

**PROJECT AGREEMENT
(Redacted Version)**

**TO DESIGN, BUILD AND FINANCE THE
ADVANCE TUNNEL FOR THE SCARBOROUGH
SUBWAY EXTENSION**

CONFIDENTIAL

1.	DEFINITIONS AND INTERPRETATION	2
1.1	Definitions and Interpretation	2
1.2	Conflict of Terms	4
1.3	Conflict of Documents	5
1.4	Legal Requirements	5
2.	COMMERCIAL CLOSE AND FINANCIAL CLOSE	5
2.1	Effective Date	5
2.2	Standby Letter of Credit.....	6
2.3	Financial Close.....	6
2.4	Disruption in Financial Markets	7
3.	GUARANTEED PRICE	8
3.1	Guaranteed Price and Adjustments	8
4.	PAYMENT	9
4.1	General.....	9
4.2	Acknowledgement by Project Co	9
4.3	Lump Sum Payments	9
4.4	Directions on Payments	11
4.5	Payment of Legislative Holdback.....	11
4.6	Payment of Finishing Holdback.....	11
4.7	Completion Holdback and Seasonal Works Holdback	12
4.8	Compensation on Termination.....	12
4.9	Payment Due under Insurance Policies.....	12
4.10	HST	12
4.11	Set-Off	12
4.12	Effect of Payment	13
4.13	No Other Entitlement.....	13
4.14	Taxes.....	13
4.15	Changes in Scope of Taxation	14
4.16	Changes in Recoverability of Tax Credits	14
4.17	Information and Assistance Provided by Project Co	14
4.18	Residency – Income Tax Act (Canada)	15
4.19	Taxes – General	15
4.20	Taxes – Indemnity.....	15
5.	SCOPE OF AGREEMENT	16
5.1	Scope of Agreement.....	16
6.	REPRESENTATIONS AND WARRANTIES.....	16
6.1	Project Co Representations and Warranties.....	16
6.2	Contracting Authority Representations and Warranties	19
7.	BACKGROUND INFORMATION	22
7.1	Review of Background Information	22
7.2	No Warranty for Background Information	22

7.3	No Claims or Liability in Respect of Background Information.....	22
7.4	Exceptions.....	23
7.5	MEI Post-Closing Reports	23
8.	PROJECT DOCUMENTS.....	24
8.1	Project Documents.....	24
8.2	Ancillary Documents	25
8.3	Changes to Lending Agreements and Refinancing.....	25
8.4	Compliance with Lending Agreements.....	26
9.	CONTRACTING AUTHORITY RESPONSIBILITIES.....	26
9.1	General.....	26
10.	PROJECT CO RESPONSIBILITIES – GENERAL	27
10.1	Other Business	27
10.2	Complete and Operational New Metrolinx Infrastructure and New Third Party Infrastructure.....	27
10.3	General Responsibilities and Standards.....	27
11.	PROJECT CO RESPONSIBILITIES – DESIGN AND CONSTRUCTION	29
11.1	Development of Design	29
11.2	Start-Up Meeting	31
11.3	Design Review Meetings	32
11.4	Performance of Design Obligations.....	34
11.5	Works Submittals.....	34
11.6	Documents	34
11.7	General Construction Obligations.....	35
11.8	Permits, Licences, Approvals and Agreements.....	36
11.9	MTO Encroachment Permit.....	38
11.10	Listed Project Co PLAAs.....	40
11.10A	PLAA Tracking Systems.....	41
11.11	Protection of Works and Property.....	43
11.12	Liability Unaffected	46
11.13	Safety	46
11.14	Additional Works and Third Party Works	49
11.15	Protest and Trespass.....	52
11.16	Adjacent Developments	54
11.17	Defective Works	55
11.18	Warranty Obligations.....	56
11.19	Warranty Work and Prompt Repair of Warranty Work.....	58
11.20	Warranty Letter of Credit.....	60
11.21	Coordination and Minimization of Disruption and Interference.....	61
11.22	Substitutions.....	63
11.23	Change in Standards	63
11.24	Subcontractors and Suppliers.....	63
11.25	Apprenticeship and Workforce Development Plan and Program	64
11.26	[Intentionally Deleted]	65
11.27	COR Certification	65
11.28	Demolition Requirements	68

11.29	Liquidated Damages and Construction Enforcement Regime	70
11.30	Works, Goods, Equipment, Consumables and Materials.....	70
11.31	[Intentionally Deleted]	70
11.32	Executive Project Meetings	70
11.33	Tunnel Boring Machine	72
11.34	Pandemic and Epidemic Plans	73
11.35	Utility Agreements.....	74
11.36	Cash Allowances.....	76
12.	REPRESENTATIVES	80
12.1	The Contracting Authority Representative	80
12.2	The Project Co Representative.....	81
12.3	Communications to Representatives.....	81
12.4	Key Individuals.....	82
13.	WORKS SCHEDULE REQUIREMENTