and Storage Activities and the HMQ FM Services.
- (d) Performance Review: To review, on a periodic basis, Project Co's performance in providing communications support as outlined in Section 3 of this Schedule 18.

2.3 HMQ Agencies Communications Responsibilities During the Operational Term

No later than 30 days prior to the Scheduled Substantial Completion Date, the Parties will agree on a communications protocol to apply during the Operational Term.

3. PROJECT CO RESPONSIBILITIES

3.1 Support Communications Role

Project Co will assume a supporting role with respect to communications related to the Project. Project Co will be responsible for:

- (a) providing identified, dedicated media-trained lead media spokesperson (with back-up media-trained personnel, as required) with 24/7 availability on applicable aspects of communications;
- (b) responding to communications issues in accordance with agreed timeframes;
- (c) reviewing and/ or providing communications and/ or technical materials reasonably requested by HMQ Agencies for website content;
- (d) updating, in collaboration with HMQ Agencies, internal/ external stakeholders, as required, including involvement and participation in community events;
- (e) providing the public/ media reasonable access to the Site for milestone events;
- (f) directing all media enquiries and interview requests to HMQ Agencies' lead communications contact;
- (g) maintaining a written record of all material public enquiries, complaints and communications and providing copies to HMQ Agencies' lead communications contact on a weekly basis (or immediately if urgent);

- (h) reporting to HMQ Agencies on communications matters on an agreed upon basis;
- (i) participating in HMQ Agencies' communications meetings, as required; and
- (j) during a crisis situation, ensuring and making available sufficient resources to work effectively with HMQ Agencies and proactively manage and perform their communications responsibilities.

3.2 Project Co Communications Responsibilities During the Works Phase

In the period up to the Substantial Completion Date, Project Co will:

- (a) within 30 days following Financial Close and in collaboration with HMQ Agencies, develop, maintain and implement a construction liaison and communications plan that includes:
 - (i) a description of Project Co's approach to all communications aspects of the Project;
 - (ii) a description of Project Co's communications team, including the roles and responsibilities for each team member and any Project Co Parties who will provide any aspect of the communications program; and
 - (iii) the identification of proposed communication tools to be used to keep the community and other stakeholders informed with respect to the progress of the Project;
- (b) update the construction liaison and communications plan on an annual basis or as reasonably requested by HMQ Agencies;
- (c) coordinate with HMQ Agencies in the implementation of the construction liaison and communications plan;
- (d) attend regular meetings with HMQ Agencies to discuss communication issues and developments;
- (e) produce monthly progress reports, which will include information on activities, public and media enquiries, any emerging issues, and actions taken in response to issues;
- (f) through HMQ Agencies, provide regular updates to the immediately affected property owners and neighbourhoods on Works related issues with particular attention to communicating the scope, schedule and status of the Works. This will include processes to proactively address any Works related enquiries and issues (e.g., public enquiries and complaints re noise, hours of work, dust, etc.);
- (g) provide regular updates to HMQ Agencies related to the management of local traffic during the Works;

- (h) develop, in collaboration with HMQ Agencies, a crisis communication plan outlining roles and responsibilities for a list of potential crisis issues that could develop during the Works; and
- (i) follow any guidelines provided by HMQ Agencies related to signage or advertising at the Site.

3.3 Project Co Communications Responsibilities During the Operational Term

No later than 30 days prior to the Scheduled Substantial Completion Date, the Parties will agree on a communications protocol to apply during the Operational Term.

4. PUBLIC DISCLOSURE AND MEDIA RELEASES

4.1 Public Disclosure and Media Releases

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

5. CONSTRUCTION SIGNAGE

5.1 Construction Signage Guidelines

With respect to any signage that may be erected and maintained at or on the Site or Project, Project Co, Project Co Parties and/or the Lenders, as applicable, shall:

- (a) include both the Metrolinx logo and the Infrastructure Ontario logo on the signage;
- (b) ensure that the signage is no larger than the larger of: (i) any existing government project sign on the site; or (ii) 16 feet by 8 feet;
- (c) adhere to local by-laws including by-laws regarding placement and size;
- (d) consider signage material suitable for long-term outdoor exposure;
- (e) provide a mock-up of the signage to the HMQ Representative for approval prior to printing; and
- (f) be responsible for installation, maintenance and removal of the signage.

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SCHEDULE 19

PROCUREMENT MONITORING AND IMPLEMENTATION PLAN

22694676.2

SCHEDULE 20

PAYMENT MECHANISM

[REDACTED]

SCHEDULE 21

FF&E LIST

Refer to Schedule 21 – Attachment

22694674.2

SCHEDULE 22

VARIATION PROCEDURE

1. VARIATIONS

1.1 Definitions

- (a) The following terms shall have the following meanings:
- (i) **“Direct Cost”** has the meaning given in Appendix A of this Schedule 22.
 - (ii) **“Estimate”** has the meaning given in Section 1.4(a) of this Schedule 22.
 - (iii) **“HMQ Work”** has the meaning given in Section 1.7(a) of this Schedule 22.
 - (iv) **“Project Co Variation Notice”** has the meaning given in Section 2.1(a) of this Schedule 22.
 - (v) **“Variation”** means a variation, addition, reduction, substitution, omission, modification, deletion, removal or other change to the whole or any part of the Project Operations, including in relation to the whole or any part of the Works or the Project Co Services.
 - (vi) **“Variation Confirmation”** has the meaning given in Section 1.8(a)(ii) of this Schedule 22.
 - (vii) **“Variation Directive”** means a written instruction which is issued on a form designated as a “Variation Directive Form” and signed by the HMQ Representative directing Project Co to immediately proceed with a Variation pending the finalization and issuance of a Variation Confirmation for that Variation.
 - (viii) **“Variation Enquiry”** has the meaning given in Section 1.3(a) of this Schedule 22.

1.2 General

- (a) HMQ Agencies have the right from time to time to propose and require Project Co to carry out and implement a Variation, and any such Variation shall be subject to the provisions of this Schedule 22 provided that HMQ Agencies shall not be permitted to withdraw a Variation Enquiry (nor will a Variation Enquiry be deemed to have been withdrawn) with respect to those circumstances specified in the Project Agreement for which HMQ Agencies are obligated to proceed with a Variation.
- (b) HMQ Agencies shall be obligated to proceed with a Variation in certain circumstances specified in this Project Agreement, and any such Variation shall be subject to the provisions of this Schedule 22.

- (c) Project Co will not be entitled to any payment, compensation or extension of time for a Variation except to the extent provided in a Variation Confirmation or Variation Directive in accordance with this Schedule 22.

1.3 Variation Enquiry

- (a) If HMQ Agencies propose or are obligated pursuant to the terms of this Project Agreement or Applicable Law to initiate a Variation they shall deliver to Project Co a written notice of the proposed Variation (a “**Variation Enquiry**”).
- (b) A Variation Enquiry shall:
 - (i) describe the proposed Variation with sufficient detail to enable Project Co to prepare a detailed Estimate;
 - (ii) in the event that the proposed Variation will require a Capital Expenditure, state whether HMQ Agencies intend to pay for the Variation by way of lump sum payment or payments, adjustment to the Monthly Service Payments (and, if applicable, with a request for Project Co to obtain financing for all or part of the Variation), or a combination thereof; and
 - (iii) provide a preliminary indication of any provisions of this 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 this Project Agreement (including the Output Specifications or the Project Co Proposal Extracts) that may be necessary to accommodate the Variation.

1.4 Delivery of Estimate

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

1.5 Project Co Grounds for Objection

- (a) Project Co may only refuse to deliver an Estimate if Project Co can demonstrate to HMQ Agencies’ 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 or Agreements required by Project Co to perform the Project Operations, and any such Permit, Licence, Approval or Agreement is not, using commercially reasonable efforts, capable of amendment or renewal; or
 - (C) require any new Permits, Licences, Approvals or Agreements for Project Co to perform the Project Operations, any of which will not, using commercially reasonable efforts by Project Co or HMQ Agencies, as applicable, be obtainable;
 - (iii) the proposed Variation would have a material and adverse effect on performance of the Project Operations (except those Project Operations which have been specified as requiring amendment in the Variation Enquiry) in a manner not compensated pursuant to this Schedule 22;
 - (iv) the implementation of the Variation would be a departure from Good Industry Practice;
 - (v) HMQ Agencies do not have the legal power or capacity to require the Variation to be implemented or to do anything envisaged by this Schedule 22 in respect of or in connection with the Variation;
 - (vi) the Variation would, if implemented, result in a change in the essential nature of the Facility;
 - (vii) the Variation Enquiry does not comply with the requirements of Section 1.3 (including a failure to include adequate information therein to enable Project Co to prepare an Estimate in respect thereof);
 - (viii) in the case of a Variation relating to the Works, the time specified for commencement and/or completion of such Variation cannot be achieved by Project Co despite commercially reasonable efforts; or
 - (ix) in the case of a Variation relating to the Project Co Services, the time specified for implementation of such Variation cannot be achieved by Project Co despite commercially reasonable efforts.
- (b) If Project Co refuses to provide an Estimate on the grounds set out in Section 1.5(a), Project Co shall, within the period for delivery of an Estimate specified or agreed pursuant to Section 1.4(a), deliver to HMQ Agencies a written notice specifying the grounds upon which Project Co rejects the Variation and the details thereof.

1.6 Estimate Requirements

- (a) Unless HMQ Agencies in a Variation Enquiry require only specified limited information, each Estimate shall include the following information, sufficient to demonstrate to HMQ Agencies' reasonable satisfaction:

- (i) the steps Project Co will take to implement the Variation, in such detail as is reasonable and appropriate in the circumstances;
- (ii) any impact on the Scheduled Substantial Completion Date, and any other schedule impact on the provision of the Facility and completion of the Works (including for certainty, any impact of the proposed Variation after taking into consideration other Variations);
- (iii) any impact on the performance of the Project Operations and any other impact on this Project Agreement (including for certainty, any impact of the proposed Variation after taking into consideration other Variations);
- (iv) any impact on expected usage of utilities, including those identified in Schedule 20 - Payment Mechanism, for the current Contract Year and subsequent Contract Years;
- (v) any amendments to this Project Agreement (including Schedule 20 - Payment Mechanism) or any Project Document required as a consequence of the Variation, the objective of such amendments being to ensure that (save for the obligation of HMQ Agencies to make payments or altered payments in respect of the Variation) the Parties are in no better and no worse position in relation to the Project than they would have been in if the Variation had not been implemented and, in particular, that there will be no material adverse change to the risk profile of the Project as a result of the Variation;
- (vi) any impact on the Direct Costs of Project Co and the Subcontractors, including:
 - (A) any Capital Expenditure that will be incurred, reduced or avoided and the impact on Project Co's cash flows from incurring, reducing or avoiding such costs (whether financed by Project Co or HMQ Agencies); and
 - (B) any other costs that will be incurred, reduced or avoided and the impact on Project Co's cash flows from incurring, reducing or avoiding such costs;
- (vii) either:
 - (A) a confirmation that the proposed Variation will not affect Project Co's existing financing or that Project Co's existing financing is adequate to implement the Variation; or
 - (B) if new or additional financing is required to implement the Variation, an indication as to the availability of such new or additional financing and the cost and terms of such new or additional financing;
- (viii) Project Co's confirmation that the projected internal rate of return on any additional equity capital required to finance the Variation will be the Base Case Equity IRR;

- (ix) Project Co's preliminary indication of the potential increase or decrease, if any, of the Monthly Service Payments, with such amount calculated by reference to the relevant parts of the Financial Model to demonstrate the impact of the proposed Variation;
- (x) any Permits, Licences, 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 obtain or amend such Permits, Licences, Approvals and Agreements for the Estimate to remain valid; and
- (xi) the proposed methods of certification of any construction or operational aspect of the Project Operations required by the Variation if not covered by the provisions of this Project Agreement,

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

- (b) In preparing its Estimate, Project Co shall include sufficient information to demonstrate to HMQ Agencies' satisfaction, acting reasonably, that:
 - (i) Project Co has used or has obliged the Subcontractors (or will oblige any Subcontractors not yet selected) to use commercially reasonable efforts, including the use of competitive quotes or tenders (if appropriate or required by Sections 1.6(c) and 1.6(e)), to minimize any increase in costs and to maximize any reduction in costs;
 - (ii) all costs of Project Co and the Subcontractors are limited to Direct Costs;
 - (iii) Project Co, the Construction Contractor and the Service Provider shall charge only the margins for overhead and profit as set out in Appendix B hereto (such margins each calculated on the basis of the applicable Direct Costs so that no margin of Project Co, the Construction Contractor or the Service Provider is calculated on any other margin of Project Co, the Construction Contractor or the Service Provider), and no other margins or mark-ups;
 - (iv) the margins for overheads and profit as set out in Appendix B hereto as applicable to Project Co's Direct Costs shall only be chargeable on Direct Costs of Project Co, such that Project Co shall not charge any margins on any amounts charged by the Construction Contractor or the Service Provider;
 - (v) all costs of providing Project Operations, including Capital Expenditures, reflect:
 - (A) labour rates applying in the open market to providers of services similar to those required by the Variation;
 - (B) any and all changes in the Output Specifications arising out of the proposed Variation; and

- (C) any and all changes in risk allocation;
 - (vi) the full amount of any and all expenditures that have been reduced or avoided (including for any Capital Expenditure) and that all such expenditures, including all applicable margins for overhead and profit anticipated to be incurred but for the Variation, have been taken into account and applied in total to reduce the amount of all costs; and
 - (vii) Project Co has mitigated or will mitigate the impact of the Variation, including on the Works Schedule, the performance of the Project Operations, the expected usage of utilities, and the Direct Costs to be incurred.
- (c) Project Co will use commercially reasonable efforts to obtain the best value for money when procuring any work, services, supplies, materials or equipment required by the Variation and will comply with all Good Industry Practice in relation to any such procurement, to a standard no less than Project Co would apply if all costs incurred were to its own account without recourse to HMQ Agencies, including using commercially reasonable efforts to mitigate such costs.
 - (d) As soon as practicable, and in any event not more than 15 Business Days after HMQ Agencies receive an Estimate, Project Co and HMQ Agencies shall discuss and seek to agree on the Estimate, including any amendments to the Estimate agreed to by the Parties.
 - (e) If HMQ Agencies would be required by Applicable Law or any policy applicable to HMQ Agencies to competitively tender any contract in relation to the proposed Variation, HMQ Agencies may require Project Co to seek and evaluate competitive tenders for the proposed Variation in accordance with such Applicable Law or policy.
 - (f) HMQ Agencies may modify a Variation Enquiry in writing at any time for any matter relating to the Estimate or the discussions in relation thereto, in which case Project Co shall, as soon as practicable and in any event not more than 10 Business Days after receipt of such modification, notify HMQ Agencies in writing of any consequential changes to the Estimate.
 - (g) If the Parties cannot agree on an Estimate pursuant to Section 1.6(d), then any Dispute will be determined in accordance with Schedule 27 - Dispute Resolution Procedure.

1.7 HMQ Agencies' Right to Perform

- (a) After Substantial Completion, HMQ Agencies shall have the right to perform the subject matter of a proposed Variation (“**HMQ Work**”) itself, or through others contracting directly with HMQ Agencies, without compensation to Project Co, except as specifically stated herein.
- (b) HMQ Agencies shall indemnify and save Project Co harmless from and against any and all loss or expense which may be suffered, sustained or incurred by Project Co as a direct

result of, in respect of, or arising out of the performance by HMQ Agencies, or any third party, of HMQ Work, including, without limitation, any loss or expense related to any adverse impacts on the Project Operations.

1.8 Variation Confirmation

- (a) As soon as practicable, and in any event within 15 Business Days after the later of the date the Estimate was delivered and the date the Estimate was either agreed to or any Dispute in respect thereof was determined in accordance with Schedule 27 - Dispute Resolution Procedure, HMQ Agencies shall either:
 - (i) subject to Sections 1.2(b) and 1.8(e), withdraw the Variation Enquiry by written notice to Project Co; or
 - (ii) issue a written confirmation (the “**Variation Confirmation**”) of the Estimate, including any agreed modifications thereto or any modifications resulting for the determination of a Dispute in respect thereof, which Variation Confirmation may be subject to Project Co obtaining financing pursuant to Section 1.9.
- (b) If HMQ Agencies do not issue a Variation Confirmation within such 15 Business Days, then, subject to Sections 1.2(b) and 1.8(e), the Variation Enquiry shall be deemed to have been withdrawn.
- (c) Upon the Variation Confirmation being issued, and if applicable upon Project Co obtaining financing pursuant to Section 1.9:
 - (i) the Parties shall as soon as practicable thereafter do all acts and execute all documents to amend this Project Agreement necessary to implement the Variation, including in respect of any required extension of time and including provision for payment to Project Co as provided in Section 1.10;
 - (ii) Project Co shall implement the Variation as provided for in the Variation Confirmation, and subject to amendments pursuant to Section 1.8(c)(i), all provisions of this Project Agreement applicable to the Project Operations shall apply to the Project Operations as thereby changed and no additional claim with respect to the Variation or Variation Confirmation will be considered; and
 - (iii) payment in relation to the Variation shall be as provided for in Section 1.10 and pursuant to any amendments pursuant to Section 1.8(c)(i).
- (d) If a Variation Confirmation is subject to Project Co obtaining financing pursuant to Section 1.9, then the Variation Confirmation shall not be effective until:
 - (i) Project Co obtains such financing acceptable to HMQ Agencies in their sole discretion; or
 - (ii) HMQ Agencies in their sole discretion waive such requirement.

- (e) Except as hereinafter provided, until a Variation Confirmation has been issued:
- (i) the determination of whether or not to proceed with a Variation shall at all times be at HMQ Agencies' sole discretion, despite any Dispute or any other matter in relation to a Variation being referred to or determined in accordance with Schedule 27 - Dispute Resolution Procedure; and
 - (ii) HMQ Agencies may at any time withdraw a Variation Enquiry and, subject to Section 1.8(f), HMQ Agencies shall not be obligated to Project Co in respect of a Variation until such time as HMQ Agencies in their sole discretion issue a Variation Confirmation and, if applicable, Project Co has obtained the financing requested by HMQ Agencies or HMQ Agencies have waived such requirement,
- provided that HMQ Agencies may not withdraw (or be deemed to have withdrawn) a Variation Enquiry in circumstances where HMQ Agencies are obligated pursuant to the terms of this Project Agreement to proceed with a Variation. In such circumstances Schedule 27 - Dispute Resolution Procedure shall be employed to finalize any aspects of the Variation which cannot otherwise be agreed to in accordance with the terms of this Schedule 22.
- (f) If a Variation Confirmation is not issued for any Variation Enquiry in respect of which Project Co has used commercially reasonable efforts to produce a fair and accurate Estimate, HMQ Agencies shall reimburse Project Co for all Direct Costs reasonably and properly incurred by Project Co in connection with preparing the Estimate.

1.9 Financing

- (a) If Project Co in its Estimate confirms that existing financing is not available to pay for the proposed Variation and if HMQ Agencies request Project Co to obtain financing for a Variation, then a Variation Confirmation may be issued subject to Project Co obtaining financing. In such event, Project Co shall use commercially reasonable efforts to obtain the requested financing on terms satisfactory to Project Co, the Lenders and HMQ Agencies, provided that, prior to the Substantial Completion Date, Project Co shall not be required to seek financing from any source other than the Lenders.
- (b) If Project Co has used commercially reasonable efforts to obtain the requested financing but has been unable to obtain an offer of financing on terms reasonably satisfactory to Project Co and HMQ Agencies within 60 days of the date that HMQ Agencies issue the Variation Confirmation, then Project Co shall have no further obligation to obtain financing for the Variation and any Variation Confirmation subject to financing shall no longer have any effect unless HMQ Agencies, in their sole discretion, waive the requirement for financing or unless HMQ Agencies are obligated to proceed with the Variation pursuant to the terms of this Project Agreement.
- (c) If Project Co obtains an offer of financing on terms reasonably satisfactory to Project Co, Project Co shall provide HMQ Agencies with details of such financing, and HMQ Agencies shall, in their sole discretion, determine whether Project Co should proceed

with such financing. If HMQ Agencies determine that Project Co should not proceed with such financing, then Project Co shall have no further obligation to obtain financing for the Variation and any Variation Confirmation subject to financing shall no longer have any effect unless HMQ Agencies, in their sole discretion, waive the requirement for financing or unless HMQ Agencies are obligated to proceed with the Variation pursuant to the terms of this Project Agreement.

- (d) HMQ Agencies may at any time withdraw the requirement for Project Co to use commercially reasonable efforts to obtain financing, after which Project Co shall have no further obligation to obtain financing for the Variation and any Variation Confirmation subject to financing shall no longer have any effect unless HMQ Agencies in their sole discretion waive the requirement for financing or unless HMQ Agencies are obligated to proceed with the Variation pursuant to the terms of this Project Agreement.
- (e) If HMQ Agencies waive the requirement for financing or if Project Co has no further obligation to obtain financing for the Variation pursuant to Sections 1.9(b), 1.9(c) or 1.9(d), then Project Co shall proceed with the Variation as set out in the Variation Confirmation and HMQ Agencies shall pay for the Variation as provided for in Section 1.10(a)(ii).

1.10 Payment

- (a) If a Variation Confirmation has been issued and is not subject to financing, or if the requirement for financing has been satisfied by Project Co or has been waived by HMQ Agencies, a price adjustment for the Variation, as set out in the Estimate and as adjusted and confirmed by the Variation Confirmation, shall be made as follows:
 - (i) the Monthly Service Payments shall be adjusted as set out in the Variation Confirmation; and
 - (ii) payment for Capital Expenditures as set out in the Variation Confirmation and not financed by Project Co shall be paid as follows:
 - (A) HMQ Agencies shall pay such Capital Expenditures in lump sum payments based on a payment schedule agreed by HMQ Agencies and Project Co, acting reasonably, to reflect the amount and timing of the Capital Expenditures to be incurred by Project Co in carrying out the Variation to the extent borne by HMQ Agencies; and
 - (B) where payment for part of the Variation reflects the carrying out of, or specific progress towards, an element within the Variation, Project Co shall provide satisfactory evidence confirming that the part of the Variation corresponding to each occasion when payment is due under the payment schedule has been duly carried out.

In the event HMQ Agencies and Project Co fail to agree as to the terms of the payment schedule, the payment schedule shall be determined in accordance with Schedule 27 -

Dispute Resolution Procedure, provided that, where all or any part of the Variation is being carried out by a third party under a contract with Project Co, subject to the terms of any contract between Project Co and that third party in relation to the implementation of the Variation having been approved by HMQ Agencies (such approval not to be unreasonably withheld or delayed), the process under Schedule 27 - Dispute Resolution Procedure shall determine a payment schedule which would enable Project Co to be funded by HMQ Agencies in time to make payments to that third party in accordance with its contract with Project Co.

- (b) HMQ Agencies shall make payment to Project Co within 20 Business Days of receipt by HMQ Agencies of invoices presented to HMQ Agencies in accordance with the agreed payment schedule accompanied (where applicable) by the relevant evidence that the relevant part of the Variation has been carried out.
- (c) Payments by HMQ Agencies in respect of a Variation shall be subject to applicable holdback provisions of the *Construction Lien Act* (Ontario), as applicable.
- (d) Project Co shall not be entitled to any amount in excess of the amount of the Estimate confirmed in the Variation Confirmation.
- (e) Upon request by Project Co, HMQ Agencies shall provide to Project Co copies of any consents or approvals issued by HMQ Agencies in connection with a proposed Variation.

1.11 Reduction in Project Operations

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

1.12 Variation Directive

- (a) If an Estimate is not promptly agreed upon by HMQ Agencies and Project Co or if there is a Dispute in relation thereto or if HMQ Agencies, in their sole discretion, require a Variation to be implemented prior to issuing a Variation Confirmation, then HMQ Agencies may issue a Variation Directive and, following receipt of the Variation Directive:
 - (i) Project Co shall promptly proceed with the Variation;
 - (ii) the determination of the valuation and time extensions, if any, required in connection with such Variation, shall be made as soon as reasonably possible after commencement of the implementation of the Variation; and
 - (iii) pending final determination of the valuation and time extensions, if any, required in connection with such Variation, the Independent Certifier (if such Variation is

in respect of matters prior to Final Completion) or the HMQ Representative, as applicable and, in each case, acting reasonably, shall determine the valuation in accordance with Appendices A and B hereto, with any Dispute to be determined in accordance with Schedule 27 - Dispute Resolution Procedure,

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

2. PROJECT CO VARIATIONS

2.1 General

- (a) Project Co shall deliver to HMQ Agencies a written notice (a “**Project Co Variation Notice**”) for each Variation proposed by Project Co.

2.2 Project Co Variation Notice

- (a) A Project Co Variation Notice shall:
 - (i) set out details of the proposed Variation in sufficient detail to enable HMQ Agencies to evaluate it in full;
 - (ii) specify Project Co’s reasons for proposing the Variation;
 - (iii) indicate all reasonably foreseeable implications of the Variation, including whether there are any costs or cost savings to HMQ Agencies, and whether an adjustment to the Monthly Service Payments is required; and
 - (iv) indicate the latest date by which a Variation Enquiry must be issued.
- (b) If HMQ Agencies, in their sole discretion, elects to consider the Variation proposed by Project Co, HMQ Agencies 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 HMQ Agencies for all out-of-pocket costs and expenses reasonably incurred by HMQ Agencies in connection with HMQ Agencies’ consideration of any Variation proposed by Project Co pursuant to Article 2 of this Schedule 22, including, without limitation, legal and consulting fees and disbursements, regardless of whether (i) a Variation Enquiry or Estimate is issued in connection therewith, or (ii) such Variation is implemented.

3. SMALL WORKS

3.1 General

- (a) After the Substantial Completion Date, Project Co shall carry out all Small Works requested by HMQ Agencies.

- (b) If Small Works are requested by HMQ Agencies, Project Co shall, within 10 Business Days of each such request and prior to carrying out the Small Works, provide HMQ Agencies with a price for carrying out the Small Works.
- (c) If Project Co's price is accepted by HMQ Agencies, in their sole discretion, Project Co shall carry out the Small Works for such price.
- (d) HMQ Agencies may at any time, in their sole discretion, including if HMQ Agencies do not accept the price proposed by Project Co pursuant to Section 3.1(b), issue a Variation Enquiry or Variation Directive in respect of such Small Works, in which event the provisions of this Schedule 22, other than this Section 3, shall apply.
- (e) Project Co's price shall include only its Direct Costs, as calculated in accordance with Appendix A, together with applicable margins as set out in Appendix B.

3.2 Project Co to Minimize Inconvenience

- (a) Project Co shall notify HMQ Agencies of the estimated duration of any Small Works so that HMQ Agencies and Project Co can agree upon a convenient time for carrying out the same, so as to minimize and mitigate inconvenience and disruption to HMQ Agencies. Project Co shall use commercially reasonable efforts to minimize the duration of any Small Works.

APPENDIX A

CALCULATION OF DIRECT COSTS

1. DIRECT COSTS

1.1 Subject to Section 1.2 of this Appendix A, the term “Direct Cost” means the cumulative total, without duplication, of only the following amounts, as paid or incurred by Project Co or the Subcontractors, 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 the Subcontractors while performing that part of the Project Operations on Site;
- (ii) salaries, wages and benefits of Project Co’s or the Subcontractors’ personnel when stationed at the Site office 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 the Subcontractors’ office personnel engaged in a technical capacity;
- (iv) without limiting Sections 1.1(i), 1.1(ii) and 1.1(iii) of this Appendix A, contributions, assessments or taxes incurred for such items as employment insurance, provincial health insurance, workers’ compensation, and Canada Pension Plan, insofar as such costs are based on the wages, salaries, or other remuneration paid to Project Co for employees pursuant to Sections 1.1(i), 1.1(ii) and 1.1(iii) of this Appendix A, but excluding for certainty all income taxes on such wages, salaries and other remuneration;
- (v) travel and subsistence expenses of Project Co’s or the Subcontractors’ officers or employees referred to in Sections 1.1(i), 1.1(ii) and 1.1(iii) of this Appendix A;
- (vi) the cost of materials (including hand tools which have a retail value of **[REDACTED]** or less), products, supplies, equipment, temporary services and facilities, including transportation and maintenance thereof, which are consumed in the performance of the Variation;
- (vii) the rental costs of all tools (excluding hand tools which have a retail value of **[REDACTED]** or less), machinery, and equipment used in the performance of the Variation, whether rented from or provided by Project Co or others, including installation, minor repair and replacement, dismantling, removal, transportation and delivery costs thereof;
- (viii) deposits lost;

- (ix) the amount of all Subcontracts with Subcontractors;
- (x) the amount paid for any design services;
- (xi) the cost of third party quality assurance required by HMQ Agencies, such as independent inspection and testing services;
- (xii) charges levied by Governmental Authorities, but excluding fines or penalties not related to the implementation of the Variation;
- (xiii) subject to Section 1.1(iv) of this Appendix A and without limiting the obligation of HMQ Agencies to pay HST under this Project Agreement, Taxes, but excluding:
 - (A) HST;
 - (B) taxes imposed on Project Co or a Subcontractor based on or measured by income or profit or otherwise imposed under the *Income Tax Act* (Canada), the *Income Tax Act* (Ontario) or any similar statute in any other jurisdiction;
 - (C) capital taxes based on or measured by the capital of Project Co or a Subcontractor;
 - (D) taxes relating to withholdings on any payments by Project Co or a Subcontractor; and
 - (E) taxes relating to any business or activity other than the business or activities related to, and conducted for, the purposes of the Project Operations;
- (xiv) the cost of removal and disposal of contaminants, hazardous substances, waste products and debris for which Project Co is not responsible under this Project Agreement;
- (xv) termination payments which are required under Applicable Law to be made to employees of Project Co reasonably and properly incurred by Project Co arising as a direct result of any Variation reducing the scope of the Project Operations, except to the extent that such termination payments are provided for in contracts of employment, agreements or arrangements that were not entered into in the ordinary course of business and on commercial arm's length terms;
- (xvi) the cost of financing, including additional financing costs related to any delay caused by the implementation of the Variation;

- (xvii) the cost of competitively tendering any contract in relation to the proposed Variation which is required by Applicable Law or any policy applicable to HMQ Agencies;
- (xviii) the cost of any additional insurance or performance security required or approved by HMQ Agencies;
- (xix) the cost of obtaining all Permits, Licences, Approvals and Agreements; and
- (xx) reasonable fees and disbursements of Project Co's legal advisors.

1.2 The Direct Cost otherwise payable shall be subject to and limited by the following:

- (i) the Direct Cost shall be net of all discounts, rebates and other price reductions and benefits, which relate to the Direct Cost incurred;
- (ii) the amount paid for materials, products, supplies and equipment incorporated into the Project Operations as a result of the Variation shall not exceed commercially competitive rates available in the Province of Ontario for such materials, products, supplies and equipment from arms-length third party suppliers;
- (iii) the amount paid for any design services included in the Direct Cost, whether provided by Project Co's personnel, consultants, manufacturers or manufacturers' consultants, for hourly paid personnel shall not exceed two times the actual salary received by those personnel (actual salary to be inclusive of all benefits, statutory remittances and holidays), and for salaried personnel, the actual salary per hour shall be calculated by dividing the annual salary (inclusive of all benefits, statutory remittances and holidays) by 2080 hours;
- (iv) the amount paid for machinery and equipment rental costs shall not exceed the prevailing competitive commercial rate for which such equipment or machinery can be obtained in Toronto, Ontario; and
- (v) the Direct Cost shall not include any cost incurred due to the failure on the part of Project Co to exercise reasonable care and diligence in its attention to the prosecution of that part of the Project Operations.

APPENDIX B

APPLICABLE MARGINS

| Party | Total Overhead and Profit Margin (as % of Direct Cost) | | |
|---|---|---|--|
| | <i>For projects under \$100,000</i> | <i>For projects between \$100,000 and \$1,000,000</i> | <i>For projects over \$1,000,000</i> |
| Project Co (Own Work) | [REDACTED] | [REDACTED] | [REDACTED] |
| | | | |
| Construction Contractor (Own Work) | [REDACTED] | [REDACTED] | [REDACTED] |
| | | | |
| Construction Contractor (Subcontracted Work) | [REDACTED] | [REDACTED] | [REDACTED] |
| | | | |
| Service Provider (Own Work) | [REDACTED] | [REDACTED] | [REDACTED] |
| | | | |
| Service Provider (Subcontracted Work) | [REDACTED] | [REDACTED] | [REDACTED] |

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SCHEDULE 23

COMPENSATION ON TERMINATION

1. DEFINITIONS

1.1 Definitions

The following terms shall have the following meanings:

- (a) **“Adjusted Estimated Fair Value”** means the Estimated Fair Value adjusted as follows:
- (i) where, in respect of any Payment Period or part of a Payment Period from the Termination Date to the Compensation Date, the Post Termination Service Amount is a negative number, the aggregate amount by which all such negative Post Termination Service Amounts are negative shall be set off against and shall reduce the Estimated Fair Value (whether or not such amounts have been set off by HMQ Agencies pursuant to Section 3.3(f) of this Schedule 23);
 - (ii) the aggregate of the following amounts shall be deducted, without duplication, from the Estimated Fair Value;
 - (A) the Post Termination Service Amounts actually paid by HMQ Agencies to Project Co prior to the Compensation Date;
 - (B) the Tender Costs; and
 - (C) amounts that HMQ Agencies are entitled to set off or deduct; and
 - (iii) the aggregate of the following amounts shall be added, without duplication, to the Estimated Fair Value:
 - (A) all credit balances on any bank accounts held by or on behalf of Project Co on the date that the Estimated Fair Value is calculated; and
 - (B) any insurance proceeds and other amounts owing to Project Co (and which Project Co is entitled to retain), to the extent not included in Section 1.1(a)(iii)(A) of this Schedule 23,to the extent that:
 - (C) Sections 1.1(a)(iii)(A) and 1.1(a)(iii)(B) of this Schedule 23 have not been directly taken into account in calculating the Estimated Fair Value; and
 - (D) HMQ Agencies have received such amounts in accordance with this Project Agreement.

- (b) **“Adjusted Highest Qualifying Tender Price”** means the price offered by the Qualifying Tenderer (if any) with the highest tender price, adjusted as follows:
- (i) where, in respect of any Payment Period or part of a Payment Period from the Termination Date to the Compensation Date, the Post Termination Service Amount is a negative number, the aggregate amount by which all such negative Post Termination Service Amounts are negative shall be set off against and shall reduce such highest tender price (whether or not such amounts have been set off by HMQ Agencies pursuant to Section 3.3(f) of this Schedule 23);
 - (ii) the aggregate of the following amounts shall be deducted, without duplication, from such highest tender price:
 - (A) the Post Termination Service Amounts actually paid by HMQ Agencies to Project Co prior to the Compensation Date;
 - (B) the Tender Costs; and
 - (C) amounts that HMQ Agencies is entitled to set off or deduct; and
 - (iii) the aggregate of the following amounts shall be added, without duplication, to such highest tender price:
 - (A) all credit balances on any bank accounts held by or on behalf of Project Co on the date that the highest priced Qualifying Tender is received; and
 - (B) any insurance proceeds and other amounts owing to Project Co (and which Project Co is entitled to retain), to the extent not included in Section 1.1(b)(iii)(A),

to the extent that:
 - (C) Sections 1.1(b)(iii)(A) and 1.1(b)(iii)(B) of this Schedule 23 have not been directly taken into account in that Qualifying Tender; and
 - (D) HMQ Agencies have received such amounts in accordance with this Project Agreement.
- (c) **“Compensation Date”** means either:
- (i) if Section 3.3 of this Schedule 23 applies, the earlier of:
 - (A) the date that the New Agreement is entered into; and
 - (B) the date on which HMQ Agencies pay the Adjusted Highest Qualifying Tender Price to Project Co; or

- (ii) if Section 3.4 of this Schedule 23 applies, the date that the Adjusted Estimated Fair Value has been agreed or determined.
- (d) **“Discount Rate”** means a rate equal to $((A + B) / C) + D$, where:
- A = the product of the outstanding principal amount of debt funded under the Lending Agreements on the date of calculation and the rate of interest applicable to such amount as shown in the Financial Model at Financial Close.
- B = the product of the Equity Capital as at Financial Close and the Base Case Equity IRR.
- C = the sum of the outstanding principal amount of debt funded under the Lending Agreements on the date of calculation and the Equity Capital as at Financial Close.
- D = the yield to maturity on a benchmark Government of Canada bond of the same maturity as the average life of the outstanding principal amount of debt funded under the Lending Agreements on the date of calculation, minus the yield to maturity on a benchmark Government of Canada bond of the same maturity as the average life of the outstanding principal amount of debt funded under the Lending Agreements as shown in the Financial Model at Financial Close.
- (e) **“Employee Termination Payments”** means termination payments which are required under Applicable Law to be made to employees of Project Co as a direct result of terminating this Project Agreement (provided that Project Co or the relevant Project Co Party shall take commercially reasonable steps to mitigate its loss) and provided that, in calculating such amount, no account should be taken of any liabilities and obligations of Project Co or the relevant Project Co Party arising out of:
- (i) contracts of employment or other agreements or arrangements entered into by Project Co or the relevant Project Co Party to the extent that such contracts of employment, agreements or arrangements were not entered into in connection with the Project; or
- (ii) contracts of employment or other agreements or arrangements entered into by Project Co or the relevant Project Co Party other than in the ordinary course of business and on commercial arm’s length terms, save to the extent that amounts would have arisen if such contracts or other agreements or arrangements had been entered into in the ordinary course of business and on commercial arm’s length terms.
- (f) **“Estimated Fair Value”** means the amount determined in accordance with Section 3.4 of this Schedule 23.
- (g) **“HMQ Default Termination Sum”** has the meaning given in Section 2.1(b) of this Schedule 23.

- (h) “**Invoice Date**” means the date that is the later of:
 - (i) the date on which HMQ Agencies receive an invoice from Project Co for the relevant termination sum; and
 - (ii) the date on which HMQ Agencies receive the supporting evidence required pursuant to Section 8.1(a) of this Schedule 23.
- (i) “**Junior Debt Amount**” means, [REDACTED].
- (j) “**Junior Debt Makewhole**” means, [REDACTED].
- (k) “**Lending Agreements**” means [REDACTED].
- (l) “**Liquid Market**” means that there are 2 or more willing parties (each of whom is capable of being a Suitable Substitute and of meeting the Qualification Criteria) in the market for agreements in Canada for the provision of services to maintenance and storage facilities under an alternative financing and procurement or similar model (where such agreements are the same as or similar to this Project Agreement) such that the retendering process in Section 3.3 of this Schedule 23 can reasonably be expected to result in a highest Qualifying Tender price broadly in the range of values that would reasonably be expected to be achieved calculating the Estimated Fair Value under Section 3.4 of this Schedule 23.
- (m) “**Market Value Availability Deduction Amount**” means for any Payment Period or part of a Payment Period, an amount equal to the Deductions for Availability Failures that were made from the Monthly Service Payment under the Payment Mechanism in the Payment Period immediately preceding the Termination Date, less an amount equal to Deductions for Availability Failures that were made for Functional Parts which were unavailable at the Termination Date but which have subsequently become available, whether as a result of HMQ Agencies incurring Rectification Costs or otherwise.
- (n) “**Maximum Service Payment**” means the Monthly Service Payments payable at any time before any Deductions under the Payment Mechanism but allowing for indexation under the Payment Mechanism.
- (o) “**New Agreement**” means an agreement on substantially the same terms and conditions as this Project Agreement as at the Termination Date, but with the following amendments:
 - (i) if this Project Agreement is terminated prior to the Substantial Completion Date, then the Longstop Date shall be extended by a period to allow a New Project Co to achieve Substantial Completion prior to such extended Longstop Date;
 - (ii) any accrued Failure Points shall be cancelled;

- (iii) the term of such agreement shall be equal to the term from the Termination Date until the Expiry Date; and
- (iv) any other amendments which do not adversely affect Project Co.
- (p) **“New Project Co”** means the person who has entered or who will enter into the New Agreement with HMQ Agencies.
- (q) **“Non-Default Termination Sum”** has the meaning given in Section 4.1(b) of this Schedule 23.
- (r) **“Post Termination Service Amount”** means, for the purposes of Section 3.3 of this Schedule 23, for the whole or any part of a Payment Period for the period from the Termination Date to the Compensation Date, an amount equal to the Maximum Service Payment which would have been payable under this Project Agreement had this Project Agreement not been terminated, less an amount equal to the aggregate (without double counting) of:
 - (i) the Market Value Availability Deduction Amount for that Payment Period; and
 - (ii) the Rectification Costs incurred by HMQ Agencies in that Payment Period.
- (s) **“Prohibited Acts Termination Sum”** has the meaning given to it in Section 5.1(b) of this Schedule 23.
- (t) **“Qualification Criteria”** means the criteria that HMQ Agencies require tenderers to meet as part of the Tender Process, which (subject to compliance with Applicable Law) shall include the following:
 - (i) that the tenders confirm acceptance of the New Agreement terms;
 - (ii) that the tenderers have, and are able to demonstrate on an indicative basis on request, the financial ability to pay the lump sum tendered;
 - (iii) that tenderers may only bid on the basis of a single lump sum payment to be paid by the tenderer;
 - (iv) that the tenderer is experienced in providing the Project Co Services or similar services;
 - (v) that the technical solution proposed by the tenderers is capable of delivery and the tenderer is technically capable of delivery of the Project Operations; and
 - (vi) any other tender criteria established by HMQ Agencies, acting reasonably.
- (u) **“Qualifying Tender”** means a tender that meets all of the Qualification Criteria.
- (v) **“Qualifying Tenderer”** means a tenderer who submits a Qualifying Tender.

- (w) “**Rectification Costs**” means, for the purposes of any Termination Date that occurs after the Substantial Completion Date, an amount equal to the reasonable and proper costs incurred by HMQ Agencies in a particular Payment Period or part of a Payment Period in ensuring that the Project Co Services are carried out.
- (x) “**Senior Debt Amount**” means, [REDACTED].
- (y) “**Senior Debt Makewhole**” means, [REDACTED].
- (z) “**Subcontractor Losses**” means, subject to Project Co’s obligations under this Project Agreement to limit any compensation to Subcontractors:
- (i) the amount reasonably and properly payable by Project Co to the Construction Contractor under the terms of the Construction Contract as a direct result of the termination of this Project Agreement (including any reasonable commercial breakage fee), provided that such amount shall be reduced to the extent that Project Co or any Subcontractors fail to take commercially reasonable steps to mitigate such amount; and
 - (ii) the amount reasonably and properly payable by Project Co to the Service Provider under the terms of the Service Contract as a direct result of the termination of this Project Agreement (including any reasonable commercial breakage fee), provided that such amount shall be reduced to the extent that Project Co or any Subcontractors fail to take commercially reasonable steps to mitigate such amount,
- provided that, in both cases, no account should be taken of any liabilities and obligations of Project Co to the Subcontractors arising out of:
- (iii) any loss of overhead or profit of such Subcontractor relating to any period or costs after the Termination Date (save to the extent the same are properly included in any reasonable commercial breakage fee set out in any of the Ancillary Documents);
 - (iv) agreements or arrangements entered into by Project Co or the Subcontractors to the extent that such agreements or arrangements were not entered into in connection with those parties’ obligations in relation to the Project; or
 - (v) agreements or arrangements entered into by Project Co or the Subcontractors other than in the ordinary course of business and on commercial arm’s length terms, save to the extent that amounts would have arisen if such agreements or arrangements had been entered into in the ordinary course of business and on commercial arm’s length terms.
- (aa) “**Tender Costs**” means the reasonable and proper costs of HMQ Agencies incurred in carrying out the Tender Process or in connection with any calculation of the Estimated Fair Value.

(bb) “**Tender Process**” means the process by which HMQ Agencies request tenders from any parties interested in entering into a New Agreement, evaluate the responses from those interested parties and enter into a New Agreement with a new Project Co, in accordance with Section 3.3 of this Schedule 23.

(cc) “**Tender Process Monitor**” has the meaning given in Section 3.3(g) of this Schedule 23.

2. COMPENSATION ON TERMINATION FOR HMQ AGENCIES’ DEFAULT OR CONVENIENCE

2.1 Compensation

(a) If Project Co terminates this Project Agreement pursuant to Section 43 of this Project Agreement or HMQ Agencies terminate this Project Agreement pursuant to Section 44.3 of this Project Agreement, HMQ Agencies shall pay to Project Co the HMQ Default Termination Sum.

(b) The “**HMQ Default Termination Sum**” shall be an amount equal to the aggregate of:

(i) the Senior Debt Amount and the Senior Debt Makewhole;

(ii) the Junior Debt Amount and the Junior Debt Makewhole;

(iii) any amount payable by HMQ Agencies to Project Co in accordance with Sections 40.2(b) and 41.2(b) of this Project Agreement;

(iv) the Employee Termination Payments and Subcontractor Losses;

(v) any reasonable costs properly incurred by Project Co to wind up its operations; and

(vi) an amount which, if paid on the Termination Date and taken together with all dividends and other Distributions paid on or made in respect of the Equity Capital on or before the Termination Date and taking account of the actual timing of all such payments, but, in any event, excluding all amounts (whether for costs, overhead, profit or otherwise) after the Termination Date, gives a nominal internal rate of return to the Termination Date equal to the Equity IRR on the amount paid for the Equity Capital (to the extent that such Equity Capital has been applied by Project Co for the purposes of the Project);

LESS, the aggregate (without double counting) of the following, to the extent it is a positive amount:

(vii) all credit balances on any bank accounts held by or on behalf of Project Co on the Termination Date and the value of any insurance proceeds due to Project Co or to which Project Co would have been entitled had insurance been maintained in accordance with the requirements of this Project Agreement (save where such

insurance proceeds are to be applied in reinstatement, restoration or replacement, or, in the case of third party legal liability, in satisfaction of the claim, demand, proceeding or liability or where HMQ Agencies are required to procure insurances and to make proceeds available to Project Co under this Project Agreement and it has failed to do so) or sums due and payable from third parties other than sums wholly unrelated to the Project Operations, the Project and this Project Agreement (but only when received from third parties) but excluding any claims under any Subcontracts or claims against other third parties which have not been determined or have been determined but not yet paid, provided that, in such case, Project Co shall assign any such rights and claims under the Subcontracts or claims against other third parties (other than claims against other third parties wholly unrelated to the Project Operations, the Project and this Project Agreement) to HMQ Agencies and, at no additional cost to Project Co, give HMQ Agencies reasonable assistance in prosecuting such claims;

- (viii) to the extent realized before the Invoice Date, the market value of any other assets and rights of Project Co (other than those transferred to HMQ Agencies pursuant to this Project Agreement) less liabilities of Project Co properly incurred in carrying out its obligations under this Project Agreement as at the Termination Date, provided that no account should be taken of any liabilities and obligations of Project Co arising out of:
 - (A) agreements or arrangements entered into by Project Co to the extent that such agreements or arrangements were not entered into in connection with Project Co's obligations in relation to the Project; or
 - (B) agreements or arrangements entered into by Project Co other than in the ordinary course of business and on commercial arm's length terms, save to the extent that liabilities and obligations would have arisen if such agreements or arrangements had been entered into in the ordinary course of business and on commercial arm's length terms; and
- (ix) amounts which HMQ Agencies are entitled to set off pursuant to Section 31.13(a)(i) of this Project Agreement,

provided that the HMQ Default Termination Sum shall never be less than the aggregate of the Senior Debt Amount, the Senior Debt Makewhole, the Junior Debt Amount and the Junior Debt Makewhole.

- (c) To the extent that such assets and rights referred to in Section 2.1(b)(iii) of this Schedule 23 are not realized and applied pursuant thereto, Project Co shall, on payment of the HMQ Default Termination Sum, assign such assets and rights to HMQ Agencies.
- (d) HMQ Agencies shall pay the HMQ Default Termination Sum in accordance with Section 8 of this Schedule 23.

3. COMPENSATION FOR PROJECT CO DEFAULT

3.1 Compensation

- (a) Save and except where Sections 5 or 6 of this Schedule 23 apply, if HMQ Agencies terminate this Project Agreement pursuant to Section 42 of this Project Agreement, HMQ Agencies shall pay to Project Co either the Adjusted Highest Qualifying Tender Price according to the retendering procedure set out in Section 3.3 of this Schedule 23 or the Adjusted Estimated Fair Value according to the no retendering procedure set out in Section 3.4 of this Schedule 23, as applicable.

3.2 Retendering Election

- (a) HMQ Agencies shall be entitled to retender the provision of the Project Operations in accordance with Section 3.3 of this Schedule 23 and the provisions thereof shall apply if:
- (i) HMQ Agencies notify Project Co on or before the date falling 30 days after the Termination Date; and
 - (ii) there is a Liquid Market,

but, otherwise, HMQ Agencies shall require a determination in accordance with the no retendering procedure set out in Section 3.4 of this Schedule 23 and the provisions thereof shall apply.

- (b) Until it is determined that the basis for determining the compensation to Project Co will be the no retendering procedure set out in Section 3.4 of this Schedule 23, Project Co shall continue to provide the Project Co Services and HMQ Agencies shall pay Project Co in accordance with Section 3.3(e) of this Schedule 23.

3.3 Retendering Procedure

- (a) The objective of the Tender Process shall be to enter into a New Agreement with a Qualifying Tenderer.
- (b) HMQ Agencies shall commence the Tender Process promptly after delivering the notice pursuant to Section 3.2(a) of this Schedule 23 and use commercially reasonable efforts to complete the Tender Process as soon as practicable.
- (c) HMQ Agencies shall, as soon as reasonably practicable, notify Project Co of the Qualification Criteria and the other requirements and terms of the Tender Process, including the timing of the Tender Process and shall act reasonably in setting such requirements and terms.
- (d) Project Co authorizes the release of any information by HMQ Agencies under the Tender Process which would otherwise be prevented under Section 49 of this Project Agreement that is reasonably required as part of the Tender Process.

- (e) Project Co shall continue to provide the Project Co Services, and, for all or any part of a Payment Period falling within the period from the Termination Date to the Compensation Date, HMQ Agencies shall pay to Project Co:
 - (i) the Post Termination Service Amount for each completed Payment Period, on or before the date falling 20 Business Days after the end of that Payment Period; and
 - (ii) the Post Termination Service Amount for the period from the end of the last completed Payment Period until the Compensation Date, on or before the date falling 30 days after the Compensation Date.
- (f) If any Post Termination Service Amount is negative, then the amount by which the Post Termination Service Amount is negative shall be carried forward and may be set off against any future positive Post Termination Service Amounts.
- (g) Project Co may, at its own cost, appoint a person (the “Tender Process Monitor”) to monitor the Tender Process for the purpose of monitoring and reporting to Project Co and the Lenders on HMQ Agencies’ compliance with the Tender Process. The Tender Process Monitor shall enter into a confidentiality agreement with HMQ Agencies in a form acceptable to HMQ Agencies and shall be entitled to attend all meetings relating to the Tender Process, inspect copies of all the tender documentation and bids and make representations to HMQ Agencies as to compliance with the Tender Process. HMQ Agencies shall not be bound to consider or act upon such representations. The Tender Process Monitor will not disclose confidential information to Project Co or the Lenders but shall be entitled to advise Project Co and the Lenders on whether it considers that HMQ Agencies have acted in accordance with the Tender Process and correctly determined the Adjusted Highest Qualifying Tender Price.
- (h) As soon as practicable after tenders have been received, HMQ Agencies shall, acting reasonably, review and assess the Qualifying Tenders and shall notify Project Co of the Adjusted Highest Qualifying Tender Price.
- (i) If Project Co refers a Dispute relating to the Adjusted Highest Qualifying Tender Price to dispute resolution in accordance with Schedule 27 - Dispute Resolution Procedure, HMQ Agencies shall, irrespective of such Dispute, be entitled to enter into a New Agreement.
- (j) HMQ Agencies shall pay the Adjusted Highest Qualifying Tender Price in accordance with Section 8 of this Schedule 23.
- (k) HMQ Agencies may elect, by notice to Project Co at any time prior to HMQ Agencies ascertaining the Adjusted Highest Qualifying Tender Price, to follow the no retendering procedure set out in Section 3.4 of this Schedule 23. In addition, HMQ Agencies shall follow such no retendering procedure if:
 - (i) only one Qualifying Tender is received; or

- (ii) a New Agreement has not been entered into and compensation paid under Section 8.2 of this Schedule 23 on or before the date falling 18 months after the Termination Date.
- (l) Project Co may give written notice to HMQ Agencies at any time after the Termination Date and prior to the date for receipt of Qualifying Tenders that a Liquid Market does not exist (or shall not exist on the date for receipt of Qualifying Tenders). If HMQ Agencies are in agreement with such notice, the provisions of Section 3.4 of this Schedule 23 shall apply. If HMQ Agencies provide a written response within 10 Business Days of receipt of such notice stating that it is in disagreement with that notice or if no written response is provided by HMQ Agencies within such 10 Business Day period, the matter shall be referred for determination in accordance with Schedule 27 - Dispute Resolution Procedure.

3.4 No Retendering Procedure

- (a) Subject to Section 3.4(b) of this Schedule 23, if the provisions of this Section 3.4 apply, Project Co shall not be entitled to receive any Post Termination Service Amount.
- (b) If HMQ Agencies elect to require a determination in accordance with this Section 3.4 of this Schedule 23 after it has elected to follow the procedure set out in Section 3.3 of this Schedule 23, then HMQ Agencies shall continue to pay to Project Co each Post Termination Service Amount until the Compensation Date in accordance with Section 3.3 of this Schedule 23.
- (c) In determining the Estimated Fair Value, the Parties shall be obliged to follow the principles set out below:
 - (i) All forecast amounts should be calculated in nominal terms as at the Termination Date. Where relevant, adjustments for forecast inflation between the date of calculation and the forecast payment date(s), as set out in this Project Agreement, will be made and, if made, will use an assumed inflation rate of [REDACTED]% per annum.
 - (ii) The Estimated Fair Value shall be calculated using the following formula (without double counting):

$$(A - B - C) - D$$

Where:

A = the present value of (i) the Substantial Completion Payment to be paid at the Termination Date, and (ii) the Monthly Service Payments forecast to be made from the Termination Date to the Expiry Date, assuming that no Deductions will be made over that period, discounted in each case at the Discount Rate

B = a contingency amount based on a reasonable risk assessment of any cost overruns that may reasonably arise (including in respect of any matter referred to in this Section 3.4(c)(ii) of this Schedule 23) whether or not forecast in the relevant base case and represented in the Financial Model as of the date of Financial Close, discounted at the Discount Rate

C = the present value of the costs of obtaining or providing the Project Co Services reasonably forecast to be incurred by HMQ Agencies from the Termination Date to the Expiry Date to the standard required, discounted at the Discount Rate

D = any rectification costs (including Rectification Costs) reasonably required to deliver the Project Operations to the standard required, including, if applicable, to complete the Works, any costs reasonably forecast to be incurred by HMQ Agencies for up-front finance fees and related costs (excluding principal and interest payments) that would not arise at the time or in the future had the termination not occurred, and any other additional operating costs required to restore operating services standards less (to the extent that such sums are included in any calculation of rectification costs (including Rectification Costs) for the purposes of this item D), the aggregate of:

- (A) any insurance proceeds received or which will be received pursuant to policies maintained in accordance with Schedule 25 - Insurance and Performance Security Requirements; and
- (B) amounts payable by HMQ Agencies in respect of Capital Expenditures under this Project Agreement which have not been paid,

discounted at the Discount Rate.

- (iii) The amount of (A – B – C) as defined in Section 3.4(c)(ii) of this Schedule 23 shall be no greater than the Non-Default Termination Sum.
 - (iv) All costs referred to in Section 3.4(c)(ii) of this Schedule 23 are to be forecast at a level that will deliver the Project Co Services and other Project Operations to the standards required by this Project Agreement and to achieve the full Monthly Service Payments (without Deductions).
 - (v) The calculation will take into consideration the obligations of the Parties with respect to allowances and payments under this Project Agreement.
- (d) If the Parties cannot agree on the Estimated Fair Value, then the Estimated Fair Value shall be determined in accordance with Schedule 27 - Dispute Resolution Procedure.
 - (e) HMQ Agencies shall pay the Adjusted Estimated Fair Value in accordance with Section 8 of this Schedule 23.

4. CONSEQUENCES OF NON-DEFAULT TERMINATION AND TERMINATION BY HMQ AGENCIES FOR RELIEF EVENT

4.1 Consequences

- (a) If HMQ Agencies terminate this Project Agreement pursuant to Section 44.1 of this Project Agreement or if either Party terminates this Project Agreement pursuant to Section 44.2 of this Project Agreement, HMQ Agencies shall pay to Project Co the Non-Default Termination Sum.
- (b) The “**Non-Default Termination Sum**” shall be an amount equal to the aggregate of:
 - (i) the Senior Debt Amount and the Senior Debt Makewhole;
 - (ii) the Junior Debt Amount;
 - (iii) any amount payable by HMQ Agencies to Project Co in accordance with Sections 40.2(b) and 41.2(b) of this Project Agreement;
 - (iv) the Employee Termination Payments and Subcontractor Losses (but excluding therefrom any claims for loss of profit); and
 - (v) an amount equal to the Equity Capital as at Financial Close, less all dividends and other Distributions paid on or made in respect of the Equity Capital on or before the Termination Date, provided that where such amount is negative, it shall be deemed instead to be zero;

LESS, the aggregate (without double counting) of the following, to the extent it is a positive amount:

- (vi) all credit balances on any bank accounts held by or on behalf of Project Co on the Termination Date and the value of any insurance proceeds due to Project Co or to which Project Co would have been entitled had insurance been maintained in accordance with the requirements of this Project Agreement (save where such insurance proceeds are to be applied in reinstatement, restoration or replacement, or, in the case of third party legal liability, in satisfaction of the claim, demand, proceeding or liability or where HMQ Agencies are required to procure insurances and to make proceeds available to Project Co under this Project Agreement and it has failed to do so) or sums due and payable from third parties other than sums wholly unrelated to the Project Operations, the Project and this Project Agreement (but only when received from third parties) but excluding any claims under any Subcontracts or claims against other third parties which have not been determined or have been determined but not yet paid, provided that, in such case, Project Co shall assign any such rights and claims under the Subcontracts or claims against other third parties (other than claims against other third parties wholly unrelated to the Project Operations, the Project and this Project

Agreement) to HMQ Agencies and, at no additional cost to Project Co, give HMQ Agencies reasonable assistance in prosecuting such claims; and

- (vii) to the extent realized before the Invoice Date, the market value of any other assets and rights of Project Co (other than those transferred to HMQ Agencies pursuant to this Project Agreement) less liabilities of Project Co properly incurred in carrying out its obligations under this Project Agreement as at the Termination Date, provided that no account should be taken of any liabilities and obligations of Project Co arising out of:
 - (A) agreements or arrangements entered into by Project Co to the extent that such agreements or arrangements were not entered into in connection with Project Co's obligations in relation to the Project; or
 - (B) agreements or arrangements entered into by Project Co other than in the ordinary course of business and on commercial arm's length terms, save to the extent that liabilities and obligations would have arisen if such agreements or arrangements had been entered into in the ordinary course of business and on commercial arm's length terms; and
- (viii) amounts which HMQ Agencies are entitled to set off pursuant to Section 31.13(a)(i) of this Project Agreement,

provided that the Non-Default Termination Sum shall never be less than the aggregate of the Senior Debt Amount, the Senior Debt Makewhole and the Junior Debt Amount.

- (c) To the extent that such assets and rights referred to in Section 4.1(b)(vii) 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 HMQ Agencies.
- (d) HMQ Agencies shall pay the Non-Default Termination Sum in accordance with Section 8 of this Schedule 23.

5. CONSEQUENCES OF TERMINATION FOR PROHIBITED ACTS

5.1 Consequences

- (a) If HMQ Agencies terminate this Project Agreement as a result of a Project Co Event of Default for failing to comply with Section 57 of this Project Agreement, HMQ Agencies shall pay to Project Co the Prohibited Acts Termination Sum.
- (b) The "**Prohibited Acts Termination Sum**" shall be an amount equal to the aggregate of:
 - (i) the Senior Debt Amount and the Senior Debt Makewhole;
 - (ii) any amount payable by HMQ Agencies to Project Co in accordance with Sections 40.2(b) and 41.2(b) of this Project Agreement; and

- (iii) the following amounts calculated in respect of the Construction Contractor, if the Construction Contractor is not responsible for a Prohibited Act, and the Service Provider, if the Service Provider is not responsible for a Prohibited Act, and which Project Co can demonstrate will be paid directly to such persons:
 - (A) the Employee Termination Payments; and
 - (B) as applicable, the Construction Contractor's and Service Provider's out-of-pocket costs incurred as a direct result of termination of this Project Agreement (excluding any breakage fees and overhead and profit of the Construction Contractor and Service Provider, as applicable);

LESS, the aggregate (without double counting) of the following, to the extent it is a positive amount:

- (iv) all credit balances on any bank accounts held by or on behalf of Project Co on the Termination Date and the value of any insurance proceeds due to Project Co or to which Project Co would have been entitled had insurance been maintained in accordance with the requirements of this Project Agreement (save where such insurance proceeds are to be applied in reinstatement, restoration or replacement, or, in the case of third party legal liability, in satisfaction of the claim, demand, proceeding or liability or where HMQ Agencies are required to procure insurances and to make proceeds available to Project Co under this Project Agreement and it has failed to do so) or sums due and payable from third parties other than sums wholly unrelated to the Project Operations, the Project and this Project Agreement (but only when received from third parties) but excluding any claims under any Subcontracts or claims against other third parties which have not been determined or have been determined but not yet paid, provided that, in such case, Project Co shall assign any such rights and claims under the Subcontracts or claims against other third parties (other than claims against other third parties wholly unrelated to the Project Operations, the Project and this Project Agreement) to HMQ Agencies and, at no additional cost to Project Co, give HMQ Agencies reasonable assistance in prosecuting such claims;
- (v) to the extent realized before the Invoice Date, the market value of any other assets and rights of Project Co (other than those transferred to HMQ Agencies pursuant to this Project Agreement) less liabilities of Project Co properly incurred in carrying out its obligations under this Project Agreement as at the Termination Date, provided that no account should be taken of any liabilities and obligations of Project Co arising out of:
 - (A) agreements or arrangements entered into by Project Co to the extent that such agreements or arrangements were not entered into in connection with Project Co's obligations in relation to the Project; or
 - (B) agreements or arrangements entered into by Project Co other than in the ordinary course of business and on commercial arm's length terms, save to

the extent that liabilities and obligations would have arisen if such agreements or arrangements had been entered into in the ordinary course of business and on commercial arm's length terms; and

- (vi) amounts which HMQ Agencies are entitled to set off pursuant to Section 31.13(a)(i) of this Project Agreement, provided that HMQ Agencies shall only set off amounts which are due to HMQ Agencies by Project Co pursuant to the terms of this Project Agreement if and to the extent the Prohibited Acts Termination Sum exceeds the Senior Debt Amount.
- (c) To the extent that such assets and rights referred to in Section 5.1(b)(v) of this Schedule 23 are not realized and applied pursuant thereto, Project Co shall, on payment of the Prohibited Acts Termination Sum, assign such assets and rights to HMQ Agencies.
- (d) HMQ Agencies shall pay the Prohibited Acts Termination Sum in accordance with Section 8 of this Schedule 23.

6. CONSEQUENCES OF TERMINATION FOR BREACH OF REFINANCING

6.1 Consequences

- (a) If HMQ Agencies terminate this Project Agreement as a result of a Project Co Event of Default for failing to comply with Section 7.3 of this Project Agreement or Schedule 28 – Refinancing or the Lender assigns, transfers or otherwise disposes of any right, title or interest it may have in, or obligations it may have pursuant to, the Security Documents in breach of the Lenders' Direct Agreement, HMQ Agencies shall pay to Project Co a termination sum equivalent to, and calculated in accordance with Sections 5.1(b)(i), (ii), (iii), (iv) and (v) of this Schedule 23, less amounts which HMQ Agencies are entitled to set off pursuant to Section 31.13(a)(i) of this Project Agreement.
- (b) HMQ Agencies shall pay such termination sum in accordance with Section 8 of this Schedule 23.

7. CONSEQUENCES OF TERMINATION BY PROJECT CO FOR RELIEF EVENT

7.1 Consequences

- (a) If Project Co terminates this Project Agreement pursuant to Section 44.1 of this Project Agreement, HMQ Agencies shall pay to Project Co a termination sum equivalent to the greater of (i) an amount calculated and payable in accordance with, the Prohibited Acts Termination Sum; and (ii) the Adjusted Estimated Fair Value calculated in accordance with this Schedule 23.
- (b) HMQ Agencies shall pay such termination sum in accordance with Section 8.1 or 8.3 of this Schedule 23, as applicable.

8. GENERAL

8.1 Payment and Interest Following Non-Project Co Default Termination

- (a) In respect of the termination payments to be made pursuant to any of Sections 2, 4, 5, 6 or 7 of this Schedule 23, as soon as practicable after, and, in any event, within 30 days after, the Termination Date, Project Co shall give to HMQ Agencies an invoice for the relevant termination sum and sufficient supporting evidence, reasonably satisfactory to HMQ Agencies, justifying the amount of the relevant termination sum including a detailed breakdown of each of the individual items comprising such sum.
- (b) HMQ Agencies shall:
 - (i) pay to Project Co the relevant termination sum within 60 days after the Invoice Date; and
 - (ii) indemnify Project Co as provided in Section 53.2(c) of this Project Agreement in respect of any damages suffered or incurred as a result of the relevant termination sum (or any part of such sum that remains outstanding) not being received on the Termination Date:
 - (A) in an amount equivalent to the No Default Payment Compensation Amount for the period from (but excluding) the Termination Date to (and including) the date which is 60 days after the Invoice Date; and
 - (B) thereafter, in an amount equivalent to the Payment Compensation Amount until the date of payment.
- (c) In respect of the termination payments to be made pursuant to any of Sections 5, 6 or 7 of this Schedule 23, if the applicable termination sum is negative, HMQ Agencies shall have no obligation to make any payment to Project Co and Project Co shall, within 60 days after the Invoice Date, pay to HMQ Agencies the amount by which such termination sum is negative, failing which Project Co shall also thereafter indemnify HMQ Agencies as provided in Section 53.1(e) of this Project Agreement in respect of any damages suffered or incurred on such amount on the basis that the due date for the payment of the negative termination sum amount was the date 60 days after the Invoice Date until the date of payment in an amount equivalent to the Payment Compensation Amount.

8.2 Payment and Interest Following Project Co Default - Retendering Procedure

- (a) Following the retendering procedure set out in Section 3.3 of this Schedule 23, HMQ Agencies shall pay to Project Co the Adjusted Highest Qualifying Tender Price no later than the date falling 30 days after the later of:
 - (i) the date on which HMQ Agencies enter into the New Agreement with the New Project Co; and

- (ii) if Project Co has, pursuant to Section 3.3(i) of this Schedule 23, referred a Dispute relating to the Adjusted Highest Qualifying Tender Price to be resolved in accordance with Schedule 27 - Dispute Resolution Procedure, the date on which the Dispute is finally determined, provided that HMQ Agencies shall pay the undisputed amount on the date referred to in Section 8.2(a)(i) of this Schedule 23,

and HMQ Agencies shall indemnify Project Co as provided in Section 53.2(c) of this Project Agreement on the Adjusted Highest Qualifying Tender Price on the basis that the due date for the payment of the Adjusted Highest Qualifying Tender Price was the date on which HMQ Agencies enter into the New Agreement with the New Project Co:

- (iii) in an amount equivalent to the No Default Payment Compensation Amount from the due date up to (and including) the date following 30 days from after the later of the dates determined under Section 8.2(a)(i) and (ii) above (and for clarity, on such portions of the Adjusted Highest Qualifying Tender Price in the circumstance described in paragraph (ii) above); and
 - (iv) thereafter, in an amount equivalent to the Payment Compensation Amount until the date of payment.
- (b) If the Adjusted Highest Qualifying Tender Price is negative, HMQ Agencies shall have no obligation to make any payment to Project Co and Project Co shall, on the date of the New Agreement, pay HMQ Agencies the amount by which such termination sum is negative, failing which Project Co shall also thereafter indemnify HMQ Agencies as provided in Section 53.1(e) of this Project Agreement in respect of any damages suffered or incurred on such amount on the basis that the due date for the payment of the negative termination sum amount was the date of the New Agreement in an amount equivalent to the Payment Compensation Amount until the date of payment.

8.3 Payment and Interest Following Project Co Default - No Retendering Procedure

- (a) If HMQ Agencies follow the no retendering procedure set out in Section 3.4 of this Schedule 23, HMQ Agencies shall pay to Project Co the Adjusted Estimated Fair Value no later than the date falling 60 days after the date on which the Adjusted Estimated Fair Value has been agreed or determined in accordance with Section 3.4 of this Schedule 23, together with interest on such amount calculated in accordance with Section 8.1(b)(ii) of this Schedule 23.
- (b) If the Adjusted Estimated Fair Value is negative, HMQ Agencies shall have no obligation to make any payment to Project Co and Project Co shall, on the Compensation Date, pay HMQ Agencies the amount by which the Adjusted Estimated Fair Value is negative, failing which Project Co shall also thereafter indemnify HMQ Agencies as provided in Section 53.1(e) in respect of any damages suffered or incurred on such amount on the basis that the due date for payment of the negative Adjusted Estimated Fair Value was the date of the New Agreement in an amount equivalent to the Payment Compensation Amount until the date of payment.

8.4 Costs

- (a) The costs and expenses to be taken into account in the calculation of all termination sums due pursuant to this Schedule 23 shall only be such costs and expenses to the extent that they are reasonable and proper in quantum and shall have been or will be reasonably and properly incurred.

8.5 Undisputed Amounts

- (a) If the calculation of any termination amount is disputed then any undisputed amount shall be paid in accordance with this Section 8 of this Schedule 23 and the disputed amount shall be dealt with in accordance with Schedule 27 - Dispute Resolution Procedure.

8.6 Outstanding Debt Amounts

- (a) HMQ Agencies 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 HMQ Agencies' obligation to pay such portion of compensation due to Project Co that is equal to the amount acknowledged or confirmed.

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SCHEDULE 24

EXPIRY TRANSITION PROCEDURE

1. Independent Inspector

- 1.1 Not less than 90 months prior to the Expiry Date, the Parties shall agree upon and, in accordance with HMQ Agencies' procurement policies, engage an independent and suitably qualified and experienced person (the "**Independent Inspector**") to carry out inspections of the Facility pursuant to this Schedule 24.
- 1.2 Project Co and HMQ Agencies shall share equally the responsibility for the payment of all fees and costs of the Independent Inspector.
- 1.3 In the event of the Independent Inspector's engagement being terminated otherwise than for full performance, the Parties shall liaise and cooperate with each other in order to appoint a replacement as soon as reasonably practicable, and in any event within 10 Business Days of the termination of the last Independent Inspector's engagement.
- 1.4 In the event the Parties fail to agree upon the identity of the Independent Inspector either pursuant to Section 1.1 or Section 1.3 of this Schedule 24 by the specified deadline, then the Independent Inspector shall be selected as follows:
 - (a) each Party shall within 10 Business Days thereafter select three independent and suitably qualified and experienced persons that would be acceptable to that Party as the Independent Inspector, and shall provide notice thereof to the other Party; and
 - (b) if the Parties have both selected a common person, then such common person shall be the Independent Inspector; or
 - (c) if the Parties have not selected a common person, then the Independent Inspector shall be selected in accordance with Schedule 27 - Dispute Resolution Procedure.

2. Condition of Facilities on Expiry

- 2.1 Subject to the exceptions specified in Section 2.2 of this Schedule 24, on the Expiry Date:
 - (a) each element of the Facility and the Site (including the ground soil located on the Site) shall be in a condition which is consistent with due performance by Project Co of its obligations under this Project Agreement and, in particular, is consistent with the Facility having been maintained in accordance with the Preventive Maintenance Plan and the Lifecycle Replacement Schedule, and, with respect to the Site and the ground soil located on the Site, does not deviate from the Pre-Existing Environmental Site Conditions by reason of any Contamination for which Project Co is responsible pursuant to this Project Agreement;

- (b) each element of the Facility shall be in good operating order (Normal Wear and Tear excepted) and capable of performing in accordance with the performance specifications and standards set out in Schedule 15 - Output Specifications; and
- (c) each element of the Facility shall be in a condition which ensures that such element of the Facility will have a reasonable likelihood of completing its Replacement Lifecycle and/or remaining lifecycle in good condition and operating order (Normal Wear and Tear excepted), and, if applicable, shall not have any structural faults, deterioration and/or defect,

(collectively, the “**Expiry Transition Requirements**”).

2.2 For greater certainty, this Schedule 24 shall not apply to any FF&E maintained by HMQ Agencies in accordance with this Project Agreement.

3. Facility Inspections

3.1 The Parties shall cause the Independent Inspector to perform an inspection of the Facility and to produce and deliver to each of the Parties a written report (a “**Facility Condition Report**”) not less than 7 years prior to the Expiry Date that:

- (a) identifies the condition of the Facility and each element of the Facility (subject to the exceptions specified in Section 2.2 of this Schedule 24) in relation to the Expiry Transition Requirements;
- (b) assesses Project Co’s business case related to capital replacement (which, for greater certainty, will include consideration of energy consumption), and provides the Independent Inspector’s opinion on both the adequacy of Project Co’s proposed strategy and the consistency of Project Co’s proposed strategy with the business case methodology and lifecycle strategy set out in Appendix 5.21A hereto;
- (c) identifies any works required to ensure the Facility and each element of the Facility (subject to the exceptions specified in Section 2.2 of this Schedule 24) will meet the Expiry Transition Requirements on the Expiry Date (the “**Expiry Transition Works**”), and specifying the Contract Year in which each of those Expiry Transition Works would be required;
- (d) specifies the Independent Inspector’s estimate of the costs that would be required to perform the Expiry Transition Works (the “**Expiry Transition Works Costs**”); and
- (e) details how the Expiry Transition Works Costs were calculated.

3.2 The Parties shall cause the Independent Inspector to perform another inspection of the Facility and produce and deliver to each of the Parties an updated Facility Condition

Report (each a “**Revised Facility Condition Report**”) on each anniversary of the date of the original Facility Condition Report.

- 3.3 The Preventive Maintenance Plan, the Five Year Maintenance Plan and the Lifecycle Replacement Schedule shall be amended and updated, as applicable, to include all Expiry Transition Works identified in either the Facility Condition Report or any Revised Facility Condition Report not already included in the then current Preventive Maintenance Plan, Five Year Maintenance Plan or Lifecycle Replacement Schedule.
- 3.4 Project Co shall carry out the Expiry Transition Works at its own cost notwithstanding that the actual cost of the Expiry Transition Works may be higher than the Expiry Transition Works Costs.
- 3.5 Either Party may dispute the Facility Condition Report or any Revised Facility Condition Report, including the Expiry Transition Works and the Expiry Transition Works Costs, in accordance with Schedule 27 - Dispute Resolution Procedure. In the event that a final determination in accordance with Schedule 27 - Dispute Resolution Procedure specifies Expiry Transition Works or Expiry Transition Works Costs which are different than those set out in either the Facility Condition Report or any Revised Facility Condition Report, then either the Facility Condition Report or any Revised Facility Condition Report, as the case may be, shall be deemed to be amended accordingly, and the Preventive Maintenance Plan, Five Year Maintenance Plan and Lifecycle Replacement Schedule, as amended pursuant to Section 3.3 of this Schedule 24, and all deductions and payments permitted or required by Section 4 of this Schedule 24, shall be adjusted accordingly.

4. Payments To and From Escrow Account

- 4.1 Following the date for delivery of the Facility Condition Report, for the purposes of Section 4.2 of this Schedule 24, the Parties shall review the amount of the Expiry Transition Works Costs and the level of capital expenditure Project Co has allocated to spend in the same period pursuant to the Financial Model (the “**Expiry Lifecycle Costs**”). Where the Expiry Transition Works Costs are greater than the Expiry Lifecycle Costs, the difference between the Expiry Transition Works Costs and the Expiry Lifecycle Costs shall be apportioned equally over the Payment Periods from the date the Facility Condition Report is to be delivered hereunder to the Expiry Date (each installment being the “**Expiry Transition Amount**”). If the Facility Condition Report is delivered after the date for delivery hereunder, then the first installment to be paid shall also include the amounts to be paid under the installments that would have been payable prior to the date the Facility Condition Report is delivered. Where the Expiry Transition Works Costs are amended pursuant to Section 3.2 or 3.5 of this Schedule 24, the Parties agree that the Expiry Transition Amount shall be adjusted accordingly.
- 4.2 Subject to Sections 4.3 and 4.5 of this Schedule 24, HMQ Agencies may deduct the Expiry Transition Amount from each Monthly Service Payment, and pay into a separate interest bearing bank account, upon escrow terms acceptable to the Parties or in trust (the “**Escrow Account**”), the Expiry Transition Amount. If in any Payment Period, the Expiry Transition Amount is greater than the relevant Monthly Service Payment, HMQ

Agencies may deduct the difference between the Expiry Transition Amount and the Monthly Service Payment from the next Monthly Service Payment or from such other Payment Period as otherwise agreed between the Parties.

- 4.3 HMQ Agencies shall not deduct any amount from a Monthly Service Payment as contemplated in Section 4.2 of this Schedule 24 if, at such time, the funds in the Escrow Account exceed the value (based on the Expiry Transition Works Costs) of all or any part of the Expiry Transition Works (as amended) yet to be performed.
- 4.4 Project Co may from time to time, but not more often than once in any month, make written request for release of funds from the Escrow Account. HMQ Agencies shall consider such request within 10 Business Days and if the funds in the Escrow Account exceed the value (based on the Expiry Transition Works Costs) of all or any part of the Expiry Transition Works (as amended) yet to be performed, then HMQ Agencies shall pay the excess to Project Co from the Escrow Account within 10 Business Days thereafter, together with any interest that has accrued on such amount. Project Co shall include with its request all information reasonably required by HMQ Agencies to evaluate such request.
- 4.5 Following the date of any Revised Facility Condition Report, if the amount in the Escrow Account (being the deductions of the Expiry Transition Amount made since the Facility Condition Report) together with the deductions to be made from the remaining Monthly Service Payments is less than the value (based on the Expiry Transition Works Costs) of the remaining Expiry Transition Works (as amended) yet to be performed, then HMQ Agencies may deduct such shortfall, in equal installments, from each remaining Monthly Service Payment until the Expiry Date, and pay each installment into the Escrow Account and Section 4.4 of this Schedule 24 shall continue to apply until the Expiry Date.
- 4.6 As an alternative to the deductions permitted by Sections 4.2 and 4.5 of this Schedule 24 or the retention of any amount in the Escrow Account pursuant to the foregoing provisions of this Section 4 of this Schedule 24, Project Co may (and if, at any time, the amounts which HMQ Agencies are permitted to deduct pursuant to Sections 4.2 and 4.5 of this Schedule 24 is greater than the remaining Monthly Service Payments, Project Co shall), within 5 Business Days of a written request from HMQ Agencies, provide a bond or letter of credit (the “**Expiry Transition Security**”) in favour of HMQ Agencies in an amount equal to the amounts which HMQ Agencies are permitted to deduct pursuant to Sections 4.2 and 4.5 of this Schedule 24, in a form and from a surety or bank, as applicable, acceptable to HMQ Agencies.

5. Project Co Not Relieved of Obligations

5.1 Notwithstanding:

- (a) any agreement of HMQ Agencies to any Expiry Transition Works, Expiry Transition Works Costs or Expiry Transition Security;
- (b) any participation of HMQ Agencies in any inspection under this Schedule 24; and

(c) the complete or partial carrying out of the Expiry Transition Works,

Project Co shall not be relieved or absolved from any obligation to conduct any other inspection or to perform any other works to the extent otherwise required by this Project Agreement, including without limitation the Output Specifications.

6. Final Facility Condition Report

- 6.1 The Parties shall cause the Independent Inspector to perform an inspection of the Facility and to produce and deliver to each of the Parties a Facility Condition Report within 30 Business Days after the Expiry Date (the “**Final Facility Condition Report**”) that documents whether the Facility met the Expiry Transition Requirements on the Expiry Date, as well as identifying any Expiry Transition Works and Expiry Transition Works Costs.
- 6.2 If the Final Facility Condition Report identifies any Expiry Transition Works, HMQ Agencies may withdraw from the Escrow Account or call upon the Expiry Transition Security an amount equivalent to such Expiry Transition Works Costs, and HMQ Agencies shall pay any remaining funds in the Escrow Account (including any interest accrued) to Project Co and return any remaining Expiry Transition Security to Project Co.
- 6.3 Provided that the funds in the Escrow Account and/or the Expiry Transition Security is adequate to meet Project Co’s obligations in respect of the Expiry Transition Works identified in the Final Facility Condition Report, following any withdrawal from the Escrow Account or call upon the Expiry Transition Security in accordance with Section 6.2 of this Schedule 24, Project Co shall have no further liability with respect to such Expiry Transition Works.
- 6.4 If no Expiry Transition Works are identified in the Final Facility Condition Report, HMQ Agencies shall, within 20 Business Days of receipt by HMQ Agencies of the Final Facility Condition Report, pay the funds in the Escrow Account (including any interest accrued) to Project Co and return the Expiry Transition Security to Project Co, unless HMQ Agencies dispute the Final Facility Condition Report, in which case the Escrow Account and Expiry Transition Security shall be dealt with as determined in accordance with Schedule 27 - Dispute Resolution Procedure.

**APPENDIX 5.21A
LIFECYCLE REPLACEMENT SCHEDULE**

See attached.

22694661.2

SCHEDULE 25

**INSURANCE AND PERFORMANCE
SECURITY REQUIREMENTS**

**ARTICLE 1
WORKS PHASE INSURANCE COVERAGE**

- 1.1 Subject to ARTICLE 8 of this Schedule 25, 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 Infrastructure Ontario Construction Insurance Program (IOCIP) the following insurances as further described in Appendix A to this Schedule 25:
- (a) “All Risks” Course of Construction Property, including Boiler and Machinery;
 - (b) “Wrap-Up” Commercial General Liability and Non-Owned Automobile Liability;
 - (c) Project Specific Professional Liability; and
 - (d) Project Specific Pollution Liability (combined Contractors’ Pollution Liability and Pollution Legal Liability).
- 1.2 Subject to ARTICLE 8 of this Schedule 25, 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) Automobile Liability;
 - (b) Commercial General Liability and Non-Owned Automobile Liability (to be maintained by the Construction Contractor and each of the Subcontractors involved in the Works) with respect to off-site operations and activities;
 - (c) Aircraft and Watercraft Liability (if any exposure);
 - (d) “All Risks” Marine Cargo (if any exposure);
 - (e) “All Risks” Contractors’ Equipment;
 - (f) Comprehensive Crime; and
 - (g) WSIB.

**ARTICLE 2
SERVICES PHASE INSURANCE COVERAGE**

- 2.1 Subject to ARTICLE 8 of this Schedule 25, from and after the Substantial Completion Date and until the Termination 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) “All Risks” Property;
 - (b) Boiler and Machinery;
 - (c) Commercial General Liability and Non-Owned Automobile Liability;
 - (d) Environmental Impairment (Pollution) Liability;
 - (e) Automobile Liability;
 - (f) Comprehensive Crime; and
 - (g) WSIB.

**ARTICLE 3
NO LIMIT ON RECOVERY**

- 3.1 Notwithstanding any other provision of 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 HMQ Agencies or by Project Co, shall in no way limit Project Co’s liability or obligations to HMQ Agencies or HMQ Agencies’ liability or obligations to Project Co, as applicable.

**ARTICLE 4
ADDITIONAL COVER**

- 4.1 Without prejudice to the other provisions of this Schedule 25, HMQ Agencies and Project Co shall, at all relevant times and at their own expense, obtain and maintain, or cause to be obtained and maintained, those insurances which they are required to obtain and maintain, or cause to be obtained and maintained, by Applicable Law, or that they consider necessary.
- 4.2 HMQ Agencies reserve the right to require Project Co to purchase such additional insurance coverage as HMQ Agencies may reasonably require. HMQ Agencies also reserve the right to request such higher or lower limits of insurance or otherwise alter the types of coverage requirements, their minimum amounts and deductibles (taking into consideration such matters as the nature of the Project Co Services and the Works, contract value, industry standards, and availability of insurance) as HMQ Agencies may reasonably require from time to time. Any additional costs of such additional and/or

amended insurance shall be borne by HMQ Agencies and any cost savings resulting from the implementation of such additional and/or amended insurance shall be for the account of HMQ Agencies.

**ARTICLE 5
RESPONSIBILITY FOR DEDUCTIBLES**

- 5.1 The Party responsible for the matter giving rise to a claim, to the extent responsible therefor, shall be responsible and liable for the payment of deductibles under any policy of insurance under which it is an insured party or under any policy of insurance Project Co is required to maintain (or cause to be maintained) under this Schedule 25. In the event that responsibility for the matter giving rise to the claim is indeterminable, the First Named Insured under the policy of insurance is responsible and liable for the payment of deductibles.

**ARTICLE 6
COOPERATION WITH INSURER’S CONSULTANT**

- 6.1 If an insurer or an insurer’s appointed consultant, for underwriting purposes or as a term of an insurance policy, needs to review any part of the performance of this Project Agreement, then HMQ Agencies and Project Co shall, and shall require the HMQ 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 HMQ Agencies (or, as applicable, and if reasonably required by the insurer, between Project Co and those engaged by or through Project Co).

**ARTICLE 7
BENCHMARKING OF INSURANCE COSTS**

- 7.1 For purposes of this Section 7, the following terms shall have the following meanings:
- (a) **“Actual Relevant Insurance Cost”** means the aggregate of (i) the annual insurance premiums reasonably incurred by Project Co to maintain (or cause to be maintained) the Relevant Insurance during the Insurance Review Period, but excluding Taxes and all broker’s fees and commissions.
 - (b) **“Base Relevant Insurance Cost”** means [REDACTED] for the first Insurance Review Period and, thereafter, means the aggregate of the annual insurance premiums which were projected (as set out in the Financial Model pursuant to RFP Schedule 3 – Part 2, Part F, Section 2.20 – Base Relevant Insurance Cost) to be incurred by Project Co to maintain (or cause to be maintained) the Relevant Insurance during the Insurance Review Period, which amounts exclude Taxes and all broker’s fees and commissions.

- (c) **“Insurance Cost Differential”** means an amount, based on the Joint Insurance Cost Report, equal to $(ARIC - BRIC) \pm PIC$ where:

ARIC is the Actual Relevant Insurance Cost;

BRIC is the Base Relevant Insurance Cost; and

PIC is any Project Insurance Change.

For the purpose of determining the Insurance Cost Differential, in the event that there is a net increase in the ARIC relative to the BRIC, the Project Insurance Change shall have a negative value and, in the event that there is a net decrease in the ARIC relative to the BRIC, the Project Insurance Change shall have a positive value.

- (d) **“Insurance Review Date”** means the Relevant Insurance Inception Date and thereafter each anniversary of the Relevant Insurance Inception Date, except where such date lies beyond the end of the Project Term, in which case the Insurance Review Date shall be the last renewal date of the Relevant Insurance and prior to the Expiry Date.

- (e) **“Insurance Review Period”** means a one year period from the Relevant Insurance Inception Date and each subsequent one year period commencing on the Relevant Insurance Inception Date, except where the end of such period lies beyond the end of the Project Term, in which case the Insurance Review Period shall be the period from the end of the penultimate Insurance Review Period to the last day of the Project Term.

- (f) **“Project Insurance Change”** means any net increase or net decrease in the Actual Relevant Insurance Cost relative to the Base Relevant Insurance Cost, arising from:

(i) other than in respect of claims or re-ratings arising out of acts or omissions of HMQ Agencies, an HMQ Party or an HMQ Service User (for greater certainty, other than as a consequence of a breach by Project Co of its obligations under this Project Agreement), the claims history or re-rating of Project Co or any Project Co Party;

(ii) the effect of any change in deductible unless:

(1) such change is attributable to circumstances generally prevailing in the worldwide insurance market; and

(2) the deductible, further to such change, is either greater than or equal to the maximum deductibles set out in this Schedule 25; and

- (3) in respect of the Relevant Insurance, such change is not attributable to claims made as the result of acts or omissions of Project Co or any Project Co Party; and
 - (iii) any other issue or factor other than circumstances generally prevailing in the worldwide insurance market.
 - (g) “**Relevant Insurance**” means all policies of insurance to be obtained (or caused to be obtained) by Project Co in accordance with ARTICLE 2 of this Schedule 25.
 - (h) “**Relevant Insurance Inception Date**” means the date on which the Relevant Insurance is first providing active insurance cover to Project Co and HMQ Agencies, respectively, being a date no earlier than the Substantial Completion Date.
- 7.2 No later than 60 days prior to each Insurance Review Date, Project Co’s insurance broker shall, at Project Co’s sole cost and expense, prepare a report on behalf of both Project Co and HMQ Agencies (the “**Joint Insurance Cost Report**”), which contains the following information for the relevant Insurance Review Period:
- (a) a full breakdown of the Actual Relevant Insurance Cost;
 - (b) a full breakdown of the Base Relevant Insurance Cost;
 - (c) an assessment and quantification of each Project Insurance Change, together with the reasons therefor;
 - (d) the opinion of Project Co’s insurance broker as to the reasons why the Actual Relevant Insurance Cost has varied from the Base Relevant Insurance Cost, specifying the impact of each of the factors and quantifying the amount attributable to each factor;
 - (e) the calculation of the Insurance Cost Differential; and
 - (f) evidence satisfactory to HMQ Agencies, acting reasonably, of any changes to circumstances generally prevailing in the worldwide insurance market that are claimed to account for the Insurance Cost Differential.
- 7.3 The Annual Service Payment will be subject to an adjustment in the amount of the Insurance Cost Differential (the “**Insurance Adjustment**”) in accordance with Schedule 20 – Payment Mechanism

**ARTICLE 8
UNINSURABLE RISKS**

- 8.1 The term “**Uninsurable Risk**” means a risk, or any component of a risk, against which Project Co is required to insure pursuant to this Schedule 25 and for which, at any time after the date of 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 insurer be licensed in the Province of Ontario to insure such a risk, by insurers licensed in the Province of Ontario; or
 - (ii) where Applicable Laws do not require that the insurer be licensed in the Province of Ontario to insure such a risk, by any insurer otherwise permitted under the terms of the Project Agreement; or
 - (b) the insurance premium payable or the terms and conditions for insuring that risk are such that the risk is not generally being insured against in the worldwide insurance market.
 - (c) Project Co has the onus of demonstrating, to HMQ Agencies’ reasonable satisfaction that the foregoing definition applies to a particular risk.
- 8.2 Project Co shall notify HMQ Agencies as soon as possible and, in any event, within 15 Business Days of becoming aware of same, that a risk, or any component of a risk, has become an Uninsurable Risk, and shall provide HMQ Agencies with all relevant details in relation to such risk, including a copy of the relevant insurance policy.
- 8.3 Project Co and HMQ Agencies shall, as soon as possible following the provision of the notice referred to in Section 8.2 of this Schedule 25, meet to discuss, in good faith, the appropriate means by which the Uninsurable Risk should be managed and, if Project Co and HMQ Agencies are able to agree to alternative arrangements, the Uninsurable Risk shall be managed in accordance with such alternative arrangements.
- 8.4 In the event that Project Co and HMQ Agencies, each acting in good faith, are unable to agree to alternative arrangements with respect to the management of an Uninsurable Risk within 15 Business Days of the expiry of the period referred to in Section 8.2 of this Schedule 25, HMQ Agencies 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 44.2 of the Project Agreement as if such termination had occurred as a result of the Parties having failed to reach agreement in accordance with Section 44.2 of the Project Agreement following the occurrence of an event of Force Majeure, and, in accordance with the provisions of Schedule 23 – Compensation on Termination, pay to Project Co an amount equal to the Non-Default Termination Sum.

8.5 On the occurrence of an Uninsurable Risk, HMQ Agencies may, in their 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 44.2 of the Project Agreement as if such termination had occurred as a result of the Parties having failed to reach agreement in accordance with Section 44.2 of the Project Agreement following the occurrence of an event of Force Majeure, and, in accordance with the provisions of Schedule 23 – Compensation on Termination, pay to Project Co an amount equal to the Non-Default Termination Sum.

8.6 With respect to any Uninsurable Risk:

- (a) Project Co shall continue to approach the insurance market on a regular basis and, in any event, at intervals of not less than 180 days and use reasonable efforts to obtain (or cause to be obtained) insurance to cover as much or all of the Uninsurable Risk as can be insured in the available insurance market from time to time; and
- (b) Subject to Section 8.6(a) of this Schedule 25, Project Co shall be relieved of its obligation to maintain (or cause to be maintained) insurance in respect of the Uninsurable Risk.

8.7 Where a risk which was previously an Uninsurable Risk ceases to be so, Project Co shall, at its own expense, obtain and maintain, or cause to be obtained and maintained, insurance in accordance with the requirements of this Schedule 25 in respect of the risk and the provisions of this Article 8 shall no longer apply to such risk.

8.8 From and after the Substantial Completion Date, the Parties shall meet on an annual basis to review the scope of insurance coverage and deductibles provided in this Schedule 25, and may make mutually agreed changes thereto.

**ARTICLE 9
TOTAL OR SUBSTANTIAL DESTRUCTION**

- 9.1 In the event of damage to, or destruction of, all or substantially all of the Facility 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 Facility or any other assets, materials or goods necessary or desirable for the carrying out of the Project Operations, all in accordance with the terms of the Insurance Trust Agreement.

**ARTICLE 10
SUBCONTRACTORS**

- 10.1 Project Co shall require that all Subcontractors are covered by, or obtain, the insurance described in this Schedule 25, provided that Project Co shall determine the applicable limits to be obtained for such insurance. Project Co shall be solely responsible and liable for any damages which HMQ Agencies may suffer as a direct result of Project Co's failure to comply with the foregoing.
- 10.2 If Project Co receives notice that any Subcontractor employed by or through Project Co is not covered by any insurance required by this Schedule 25 to be obtained (or caused to be obtained) by Project Co, Project Co shall:
- (a) ensure that such insurance coverage is put in place;
 - (b) remove the Subcontractor from the Site and ensure that such Subcontractor does not perform any further part of the Project Operations until after such insurance coverage is put in place; or
 - (c) if the Subcontractor cannot be covered by a particular policy as required by this Schedule 25, replace the Subcontractor with a new Subcontractor who can be covered by insurance required by this Schedule 25 or who can obtain the required insurance coverage; it being acknowledged by Project Co that the requirements and restrictions set forth in the Project Agreement regarding new and replaced Subcontractors shall be complied with.

**ARTICLE 11
RENEWAL**

- 11.1 Project Co shall provide to HMQ Agencies, at least 5 Business Days prior to the expiry date of any policy of insurance required to be obtained (or caused to be obtained) by Project Co pursuant to this Schedule 25, evidence of the renewal of each such policy satisfactory to HMQ Agencies, acting reasonably.

**ARTICLE 12
NAMED AND ADDITIONAL INSUREDS AND WAIVER OF SUBROGATION**

- 12.1 All insurance provided by Project Co shall:
- (a) include Project Co, HMQ Agencies, HMQ Occupants, Non-HMQ Occupants as Named Insureds to the extent specified in Appendix A of this Schedule 25;
 - (b) include HMQ Agencies, HMQ Occupants, Non-HMQ Occupants and the Lenders' and the Lenders' Agent as Additional Insureds, or loss payees to the extent of their respective insurable interests specified in Appendix A of this Schedule 25;
 - (c) except with respect to the Project Specific Professional Liability specified in Part 1 of Appendix A to this Schedule 25 and Automobile Liability, Comprehensive Crime and WSIB specified in Parts 1 and 2 of Appendix A to this Schedule 25, contain a waiver of subrogation as against HMQ Agencies, the HMQ Parties and their respective shareholders, officials, directors, officers, employees, servants, consultants (other than Design Consultants) and agents;
 - (d) with respect to "All Risks" Course of Construction Property, including Boiler and Machinery insurance specified in Part 1 of Appendix A to this Schedule 25, contain a waiver of subrogation as against HMQ Occupants, Non-HMQ Occupants and their respective shareholders, officials, directors, officers, employees, servants, consultants and agents.
 - (e) contain a breach of warranty provision whereby a breach of a condition by Project Co will not eliminate or reduce coverage for any other insured; and
 - (f) to the extent HMQ Agencies, HMQ Occupants, and Non-HMQ Occupants are Named Insureds (as specified in Appendix A of this Schedule 25) or Additional Insureds or loss payees (as specified in Appendix A of this Schedule 25), be primary insurance with respect to any similar coverage provided by any insurance obtained by or available to HMQ Agencies, HMQ Occupants and Non-HMQ Occupants without any right of contribution of any insurance carried by HMQ Agencies, HMQ Occupants and Non-HMQ Occupants.

**ARTICLE 13
CERTIFICATES OF INSURANCE AND CERTIFIED COPIES OF POLICIES**

- 13.1 Prior to the commencement of any part of the Works, Project Co will provide HMQ Agencies with certified copies of policies, confirming that the insurances specified in Section 1.1 have been obtained and are in full force and effect.
- 13.2 Prior to the commencement of any part of the Works, Project Co will provide HMQ Agencies 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 HMQ Agencies no later than 90 days after execution of this Project Agreement.

- 13.3 Prior to the commencement of any part of the Project Co Services, Project Co will provide HMQ Agencies with certificates of insurance or certified copies of policies, confirming that the insurances specified in Section 2.1 have been obtained and are in full force and effect. If certificates of insurance are provided, certified copies of the entire contents of all relevant insurance policies will subsequently be provided to HMQ Agencies no later than 90 days after the Substantial Completion Date; however specimen wordings of all such insurance policies, along with the corresponding summary of coverage, limits and deductibles, must be provided to HMQ Agencies no later than 90 days prior to the Substantial Completion Date.

**ARTICLE 14
FAILURE TO MEET INSURANCE REQUIREMENTS**

- 14.1 If Project Co fails to obtain or maintain, or cause to be obtained and maintained, the insurance required by this Schedule 25, fails to furnish to HMQ Agencies 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 HMQ Agencies 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 HMQ Agencies' option, be payable by Project Co to HMQ Agencies on demand or be deducted by HMQ Agencies from the next payment or payments otherwise due to Project Co.
- 14.2 If coverage under any insurance policy required to be obtained (or caused to be obtained) by Project Co should lapse, be terminated or be cancelled, then, if directed by HMQ Agencies, all work by Project Co shall immediately cease until satisfactory evidence of renewal is produced.

**ARTICLE 15
MODIFICATION OR CANCELLATION OF POLICIES**

- 15.1 Except as noted in Appendix A 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 HMQ Agencies and the Lenders' Agent. For greater certainty, the terms "adversely reduced", "adversely materially altered" and "adversely materially amended" as used in this provision shall mean any decrease or reduction in policy limits, aggregate limits or sub-limits (other than as a result of claims under the policy), any increase in any policy deductible or self-insured retention, any reduction in the policy coverage period, cancellation or suspension of coverage with respect to any insured parties from the time the policy was issued for that policy period, addition of any exclusions or restrictions from the time the policy was issued for that policy period and any reduction or restriction in the scope of coverage provided under the policy, in all

- cases when such adverse reduction, adverse material alteration or adverse material amendment is initiated by the insurer.
- 15.2 All insurance provided by Project Co shall contain endorsements confirming that, in the event of cancellation for non-payment of premium, the insurer(s) will give at least fifteen (15) days prior written notice by registered mail, at the address specified, to HMQ Agencies and the Lenders' Agent.
- 15.3 With respect to Services Phase insurances, only notice of cancellation will be required for the Automobile Liability and Comprehensive Crime described in Part 2 of Appendix A to this Schedule 25.
- 15.4 With respect to insurances described in Section 1.1(a), (b) and (d), Section 1.2(d) and Section 2.1(a), (b), (c) and (d), breach of any of the terms or conditions of the policies required to be provided by Project Co, or any negligence or wilful act or omission or false representation by an Insured under these policies, shall not invalidate the insurance with respect to HMQ Agencies, HMQ Occupants and the Non-HMQ Occupants, the Lenders or any other Insured, but only to the extent that such breach is not known to these parties.

**ARTICLE 16
INSURERS**

- 16.1 All policies of insurance to be obtained (or caused to be obtained) by Project Co in accordance with this Schedule 25 shall be issued by financially sound insurers acceptable to HMQ Agencies and Lenders, acting reasonably, and, where required by statute, be licensed to insure such risk in the Province of Ontario.
- 16.2 To be eligible to provide insurance, an insurer must have the capacity to provide the particular insurance and shall have current ratings from time to time of either:
- (a) a Financial Strength Rating of not lower than "A-" for three out of the previous five years but not lower than "B" at any time during those five years, and a Financial Size Category not lower than VII, such ratings being those established by A.M. Best Company (**Best**); or
 - (b) a Long-Term Financial Strength Rating of not lower than "A-" for three out of the past five years but not less than "BBB" at any time during those five years, a Short-Term Financial Strength Rating of not lower than "A-3" for three out of the previous five years and a Financial Enhancement Rating of not lower than "A-" for three out of the previous five years but not less than "BB+" at any time during those five years, such ratings being those established by Standard and Poor's (**S&P**); or
 - (c) if the insurer is not rated by Best or S&P, an insurer that is acceptable to HMQ Agencies and Lenders, acting reasonably, with respect to the insurances required by this Schedule 25.

**ARTICLE 17
POLICY TERMS AND CONDITIONS**

- 17.1 All policies of insurance to be obtained (or caused to be obtained) by Project Co in accordance with this Schedule 25 shall be in form and substance satisfactory to HMQ Agencies and their insurance advisors, acting reasonably.
- 17.2 To achieve the minimum limits for any type of insurance required under Appendix A, it is permissible to arrange the insurance under a single policy, or by a combination of primary, umbrella and/or excess policies.

**ARTICLE 18
FAILURE TO COMPLY**

- 18.1 Neither failure to comply 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.

**ARTICLE 19
PERFORMANCE SECURITY REQUIREMENTS**

[REDACTED]

**ARTICLE 20
INSURANCE TRUST AGREEMENT**

- 20.1 All losses under (i) the “All Risks” Course of Construction Property Insurance policy, including Boiler & Machinery Insurance carried by Project Co prior to Substantial Completion; (ii) the Property Insurance carried by Project Co after Substantial Completion; and (iii) the Boiler and Machinery Insurance carried by Project Co after Substantial Completion, which, in each case, relate to FF&E purchased by HMQ Agencies or HMQ Occupants, as applicable, shall be payable solely to HMQ Agencies and shall not be payable to the Account Trustee or distributed pursuant to the Insurance Trust Agreement.

Appendix A – Insurance Requirements

East Rail Maintenance Facility Project

Works Phase Insurance – Part 1 East Rail Maintenance Facility Project

From First Access to Site until Substantial Completion Date (Insurance for Works Phase)

Insurances to be provided, or caused to be provided, by Project Co and arranged through the IOCIP program

| Type | Amount | Maximum Deductible | Principal Cover | Estimated Premium |
|---|--|--|--|-------------------|
| “All Risks” Course of Construction Property Including Boiler and Machinery | Value declared to be equal to the estimated completed Project value of the Facility, including Property of Every Description, all FF&E and all other property for incorporation into the Facility. Delay in Start-up [REDACTED], covering an 18 month indemnity period, including Contingent Delayed Start-Up re losses at Suppliers’ or Manufacturers’ premises, or other temporary storage locations ([REDACTED] sub-limit with respect to Contingent Delay in Start-Up) Soft Costs [REDACTED] (representing 100% of Recurring / Continuing Soft Costs) Extra and Expediting Expense (minimum [REDACTED]sub-limit) Principal Extensions: <ul style="list-style-type: none"> • Replacement Cost Valuation (Property) • Most Recent Technology Replacement Cost Valuation (Equipment or Machinery) | 3% of loss value / [REDACTED] minimum Earthquake [REDACTED] Flood [REDACTED] Testing and Commissioning [REDACTED] All other losses 30 days waiting period applicable to time element coverages 48 hour waiting period applicable to Off Premises Services Service Interruption | “All Risks” Course of Construction Property Insurance covering the full insurable replacement cost of the Works including cold and hot testing / commissioning, of Boiler & Machinery equipment, including HVAC, Delay in Start-Up, Soft Costs, with no early occupancy restriction. This coverage shall be primary with respect to the Facility without right of contribution of any insurance carried by HMQ Agencies or the Lenders. | TBD |

| Type | Amount | Maximum Deductible | Principal Cover | Estimated Premium |
|------|--|--------------------|-----------------|-------------------|
| | <ul style="list-style-type: none"> • Flood (to policy limit with annual aggregate) • Natural or man-made earth movement, including earthquake, landslide or subsidence (to policy limit with annual aggregate) • Electronic Data Processing equipment and media, including data restoration and re-creation costs • Transit • Unnamed locations • By-laws including Demolition, Increased Cost of Repairs and Replacement (subject to a [REDACTED] sub-limit only with respect to existing or renovated buildings) • Debris Removal (minimum [REDACTED] sub-limit) • Off Premises Services ([REDACTED] sub-limit) • Professional Fees (minimum [REDACTED] sub-limit) • Fire Fighting Expenses (minimum [REDACTED] limit) • Radioactive contamination caused by sudden and accidental release of radioactive isotopes (resulting from an accident to measuring, testing or medical | | | |

| Type | Amount | Maximum Deductible | Principal Cover | Estimated Premium |
|------|--|--------------------|-----------------|-------------------|
| | <ul style="list-style-type: none"> equipment and subject to a [REDACTED] sub-limit • Valuable Papers (minimum [REDACTED] sub-limit) • Accounts Receivable (minimum [REDACTED] sub-limit) • Green Building and LEED Upgrades (subject to a [REDACTED] sub-limit) • Defence Costs (subject to a [REDACTED] sub-limit) • Contamination Clean-up or Removal (minimum [REDACTED] sub-limit) • Ammonia Contamination (minimum [REDACTED] sub-limit) • LEED Recertification, Commissioning and Testing Expenses (subject to a [REDACTED] sub-limit) • Civil Authority Access Interruption (8 weeks) • Prevention of Ingress/Egress (8 weeks) • Permission for Partial Occupancy prior to Substantial Completion • Off Premises Services Interruption • Cost of Carrying Project Financing (18 Months), included in Delayed Start-Up or Soft Costs coverage | | | |

| Type | Amount | Maximum Deductible | Principal Cover | Estimated Premium |
|-----------------|--|--------------------|-----------------|-------------------|
| | <ul style="list-style-type: none"> • Margin of Profit Extension for Contractors • Testing and Commissioning (120 days) | | | |
| | <p>Permitted Exclusions:</p> <ul style="list-style-type: none"> • Cyber risk • Mould, fungi and fungal derivatives • Faulty workmanship, materials construction, or design but resultant damage to be insured to a minimum DE4 standard • War risk • Terrorism • Nuclear or radioactive contamination, except re radioactive isotopes intended for scientific, medical, industrial or commercial use • Contractors' Equipment | | | |
| <i>Comments</i> | <ul style="list-style-type: none"> • Named Insured includes Project Co, Lenders, Lender's Agent, the Construction Contractor, subcontractors, sub-subcontractors, consultants, and sub-consultants, HMQ Agencies and HMQ Occupants as their respective interests may appear. • No provision permitted allowing a coinsurance penalty • Insurance shall be primary without right of contribution of any other insurance carried by any Named Insured • Additional key extensions of coverage: <ul style="list-style-type: none"> – Underground services, temporary works involved in the Project such as scaffolding, hoarding, etc., site preparation, including excavation and associated improvements, landscaping and property of others used in the construction of the Project – All loss proceeds payable in accordance with the Insurance Trust Agreement – Upon Substantial Completion, coverage will cease with respect to the Facility and be replaced by Property and Boiler & Machinery insurance – Services Phase for the entire Facility | | | |

- Waiver of Subrogation against all Named and Unnamed Insureds, including but not limited to Project Co, HMQ Agencies, HMQ Occupants, contractors, subcontractors, professional consultants (other than for their professional liability), Lenders, Lenders' Agent, as well as officers, directors and employees, servants, and agents of the foregoing
- Frost or freezing to concrete – but only resultant damage from a peril not otherwise excluded
- Liberalization Clause
- Errors and Omissions
- Breach of Conditions
- Interim Payments Clause

Underwriters Principal underwriters in compliance with Article 16 of this Schedule.

East Rail Maintenance Facility Project

Works Phase Insurance – Part 1 East Rail Maintenance Facility Project

From First Access to Site until Substantial Completion Date (Insurance for Works Phase)

Insurances to be provided, or caused to be provided, by Project Co and arranged through the IOCIP program

| Type | Amount | Maximum Deductible | Principal Cover | Estimated Premium |
|--|--|--|--|-------------------|
| Wrap-Up Commercial General Liability and Non-Owned Automobile Liability | <p>[REDACTED] each occurrence, and in the aggregate with respect to Broad Form Products and Completed Operations</p> <p>Sub-limits:</p> <ul style="list-style-type: none"> • [REDACTED] Non-Owned Automobile Liability • [REDACTED] Sudden and Accidental Pollution and Hostile Fire Pollution Liability • [REDACTED] “All Risks” Tenants’ Legal Liability • [REDACTED] Prairie or Forest Fire Fighting Expenses • [REDACTED] Employee Benefits Administrative Errors and Omissions • [REDACTED] Contractors Rework • [REDACTED] Legal Liability for Damages To Non-owned Automobiles (SEF 94) • [REDACTED] Medical Payments | <p>[REDACTED] per occurrence</p> <p>[REDACTED] per claim with respect to Contractors Rework</p> <p>[REDACTED] per claim with respect to each of SEF 94, Tenants’ Legal Liability, Prairie or Forest Fire Fighting Expenses and Employee Benefits Administrative Errors and Omissions</p> | <p>Wrap-Up Commercial General Liability and Non-Owned Automobile Liability insurance covering all construction operations on an occurrence basis against claims for Bodily Injury (including Death), Personal Injury, Property Damage (including Loss of Use), and including Products and Completed Operations Liability extension for a period of not less than 24 months, effective from the date of Substantial Completion.</p> <p>Coverage shall be maintained continuously from the date of the first activities at the Site, until the Substantial Completion Date, at which time the Products and Completed Operations extension will take effect.</p> <p>Pollution Liability – Sudden and Accidental Pollution coverage to be not less than IBC 2313 form (240 hours detection/240 hours’ notice coverage structure). To include Hostile Fire extension.</p> <p>This coverage shall be primary with respect to the Facility without right of contribution of any insurance carried by HMQ Agencies or the Lenders.</p> | |

| Type | Amount | Maximum Deductible | Principal Cover | Estimated Premium |
|------|--------|--------------------|---|-------------------|
| | | | Principal Extensions: <ul style="list-style-type: none"> • Owner’s and Contractor’s Protective • Blanket Contractual (written and oral) • Direct and Contingent Employers Liability • Employee Benefits Administrative Errors and Omissions • Personal Injury (nil participation) • Cross Liability and Severability of Interest with respect to each insured party • Blasting / demolition / excavating / under-pinning / pile driving / shoring / caisson work / work below ground surface / tunnelling / grading, and similar operations associated with the Works, as applicable • Elevator and Hoist Collision Liability • Liberalized Notice of Claim Requirement, i.e., requirement to report will commence when knowledge is held by a designated Project person(s) – to be identified by Project Co • Non-Owned Automobile Liability | |

| Type | Amount | Maximum Deductible | Principal Cover | Estimated Premium |
|--|--------|--------------------|-----------------|-------------------|
| <ul style="list-style-type: none"> • Tenants’ Legal Liability (All Risks) – subject to sub-limit • Medical Expenses – subject to sub-limit • Prairie or Forest Fire Fighting Expenses – subject to sub-limit • Sudden and Accidental Pollution – subject to sub-limit • Permission for Unlicensed Vehicles (partial road use) • Unlicensed Equipment • Loss of Use Without Property Damage • Loading and Unloading of Automobiles • Broad Form Property Damage • Broad Form Completed Operations • Intentional Injury, committed to Protect Persons or Property • Accident Benefits • Worldwide Territory, subject to suits being brought in Canada or the US | | | | |
| <p>Permitted Exclusions:</p> | | | | |
| <ul style="list-style-type: none"> • Injury to employees, where WSIB provides valid coverage • Property in the care, custody | | | | |

| Type | Amount | Maximum Deductible | Principal Cover | Estimated Premium |
|------------------------|--|--------------------|-----------------|-------------------|
| | <p>or control of the insured, except as provided under Broad Form Products and Completed Operations extension period</p> <ul style="list-style-type: none"> • Operation of licensed motor vehicles, other than attached machinery while used for its purpose, or at the Project Site • Physical damage to the Project, except during Broad Form Products and Completed Operations extension period • Cyber risk • Mould, fungi and fungal derivatives • Professional liability of engineers, architects, and other professional consultants • Nuclear or radioactive contamination, except release radioactive isotopes intended for scientific, medical, industrial or commercial use | | | |
| <p><i>Comments</i></p> | <ul style="list-style-type: none"> • Named Insured includes Project Co and its Affiliates, HMQ Agencies, HMQ Occupants, the Lenders, Project Co Parties involved in the Works, including all other contractors, subcontractors, sub-subcontractors, suppliers while working on Site, tradesmen while working on Site, engineers, architects, consultants and sub-consultants (other than for professional liability), others as Additional Insureds, as may be required from time to time, arising from all operations and activities pertaining to the Works and the control and use of the Site • Directors, officers, shareholders, employees of the insured parties involved in the Works covered as Additional Insureds • Canadian National Railway Company will be identified as an Additional Insured • Insurance primary without right of contribution of any other insurance carried by any Named Insured • Aggregate limits will be permitted for Products and Completed Operations, Prairie and Forest Fire Fighting Expenses, Sudden and Accidental and Hostile Fire Pollution Liability and Employee Benefits Administrative Errors & Omissions Liability; no policy general | | | |

aggregate will be permitted

- Professional service activities integral to the Project, but not covering engineers, architects or other professional consultants, i.e., incidental professional liability risk of a Named Insured and their employed professionals is to be covered, but not the professional liability of independent fee-for-service professional consultants, architects or engineers
- Waiver of Subrogation of insurers' rights of recovery, against all Named and/or Additional Insureds, including Project Co, HMQ Agencies, HMQ Occupants, contractors, subcontractors or sub-subcontractors; professional consultants, engineers and architects (other than for their professional liability), Lenders, Lenders' Agent, as well as officers, directors, employees, servants and agents of the foregoing

Underwriters Principal underwriters in compliance with Article 16 of this Schedule.

East Rail Maintenance Facility Project

Works Phase Insurance – Part 1 East Rail Maintenance Facility Project

From First Access to Site until Substantial Completion Date (Insurance for Works Phase)

Insurances to be provided, or caused to be provided, by Project Co and arranged through the IOCIP program

| Type | Amount | Maximum Self-Insured Retention | Principal Cover | Estimated Premium |
|--|---|--------------------------------|--|-------------------|
| Project Specific Professional Liability | [REDACTED] per claim / [REDACTED] in the aggregate (inclusive of defense and related costs and supplementary payments). | [REDACTED] per claim | Project Specific Professional Liability Insurance in connection with the design and construction of the Project from beginning of first design, through the entire construction period, to Substantial Completion plus coverage for an extended reporting period of not less than 36 months. This coverage shall be primary with respect to the Facility without right of contribution of any insurance carried by HMQ Agencies or the Lenders. | |
| | Principal Extensions: | | | |
| | <ul style="list-style-type: none"> • Primary Insurance extension • Automatic addition of firms • Present, former partner, executive officer, director or shareholder of Named Insureds while acting within their scope of duties for the Named Insured • Any individuals or personal corporations retained by the Named Insured under a personal services contract • Claim defined as a written or oral demand for money or a written or oral allegation in breach in the rendering or failure to render professional services received by the Insured or Named Insured and resulting from a single error, omission or negligent act • Lawyer fees and associated | | | |

| Type | Amount | Maximum Self-Insured Retention | Principal Cover | Estimated Premium |
|------|--|--------------------------------|-----------------|-------------------|
| | <p>expenses incurred in the investigation, defence, settlement, arbitration or litigation of claims</p> <ul style="list-style-type: none"> • Duty to defend, even if the allegations are groundless, false or fraudulent • Worldwide Territory, subject to suits brought in Canada <p>Permitted Exclusions:</p> <ul style="list-style-type: none"> • Express warranties or guarantees • Estimates on profit, return • Faulty workmanship, construction or work which is alleged or in fact not constructed in accordance with the design of the Project or the construction documents • Design or manufacture of any good or products sold or supplied by the Named Insured • Terrorism • Nuclear Liability • Judgments and awards deemed uninsurable by law • Liability assumed under design contract, unless such liability would have attached to the Named Insured by law in the absence of such agreement | | | |

| Type | Amount | Maximum Self-Insured Retention | Principal Cover | Estimated Premium |
|---------------------|--|--------------------------------|-----------------|-------------------|
| | <ul style="list-style-type: none"> • Punitive or exemplary damages, fines, penalties or interest or liquidated punitive or exemplary damages or fees • Refusal to employ, termination of employment, humiliation or discrimination on any basis or other employment related practices or policies | | | |
| <i>Comments</i> | <ul style="list-style-type: none"> • Named Insured: Construction Contractor (as appropriate), all engineers, architects, and other professional consultants that provide professional design services in connection with the Project • Professional Services covered: Including but not limited to all architectural, engineering, land surveying, environmental, landscape architectural, interior design/space planning, soil and material testing services, geotechnical services and procurement services, including their replacements and/or sub-consultants of any tier • Retroactive Date: Full retroactive coverage from date of first design activity • Policy to be non-cancellable except for premium non-payment, material misrepresentation or concealment of facts, or a material breach of any condition of the policy | | | |
| Underwriters | Principal underwriters in compliance with Article 16 of this Schedule. | | | |

East Rail Maintenance Facility Project

Works Phase Insurance – Part 1 East Rail Maintenance Facility Project

From First Access to Site until Substantial Completion Date (Insurance for Works Phase)

Insurances to be provided, or caused to be provided, by Project Co and arranged through the IOCIP program

| Type | Amount | Maximum Deductible | Principal Cover | Estimated Premium |
|---|---|---|--|-------------------|
| <p>Project Specific Pollution Liability (combined Contractors' Pollution Liability and Pollution Legal Liability):</p> <p>Combined Limit subject to Commercial Pollution Legal Liability with a minimum [REDACTED] sub-limit</p> | <p>[REDACTED] per claim and in the aggregate for all claims, inclusive of defense and all costs and expenses</p> <p>[REDACTED] per claim and in the aggregate for all claims, inclusive of defense and all costs and expenses</p> <p>Principal Extensions:</p> <ul style="list-style-type: none"> • Hazardous Substances occurring at or emanating from the Facility or Site during the Policy Period • Microbial Matter (including Fungus/Mould) • Underground / above ground storage tanks • First Party Restoration and Clean-up Costs • Disposal Site Extension, including Transportation (reporting required) • Duty to Defend • Canada and US Territory • Contractual Liability • Emergency Response Costs | <p>[REDACTED] per claim inclusive of defense and all costs and expenses</p> | <p>Pollution Liability insurance covering third party bodily injury, property damage consequential loss or damage, including clean-up and restoration costs, both at the Site and Off-Site, as required.</p> <p>Extended Reporting Period: Minimum of 36 months after Substantial Completion Date.</p> <p>This coverage shall be primary with respect to the Facility without right of contribution of any insurance carried by HMQ Agencies or the Lenders.</p> | |

| Type | Amount | Maximum Deductible | Principal Cover | Estimated Premium |
|---------------------|--|--------------------|-----------------|-------------------|
| | Permitted Exclusions: <ul style="list-style-type: none"> • Terrorism • War • Intentional Non-compliance • Prior Knowledge/Known Conditions • WSIB • Employers' Liability • Professional Liability • Nuclear Liability • Property Damage to Motor Vehicles during Transportation | | | |
| <i>Comments</i> | <ul style="list-style-type: none"> • Named Insured will include Project Co, its Affiliates, Project Co Parties and all other parties engaged in the Works, including contractors, subcontractors, sub-subcontractors, consultants and sub-consultants • HMQ Agencies, HMQ Occupants and the Lenders will be identified as additional insureds, or insured clients of Project Co and its Affiliates • The directors, officers, shareholders, and employees of the foregoing shall be additional insureds | | | |
| Underwriters | Principal underwriters in compliance with Article 16 of this Schedule. | | | |

East Rail Maintenance Facility Project

Works Phase Insurance – Part 1 East Rail Maintenance Facility Project

From First Access to Site until Substantial Completion Date (Insurance for Works Phase)

Insurances to be provided, or caused to be provided, by Project Co

| Type | Amount | Maximum Deductible | Principal Cover | Estimated Premium |
|--|---|--------------------|--|-------------------|
| Automobile Liability | <p>[REDACTED] (Minimum) for Project Co and Project Co’s Construction Contractor vehicles</p> <p>[REDACTED] (Minimum) for vehicles of any other contractor, subcontractors, sub-subcontractors, consultants, and sub-consultants, and workmen, tradesmen, or other persons working on or at the Site</p> | | <p>Standard Ontario Owners Form For all vehicles operated by Project Co, Contractor, all subcontractors, sub-subcontractors, consultants, and sub-consultants, operated in connection with the Project.</p> <p>Business Automobile Liability insurance covering third party property damage and bodily injury liability (including accident benefits) arising out of any licensed vehicle.</p> <p>Policies shall be endorsed to preclude cancellation, except upon 60 days prior written notice provided to HMQ Agencies and the Lenders.</p> | |
| Commercial General Liability and Non-Owned Automobile Liability | <p>[REDACTED] each occurrence, and in the annual aggregate with respect to Broad Form Products and Completed Operations for Project Co and Project Co’s Construction Contractor</p> <p>[REDACTED] each occurrence, and in the annual aggregate with respect to Broad Form Completed Operations for any other contractor, subcontractors, sub-subcontractors, consultants, and sub-consultants, and workmen, tradesmen, or other persons involved in the Works</p> <p>In both instances, limits of liability may be structured as any combination of Primary plus supplementary layers and Umbrella and/or</p> | | <p>Commercial General Liability insurance covering all operations on an occurrence basis against claims for Bodily Injury (including Death), Broad Form Property Damage (including Loss of Use), and including Broad Form Products and Completed Operations Liability.</p> <p>This Commercial General Liability Insurance will cover Off-Site activities connected to the Project and Products and Completed Operations Liability beyond the “Wrap-Up” Commercial General Liability Insurance policy’s Products and Completed Operations extension period.</p> | |

| Type | Amount | Maximum Deductible | Principal Cover | Estimated Premium |
|---|--|--------------------|---|-------------------|
| and Contingent Employers Liability, Products and Completed Operations Liability, and Owner’s and Contractor’s Protective extensions | <p>Excess, or Primary plus Umbrella and/or Excess</p> <p>Sub-limits (Project Co and Project Co’s Construction Contractor):</p> <ul style="list-style-type: none"> • Full policy limits with respect to Non-Owned Automobile Liability • [REDACTED] Prairie or Forest Fire Fighting Expenses <p>Principal Extensions (required to be provided by the Project Co. and its Construction Contractor; shall be endeavoured to be provided by any other contractor, subcontractors, sub-subcontractors, consultants, and sub-consultants, and workmen, tradesmen, or other persons involved in the Works):</p> <ul style="list-style-type: none"> • Owner’s and Contractor’s Protective • Blanket Contractual (written) • Direct and Contingent Employers Liability • Personal Injury (nil participation) • Cross Liability and Severability of Interest with respect to each insured party • Blasting/demolition/excavating/underpinning/pile driving/shoring/caisson work/work below ground surface/tunnelling/grading, and similar operations associated with the Works as applicable • Elevator and Hoist Collision Liability • Non-Owned Automobile Liability • Prairie or Forest Fire Fighting Expenses – subject to sub-limit | | <p>This insurance shall be maintained in effect, during the Works phase until twelve (12) months following the earlier of the termination of the insured’s person’s involvement in the Works and the date of issuance of the Substantial Completion Certificate for the Works.</p> <p>Policies shall be endorsed to preclude cancellation, except upon 90 days prior written notice provided to HMQ Agencies and the Lenders.</p> | |

| Type | Amount | Maximum Deductible | Principal Cover | Estimated Premium |
|--|--------|--------------------|-----------------|-------------------|
| <ul style="list-style-type: none"> • Permission for Unlicensed Vehicles’ (partial road use) • Unlicensed Equipment • Loss of Use Without Property Damage • Loading and Unloading of Automobiles • Broad Form Property Damage • Broad Form Completed Operations • Intentional Injury, committed to Protect Persons or Property • Worldwide Territory, subject to suits being brought in Canada or the US | | | | |
| <p>Permitted Exclusions:</p> | | | | |
| <ul style="list-style-type: none"> • Injury to employees, where WSIB provides valid coverage • Property in the care, custody or control of the insured, except as provided under Broad Form Products and Completed Operations extension period • Operation of licensed motor vehicles, other than attached machinery while used for its purpose, or at the Project Site • Physical damage to the Project, except during Broad Form Products and Completed Operations extension period • Cyber risk • Mould, fungi and fungal derivatives • Professional liability of engineers, architects, and other professional consultants • Nuclear or radioactive contamination, except release of radioactive isotopes intended for scientific, medical, industrial or commercial use | | | | |

| Type | Amount | Maximum Deductible | Principal Cover | Estimated Premium |
|---|---|--------------------|---|-------------------|
| • | | | | |
| <hr/> | | | | |
| <i>Comments</i> | | | | |
| <ul style="list-style-type: none"> • HMQ Agencies and the Lenders will be identified as additional insurers, or insured clients of Project Co and its Affiliates • Canadian National Railway Company will be identified as an Additional Insured | | | | |
| Aircraft and Watercraft Liability | Minimum [REDACTED] inclusive, including [REDACTED] passenger hazard – Owned Aircraft | To be determined | Policies shall be endorsed to preclude cancellation, except upon 90 days prior written notice provided to HMQ Agencies, and the Lenders. | |
| (If any exposure) | Minimum [REDACTED] inclusive – Non-Owned Aircraft Minimum [REDACTED] inclusive Owned or Non-Owned Watercraft | | | |
| <hr/> | | | | |
| <i>Comments</i> | | | | |
| <ul style="list-style-type: none"> • HMQ Agencies and the Lenders will be identified as additional insureds, or insured clients of Project Co and its Affiliates | | | | |
| “All Risks” Ocean Marine Cargo | 100% Replacement Cost Valuation basis | [REDACTED] | Property of Every description destined for incorporation into the Facility, during marine transit, on a full replacement value basis, with no co-insurance provision. | |
| (If any exposure) | | | This coverage shall be primary with respect to the Facility without right of contribution of any insurance carried by HMQ Agencies or the Lenders. | |
| <hr/> | | | | |
| <i>Comments</i> | | | | |
| <ul style="list-style-type: none"> • Named Insured includes Project Co, HMQ Agencies, Lenders, Lender’s Agent, the Construction Contractor, subcontractors, sub-subcontractors, consultants, and sub-consultants as their respective interests may appear. | | | | |

| Type | Amount | Maximum Deductible | Principal Cover | Estimated Premium |
|--|---|--------------------|--|-------------------|
| <p>“All Risks” Contractors’ Equipment</p> <p>To cover Project Co, contractors, subcontractors, sub-subcontractors, consultants and sub-consultants</p> | <p>If Site equipment is three years old or less the sum insured shall be equal to 100% of the replacement value of all contractors’ equipment used at the Project. If Site equipment is more than three years old, actual cash value basis of loss settlement is acceptable</p> | | <p>All Risks coverage on all owned, rented, leased or borrowed contractors’ equipment, used at the Project Site.</p> | |
| <p><i>Comments</i></p> <ul style="list-style-type: none"> Waiver of Subrogation rights against Project Co, HMQ Agencies, HMQ Occupants, Construction Contractor, subcontractors, sub-subcontractors, consultants, sub-consultants, Lenders, Lenders’ Agent, as well as officers, directors, shareholders and employees of the foregoing | | | | |
| <p>Comprehensive Crime</p> | <p>[REDACTED] per loss with respect to Employee Dishonesty</p> | | <p>Comprehensive Crime insurance, including coverage for Employee Dishonesty insurance against the fraudulent/dishonest acts of employees of Project Co and its Affiliates coverage for Broad Form Money and Securities, Money Orders and Counterfeit Paper, Depositors’ Forgery, Computer Fraud and Funds Transfer Fraud, Audit Expenses and Credit Card Forgery.</p> <p>Custodial endorsement extending protection to third parties.</p> <p>Insurance primary without right of contribution of any other insurance carried</p> | |

| Type | Amount | Maximum Deductible | Principal Cover | Estimated Premium |
|---|--|--------------------|--|-------------------|
| by HMQ Agencies or the Lenders. | | | | |
| Underwriters (All non-IOCIP Works Phase insurances that are to be provided or caused to be provided by Project Co) | Principal underwriters in compliance with Article 16 of this Schedule. | | | |
| WSIB | In accordance with Ontario Act’s established benefits and schedules | Not Applicable | <p>(i) Project Co and its Affiliates shall obtain and maintain at Project Co’s expense, WSIB Insurance, in accordance with the Province of Ontario requirements.</p> <p>(ii) Project Co shall ensure that satisfactory evidence of WSIB Insurance is provided by all Project Co Parties, including all other consultants, sub consultants, contractors, subcontractors, suppliers and tradesmen working at the Site.</p> <p>Prior to commencement of the work, each of the foregoing shall provide satisfactory written confirmation of compliance, from the appropriate authority, including confirmation that all required assessments have been paid to date.</p> <p>Upon Substantial Completion of the</p> | |

| Type | Amount | Maximum Deductible | Principal Cover | Estimated Premium |
|-------------|---------------|---------------------------|---|--------------------------|
| | | | <p>Facility, Project Co shall be provided with satisfactory written confirmation that all required assessments have been paid to date.</p> <p>On request, within 30 days of such request, Project Co shall deliver to HMQ Agencies evidence of the WSIB coverage maintained by any person involved in the Works, or confirmation of that person's exemption from WSIB coverage.</p> | |

Services Phase Insurance – Part 2 East Rail Maintenance Facility Project

Insurance to be provided, or caused to be provided, by Project Co from Substantial Completion Date with respect to the entire Facility until Termination Date (Insurance for Services Phase)

| Type | Amount | Maximum Deductible | Principal Cover | Estimated Premium |
|-----------------------------------|--|--|---|-------------------|
| <p>“All Risk” Property</p> | <p>Full Replacement Cost of all property associated with the Facility, while on the Site or while in transit, including material and supplies destined for incorporation into the Facility or intended to be used in the performance of Project Co Services</p> <p>Business Interruption (Gross Revenue or Gross Profits Form), – 24 months period of indemnity – including interdependency and contingent coverage re losses at key supplier premises, property in transit or in storage off-Site</p> <p>Extra and Expediting Expenses (minimum [REDACTED] sub-limit)</p> <p>If commercially available, such business interruption insurance should be extended to include infectious disease as a peril that triggers the business interruption coverage</p> <p>Principal Extensions:</p> <ul style="list-style-type: none"> Replacement Cost Valuation | <p>3% of loss value / [REDACTED] minimum Earthquake</p> <p>[REDACTED] Flood</p> <p>[REDACTED]All other losses</p> <p>30 days waiting period applicable to time element coverages</p> | <p>All Risks Property insurance covering all property to be insured with a sum insured equivalent to the full replacement cost value of the property insured, and including necessary business interruption and expediting expenses.</p> <p>Such insurance will include Inland Transportation, By-Laws and Off Premises coverage.</p> <p>Coverage shall be maintained continuously from the Substantial Completion Date until the Termination Date.</p> <p>This coverage shall be primary with respect to the Facility without right of contribution of any insurance carried by HMQ Agencies or the Lenders.</p> | |

| Type | Amount | Maximum Deductible | Principal Cover | Estimated Premium |
|------|--|--------------------|-----------------|-------------------|
| | <ul style="list-style-type: none"> • Civil Authority Access Interruption (minimum 8 weeks) • Prevention of Ingress/Egress (minimum 8 weeks) • Automatic Coverage for Newly Acquired Locations (90 day reporting period acceptable) • By-Laws including demolition and increased replacement / repair costs • Off premises services interruption • By-laws including demolition, increased cost of repairs and replacement • Margin of profit extension for contractors • Radioactive contamination caused by sudden and accidental release of radioactive isotopes resulting from an accident to medical equipment • Joint Loss Agreement (if separate “All Risk” Property and Boiler and Machinery policies are arranged) <p>Permitted Exclusions:</p> <ul style="list-style-type: none"> • Cyber risk • Mould, fungi and fungal derivatives | | | |

| Type | Amount | Maximum Deductible | Principal Cover | Estimated Premium |
|---------------------|--|--------------------|-----------------|-------------------|
| | <ul style="list-style-type: none"> • Faulty workmanship, materials construction, or design but resultant damage to be insured • War risk • Terrorism • Nuclear or radioactive contamination, except re radioactive isotopes intended for scientific, medical, industrial or commercial use | | | |
| <i>Comments</i> | <ul style="list-style-type: none"> • Named Insured will include Project Co, HMQ Agencies, HMQ Occupants and the Lenders, and the Lender’s Agent – Lenders and Lenders’ Agent will be covered as Loss Payee and Mortgagee • All loss proceeds payable to the Insurance Trustee in accordance with the Insurance Trust Agreement • No provision allowing a coinsurance penalty • Waiver of Subrogation against all Insureds, including but not limited to Project Co, HMQ Agencies, HMQ Occupants, Non-HMQ Occupants, the Lenders, the Lenders’ Agent, as well as officers, directors and employees, servants, and agents of the foregoing | | | |
| Underwriters | Principal underwriters in compliance with Article 16 of this Schedule. | | | |

East Rail Maintenance Facility Project

Services Phase Insurance – Part 2 East Rail Maintenance Facility Project

Insurance to be provided, or caused to be provided, by Project Co from Substantial Completion Date with respect to the entire Facility until Termination Date (Insurance for Services Phase)

| Type | Amount | Maximum Deductible | Principal Cover | Estimated Premium |
|-------------------------------|--|---|---|-------------------|
| Boiler & Machinery | <p>Limit of [REDACTED] each Accident to an Insured Object</p> <p>Business Interruption Insurance based on a 24 month indemnity period</p> <p>If a covered accident to insured objects(s) causes an interruption to Project Co Services, the Business Interruption loss will include the costs of carrying the Project financing, during the affected period</p> <p>Sub-limits ([REDACTED]):</p> <ul style="list-style-type: none"> • Ammonia Contamination • Automatic Coverage • Bylaws • Errors and Omissions • Expediting Expenses • Extra Expense • Hazardous Substances • Professional Fees • Water Damage | <p>[REDACTED] per claim, Direct Damage</p> <p>Business Interruption – Maximum 30 day Waiting Period</p> | <p>From the date of Substantial Performance, or activation, whichever shall first occur, Boiler & Machinery insurance on a Comprehensive Policy Form basis including HVAC, but not medical equipment, on a full replacement cost basis, including all appropriate endorsements and extensions as well as necessary business interruption and Expediting and Extra Expense coverage.</p> <p>Boiler and Machinery Insurance may be arranged on a combined Property/Boiler and Machinery basis, subject to the Boiler and Machinery section of such a policy being arranged on a Comprehensive Form basis.</p> <p>Coverage shall be maintained continuously from the Substantial Completion Date until the Termination Date.</p> <p>This coverage shall be primary with respect to the Facility without right of contribution of any insurance carried by HMQ Agencies or the Lenders.</p> | |
| <i>Comments</i> | <ul style="list-style-type: none"> • Named Insured will include Project Co, HMQ Agencies, HMQ Occupants, the Lenders and the Lenders’ Agent – the Lenders and the Lender’s Agent will be covered as Loss Payee and Mortgagee • All loss proceeds payable to the Insurance Trustee in accordance with the Insurance Trust Agreement | | | |

- Waiver of Subrogation against all Insureds, including but not limited to Project Co, HMQ Agencies, HMQ Occupants, the Lenders, the Lenders' Agent, as well as officers, directors and employees, servants and agents of the foregoing
As nearly as possible, coverage will be structured to dovetail with the Property Insurance

Underwriters Principal underwriters in compliance with Article 16 of this Schedule.

East Rail Maintenance Facility Project

Services Phase Insurance – Part 2 East Rail Maintenance Facility Project

Insurance to be provided, or caused to be provided, by Project Co from Substantial Completion Date with respect to the entire Facility until Termination Date (Insurance for Services Phase)

| Type | Amount | Maximum Deductible | Principal Cover | Estimated Annual Premium |
|--|---|----------------------------------|--|--------------------------|
| Commercial General Liability and Non-Owned Automobile Liability | <p>[REDACTED] each accident or occurrence and in the aggregate with respect to Products and Completed Operations</p> <p>Sub-limits:</p> <ul style="list-style-type: none"> • [REDACTED] Non-Owned Automobile Liability, unless coverage provided under automobile liability insurance • [REDACTED] Sudden and Accidental Pollution, and Hostile Fire Pollution • [REDACTED] “All Risks” Tenants’ Legal Liability, if any exposure • [REDACTED] Prairie or Forest Fire Fighting Expense • [REDACTED] Employee Benefits Administrative Errors and Omission Liability • [REDACTED] Legal Liability for Damages To Non-owned Automobiles (SEF 94), unless coverage provided under automobile liability insurance • [REDACTED] Medical Payments | <p>[REDACTED] per occurrence</p> | <p>Commercial General Liability insurance covering all operations on an occurrence basis against claims for personal injury (including bodily injury and death), Broad Form Property Damage (including Loss of Use), and including Broad Form Products and Completed Operation Liability insurance.</p> <p>Coverage shall be maintained continuously from the Substantial Completion Date until the Termination Date.</p> <p>Pollution Liability – Sudden and Accidental Pollution coverage to be not less than IBC 2313 form (120 hours detection/120 hours’ notice coverage structure). To include Hostile Fire extension.</p> <p>This coverage shall be primary with respect to the Facility without right of contribution of any insurance carried by HMQ Agencies or the Lenders.</p> | |

| Type | Amount | Maximum Deductible | Principal Cover | Estimated Annual Premium |
|---|--------|--------------------|-----------------|--------------------------|
| Principal Extensions: | | | | |
| • Owner’s and Contractor’s Protective | | | | |
| • Blanket Contractual (written and oral) | | | | |
| • Direct and Contingent Employers Liability | | | | |
| • Employee Benefits Administrative Errors and Omissions | | | | |
| • Personal Injury (nil participation) | | | | |
| • Cross Liability and Severability of Interest with respect to each insured party | | | | |
| • Blasting / demolition / excavating / under pinning / pile driving / shoring / caisson work / work below ground surface / tunnelling / grading, and similar operations as applicable | | | | |
| • Elevator and Hoist Collision Liability | | | | |
| • Liberalized Notice of Claim Requirement, i.e., requirement to report will commence when knowledge is held by a designated Project person(s) – to be identified by Project Co | | | | |
| • Non-owned Automobile Tenants’ Legal Liability (All Risks) – subject to sub-limit | | | | |

| Type | Amount | Maximum Deductible | Principal Cover | Estimated Annual Premium |
|--|--------|--------------------|-----------------|--------------------------|
| <ul style="list-style-type: none"> • Medical Expenses – subject to sub limit • Prairie or Forest Fire Fighting Expenses – subject to sub-limit • Sudden and Accidental Pollution and Hostile Fire – subject to sub-limit • Permission for unlicensed vehicles’ partial road use • Unlicensed Equipment • Loss of Use Without Property Damage • Loading and Unloading of Automobiles • Broad Form Property Damage • Broad Form Completed Operations • Intentional Injury, committed to Protect Persons or Property • Voluntary Compensation • Worldwide Territory, subject to suits being brought in Canada or the US | | | | |
| <p>Permitted Exclusions:</p> | | | | |
| <ul style="list-style-type: none"> • Injury to employees, where WSIB provides valid coverage • Property in the care, custody or control of the insured, except as provided under Broad Form Products and Completed Operations | | | | |

| Type | Amount | Maximum Deductible | Principal Cover | Estimated Annual Premium |
|------------------------|---|--------------------|-----------------|--------------------------|
| | <ul style="list-style-type: none"> • extension period • Operation of licensed motor vehicles, other than attached machinery while used for its purpose, or at the Project Site • Cyber risk • Mould, fungi and fungal derivatives • Professional liability of engineers, architects, and other professional consultants • Asbestos • Nuclear or radioactive contamination, except radioactive isotopes intended for scientific, medical, industrial or commercial use • The direct or indirect provision of professional medical services and malpractice liability in connection with or resulting from the Clinical Services and any allegations of malpractice, negligence, breach of contract or other cause of action related to the provision of these professional medical services or any resultant malpractice liability | | | |
| <p><i>Comments</i></p> | <ul style="list-style-type: none"> • Named Insured includes Project Co and its Affiliates, HMQ Agencies, HMQ Occupants, the Lenders, Project Co Parties involved in the Project Co Services, including all other contractors, subcontractors, sub-subcontractors, suppliers while working on Site, tradesmen while working on Site, engineers, architects, consultants and sub-consultants (other than for professional liability), and others as | | | |

additional insureds, as may be required from time to time, arising from all operations and activities pertaining to the Project Co Services and the control and use of the Site

- Directors, officers, shareholders, employees of the insured parties involved in the Project Co Services are covered as Additional Insureds
- Canadian National Railway Company will be identified as an Additional Insured
- Insurance primary without right of contribution of any other insurance carried by any Named Insured
- Aggregate limits will be permitted for Products and Completed Operations, Prairie and Forest Fire Fighting Expenses, Sudden and Accidental and Hostile Fire Liability and Employee Benefits Administrative Errors & Omissions Liability; no policy general aggregate will be permitted
- Professional service activities integral to the Project Co Services, but not covering engineers, architects or other professional consultants, i.e., incidental professional liability risk of a Named Insured and their employed professionals is to be covered, but not the professional liability of independent fee-for-service professional consultants, architects or engineers
- Waiver of Subrogation of insurers' rights of recovery, against all Named and/or Additional Insureds, including Project Co, HMQ Agencies, contractors, subcontractors and sub-subcontractors; professional consultants, engineers and architects (other than for their professional liability), Lenders, Lenders' Agent, as well as officers, directors, employees, servants and agents of the foregoing

Underwriters Principal underwriters in compliance with Article 16 of this Schedule.

Services Phase Insurance – Part 2 East Rail Maintenance Facility Project

Insurance to be provided, or caused to be provided, by Project Co from Substantial Completion Date with respect to the entire Facility until Termination Date (Insurance for Services Phase)

| Type | Amount | Maximum Deductible | Principal Cover | Estimated Annual Premium |
|---|--|---|---|--------------------------|
| Environmental Impairment (Pollution) Liability | <p>Minimum [REDACTED] per claim and in the aggregate for all claims, inclusive of defense and all costs and expenses</p> <p>Principal Extensions:</p> <ul style="list-style-type: none"> • Hazardous Substances occurring at or emanating from the Facility or Site during the Policy Period • Microbial Matter (including Fungus / Mould) • Biological Agents • Underground / above ground storage tanks (as applicable) • First Party Restoration and Clean-up • Duty to Defend • Contractual Liability <p>Permitted Exclusions:</p> <ul style="list-style-type: none"> • Terrorism • Intentional Non-Compliance • WSIB • War • Employers Liability • Nuclear Liability • Professional Liability | <p>[REDACTED] per claim inclusive of defense and all costs and expenses</p> | <p>Pollution Liability insurance covering third party bodily injury and property damage liability, consequential loss or damage, including necessary on-Site and off-Site clean-up costs, both at the Site and Off-Site, as required. Coverage is extended to include underground and above ground storage tanks (as applicable).</p> <p>Coverage shall be maintained continuously from the Substantial Completion Date until the Termination Date.</p> <p>This insurance shall include a twelve (12) month extended discovery period and reporting period provision in the event of termination of the Policy or in the event termination of the Project Agreement for any reason, including its expiration.</p> <p>This coverage shall be primary with respect to the Facility without right of contribution of any insurance carried by HMQ Agencies or the Lenders.</p> | |

| | |
|---------------------|---|
| <i>Comments</i> | <ul style="list-style-type: none">• HMQ Agencies and the Lenders will be identified as additional insureds, or insured clients of Project Co and its Affiliates• It is permissible for Project Co to extend the construction pollution policy to include pollution events occurring during the Services Phase, on an annual basis throughout the term. |
| Underwriters | Principal underwriters in compliance with Article 16 of this Schedule. |

Services Phase Insurance – Part 2 East Rail Maintenance Facility Project

Services Phase Insurance to be provided, or caused to be provided, by Project Co from Substantial Completion Date with respect to the entire Facility until Termination Date (Insurance for Services Phase)

| Type | Amount | Maximum Deductible | Principal Cover | Estimated Annual Premium |
|-----------------------------|---|--------------------|---|--------------------------|
| Automobile Liability | <p>[REDACTED] (Minimum) Project Co’s vehicles</p> <p>[REDACTED] (Minimum) for vehicles of any contractors, subcontractors, sub-subcontractors, consultants, and sub-consultants, workmen, tradesmen or other persons working on or at the Site in connection with the Project Co Services</p> | | <p>Standard Ontario Owners Form For all vehicles operated by Project Co, Contractors, subcontractors, sub-subcontractors, consultants, sub-consultants, workmen, tradesmen or other working on or at the Site in connection with the Project Co Services.</p> <p>Coverage shall be maintained continuously from the Substantial Completion Date until the Termination Date.</p> <p>Business Automobile Liability insurance covering third party property damage and bodily injury liability (including accident benefits) arising out of any licensed vehicle.</p> <p>Policies shall be endorsed to preclude cancellation, except upon 60 days prior written notice provided to HMQ Agencies and the Lenders.</p> | |

Comments

Underwriters Principal underwriters in compliance with Article 16 of this Schedule.

Services Phase Insurance – Part 2 East Rail Maintenance Facility Project

Services Phase Insurance to be provided, or caused to be provided, by Project Co from Substantial Completion Date with respect to the entire Facility until Termination Date (Insurance for Services Phase)

| Type | Amount | Maximum Deductible | Principal Cover | Estimated Annual Premium |
|----------------------------|--|--------------------|--|--------------------------|
| Comprehensive Crime | [REDACTED] per extension | | <p>Comprehensive Crime insurance including coverage for Employee Dishonesty against the fraudulent/dishonest acts of employees of Project Co and its Affiliates, coverage for Broad Form Money and Securities, Money Orders and Counterfeit Paper, Depositors’ Forgery, Computer Fraud and Funds Transfer Fraud, Audit Expenses and Credit Card Forgery.</p> <p>Custodial endorsement extending protection to third parties.</p> <p>Coverage shall be maintained continuously from the Substantial Completion Date until the Termination Date.</p> <p>This coverage shall be primary with respect to the Facility without right of contribution of any insurance carried by HMQ Agencies or the Lenders.</p> | |
| <i>Comments</i> | | | | |
| Underwriters | Principal underwriters in compliance with Article 16 of this Schedule. | | | |
| WSIB | In accordance with Ontario Act’s established benefits and | Not Applicable | (i) Project Co and its Affiliates shall obtain and maintain at Project Co’s expense, WSIB Insurance, in accordance with the Province of Ontario | |

| Type | Amount | Maximum Deductible | Principal Cover | Estimated Annual Premium |
|-----------|--------|--------------------|--|--------------------------|
| schedules | | | <p>requirements.</p> <p>(ii) Project Co shall ensure that satisfactory evidence of WSIB Insurance is provided by all Project Co Parties, including all other consultants, sub consultants, contractors, subcontractors, suppliers and tradesmen working at the Site.</p> <p>Prior to commencement of the Project Co Services, each of the foregoing shall provide satisfactory written confirmation of compliance, from the appropriate authority, including confirmation that all required assessments have been paid to date.</p> <p>Upon completion of the Project Co Services, Project Co shall be provided with satisfactory written confirmation from the appropriate authority that all required assessments have been paid to date.</p> <p>On request, within 30 days of such request, Project Co shall deliver to HMQ Agencies evidence of the WSIB coverage maintained by any person involved in the Project Co Services, or confirmation of that person’s exemption from WSIB coverage.</p> | |

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SCHEDULE 26

RECORD PROVISIONS

1. General Requirements

- 1.1 Project Co shall prepare, retain and maintain, at its own expense, all the records (including superseded records) referred to in Section 2.1 of this Schedule 26, as follows:
- (a) in accordance with Section 1 of this Schedule 26;
 - (b) in accordance with the Output Specifications;
 - (c) in accordance with the requirements of Good Industry Practice;
 - (d) having due regard to the guidelines and policies of the Office of the Information and Privacy Commissioner of Ontario;
 - (e) in accordance with the most stringent of Project Co's, the Construction Contractor's and the Service Provider's normal business practices;
 - (f) in accordance with Canadian GAAP;
 - (g) in chronological order;
 - (h) in 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 34 of this Project Agreement; and
 - (i) in a form that is capable of audit.
- 1.2 Project Co shall retain and maintain all records at the Facility or otherwise on the Site.
- 1.3 Wherever practical, original records shall be retained and maintained in a hard copy form. Project Co may retain true copies of original records where it is not practical to retain original records.
- 1.4 Any drawings (including, without limitation, the As Built Drawings) required to be made or supplied pursuant to this Project Agreement shall be of a size appropriate to show the detail to be depicted clearly without magnifying aids, shall be consistent in size and format to drawings previously submitted by Project Co to HMQ Agencies, and shall conform to the Output Specifications, Good Industry Practice and the CAD standards. Where by prior agreement HMQ Agencies and Project Co have agreed to accept microfilm, microfiche, CD-ROM or other storage media, 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.

- 1.5 Records may, with the consent of HMQ Agencies, not to be unreasonably withheld or delayed, be stored in electronic form if HMQ Agencies has access thereto and will continue to have access thereto, such that HMQ Agencies will be able to read, copy, download, and search same without licence or payment.
- 1.6 Subject to Sections 1.7 and 1.8 of this Schedule 26, Project Co shall retain and maintain in safe storage, at its expense, all records referred to in Section 2.1 of this Schedule 26 for a period of at least 7 years or such longer period as required by Applicable Law.
- 1.7 Project Co shall notify HMQ Agencies if Project Co wishes to destroy any records referred to in this Schedule 26 which are more than 7 years old, or in respect of which the required period under Applicable Law for their retention has expired. The Parties agree that:
- (a) within 60 days of such notice, HMQ Agencies may elect to require Project Co to deliver such records to HMQ Agencies, in which case Project Co shall, at the expense of HMQ Agencies, deliver such records (with the exception of Sensitive Information) to HMQ Agencies in the manner and to the location as HMQ Agencies shall specify; or
 - (b) if HMQ Agencies fail to notify Project Co of its election pursuant to Section 1.7(a) of this Schedule 26 within such 60 day period, Project Co may, at its expense, destroy such records.
- 1.8 In the event of termination of this Project Agreement prior to the Expiry Date, Project Co shall deliver all records that Project Co retains and maintains pursuant to this Schedule 26 to HMQ Agencies in the manner and to the location that HMQ Agencies shall reasonably specify. HMQ Agencies shall make available to Project Co all the records Project Co delivers pursuant to this Section 1.8 of this Schedule 26 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 this 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 this Project Agreement arises:
- (a) as a result of a HMQ Event of Default or pursuant to Section 44.3 of this Project Agreement, then the costs of delivering the records and the costs for retaining such records in safe storage will be borne by HMQ Agencies; or
 - (b) for any other cause, then the costs of delivering the records and the costs for retaining such records in safe storage for a period of at least six years following

the Termination Date (unless a longer period is required by Applicable Law), shall be borne by Project Co.

- 1.10 Within 30 days after the end of each Contract Year, Project Co shall deliver to HMQ Agencies a report, as reasonably requested by HMQ Agencies in connection with HMQ Agencies' financial reporting, detailing to the best of Project Co's knowledge at the time of any such report any and all liabilities, claims and demands, including contingent liabilities, claims and demands, that Project Co has or may have against HMQ Agencies or that may be owing by HMQ Agencies 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 this Project Agreement.
- 1.11 Project Co shall provide to HMQ Agencies not later than 60 days after the end of each fiscal quarter in each fiscal year, part or all of which falls in a Contract Year, a copy of Project Co's unaudited financial statements in respect of that period, and 120 days after the end of each fiscal year, a copy of Project Co's audited financial statements, in respect of that period, prepared in accordance with Applicable Law and Canadian GAAP, together with copies of all related auditors' reports and, to the extent publicly available, all related directors' reports and other notices and circulars to shareholders or partners, all of which documents, whether or not marked or identified as confidential or proprietary but subject to the exceptions contained in Section 49 of this Project Agreement, shall be treated by HMQ Agencies as Confidential Information of Project Co.
- 1.12 Within 15 days after the end of each Contract Year, Project Co shall deliver to HMQ Agencies a report, as reasonably requested by HMQ Agencies in connection with HMQ Agencies' financial reporting, detailing to the best of Project Co's knowledge at the time, Operating Term costs ("**Operating Term Costs**") for the most recent Contract Year. The breakdown of Operating Term Costs shall include, but not be limited to, the cost items as set out in Appendix 1 – Operational Term Cost Reporting to this Schedule 26 – Record Provision. Such information, whether or not marked or identified as confidential or proprietary but subject to the exceptions contained in Section 49 of this Project Agreement, shall be treated by HMQ Agencies as Confidential Information of Project Co.

2. Records To Be Kept

- 2.1 Without limiting any other requirement of this Project Agreement, Project Co shall prepare, retain and maintain at its own expense:
 - (a) this Project Agreement, its Schedules and the Project Documents, including all amendments to such agreements;
 - (b) all records relating to the appointment and replacement of the HMQ Representative and the Project Co Representative;
 - (c) any documents, drawings (including, without limitation, the As Built 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) all records relating to any statutory inspections of the Facility or the Site, including any roadways, tracks or switches;
- (f) any notices, reports, results and certificates relating to Substantial Completion and Final Completion of the Works and completion of the Project Co Commissioning;
- (g) all operation and maintenance manuals;
- (h) any documents relating to events of Force Majeure, Delay Events, Compensation Events, Relief Events and Excusing Causes;
- (i) all formal notices, reports or submissions made to or received from HMQ Agencies in connection with the provision of the Project Co Services, the monitoring of performance, the availability of the Facility, and payment adjustments;
- (j) all certificates, licences, registrations or warranties related to the provision of the Project Co Services;
- (k) the invoices for Monthly Service Payments;
- (l) all documents submitted in accordance with Schedule 22 - Variation Procedure;
- (m) any documents related to decisions resulting from the Dispute Resolution Procedure;
- (n) any documents related to a Project Co Change in Ownership or Change in Control;
- (o) any documents relating to any Refinancing;
- (p) 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;
- (q) the financial accounts of Project Co referred to in Section 1.11 of this Schedule 26;
- (r) all records required by Applicable Law (including in relation to health and safety matters) to be maintained by Project Co with respect to the Project Operations;
- (s) any documents relating to insurance and insurance claims;
- (t) the Plant Services Information Management System;
- (u) all Jointly Developed Materials;
- (v) such documents as HMQ Agencies may reasonably require relating to Business Opportunities proposed by Project Co in accordance with the Project Agreement; and
- (w) all other records, documents, information, notices or certificates expressly required to be produced or maintained by Project Co pursuant to this Project Agreement.

2.2 Either Party may review the documents required to be prepared, retained and maintained by Project Co pursuant to Section 2.1 of this Schedule 26.

APPENDIX 1

OPERATIONAL TERM COST REPORTING

1. Annual Maintenance Costs

- 1.1 Vehicle maintenance equipment costs
- 1.2 Main building facility maintenance costs
- 1.3 Security and fire protection services
- 1.4 Snow clearing and landscaping
- 1.5 Garbage collection and oil removal
- 1.6 Track maintenance
- 1.7 Other annual maintenance costs

2. Financing Costs

- 2.1 Interest paid
- 2.2 Interest received
- 2.3 Financing fees
- 2.4 Equity distributions

3. Lifecycle Costs

- 3.1 Vehicle maintenance equipment
- 3.2 Tracks
- 3.3 Other Lifecycle costs

4. Transaction Costs

- 4.1 Base relevant insurance costs
- 4.2 SPV costs
- 4.3 Rating agency fees

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SCHEDULE 27

DISPUTE RESOLUTION PROCEDURE

1. General

- 1.1 All disputes, controversies, or claims arising out of or relating to any provision of this Project Agreement, or the alleged wrongful exercise or failure to exercise by a Party of a discretion or power given to that Party under this Project Agreement, or the interpretation, enforceability, performance, breach, termination, or validity of this Project Agreement, including, without limitation, this Schedule 27, or any matter referred to for resolution pursuant to this Schedule 27 (collectively and individually, a “**Dispute**”) shall be resolved in accordance with the provisions of this Schedule 27.
- 1.2 The Parties agree that at all times, both during and after the Project Term, each of them will make bona fide efforts to:
- (a) resolve by amicable negotiations any and all Disputes arising between them on a without prejudice basis; and
 - (b) have all Disputes resolved at the lowest level of management before engaging the dispute resolution processes described in Sections 2 to 9 of this Schedule 27.
- 1.3 If the Parties are unable to resolve a Dispute at the lowest level of management pursuant to Section 1.2(b) of this Schedule 27, either Party may deliver to the HMQ Representative or the Project Co Representative, as applicable, a written notice of dispute (the “**Notice of Dispute**”), which Notice of Dispute shall, subject to the terms of this Schedule 27 requiring resolution of a Dispute pursuant to a specific dispute resolution process set forth in this Schedule 27, initiate the dispute resolution process described in Sections 2 to 9 of this Schedule 27, as applicable, as more particularly described in this Schedule 27. To be effective, the Notice of Dispute must expressly state that it is a notice of dispute, set out the particulars of the matter in dispute, describe the remedy or resolution sought by the Party issuing the Notice of Dispute and be signed by the HMQ Representative, if given by HMQ Agencies, or by the Project Co Representative, if given by Project Co.

2. Amicable Resolution by Party Representatives

- 2.1 On receipt of a Notice of Dispute, the HMQ Representative and the Project Co Representative (collectively “**Party Representatives**” and individually “**Party Representative**”) shall each promptly and diligently make all reasonable bona fide efforts to resolve the Dispute. Each Party Representative shall provide to the other, on a without prejudice basis, frank, candid and timely disclosure of relevant facts, information and documents (except such documentation that is subject to legal privilege) as may be required or reasonably requested by the other to facilitate the resolution of the Dispute.

3. Amicable Resolution by Senior Officers of each Party

- 3.1 If, following the process referred to in Section 2 of this Schedule 27 (or as otherwise agreed to in writing by the Parties pursuant to Section 13.6 of this Schedule 27), a Dispute is not resolved by the Party Representatives within 10 Business Days after receipt by a Party of the applicable Notice of Dispute, or within such longer period of time as the Party Representatives may both expressly agree, then at any time after the expiry of such period of time either Party Representative may, by notice in writing to the other, refer the Dispute to an executive of a Party who:
- (a) is in a position of authority above that of the HMQ Representative or the Project Co Representative, as the case may be; and
 - (b) subject only to approval of the board of directors or similar governing body of the Party, has full authority to resolve and settle the Dispute.
- 3.2 Once a Dispute is referred to them, the executive of each Party shall promptly and diligently make all reasonable bona fide efforts to resolve the Dispute. All discussions and negotiations, and all documents exchanged, between them related to the Dispute shall be on a without prejudice basis to facilitate the resolution of the Dispute.

4. Independent Certifier

- 4.1 This Section 4 applies to all Disputes that fall within the description of Section 4.2 of this Schedule 27 that cannot be resolved as provided in Sections 2 and 3 of this Schedule 27 or as otherwise agreed to in writing by the Parties pursuant to Section 13.6 of this Schedule 27.
- 4.2 All Disputes related to the Works and that:
- (a) arise prior to, or otherwise in relation to Substantial Completion;
 - (b) relate to completion of Minor Deficiencies;
 - (c) relate to whether any proposed work constitutes a Variation;
 - (d) relate to a review of Estimates or any other matters relating to Variations as the Independent Certifier is entitled to review and determine pursuant to Section 36 of the Project Agreement;
 - (e) are referred to in this Project Agreement for determination by the Independent Certifier; or
 - (f) relate to the Certification Services or any Certification Service Variations (as those terms are defined in the Independent Certifier Agreement);

shall initially be submitted to the Independent Certifier for independent determination by the Independent Certifier within such period as may be specified in this Project Agreement, or if no period is specified, within 10 Business Days after submission to the Independent Certifier.

- 4.3 Without limiting any obligations of the Parties under the Independent Certifier Agreement, the Parties shall cooperate with the Independent Certifier and provide such information, records and documents as may be required by the Independent Certifier to make the determination within the period referred to in Section 4.2 of this Schedule 27.
- 4.4 The Independent Certifier’s decision to issue or not to issue the Substantial Completion Certificate shall be final and binding on the Parties solely in respect of determining the Payment Commencement Date and a Dispute in relation to the Payment Commencement Date shall not be subject to resolution pursuant to this Schedule 27. Save and except as aforesaid, the Independent Certifier’s determinations are not binding on the Parties, and all Disputes in relation to the Independent Certifier’s decisions shall be resolved pursuant to this Schedule 27, provided however that Sections 5 and 6 of this Schedule 27 shall not apply unless otherwise agreed by the Parties on terms acceptable to the Parties.

5. Expert Determination

- 5.1 If, following the process referred to in Section 2 and 3 (or as otherwise agreed to in writing by the Parties pursuant to Section 13.6 of this Schedule 27) of this Schedule 27, any Dispute as to:
- (a) whether a Liquid Market exists;
 - (b) whether amendments proposed by potentially Qualifying Tenders to this Project Agreement or other Project Documents are material;
 - (c) the Adjusted Highest Qualifying Tender Price;
 - (d) the determination of the Estimated Fair Value in accordance with Schedule 23 – Compensation on Termination of this Project Agreement; or
 - (e) whether Project Co has achieved all necessary prerequisites, credits and points under the LEED Rating System in accordance with the specific requirements under this Project Agreement to achieve the LEED Gold Rating;

has not been resolved within 10 Business Days after the date the Dispute was referred to the executives of the Parties for resolution by them, or within such longer period of time as the executives may expressly agree in writing in respect of a specific Dispute to allow them to continue their efforts to resolve the Dispute, then either Party may at any time thereafter, by written notice signed by their Party Representative and delivered to the other Party Representative, require that the Dispute be resolved on an expedited basis by a qualified and experienced expert (the “**Expert**”).

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- 5.2 The Expert shall be appointed as follows:
- (a) if the Parties agree on the Expert, the Parties shall jointly appoint the Expert as soon as possible and, in any event, within 5 Business Days after delivery of the notice requiring that the Dispute be resolved by an Expert;
 - (b) if the Parties fail to agree or jointly appoint the Expert within such 5 Business Day period, either Party may apply to the Ontario Superior Court of Justice for appointment of the Expert, in which case the court shall appoint the Expert at the earliest opportunity from the list of potential Experts submitted by the Parties or, if either or both Parties fail to submit their list of potential Experts within 7 Business Days, the court may appoint such person as the Expert who meets the requirements set out in this Schedule 27 for qualifications and experience of the Expert.
- 5.3 No one shall be nominated or appointed to act as an Expert who is or was in any way interested, financially or otherwise, in the conduct of the Project Operations or in the business affairs of HMQ Agencies, Project Co, or any consultant, subconsultant or subcontractor of any of them.
- 5.4 Subject to the matters the Expert is authorized to determine pursuant to Section 5.1 of this Schedule 27, the Expert will be appointed on a Dispute by Dispute basis, with each Expert having the qualifications and experience relevant to the issues in the particular Dispute for which the Expert is appointed.
- 5.5 The Expert shall determine the appropriate process for timely and cost effective resolution of the Dispute and, without limiting the generality of the foregoing, the Expert has discretion to, among other things:
- (a) solicit submissions and documents from both Parties, and impose deadlines for the receipt of such submissions;
 - (b) require some or all of the evidence to be provided by affidavit;
 - (c) direct either or both Parties to prepare and provide the Expert with such documents, test results or other things as the Expert may require to assist the Expert in the resolution of the Dispute and rendering of a decision;
 - (d) require either Party to supply or prepare for examination by the Expert and the other Party, any document or information the Expert considers necessary;
 - (e) inspect the Project Operations, giving reasonable notice to each Party of the time when, and the place where, the Expert intends to conduct any inspections;
 - (f) convene meetings of the Parties to have the Parties discuss the issues in Dispute in the presence of the Expert; and

- (g) take, or require either or both Parties to take and provide to the Expert, such measurements, perform such tests, audit such processes and procedures, and take any and all such other measures and steps as the Expert considers necessary to make a final determination in the Dispute.
- 5.6 The Expert shall render a decision as soon as possible and, in any event, shall use all reasonable efforts to render a decision no later than 10 Business Days after the date of the appointment of the Expert, or such longer period of time as agreed to in writing by the Parties. The Expert shall give reasons or a summary of reasons for the Expert's decision.
- 5.7 The Expert shall keep all information about the Dispute confidential and shall not disclose such information to anyone other than the Parties.
- 5.8 Each Party shall bear its own costs of the process for resolution of the Dispute by the Expert. In addition, the costs of the Expert shall be borne equally by the Parties.
- 5.9 Subject to a right to require the Dispute to be arbitrated or litigated pursuant to Sections 7, 8 and 9 of this Schedule 27 by giving the required notices to arbitrate or litigate within the time periods specified therein, the Parties agree that the Expert's determination shall be final and binding on both Parties and not subject to appeal, adjudication, arbitration, litigation or any other dispute resolution process, and both Parties expressly waive all rights of appeal in connection with the Expert's determination. For greater certainty, the final determination by the Expert shall not be referred to an Adjudicator (as defined below) for determination under Section 6 of this Schedule 27.

6. Adjudication

- 6.1 If the Parties fail to resolve any Dispute through the process referred to in Section 2 and 3 of this Schedule 27 within 15 Business Days following referral of the Dispute to an executive in accordance with Section 3.1 (or such other period as may be agreed or expressly stipulated in respect of the relevant matter) and it is not a Dispute referred to in Sections 4.2 and 5.1 of this Schedule 27 or a Dispute referred to arbitration or litigation pursuant to Sections 4.4 or 5.9 of this Schedule 27 (except as otherwise agreed to in writing by the Parties pursuant to Section 13.6 of this Schedule 27), either Party may refer the Dispute to an adjudicator selected in accordance with Section 6.2 of this Schedule 27 (the "**Adjudicator**").
- 6.2 The Adjudicator nominated by the Party issuing the Notice of Dispute shall be agreed between the Parties or, failing agreement, shall be determined by the Ontario Superior Court of Justice (following an application thereto by the Party issuing the Notice of Dispute) pursuant to the *Arbitration Act* (Ontario) as if the adjudicator was an arbitrator under the *Arbitration Act* (Ontario) and shall:
 - (a) be independent of and at arm's length to Project Co, HMQ Agencies, any Government Entity, the Lenders and any other person having an interest in the Facility or any of the Project Documents;

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- (b) if the Dispute arises during the Project Term, be familiar with building operations and management and the activities of a facility similar to the Facility; and
- (c) be a person who has qualifications and experience with respect to the particular issues in Dispute.

6.3 The Adjudicator shall resolve the Dispute in accordance with the United Kingdom Construction Industry Council's *Model Adjudication Procedure: Fourth Edition* (the "**Model Adjudication Procedure**") the terms of which are incorporated herein by reference, subject to the following modifications:

- (a) notwithstanding paragraph 14 of the Model Adjudication Procedure, within 7 Business Days of appointment in relation to a particular Dispute, the Adjudicator shall require the Parties to submit in writing their respective arguments; provided that, where necessary, the onus of proving that the Facility is operating in accordance with all relevant specifications and requirements set forth in the Project Agreement is on Project Co. The Adjudicator shall, in his absolute discretion, determine the procedure of the adjudication proceedings including without limitation, whether a hearing is necessary in order to resolve the Dispute;
- (b) notwithstanding paragraphs 16 and 24 of the Model Adjudication Procedure, in any event, and subject to Section 6.4 of this Schedule 27, the Adjudicator shall provide to both Parties his written decision on the Dispute, within 10 Business Days of appointment (or within such other period as the Parties may agree after the reference). The Adjudicator shall give detailed reasons for the Adjudicator's decision. The Adjudicator shall be entitled to award compensation to a Party and shall be entitled to state the relief for such Party, which may include deeming the occurrence of any Relief Event, Delay Event, Compensation Event and/or Excusing Cause. Unless otherwise provided for in this Schedule 27, the Adjudicator's decision shall be binding on the Parties, but not final;
- (c) notwithstanding paragraphs 29 and 30 of the Model Adjudication Procedure, the Adjudicator's costs, including any legal fees, of any reference shall be borne as the Adjudicator shall specify or in default, equally by the Parties. In no circumstances shall the Adjudicator be entitled to order a successful or partially successful Party in an adjudication to pay more than one half of the Adjudicator's fees. Each Party shall bear its own costs arising out of the reference, including legal costs and the costs and expenses of any witnesses;
- (d) the Adjudicator shall be deemed not to be an arbitrator but shall render his decision as an expert and the provisions of the *Arbitration Act, 1991* (Ontario) and the law relating to arbitration shall not apply to the Adjudicator (other than in respect of the appointment of the Adjudicator as set out in Section 6.2 of this Schedule 27) or his determination or the procedure by which he reached his determination;

- (e) notwithstanding paragraph 26 of the Model Adjudication Procedure, the Adjudicator shall act impartially and may take the initiative in ascertaining the facts and the law. Unless otherwise expressly provided in this Project Agreement, the Adjudicator shall have the power to open up, review and revise any opinion, certificate, instruction, determination or decision of whatever nature given under this Project Agreement. For greater certainty, the Independent Certifier’s decision to issue or not to issue the Substantial Completion Certificate shall be final and binding on the Parties solely in respect of determining the Payment Commencement Date and a Dispute in relation to the Payment Commencement Date shall not be subject to resolution pursuant to this Schedule 27;
- (f) the Adjudicator shall execute a non-disclosure agreement (the “**Non-Disclosure Agreement**”) in a form satisfactory to the Parties, providing that, among other things, all information, data and documentation disclosed or delivered by a Party to the Adjudicator in consequence of or in connection with his appointment as the Adjudicator shall be treated as confidential and without prejudice to any potential litigation proceedings. The Adjudicator shall not, save except as expressly permitted by the Non-Disclosure Agreement, disclose to any person any such information, data or documentation, and all such information, data or documentation shall remain the property of the Party disclosing or delivering the same and all copies shall be returned to such Party on completion of the Adjudicator’s mandate with respect to the Dispute; and
- (g) notwithstanding paragraph 34 of the Model Adjudication Procedure, the Adjudicator shall not be liable for anything done or omitted to be done in the discharge or purported discharge of his functions as Adjudicator unless the act or omission is in bad faith. Any employee or agent of the Adjudicator is similarly protected from liability.

6.4 Where it is determined by the Adjudicator that:

- (a) corrective measures must be taken by Project Co to resolve a Dispute, those measures must be implemented by Project Co as soon as reasonably practical, without payment by HMQ Agencies unless (i) the Adjudicator determines otherwise; or (ii) that determination is subsequently reversed by a binding and final determination made in a court proceeding;
- (b) corrective measures are not required to be taken by Project Co to resolve a Dispute, HMQ Agencies may, at their option, require corrective measures to be taken forthwith by Project Co, in which case those measures must be implemented by Project Co as soon as reasonably practical provided that HMQ Agencies undertake to pay Project Co for Direct Costs, plus reasonable overhead and profit incurred by Project Co as such costs are so incurred; provided that no such costs should exceed the amount Project Co is entitled to receive pursuant to Schedule 22 – Variation Procedure thereby incurred upon completion of those

corrective measures, but any such undertaking and payment shall be without prejudice to HMQ Agencies' rights to contest the determination made by the Adjudicator in a subsequent proceeding. HMQ Agencies shall provide Project Co such reasonable extensions of time in respect of Project Co's obligations under this Agreement necessary to allow Project Co to effect the corrective measures and such extension of time may be treated as a Delay Event or an Excusing Cause, as applicable, if so determined by the Adjudicator.

6.5 Subject to a right to require the Dispute to be arbitrated or litigated pursuant to Sections 7, 8 and 9 of this Schedule 27 by giving the required notices to arbitrate or litigate within the time periods specified therein, the Parties agree that the Adjudicator's determination is final and binding and not subject to appeal, arbitration, litigation or any other dispute resolution process, and both Parties expressly waive all rights of appeal in connection with the Adjudicator's determination.

7. Referral of Disputes to Arbitration or Litigation

7.1 If:

- (a) the amount awarded by the Expert to a Party pursuant to Section 5 of this Schedule 27 or by the Adjudicator pursuant to Section 6 of this Schedule 27 is more than \$[REDACTED] (index linked) in the aggregate or \$[REDACTED] (index linked) in any one year;
- (b) the Dispute involves issues other than monetary claims by one Party against the other Party and which a Party reasonably believes are material and significant to that Party; or
- (c) a Notice of Dispute has been issued for a Dispute in relation to the Independent Certifier's decisions for which Section 4.4 of this Schedule 27 provides that Sections 5 and 6 of this Schedule 27 shall not apply to resolve such Dispute,

then, subject to the right of a Party to require litigation of the Dispute pursuant to Section 9.1 of this Schedule 27 or a consolidation of proceedings pursuant to Section 11 of this Schedule 27, either Party may, by written notice signed by their Party Representative, request that the Dispute be resolved by arbitration pursuant to Section 8 of this Schedule 27 upon the written consent of the other Party. Such notice will not be effective unless it indicates it is a notice to arbitrate, is signed by the Party Representative and is delivered to the other Party Representative within 15 Business Days after receipt of the Expert's determination, the Adjudicator's decision or the Notice of Dispute referred to in Section 7.1(c) of this Schedule 27, as applicable, and provided further that such notice expressly identifies the specific Dispute and determination of the Expert, decision of the Adjudicator or the Independent Certifier, as applicable, that is to be the subject of the arbitration.

7.2 If a Party is entitled to refer a Dispute to which Sections 5 or 6 of this Schedule 27 apply to arbitration or litigation pursuant to Sections 7.1 or 9.1 of this Schedule 27 then, unless the Parties otherwise expressly agree in writing, all information, documents and submissions prepared by a Party for the Expert or the Adjudicator which are not business records that would otherwise be kept in the normal course of business by the Party for its business purposes, and all decisions and determinations by the Expert or the Adjudicator, shall be confidential and inadmissible in any arbitration or litigation proceeding. For greater certainty, neither the Expert or the Adjudicator shall be called as a witness by either party in any arbitration or litigation proceeding.

8. Resolution by Arbitration

8.1 Upon the mutual written consent of the parties,

- (a) where the Parties fail to resolve a Dispute through the process set out in Sections 2, 3, 4, 5 and 6 (to the extent required) of this Schedule 27, and
- (b) all other requirements set out in this Schedule 27 have been satisfied.

such Dispute may be referred to arbitration in accordance with the *Arbitration Act, 1991* (Ontario) and this Section.

8.2 Disputes referred to arbitration shall be resolved by a single arbitrator unless one of the Parties, by notice in writing delivered to the other Party within 5 Business Days after a notice to arbitrate pursuant to Section 7.1 of this Schedule 27 has been delivered, expressly requires that the Dispute that is the subject of that notice to arbitrate be resolved by a three person arbitration tribunal, in which case that particular Dispute shall be resolved by a three person arbitration tribunal.

8.3 If the arbitration tribunal is comprised of a single arbitrator, the arbitrator shall be appointed as follows:

- (a) if the Parties agree on the arbitrator, the Parties shall jointly appoint the arbitrator as soon as possible and in any event within 5 Business Days after delivery of the notice to arbitrate pursuant to Section 7 of this Schedule 27; and
- (b) if the Parties fail to agree or jointly appoint the arbitrator within such 5 Business Day period, either Party may apply to the Ontario Superior Court of Justice for appointment of the arbitrator, in which case the court shall appoint the arbitrator at the earliest opportunity in accordance with the following:
 - (i) from the lists of potential arbitrators submitted to the court by the Parties, provided that potential arbitrators meeting the necessary qualifications and experience set out in this Schedule 27 are on the list; or

- (ii) if one Party fails to submit its list of potential arbitrators to the court within 5 Business Days of a request from the court to submit a list, from the list submitted by the other Party provided that potential arbitrators meeting the necessary qualifications and experience set out in this Schedule 27 are on the list of that other Party; or
- (iii) if no list is submitted by either Party, or if the list or lists submitted do not include potential arbitrators with the necessary qualifications and experience, the court shall be entitled at its sole discretion to appoint anyone who meets the requirements set out in this Schedule 27 for the qualifications and experience of the arbitrator.

8.4 If the arbitration tribunal is comprised of three arbitrators:

- (a) the arbitrators shall be appointed as follows:
 - (i) each Party shall appoint one arbitrator no later than 5 Business Days after delivery of the notice to arbitrate pursuant to Section 7 of this Schedule 27;
 - (ii) if a Party fails to appoint an arbitrator within 5 Business Days after delivery of the notice to arbitrate, the other Party is entitled to apply to the Ontario Superior Court of Justice to appoint that arbitrator, in which case the court shall appoint that arbitrator at the earliest opportunity using a comparable process to that described in Section 8.3(b) of this Schedule 27;
 - (iii) the arbitrators appointed in accordance with the foregoing shall, within 5 Business Days after their appointment, jointly appoint a third arbitrator who shall also act as the chair of the arbitration tribunal and who, in addition to all other required qualifications, shall have experience in arbitration or judicial processes and procedures; and
 - (iv) if the two arbitrators appointed by the Parties fail to appoint a third arbitrator within the required time, either of the other two arbitrators may apply to the Ontario Superior Court of Justice for appointment of the third arbitrator, in which case the court shall appoint the third arbitrator at the earliest opportunity using a comparable process to that described in Section 8.3(b) of this Schedule 27; and
- (b) the arbitrators appointed by the Parties shall at all times be neutral and act impartially and shall not act as advocates for the interests of the Party who appointed them.

8.5 All arbitrators must have qualifications and experience relevant to the issues in the Dispute and also have qualifications and experience as arbitrators.

- 8.6 No one shall be nominated or appointed to act as an arbitrator who is or was in any way interested, financially or otherwise, in the conduct of the Project Operations or in the business affairs of HMQ Agencies, Project Co, or any consultant, subconsultant or subcontractor of any of them.
- 8.7 The arbitrator(s) shall have the jurisdiction and power to:
- (a) amend or vary any and all rules under the *Arbitration Act, 1991* (Ontario), including rules relating to time limits, either by express agreement of the Parties or, failing such agreement, as the arbitrator(s) consider appropriate and necessary in the circumstances to resolve the Dispute and render an award;
 - (b) require some or all of the evidence to be provided by affidavit;
 - (c) hold a hearing at which evidence and submissions are presented by the Parties;
 - (d) direct either or both Parties to prepare and provide the arbitrator(s) with such documents, test results or other things as the arbitrator(s) may require to assist them in the resolution of the Dispute and rendering of an award;
 - (e) require either Party to supply or prepare for examination by the arbitrator(s) and the other Party, any document or information the arbitrator(s) considers necessary;
 - (f) inspect the Project Operations, giving reasonable notice to each Party of the time when, and the place where, the arbitrator(s) intend(s) to conduct any inspections;
 - (g) award any remedy or relief that a court or judge of the Ontario Superior Court of Justice could order or grant subject to and in accordance with this Project Agreement, including, without limitation, interim orders, interim and permanent injunctions, and specific performance; and
 - (h) require either or both Parties to take and provide to the arbitrator(s) such measurements, perform such tests, perform such audits, or take any and all such other measures or steps as the arbitrator(s) consider necessary or desirable to aid them in making a fair and reasonable award.
- 8.8 The place of arbitration shall be Toronto, Ontario. The language of the arbitration shall be English.
- 8.9 The costs of an arbitration are in the discretion of the arbitrator(s) who, in addition to any jurisdiction and authority under applicable law to award costs, has the jurisdiction and authority to make an order for costs on such basis as the arbitrator(s) considers appropriate in the circumstances, including to award actual legal fees and disbursements and expert witness fees, and to specify or order any or all of the following:

- (a) the Party entitled to costs;
 - (b) the Party who must pay the costs;
 - (c) the amount of the costs or how that amount is to be determined; and
 - (d) how all or part of the costs must be paid.
- 8.10 In exercising discretion to award costs, however, the arbitrator(s) will take into account the desire of the Parties that costs should generally be awarded to each Party in proportion to the relative success that each Party has in the arbitration.
- 8.11 The award of the arbitrator(s) shall be final and binding upon both Parties, and both Parties expressly waive all rights of appeal in connection with the award of the arbitrator(s). Judgment may be entered upon the award in accordance with Applicable Law in any court having jurisdiction.
- 8.12 The Parties agree to and shall co-operate fully with the arbitrator(s) and proceed with the arbitration expeditiously, including in respect of any hearing, in order that an award may be rendered as soon as practicable by the arbitrator(s), given the nature of the Dispute. The arbitrator(s) shall render a decision as soon as possible and, in any event, shall use all reasonable efforts to render a decision no later than 20 Business Days after the date of the hearing, or such longer period of time as agreed to in writing by the Parties. If the arbitration tribunal is comprised of three arbitrators, the decision of a majority of the arbitration tribunal shall be deemed to be the decision of the arbitration tribunal, and where there is no majority decision, the decision of the chair of the arbitration tribunal shall be deemed to be the decision of the arbitration tribunal.
- 8.13 This Project Agreement, including this Schedule 27, constitutes an agreement to arbitrate that shall be specifically enforceable.
- 8.14 Any arbitrator appointed pursuant to this Section 8 of this Schedule 27 shall keep all information about the Dispute confidential and shall not disclose such information to anyone other than the Parties.

9. Litigation

- 9.1 Notwithstanding that a notice to arbitrate has been delivered pursuant to Section 7.1 of this Schedule 27, following receipt of the Expert's award or determination pursuant to Section 5 of this Schedule 27, or of the Adjudicator's award or determination pursuant to Section 6 of this Schedule 27, or if applicable a Notice of Dispute has been issued following receipt of a decision of the Independent Certifier if the Dispute is a Dispute in relation to the Independent Certifier's decisions for which Section 4.4 of this Schedule 27 provides that Sections 5 and 6 of this Schedule 27 shall not apply, if one or more of the following apply then either Party may elect, by written notice signed by their Party Representative, to require that the Dispute be referred to and resolved solely by litigation

in the Ontario Superior Court of Justice, and both Parties agree to attorn to the exclusive jurisdiction of the courts of the Province of Ontario in respect of the Dispute:

- (a) if the actual or potential total value or amount at issue in the Dispute (as determined by adding all claims and counterclaims) is more than \$[REDACTED] (index linked) in the aggregate or \$[REDACTED] (index linked) in any one year; or
- (b) if the Dispute is considered by HMQ Agencies to involve material issues of public health or safety.

Such notice will not be effective unless it indicates it is a notice to submit the Dispute to litigation, is signed by the Party Representative and is delivered to the other Party Representative within 15 Business Days after receipt of the Expert's determination, the Adjudicator's determination, or the Notice of Dispute referred to in Section 7.1(c) of this Schedule 27, as applicable, and provided further that such notice expressly identifies the specific Dispute and determination of the Adjudicator, Expert or Independent Certifier, as applicable, that is to be the subject of the litigation.

9.2 If neither Party delivers a notice of election to resolve a particular Dispute by litigation in the manner and within the time specified in Section 9.1 of this Schedule 27, then:

- (a) provided that one Party has, in the manner and within the time period specified in Section 7.1 of this Schedule 27, given notice to the other Party of election to resolve that Dispute by arbitration, and subject to a consolidation of proceedings pursuant to Section 11 of this Schedule 27, that Dispute shall be resolved only by arbitration pursuant to Sections 8.2 to 8.14 of this Schedule 27; and
- (b) subject to Section 9.2(a), where a Dispute was determined by the Expert, the Expert's determination is final and binding on both Parties and not subject to appeal, arbitration, litigation or any other dispute resolution process.

10. Consolidation of Project Agreement Adjudication, Arbitration and Litigation

10.1 For all Disputes that arise prior to Substantial Completion, unless:

- (a) both Parties otherwise agree; or
- (b) the issue in a particular Dispute arises in connection with the Review Procedure; or
- (c) the issue in a particular Dispute is such that waiting until after Substantial Completion to resolve that Dispute will cause irreparable harm to one of the Parties; or

- (d) the issue in a particular Dispute arises in connection with requirements of achieving or deficiencies in not achieving Substantial Completion; or
- (e) in respect to a particular Dispute, the Dispute is consolidated with Third Party Disputes (as hereinafter defined) pursuant to Section 11 of this Schedule 27;

all adjudication, arbitral and litigation proceedings between the Parties prior to Substantial Completion shall be stayed and consolidated into, as applicable, a single adjudication, arbitration and a single litigation proceeding, with the adjudication, arbitration and, if applicable, litigation, proceeding promptly and expeditiously after Substantial Completion.

11. Consolidation with Third Party Disputes

- 11.1 Subject to Section 11.4 of this Schedule 27, if either Party is involved in an arbitration in the Province of Ontario with a third party (“**Third Party Arbitration**”), and if such Third Party Arbitration involves common factual or legal issues (including common issues of damages) which are also the subject of a Dispute between the Parties for which a Notice of Dispute has been given, then any arbitration of the Dispute between the Parties which includes those common factual, legal or damages issues (“**Project Agreement Arbitration**”) shall be stayed, consolidated or joined with the Third Party Arbitration(s) but only if HMQ Agencies, Project Co and the other Parties all agree or, failing their agreement, if a court in the Province of Ontario on application considers it just and convenient in all the circumstances that the Project Agreement Arbitration should be stayed or consolidated or joined with the Third Party Arbitration.
- 11.2 Subject to Section 11.4 of this Schedule 27, if either Party is involved in litigation in the Province of Ontario with a third party (“**Third Party Litigation**”) and if:
 - (a) such Third Party Litigation involves common factual or legal issues (including common issues of damages) which are the subject of a Project Agreement Arbitration; and
 - (b) one of the Parties is brought directly into the Third Party Litigation as a Party to that litigation,

then on the application of either Party to the court in the Province of Ontario having jurisdiction the court may, if it determines that it is just and convenient in all the circumstances, order a stay of either or both the Project Agreement Arbitration proceeding and Third Party Litigation, or order a joinder of the Project Agreement Arbitration and the Third Party Litigation. If such joinder is ordered, the Project Agreement Arbitration and the Third Party Litigation ordered to be joined by the court shall be determined by that court or by another court in Ontario such that the Project Agreement Arbitration and the Third Party Litigation shall be resolved in one forum. For purposes of the foregoing, joinder of the Project Agreement Arbitration and the Third Party Litigation shall be construed to include stays and conditional stays of issues in the

Project Agreement Arbitration pending the commencement and completion of third party proceedings by one or both of the Parties in the Third Party Litigation.

- 11.3 In considering whether to order a stay, consolidation or joinder of a Project Agreement Arbitration with a Third Party Arbitration or Third Party Litigation, the court will be entitled to give substantial weight to the desire by the Parties that all Disputes which are related to Third Party Arbitration or Third Party Litigation be resolved in a single forum to avoid multiplicity of proceedings and the potential for contradictory findings of fact, liability and quantum, and to ensure the arbitrator or court has the advantage of obtaining full evidence and disclosure from the Parties and from the other Parties, as applicable and as required to resolve the Dispute and to make findings of fact, liability and quantum of damages and awards or judgments binding on the Parties based on all available evidence.
- 11.4 Sections 11.1 and 11.2 of this Schedule 27 only apply:
- (a) if the Dispute between the Parties includes a claim by one Party against the other for contribution or indemnity for that Party's liability or potential liability to the third party where such liability results or will result from an award in the Third Party Arbitration or a judgment in the Third Party Litigation; and
 - (b) to those specific issues that are common issues in the Project Agreement Arbitration, the Third Party Arbitration and the Third Party Litigation, such that all other issues in the Dispute shall continue to be resolved by Project Agreement Arbitration and shall not be consolidated with the Third Party Arbitration or Third Party Litigation.

12. [Intentionally deleted]

13. Miscellaneous

- 13.1 Project Co and HMQ Agencies shall diligently carry out their respective obligations under this Project Agreement during the pendency of any Disputes, including, without limitation, adjudication proceedings, arbitration proceedings or litigation proceedings. If during the pendency of any Dispute it is considered necessary by either Party to proceed in respect of the matter that is in Dispute, then without prejudice to Project Co's rights in respect of the Dispute (including in respect of Delay Events, Compensation Events and Variations), Project Co shall proceed in accordance with the direction of HMQ Agencies, and in the event the matter in dispute is determined in favour of Project Co, proceeding in accordance with HMQ Agencies' position shall: (i) subject to and in accordance with Section 38 of this Project Agreement, be treated as a Delay Event; (ii) subject to and in accordance with Section 39 of this Project Agreement, be treated as a Compensation Event; and (iii) subject to and in accordance with Schedule 22 - Variation Procedure, result in a Variation. For greater certainty, in respect of any Dispute relating to the Works referred to in Section 4.2 of this Schedule 27, the Independent Certifier shall be the decision maker of first instance and the Parties shall comply with the initial decision

- of the Independent Certifier unless and until it is overturned in a subsequent arbitration or litigation proceeding.
- 13.2 Nothing contained in this Schedule 27 will prevent the Parties from seeking interim protection from the courts of the Province of Ontario, including seeking an interlocutory injunction, if necessary to prevent irreparable harm to a Party.
- 13.3 The Parties shall indemnify each other in respect of any damages suffered or incurred on amounts agreed to be paid pursuant to resolution of a Dispute by the Party Representatives or by the executives of the Parties pursuant to Sections 2 and 3 of this Schedule 27, and on the amount of any award or judgment as follows:
- (a) for amounts payable by Project Co to HMQ Agencies, Project Co shall indemnify HMQ Agencies as provided for at Section 53.1(e) of this Project Agreement from and against any damages suffered or incurred resulting from any overpayment to Project Co or, as applicable, any underpayment or non-payment by Project Co from the date of any overpayment to Project Co or, as applicable, from the date on which payment was due under this Project Agreement to HMQ Agencies until the date of payment; or
 - (b) for amounts payable by HMQ Agencies to Project Co, HMQ Agencies shall indemnify Project Co as provided for at Section 53.2(c) of the Project Agreement from and against any damages suffered or incurred resulting from any overpayment to HMQ Agencies or, as applicable, any underpayment or non-payment by HMQ Agencies from the date of any overpayment to HMQ Agencies or, as applicable, from the date on which payment was due under this Project Agreement to Project Co until the date of payment.
- 13.4 Project Co shall ensure that any and all documents and other information in the possession or control of any Project Co Party that are available to Project Co and that may be necessary for the resolution of a Dispute on an informed basis by the Party Representatives or by the executives of the Parties pursuant to Sections 2 and 3 of this Schedule 27, or by an expert, an adjudicator, an arbitrator or court of competent jurisdiction, are made available in a timely manner to HMQ Agencies and the HMQ Representative.
- 13.5 HMQ Agencies shall ensure that any and all documents and other information in the possession or control of any HMQ Party that are available to HMQ Agencies and that may be necessary for the resolution of a Dispute on an informed basis by the Party Representatives or by the executives of the Parties pursuant to Sections 2 and 3 of this Schedule 27, or by an adjudicator, an arbitrator or court of competent jurisdiction, are made available in a timely manner to Project Co and the Project Co Representative.
- 13.6 The Parties can, by written agreement, on a Dispute by Dispute basis:
- (a) extend any or all timelines set out in this Schedule 27;

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- (b) agree to waive or by-pass any one or more of the Dispute resolution processes in Sections 2, 3, 4, 5 and 6 of this Schedule 27 and, instead, proceed directly to resolution of the Dispute by arbitration or litigation pursuant to Sections 7, 8 and 9 of this Schedule 27;
- (c) agree to (i) resolve a Dispute by litigation rather than adjudication or arbitration notwithstanding the requirements of Section 6 and Section 8 of this Schedule 27, or (ii) agree to resolve a Dispute by arbitration rather than adjudication or litigation notwithstanding the requirements of Section 6 and Section 9 of this Schedule 27, or (iii) agree to resolve a Dispute by adjudication rather than arbitration or litigation notwithstanding the requirements of Section 8 and Section 9 of this Schedule 27; and
- (d) agree to resolve a Dispute relating to the decision of an Expert by adjudication, arbitration or litigation, notwithstanding the provisions of Section 5 of this Schedule 27.

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SCHEDULE 28

REFINANCING

1 DEFINITIONS

1.1 The following terms shall have the following meanings:

- (a) **“Distribution”** means, whether in cash or in kind, any:
- (i) dividend or other distribution in respect of the Equity Capital;
 - (ii) reduction of capital, redemption or purchase of shares or any other reorganization or variation to the Equity Capital;
 - (iii) payment, loan, contractual arrangement or transfer of assets or rights to the extent (in each case) it was put in place after Financial Close and was neither in the ordinary course of business nor on reasonable commercial terms; or
 - (iv) the receipt of any other benefit which is not received in the ordinary course of business nor on reasonable commercial terms,
- and where any such Distribution is not in cash, the equivalent cash value of such Distribution shall be calculated.
- (b) **“Equity IRR”** means the projected internal rate of return to the Equity Provider over the full term of this Project Agreement, taking into account the aggregate of all its investments and of all Distributions made and projected to be made.
- (c) **“Exempt Refinancing”** means:
- (i) any Refinancing that has the effect of replacing or extending any Mini-Perm Financing, provided that Project Co shall assume any and all risks and benefits associated with such Refinancing without adjustment to the Monthly Service Payments or any other form of compensation to Project Co under the Project Agreement, including any risk that such Refinancing results in higher financing costs than the financing costs assumed by Project Co in its Financial Model as of the date of this Project Agreement for the Refinancing of any Mini-Perm Financing;
 - (ii) a change in taxation or change in accounting treatment pursuant to a Change in Law or change in Canadian GAAP;
 - (iii) the exercise of any right, the grant of any amendment, waiver or consent or any similar action under the Lending Agreements by the Lenders that

does not provide for a financial benefit to Project Co under those agreements;

- (iv) any sale of Equity Capital or securitization of the existing rights or interests attaching to such Equity Capital, unless such sale or securitization involves increasing the Senior Debt Amount or the Junior Debt Amount, as applicable, or amending the Senior Debt Makewhole or the Junior Debt Makewhole, as applicable, on terms more favourable to Project Co than contained in the Lending Agreements;
 - (v) any Qualifying Bank Transaction;
 - (vi) any Rescue Refinancing;
 - (vii) any Refinancing that was approved by HMQ Agencies prior to the execution of this Project Agreement and occurs during the first six months following the date of this Project Agreement;
 - (viii) any amendment, variation or supplement of any agreement approved by HMQ Agencies as part of any Variation under this Project Agreement; or
 - (ix) any Permitted Borrowing.
- (d) **“Mandatory Refinancing”** means an Exempt Refinancing described in Section 1.1(c)(i).
- (e) **“Mini-Perm Financing”** means a financing facility under any Lending Agreement that, pursuant to the applicable Lending Agreement, is scheduled to be repaid in whole or in part from the proceeds of a new financing.
- (f) **“Qualifying Bank”** means a lending institution that is:
- (i) a bank listed in Schedule I, II or III of the *Bank Act* (Canada); or
 - (ii) a bank, life insurance company, pension fund or fund managed by a professional fund manager that controls, either directly or through its affiliates, funds in excess of \$[REDACTED],

provided such institution is not a Restricted Person or a person whose standing or activities may compromise (1) the Province’s reputation or integrity, or (2) the nature of the Province’s transportation system, so as to affect public confidence in that system.

- (g) **“Qualifying Bank Transaction”** means:
- (i) the disposition by a Lender of any of its rights or interests in the Lending Agreements to a Qualifying Bank;

- (ii) the grant by a Lender to a Qualifying Bank of any rights of participation in respect of the Lending Agreements; or
 - (iii) the disposition or grant by a Lender to a Qualifying Bank of any other form of benefit or interest in either the Lending Agreements or the revenues or assets of Project Co, whether by way of security or otherwise.
- (h) **“Qualifying Refinancing”** means any Refinancing that will give rise to a Refinancing Gain that is not an Exempt Refinancing.
- (i) **“Refinancing”** means:
- (i) any amendment, variation, novation, supplement or replacement of any Lending Agreement;
 - (ii) the exercise of any right, or the grant of any waiver or consent, under any Lending Agreement;
 - (iii) the disposition of any rights or interests in, or the creation of any rights of participation in respect of, the Lending Agreements or the creation or granting of any other form of benefit or interest in either the Lending Agreements or the contracts, revenues or assets of Project Co whether by way of security or otherwise; or
 - (iv) any other arrangement put in place by Project Co or another person which has an effect which is similar to any of the foregoing provisions of this definition above or which has the effect of limiting Project Co’s ability to carry out any of the foregoing provisions of this definition.
- (j) **“Refinancing Financial Model”** means a comprehensive and detailed financial model satisfactory to HMQ Agencies, 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 this Project Agreement;
 - (iii) the performance of the Project Operations to the date of the Refinancing;
 - (iv) macroeconomic assumptions; and
 - (v) all other relevant factors.
- (k) **“Refinancing Gain”** means an amount equal to the greater of zero and (A - B), where:

A = the net present value, discounted at a discount rate equal to the Base Case Equity IRR, of all Distributions as projected immediately prior to the Refinancing (using the Refinancing Financial Model and taking into account the effect of the Refinancing) to be made over the remaining term of this Project Agreement following the Refinancing.

B = the net present value, discounted at a discount rate equal to the Base Case Equity IRR, of all Distributions as projected immediately prior to the Refinancing (using the Refinancing Financial Model but without taking into account the effect of the Refinancing) to be made over the remaining term of this Project Agreement following the Refinancing.

- (l) “**Refinancing Notice**” has the meaning given in Section 2.9.
- (m) “**Rescue Refinancing**” means any Refinancing which takes place due to the failure or prospective failure of Project Co to comply with any material financial obligation under the Lending Agreements, or any of them, which does not increase any liability of HMQ Agencies, whether actual or potential.

2 REFINANCING

2.1 Project Co shall not carry out:

- (a) any Qualifying Refinancing unless Project Co has obtained the prior written consent of HMQ Agencies, which consent, subject to Section 2.2, shall not be unreasonably withheld or delayed;
- (b) any Exempt Refinancing or any other Refinancing which does not result in a Refinancing Gain unless Project Co has delivered a notice of such Refinancing to HMQ Agencies before 5 Business Days of such Refinancing, except that such notice shall not be required for a disposition by a Lender of its rights or participation in the Lending Agreements where such disposition is a trade of bonds issued as provided for under a book-based system of a depository or pursuant to a trust indenture that comprises a portion of the Senior Debt Amount and/or Junior Debt Amount.

2.2 HMQ Agencies may withhold their consent to any Qualifying Refinancing, in their sole discretion:

- (a) where any person with whom Project Co proposes to carry out a Qualifying Refinancing is a Restricted Person;
- (b) if, at the time the Qualifying Refinancing is contemplated and effected, the Qualifying Refinancing will materially adversely affect the ability of Project Co to perform its obligations under the Project Documents or this Project Agreement;
or

- (c) if, at the time the Qualifying Refinancing is contemplated and effected, the Qualifying Refinancing will have the effect of increasing any liability of HMQ Agencies, whether actual or contingent, present or future, known or unknown.

2.3 HMQ Agencies shall be entitled to receive:

- (a) a [REDACTED]% share of any Refinancing Gain arising from a Qualifying Refinancing, in respect of any Refinancing Gain up to (when considered in aggregate with all previous Qualifying Refinancings) a Refinancing Gain of \$[REDACTED];
- (b) a [REDACTED]% share of any further Refinancing Gain arising from a Qualifying Refinancing, in respect of any Refinancing Gain in excess of \$[REDACTED] and up to (when considered in aggregate with all previous Qualifying Refinancings) a Refinancing Gain of \$[REDACTED]; and
- (c) a [REDACTED]% share of any further Refinancing Gain arising from a Qualifying Refinancing.

2.4 Project Co shall promptly provide HMQ Agencies with full details of any proposed Qualifying Refinancing, including a copy of the proposed Refinancing Financial Model and the basis for the assumptions used in the proposed Refinancing Financial Model. HMQ Agencies shall (before, during and at any time after any Refinancing) have unrestricted rights of audit over the Refinancing Financial Model and any documentation (including any aspect of the calculation of the Refinancing Gain) used in connection with such Refinancing (whether or not such Refinancing is determined to be a Qualifying Refinancing). Project Co shall promptly, and, in any event, within 5 Business Days of receiving a written request from HMQ Agencies, provide any information in relation to a proposed Refinancing as HMQ Agencies may reasonably require. Project Co shall keep HMQ Agencies informed as to any changes to the terms of the Refinancing. HMQ Agencies and Project Co shall at all times act in good faith with respect to any Refinancing.

2.5 Subject to Section 2.6 of this Schedule 28, HMQ Agencies shall have the right to elect to receive their share of any Refinancing Gain as:

- (a) a single payment in an amount less than or equal to any Distribution made on or about the date of the Refinancing; and/or
- (b) a reduction in the Monthly Service Payments over the remaining Project Term, such that the total net present value, discounted at the Discount Rate, of the foregoing, calculated at the time immediately prior to the Refinancing, shall equal HMQ Agencies' share of the Refinancing Gain.

2.6 HMQ Agencies and Project Co will negotiate in good faith to agree upon the basis and method of calculation of the Refinancing Gain and payment of HMQ Agencies' share of

the Refinancing Gain (taking into account how HMQ Agencies have elected to receive their share of the Refinancing Gain under Section 2.5 of this Schedule 28 and the profile of the Refinancing Gain). If the parties fail to agree upon the basis and method of calculation of the Refinancing Gain or the payment of HMQ Agencies' share, the Dispute shall be determined in accordance with Schedule 27 - Dispute Resolution Procedure.

- 2.7** HMQ Agencies and Project Co shall work collaboratively to establish the rate setting process required to complete the Qualifying Refinancing. The Refinancing Gain shall be calculated after taking into account the reasonable out-of-pocket costs that each Party directly incurs in relation to the Qualifying Refinancing and on the basis that, within 15 Business Days of any Qualifying Refinancing, Project Co will reimburse HMQ Agencies for all such reasonable out-of-pocket costs incurred by HMQ Agencies. Project Co and HMQ Agencies shall not be entitled to claim as out-of-pocket costs, any charge, cost, expense, fee or similar amount that is incurred by either Party in relation to a Qualifying Refinancing outside of the ordinary course.
- 2.8** If Project Co must, at a future date, undertake a Mandatory Refinancing, then HMQ Agencies may at any time request that Project Co provide to HMQ Agencies full and complete details and information with respect to the Mandatory Refinancing and its plan for the Mandatory Refinancing, including in respect to all relevant assumptions regarding the Mandatory Refinancing set out in the Financial Model (the “**Refinancing Information**”). For clarity, if Project Co must, at a future date, undertake a Mandatory Refinancing, HMQ Agencies must request Project Co to provide the Refinancing Information before it can issue a Refinancing Notice pursuant to Section 2.9. If HMQ Agencies and Project Co mutually agree, acting reasonably, that based on the Refinancing Information, a Refinancing prior to the Mandatory Refinancing would not have a negative material financial impact on the Mandatory Refinancing, then HMQ Agencies may provide Project Co with a Refinancing Notice pursuant to Section 2.9.
- 2.9** If HMQ Agencies consider the funding terms generally available in the market to be more favourable than those reflected in the Lending Agreements, HMQ Agencies may, by notice in writing to Project Co (a “**Refinancing Notice**”), require Project Co to request potential funders to provide terms for a potential Refinancing.
- 2.10** The Refinancing Notice shall set out in reasonable detail the grounds upon which HMQ Agencies believe such funding terms to be available. Project Co and HMQ Agencies shall meet to discuss the Refinancing Notice within 20 Business Days. Such a meeting will consider the evidence available to both parties about the availability of funding terms for a potential Refinancing. HMQ Agencies shall be entitled to withdraw the Refinancing Notice at or before such a meeting, or within 7 Business Days following the meeting.
- 2.11** If HMQ Agencies serve a Refinancing Notice which is not withdrawn pursuant to Section 2.10, then Project Co shall:
- (a) act promptly, diligently and in good faith with respect to the potential Refinancing;

- (b) use all reasonable endeavours to obtain the most favourable available terms from existing and/or new lenders for any potential Refinancing (provided that Project Co shall not be required to propose refinancing in a manner which a prudent board of directors of a company operating the same business in Canada to that operated by Project Co, in similar circumstances, would not approve), for the avoidance of doubt also being terms which are likely to generate a positive Refinancing Gain after the deduction of costs in accordance with the provisions of Section 2.7; and
- (c) either:
 - (i) as soon as reasonably practicable after receipt of the Refinancing Notice, provide to HMQ Agencies (I) full details of the proposed Refinancing, including a financial model and the basis for the assumptions used in the financial model and evidence to the reasonable satisfaction of HMQ Agencies that these assumptions represent the most favourable available terms for the potential Refinancing on the basis set out in Section 2.11(b) and (II) initial drafts of any changes to the Project Agreement including in relation to potential compensation on termination which might be required to give effect to the proposed Refinancing; or
 - (ii) if Project Co (acting reasonably) believes that it is not possible to obtain funding terms which are more favourable than those reflected in the Lending Agreements in accordance with the requirements of Section 2.11(b), provide evidence to the reasonable satisfaction of HMQ Agencies for such belief and evidence to the reasonable satisfaction of HMQ Agencies that Project Co has complied with its obligations in Sections 2.11(a) and (b) above.

2.12 Following receipt of the information referred to in Section 2.11(c)(i), HMQ Agencies shall, acting reasonably, either:

- (a) instruct Project Co to implement the proposed Refinancing; or
- (b) instruct Project Co to discontinue the proposed Refinancing

provided that if HMQ Agencies reasonably consider that the requirements of Sections 2.11(c)(i) or 2.11(c)(ii) have not been satisfied, HMQ Agencies may require Project Co to satisfy its obligations under Sections 2.11(c)(i) or 2.11(c)(ii). If Project Co must, at a future date, undertake a Mandatory Refinancing, HMQ Agencies shall not instruct Project Co to implement the proposed Refinancing unless HMQ Agencies and Project Co, acting reasonably, agree that such Refinancing will be likely to generate a positive Refinancing Gain after the deduction of costs in accordance with the provisions of Section 2.7 and will not have a negative material financial impact on the Mandatory Refinancing.

2.13 If HMQ Agencies instruct Project Co to implement the proposed Refinancing:

- (a) Project Co shall, as soon as reasonably practicable, use all reasonable endeavours to ensure that such proposed Refinancing is implemented;
- (b) such proposed Refinancing shall be deemed to be a Qualifying Refinancing; and
- (c) the provisions of Sections 2.1 to 2.7 shall apply.

2.14 If:

- (a) HMQ Agencies instruct Project Co to discontinue the potential Refinancing pursuant to Section 2.12(b); or
- (b) the requirements of Section 2.11(c)(ii) are satisfied

then, HMQ Agencies shall reimburse Project Co for the reasonable and proper professional costs incurred by Project Co in relation to the potential Refinancing, such costs to be paid to Project Co by HMQ Agencies within 20 Business Days after receipt of a valid invoice in respect of such amount. Such costs shall not include any internal management costs incurred by Project Co except insofar as (i) it can be demonstrated to the reasonable satisfaction of HMQ Agencies that such costs have been incurred in place of professional costs which would in the normal course of such business have been paid to third parties and (ii) HMQ Agencies have, by prior written agreement, approved the use of such internal management resource.

2.15 HMQ Agencies shall be entitled to issue a Refinancing Notice under Section 2.9 at any time but not more than once in any two-year period. For the avoidance of doubt, a Refinancing Notice that has been withdrawn under Section 2.10 has been issued for the purpose of this Section 2.15.

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SCHEDULE 29

STANDBY LETTER OF CREDIT

[NTD: The Standby Letter of Credit must be issued by a bank acceptable to Infrastructure Ontario, acting reasonably, and must be callable at the bank's counters in Toronto, Ontario.]

Letter of Credit: #[<*>]

Date: [<*>]

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

Attn: [<*>]

Dear Sir/Madam:

RE: East Rail Maintenance Facility Project

At the request of our client, [<*>] (“**Project Co**”), we, [insert name and address of issuing bank], hereby issue in your favour an irrevocable standby letter of credit (the “**Letter of Credit**”) in the amount of [REDACTED].

The amount available under this Letter of Credit is payable to Ontario Infrastructure and Lands Corporation (“**IO**”), at any time and from time to time, upon (a) receipt by us of a written demand for payment, accompanied by a certificate signed by two officers of IO certifying that IO is entitled to draw on this Letter of Credit pursuant to Section 2.3(c) of a project agreement dated [<*>] (as amended from time to time, the “**Project Agreement**”), and (b) presentation of the original of this Letter of Credit.

This Letter of Credit will expire at 5:00 p.m. on [insert the date that is 180 days after the **Financial Close Target Date**] (the “**Expiry Date**”), and IO may call for payment of any amount outstanding under this Letter of Credit at any time up to 5:00 p.m. on that date should this Letter of Credit not be renewed.

It is a condition of this Letter of Credit that it shall be automatically extended, without amendment, for one year from the expiration date hereof, or any future expiration date, unless, at least 30 days prior to any expiration date, we notify you, in writing, that we elect not to consider this Letter of Credit renewed for any such additional period. Upon receipt by you of such notice, you may draw the full amount hereunder by means of your demand.

Partial drawings are permitted.

We hereby agree that demands delivered under this Letter of Credit will be duly honoured upon presentation provided that all terms and conditions herein have been complied with.

Written demands drawn under this Letter of Credit shall state on their face that they are drawn under Letter of Credit #[<*>].

It is understood that [insert name of issuing bank] is obligated under this Letter of Credit for payments of monies only.

The Project Agreement is referred to herein for reference purposes only and does not form part of the terms of this Letter of Credit.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision) of the International Chamber of Commerce (ICC Publication No. 600) (the “UCP”) with the exception of Articles 18-30 inclusive (other than Article 29a, which shall apply) and Articles 31b, 31c and 32 except to the extent, if any, inconsistent with the express terms of this Letter of Credit. Notwithstanding Article 36 of the UCP, if this Letter of Credit expires during an interruption of business as contemplated in such Article 36, we shall honour any demand made under this Letter of Credit prior to the Expiry Date, within 30 days after the date on which such interruption of business ends (and we shall notify you promptly when it does so end). For matters not covered by such publication, this Letter of Credit shall be governed by and construed in accordance with the laws of the Province of Ontario.

Yours very truly,

[Name of Issuing Bank]

By: _____

Name:

Title:

By: _____

Name:

Title:

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SCHEDULE 30

INSURANCE TRUST AGREEMENT

THIS AGREEMENT is made as of the _____ day of March, 2015

AMONG:

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

(“**IO**”)

AND:

METROLINX, a non-share capital corporation continued under the *Metrolinx Act, 2006*, S.O. 2006, c.16 and a Crown agency in accordance with the *Crown Agency Act*, R.S.O. c.48

(“**Metrolinx**” and, together with IO, collectively, “**HMQ Agencies**”)

AND:

PLENARY INFRASTRUCTURE ERMF GP, a general partnership existing under the laws of the Province of Ontario

(“**Project Co**”)

AND:

[REDACTED]

(the “**Lenders’ Agent**”)

AND:

[REDACTED]

(the “**Account Trustee**”)

WHEREAS:

A. HMQ Agencies and Project Co have entered into the Project Agreement.

- B. HMQ Agencies, the Lenders’ Agent and Project Co have entered into the Lenders’ Direct Agreement.
- C. HMQ Agencies, the Lenders’ Agent and Project Co have agreed that all amounts from time to time contained in the Insurance Trust Account are to be held in trust by the Account Trustee in accordance with the terms of this Insurance Trust Agreement, and that no releases, distributions or transfers of any funds from the Insurance Trust Account shall be made other than in accordance with the terms of this Insurance Trust Agreement.
- D. **[REDACTED]**.

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 to it in the preamble.
- (b) **“Bank”** means **[REDACTED]**.
- (c) **“Business Day”** has the meaning given in the Project Agreement.
- (d) **“Change of Authorization Event”** has the meaning given in Section 7(a) of this Insurance Trust Agreement.
- (e) **“Change of Authorization Notice”** has the meaning given in Section 7(b)(ii) of this Insurance Trust Agreement.
- (f) **“Common Terms Agreement”** has the meaning given in the Project Agreement.
- (g) **“Crown”** has the meaning given in the Project Agreement.
- (h) **“Default Notice”** means a written notice given by the Lenders’ Agent to the Account Trustee that an event of default under the Lending Agreements has occurred and is continuing.
- (i) **“Default Period”** means the period commencing on the date upon which the Account Trustee receives a Default Notice and ending on the date upon which the Account Trustee receives written notice from the Lenders’ Agent that the event of default which was the subject matter of the applicable Default Notice has been cured.
- (j) **“Facility”** has the meaning given in the Project Agreement.
- (k) **“FF&E”** has the meaning given in the Project Agreement.

- (l) “**Governmental Authority**” has the meaning given in the Project Agreement.
- (m) “**HMQ Agencies**” has the meaning given in the recitals.
- (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 4(b) 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 to it in the preamble.
- (t) “**Lenders’ Direct Agreement**” means the lenders’ direct agreement made on or about the date hereof between HMQ Agencies, Project Co and the Lenders’ Agent.
- (u) “**Lending Agreements**” has the meaning given in the Project Agreement.
- (v) “**Order**” has the meaning given in Section 6(k) of this Insurance Trust Agreement.
- (w) “**Party**” means any of HMQ Agencies, Project Co, the Lenders’ Agent or the Account Trustee, and “**Parties**” means all of HMQ Agencies, Project Co, the Lenders’ Agent and the Account Trustee.
- (x) “**person**” has the meaning given in the Project Agreement.
- (y) “**Privacy Laws**” has the meaning given to it in section 6(r).
- (z) “**Project**” has the meaning given in the Project Agreement.
- (aa) “**Project Agreement**” means the project agreement made on or about the 24th day of March, 2015 between HMQ Agencies and Project Co.
- (bb) “**Project Co**” has the meaning given to it in the preamble.
- (cc) “**Project Co Event of Default**” has the meaning given in the Project Agreement.
- (dd) “**Project Operations**” has the meaning given in the Project Agreement.
- (ee) “**Trust Property**” means all of the property held in trust by the Account Trustee pursuant to this Insurance Trust Agreement, including, without limitation, the Insurance Trust Account, and all amounts from time to time contained therein, the Insurance Policies and the Insurance Proceeds.

2. INTERPRETATION

This Insurance Trust Agreement shall be interpreted according to the following provisions, unless the context requires a different meaning:

- (a) The headings in this Insurance Trust Agreement are for convenience of reference only, shall not constitute a part of this Insurance Trust Agreement, and shall not be taken into consideration in the interpretation of, or affect the meaning of, this Insurance Trust Agreement.
- (b) Unless the context otherwise requires, references to specific Sections, Clauses, Paragraphs, Subparagraphs, and other divisions are references to such Sections, Clauses, Paragraphs, Subparagraphs, or divisions of this Insurance Trust Agreement and the terms “Section” and “Clause” are used interchangeably and are synonymous.
- (c) Words importing persons or parties are to be broadly interpreted and include an individual, corporation, 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 apply to the construction of this

Insurance Trust Agreement and, accordingly, general words introduced or followed by the word “other” or “including” or “in particular” shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words.

- (i) Where this Insurance Trust Agreement states that an obligation shall be performed “no later than” or “within” or “by” a stipulated date or event which is a prescribed number of days after a stipulated date or event, the latest time for performance shall be 5:00 p.m. on the last day for performance of the obligation concerned, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- (j) Where this Insurance Trust Agreement states that an obligation shall be performed “on” a stipulated date, the latest time for performance shall be 5:00 p.m. on that day, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- (k) Any reference to time of day or date means the local time or date in Whitby, Ontario.
- (l) Unless otherwise indicated, time periods will be strictly construed.
- (m) Whenever the terms “will” or “shall” are used in this Insurance Trust Agreement they shall be construed and interpreted as synonymous and to read “shall”.

3. INSURANCE TRUST ACCOUNT

- (a) Prior to the commencement of a Default Period, the Insurance Trust Account, and all amounts from time to time contained therein, including interest thereon, shall be held in trust by the Account Trustee for the benefit of Project Co. During a Default Period, the Insurance Trust Account, and all amounts from time to time contained therein, shall be held in trust by the Account Trustee for the benefit of the Lenders’ Agent and the Lenders, provided that, upon receipt by the Account Trustee of a Change of Authorization Notice, the Insurance Trust Account, and all amounts from time to time contained therein, shall be held in trust by the Account Trustee for the benefit of HMQ Agencies.
- (b) The Account Trustee shall not release, distribute or transfer any funds from the Insurance Trust Account other than in accordance with the terms of this Insurance Trust Agreement.
- (c) Notwithstanding any other provision of this Insurance Trust Agreement and subject to Section 3(d), the Lenders’ Agent, HMQ Agencies, and Project Co agree that, if any of them either receives any Insurance Proceeds from the Insurance Trust Account or has the right to direct the Account Trustee to advance funds in respect of any Insurance Proceeds from the Insurance Trust Account 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 Facility or any other assets, materials or goods necessary or desirable for the carrying out of the Project Operations in respect of which such Insurance Proceeds have been paid;

- (ii) the completion of the Project; or
- (iii) indemnification for any HMQ Agencies', HMQ Occupant or Non-HMQ Occupant 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 Project Operations.

- (d) Notwithstanding anything in this Insurance Trust Agreement, if any of HMQ Agencies, any HMQ Occupants or any Non-HMQ Occupants are entitled to indemnification under the Insurance Policies in respect of any loss incurred by HMQ Agencies, any HMQ Occupants or any Non-HMQ Occupants such related insurance proceeds are to be paid directly to HMQ Agencies, any HMQ Occupants or any Non-HMQ Occupants, as the case may be, 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 HMQ Agencies shall be required to use such proceeds for carrying out the purposes referred to in Sections 3(c)(i) and (ii) in respect of which such proceeds have been paid.

4. INSURANCE

- (a) Project Co shall deliver, or cause to be delivered, to the Account Trustee originals of all property and asset related insurance policies that Project Co is required to maintain under the Project Agreement (collectively, the “**Insurance Policies**”), and the Account Trustee shall hold the Insurance Policies in trust for the benefit of each of the beneficiaries and loss payees, as the case may be, thereunder.
- (b) The Account Trustee shall distribute any proceeds of any Insurance Policy that are paid over to it by any insurer, Project Co, the Lenders' Agent or HMQ Agencies (the “**Insurance Proceeds**”) as follows:
 - (i) subject to Section 4(c), in the case of the all risks course of construction (builders' risk), boiler and machinery insurance or property insurance policies that Project Co is required to maintain under the Project Agreement:
 - (A) if the Account Trustee has not received a Default Notice and:
 - (1) if the amount of such Insurance Proceeds, together with the aggregate of all Insurance Proceeds paid in respect of the same loss or claim, is less than [REDACTED], to Project Co to repair, restore or replace the assets in respect of which such Insurance Proceeds have been paid; or

- (2) if the amount of such Insurance Proceeds, together with the aggregate of all Insurance Proceeds paid in respect of the same loss or claim, is equal to or greater than [REDACTED], to the Lenders' Agent to reimburse Project Co for the costs of repairing, restoring or replacing the assets in respect of which such Insurance Proceeds have been paid; or
- (B) if the Account Trustee has received a Default Notice, to the Insurance Trust Account to be distributed by the Account Trustee in such amounts and to such persons as the Lenders' Agent may at any time or from time to time direct in writing, provided that, if the Account Trustee has received a Change of Authorization Notice, the Account Trustee shall release such Insurance Proceeds from the Insurance Trust Account in such amounts and to such parties as HMQ Agencies may at any time or from time to time direct in writing, in each case, to repair, restore or replace the assets in respect of which such Insurance Proceeds have been paid; and
- (ii) in the case of any other Insurance Policies, to the Lenders' Agent, or, following receipt by the Account Trustee of a Change of Authorization Notice, to HMQ Agencies, to be distributed to the parties entitled thereto.
- (c) All losses under (i) all risks course of construction (builder's risk) including boiler and machinery insurance carried by Project Co prior to Substantial Completion; (ii) property insurance carried by Project Co after Substantial Completion; and (iii) the boiler and machinery insurance carried by Project Co after Substantial Completion, which in each case is related to FF&E purchased, owned or leased by any of HMQ Agencies, any HMQ Occupants or Non-HMQ Occupants, shall be payable solely to HMQ Agencies, the HMQ Occupants or Non-HMQ Occupants, as applicable, and shall not be payable to the Account Trustee or distributed pursuant to this Insurance Trust Agreement.
- (d) The Account Trustee shall distribute any excess Insurance Proceeds remaining after the distributions contemplated in Section 4(b)(ii) have been made, including, without limitation, 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, HMQ Agencies, may at any time or from time to time direct in writing.

5. ACCOUNT AGREEMENT

[REDACTED].

6. THE ACCOUNT TRUSTEE

- (a) The Account Trustee shall not have any duty or obligation to manage, control, use, make any payment in respect of, register, record, insure, inspect, sell, dispose of or otherwise deal with any part of the Trust Property except as expressly provided by the terms of this Insurance Trust Agreement. The Account Trustee shall carry out all written directions given by the Lenders' Agent, HMQ Agencies 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, HMQ Agencies 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, without limitation, negligence in the handling of funds), wilful misconduct, bad faith or reckless disregard of any duty hereunder.
- (c) The Account Trustee will not be subject to any liability whatsoever, in tort, contract or otherwise in connection with the Trust Property or the carrying out of its duties under this Insurance Trust Agreement to the Lenders' Agent, the Lenders, Project Co or any other person for any action taken or permitted by it to be taken, or for its failure to take any action, or for not performing any act or fulfilling any duty, obligation or responsibility hereunder by reason of any occurrence beyond the control of the Account Trustee (including, but not limited to, any act or provision of any present or future law or of any Governmental Authority, any act of God or war, or the unavailability of any wire or communication facility), provided that the foregoing limitation will not apply in respect of any action or failure to act arising from or in connection with wilful misconduct, negligence or reckless disregard of duty by the Account Trustee. The Account Trustee in doing anything or permitting anything to be done in respect of the Trust Property or the carrying out of its duties under this Insurance Trust Agreement is, and will be conclusively deemed to be, acting as trustee for the beneficiaries hereunder and not in any other capacity. Except to the extent provided in this Section 6(c), the Account Trustee will not be subject to any liability for debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses against or with respect to the Trust Property, arising out of anything done or permitted by it to be done or its failure to take any action in respect of the execution of its duties hereunder and resort will be had solely

to the Trust Property for the payment or performance thereof, and no other property or assets of the Account Trustee, whether owned in its personal capacity or otherwise, will be subject to levy, execution or other enforcement procedure with regard to any obligation under this Insurance Trust Agreement.

- (d) The Account Trustee shall not be required to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers hereunder, or in acting at the request or direction of the Lenders' Agent on behalf of the Lenders, unless it shall have received adequate indemnity or security against such risk or liability satisfactory to it.
- (e) Notwithstanding the foregoing, the Account Trustee shall be liable for any action or failure to act arising from or in connection with the dishonesty, fraud, negligence (including, without limitation, negligence in the handling of funds), wilful misconduct, bad faith or reckless disregard of any duty hereunder by the Account Trustee or any of its directors, officers or employees, or the failure to comply with the standard of care referred to in Section 6(b).
- (f) Except as otherwise provided in Sections 6(c), 6(d) and 6(e):
 - (i) the Account Trustee may rely and shall be protected in acting or refraining from acting upon any signature, resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order or other paper or document reasonably believed by it in good faith to be genuine and to have been signed or presented by the proper party or parties; and
 - (ii) the Account Trustee may exercise its powers and perform its duties by or through such attorneys, representatives, agents and employees as it shall appoint; and may consult with counsel, accountants and other skilled persons selected and employed or retained by it, and the Account Trustee shall not be liable for anything done, suffered or omitted in good faith by it in accordance with the written advice of such counsel, accountants or other skilled persons (provided that such advice pertains to such matters as the Account Trustee may reasonably presume to be within the scope of such person's area of competency) and not contrary to any express provision in this Insurance Trust Agreement.
- (g) Project Co hereby agrees to pay, indemnify and hold harmless the Account Trustee from and against any and all loss, liability, cost, claim and expense incurred by the Account Trustee with respect to the performance of this Insurance Trust Agreement by the Account Trustee or any of the Account Trustee's directors, officers or employees, unless arising from its or their own dishonesty, fraud, negligence (including, without limitation, 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 HMQ Agencies 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, HMQ Agencies 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, HMQ Agencies, 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, HMQ Agencies, 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, HMQ Agencies, 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 HMQ Agencies shall be paramount to and supersede any direction, instruction, notice or other communication from any other Party to this Insurance Trust Agreement, and the Account Trustee shall comply with such direction, instruction, notice or other communication from HMQ Agencies.
- (o) Each of the Lenders' Agent and HMQ Agencies 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 HMQ Agencies, as applicable. The Account Trustee shall refuse to act upon any instruction given by the Lenders' Agent or HMQ Agencies 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 HMQ Agencies, as applicable, pursuant to this Section 6(o), as any such incumbency certificate may be amended, supplemented or replaced from time to time.
- (p) The Account Trustee shall be entitled to rely on, and act upon, any direction, instruction, notice or other communication provided to it hereunder which is sent to it by facsimile transmission, provided that any such direction, instruction, notice or other communication is signed by an individual named in the incumbency certificate delivered to the Account Trustee by the Lenders' Agent or HMQ Agencies, as applicable, pursuant to Section 6(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 10 days' written notice to Project Co and HMQ Agencies, or any shorter period of time as agreed to by Project Co and HMQ Agencies, notwithstanding the provisions of Section 6(a) of this Insurance Trust Agreement, provided that (i) the Account Trustee's written notice

shall describe the circumstances of such non-compliance; and (ii) if such circumstances are rectified to the Account Trustee's satisfaction within such 10 day period, then such resignation shall not be effective.

- (r) The Parties acknowledge that federal and/or provincial legislation that addresses the protection of individuals' personal information (collectively, "**Privacy Laws**") may apply to obligations and activities under this Insurance Trust Agreement. Despite any other provision of this Insurance Trust Agreement, no Party shall take or direct any action that would contravene, or cause the other to contravene, applicable Privacy Laws. Project Co, the Lenders' Agent and HMQ Agencies shall, prior to transferring or causing to be transferred personal information to the Account Trustee, obtain and retain required consents of the relevant individuals to the collection, use and disclosure of their personal information, or shall have determined that such consents either have previously been given upon which the Parties can rely or are not required under the Privacy Laws. The Account Trustee shall use commercially reasonable efforts to ensure that its services hereunder comply with Privacy Laws. Specifically, the Account Trustee agrees: (a) to have a designated chief privacy officer; (b) to maintain policies and procedures to protect personal information and to receive and respond to any privacy complaint or inquiry; (c) to use personal information solely for the purposes of providing its services under or ancillary to this Insurance Trust Agreement and not to use it for any other purpose except with the consent of or direction from Project Co or HMQ Agencies or the individual involved; (d) not to sell or otherwise improperly disclose personal information to any third party; and (e) to employ administrative, physical and technological safeguards to reasonably secure and protect personal information against loss, theft, or unauthorized access, use or modification.

7. LENDERS' AGENT AND HMQ AGENCIES' RIGHTS TO DIRECT

- (a) Until the termination of the Project Agreement in accordance with the Lenders' Direct Agreement and receipt by Project Co of any amounts to which it is entitled pursuant to Schedule 23 - Compensation on Termination to the Project Agreement and all Insurance Proceeds to the extent that the value of such Insurance Proceeds was deducted from the amounts payable to Project Co by HMQ Agencies (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 and the Insurance Proceeds.
- (b) Upon the occurrence of a Change of Authorization Event:
- (i) the Lenders' Agent shall cease to be entitled, and HMQ Agencies shall thenceforth be entitled, to direct the Account Trustee with respect to the Insurance Trust Account, the Insurance Policies and the Insurance Proceeds; and
 - (ii) the Lenders' Agent and HMQ Agencies shall jointly provide notice to the Account Trustee (a "**Change of Authorization Notice**") that HMQ Agencies shall, as of the date of such Change of Authorization Event, have the exclusive

right to direct the Account Trustee with respect to the Insurance Trust Account, the Insurance Policies and the Insurance Proceeds.

- (c) Notwithstanding the foregoing, no Change of Authorization Event shall occur and no Change of Authorization Notice shall be delivered to the Account Trustee where an HMQ Event of Default has occurred. Where an HMQ Event of Default has occurred, upon receipt by the Lenders' Agent and Lenders of all amounts owing by HMQ Agencies to the Lenders' Agent and Lenders under the Lenders' Direct Agreement, the Account Trustee shall release all amounts in the Insurance Trust Account, the Insurance Policies and the Insurance Proceeds to Project Co or as Project Co may otherwise direct from time to time.

8. TERMINATION

- (a) Subject to the provisions of Section 8(b), this Insurance Trust Agreement shall remain in full force and effect and be binding in accordance with and to the extent of its terms until:
 - (i) the obligations of Project Co to the Lenders' Agent and the Lenders under the Lending Agreements have been paid and performed in full and the Lenders have no further obligation to make any further advances or other credit accommodations under the Lending Agreements; and
 - (ii) the obligations of Project Co to HMQ Agencies have been paid and performed in full.
- (b) The Account Trustee may terminate this Insurance Trust Agreement at any time upon sixty (60) days prior written notice to the other Parties hereto, provided that no termination of this Insurance Trust Agreement by the Account Trustee shall be effective until such time as the Lender's Agent, HMQ Agencies, 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 HMQ Agencies.

9. ASSIGNMENT

- (a) The Account Trustee shall not assign, transfer or otherwise dispose of any of its rights or obligations under this Insurance Trust Agreement without the prior written consent of the Lenders' Agent, HMQ Agencies and Project Co.

10. 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, facsimile or by hand, as follows:

If to HMQ Agencies:

Metrolinx
20 Bay Street, Suite 600
Toronto, Ontario M5J 2W3

Fax: **[REDACTED]**
Attn.: Manager, Rail Facilities

with a copy to:

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

Fax No.: **[REDACTED]**
Attn.: Project Manager, East Rail Maintenance Facility
Project

If to Project Co:

[REDACTED]

Attention: **[REDACTED]**
Facsimile: **[REDACTED]**
Email: **[REDACTED]**

with a copy (by facsimile) to:

[REDACTED]

Attention : **[REDACTED]**
Facsimile: **[REDACTED]**
Email: **[REDACTED]**

and:

Attention: Chief Financial Officer
Facsimile: **[REDACTED]**

and with a copy to:

[REDACTED]
Attention: **[REDACTED]**

If to the Account Trustee:

[REDACTED]

Fax: **[REDACTED]**
Attn.: Manager, Corporate Trust

If to the Lenders' Agent: [REDACTED]

Fax: [REDACTED]

Attn.: Corporate Trust Administration

- (b) Where any notice is provided or submitted to a Party via facsimile, an original of the notice sent via facsimile shall promptly be sent by regular mail or registered mail. For greater certainty, a notice given via facsimile shall not be invalid by reason only of a Party's failure to comply with this Section 10(b).
- (c) Any Party to this Insurance Trust Agreement may, from time to time, change any of its contact information set forth in Section 10(a) by prior notice to the other Parties, and such change shall be effective on the Business Day that next follows the recipient Party's receipt of such notice unless a later effective date is given in such notice.
- (d) Subject to Sections 10(e), 10(f) and 10(g):
 - (i) a notice given by registered mail shall be deemed to have been received on the third Business Day after mailing;
 - (ii) a notice given by hand delivery shall be deemed to have been received on the day it is delivered; and
 - (iii) a notice given by facsimile shall be deemed to have been received on the day it is transmitted by facsimile.
- (e) If the Party giving the notice knows or ought reasonably to know of difficulties with the postal system which might affect negatively the delivery of mail, any such notice shall not be mailed but shall be made or given by personal delivery or by facsimile transmission in accordance with this Section 10.
- (f) If any notice delivered by hand or transmitted by facsimile is so delivered or transmitted, as the case may be, either on a day that is not a Business Day or on a Business Day after 4:00 p.m. (recipient's local time), then such notice shall be deemed to have been received by such recipient on the next Business Day.
- (g) A notice given by facsimile shall be deemed to have been received by the recipient on the day it is transmitted only if a facsimile transmission report (maintained by the sender) indicates that the transmission of such notice was successful.

11. AMENDMENTS

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

12. WAIVER

- (a) No waiver made or given by a Party under or in connection with this Insurance Trust Agreement shall be binding or effective unless the waiver is in writing, signed by an authorized representative of the Party giving such waiver, and delivered by such Party to the other Parties. No waiver made with respect to any right, power or remedy in one instance will be deemed to be a waiver with respect to any other instance involving the exercise of such right, power, or remedy or with respect to any other right, power, or remedy.
- (b) Failure by any Party to exercise any of its rights, powers or remedies hereunder or its delay to do so shall not constitute a waiver of those rights, powers or remedies. The single or partial exercise of a right, power or remedy shall not prevent its subsequent exercise or the exercise of any other right, power or remedy.

13. RELATIONSHIP BETWEEN THE PARTIES

The Parties are independent contractors. This Insurance Trust Agreement is not intended to and does not create or establish between the Parties any relationship as partners, joint venturers, employer and employee, master and servant, or, except as provided in this Insurance Trust Agreement, of principal and agent.

14. ENTIRE AGREEMENT

Except where provided otherwise in this Insurance Trust Agreement, this Insurance Trust Agreement constitutes the entire agreement between the Parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings, whether oral, written, express or implied, concerning the subject matter of this Insurance Trust Agreement.

15. SEVERABILITY

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

16. ENUREMENT

This Insurance Trust Agreement shall enure to the benefit of, and be binding on, each of the Parties and their respective successors and permitted transferees and assigns.

17. GOVERNING LAW AND JURISDICTION

- (a) This Insurance Trust Agreement shall be governed by and construed in accordance with the laws of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract, without regard to conflict of laws principles.
- (b) The Parties agree that the courts of the Province of Ontario and all courts competent to hear appeals therefrom shall have exclusive jurisdiction to hear and settle any action, suit, proceeding or dispute in connection with this Insurance Trust Agreement and hereby irrevocably attorn to the exclusive jurisdiction of such courts.
- (c) Nothing in this Insurance Trust Agreement affects the rights, protections and immunities of the Crown under the *Proceedings Against the Crown Act* (Ontario).

18. HMQ DESIGNATE

At any time and from time to time, the Crown may designate any ministry, branch, agency, division, department or office of the Government of Ontario to carry out administrative responsibility for the rights and obligations of HMQ Agencies 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 HMQ Agencies hereunder and such notice shall have effect on the later of the date of delivery of such notice and the date specified in the written notice. The Crown shall advise Project Co, the Lenders' Agent and the Account Trustee in writing of any designation hereunder. The rights and obligations of the parties to this Insurance Trust Agreement shall be in no way affected by reason of any such designation. Project Co, the Lenders' Agent and the Account Trustee acknowledge the right of the Crown to delegate administrative responsibilities hereunder as set forth in this Section 18.

19. FURTHER ASSURANCE

Each Party shall do all things, from time to time, and execute all further documents necessary to give full effect to this Insurance Trust Agreement.

20. LANGUAGE OF AGREEMENT

Each Party acknowledges having requested and being satisfied that this Insurance Trust Agreement and related documents be drawn in English. Chacune des parties reconnaît avoir demandé que ce document et ses annexes soient rédigés en anglais et s'en déclare satisfaite.

21. JOINT AND SEVERAL

IO and Metrolinx shall be liable, on a joint and several basis, for all of the obligations of HMQ Agencies under this Insurance Trust Agreement and for each covenant of the other under this Insurance Trust Agreement.

22. 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 the Parties shall constitute a full, original and binding agreement for all purposes. Counterparts may be executed either in original or faxed form provided that any Party providing its signature in faxed form shall promptly forward to such Party an original signed copy of this Insurance Trust Agreement which was so faxed.

Remainder of this Page Intentionally Left Blank

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

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

Per: _____
Name: [redacted]
Title: [redacted]

Per: _____
Name: [redacted]
Title: [redacted]

I/We have authority to bind the corporation.

METROLINX

Per: _____
Name: [redacted]
Title: [redacted]

I/We have authority to bind the corporation.

[REDACTED]

Per: _____
Name: [redacted]
Title: [redacted]

Per: _____
Name: [redacted]
Title: [redacted]

I/We have authority to bind the trust

**PLENARY INFRASTRUCTURE ERMF
GP,**

by its partners:

[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:

By: _____
Name:
Title:

I/We have authority to bind the corporation.

[REDACTED]

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have authority to bind the trust.

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SCHEDULE 31

PROJECT CO INFORMATION

[REDACTED]

SCHEDULE 32

FINANCIAL MODEL EXTRACTS

[REDACTED]

22694669.2

SCHEDULE 33

WORKS REPORT REQUIREMENTS

1. The Works Report shall include the following:
 - (a) an executive summary;
 - (b) design status;
 - (c) Works Schedule summary, including:
 - (i) permits;
 - (ii) construction progress;
 - (iii) progress photos, including at least one photograph from the same location each month;
 - (iv) construction milestones; and
 - (v) submissions schedule;
 - (d) contractual outstanding decisions;
 - (e) LEED status;
 - (f) quality assurance and quality control;
 - (g) organization / staffing changes and additions for Project Co and Construction Contractor;
 - (h) health and safety, including:
 - (i) lost time injuries; and
 - (ii) accidents with no lost time;
 - (i) Subcontract status, including:
 - (i) consultants;
 - (ii) Subcontracts awarded;
 - (iii) tenders;
 - (iv) shop drawing submittals status;
 - (v) labour report (average workforce); and

- (vi) the number of apprentices who are providing services relating to the Project as of the date of the Works Report, and such information may be provided on a monthly basis but in any event not less frequent than on a quarterly basis;
- (j) financial status, including:
 - (i) actual costs incurred by category such as (but not limited to) pure construction costs, construction ancillary costs, financing costs and transaction costs, along with a further breakdown thereof as required;
 - (ii) progress and Variations;
 - (iii) insurance summary;
 - (iv) Construction Contractor default status; and
 - (v) cash flow projection (capital cost components);
- (k) risk management, including:
 - (i) claims;
 - (ii) liens;
 - (iii) environmental issues;
 - (iv) labour;
 - (v) market conditions;
 - (vi) outstanding disputes;
 - (vii) operational risks;
 - (viii) other risks;
- (l) cash allowances, including:
 - (i) financial information related to each Cash Allowance Item; and
 - (ii) status of each Cash Allowance Item and spend projections;
- (m) budgets for FF&E (held by HMQ Agencies);
- (n) delivery dates for program equipment from prequalified vendors (vehicle washing equipment, rail car hoists, body hoists, turnables, underfloor wheel lathe wheel measurement and inspection system, vehicle sanding equipment);

- (o) FF&E delivery dates; and
- (p) commissioning, occupancy and completion.

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SCHEDULE 34

[REDACTED]

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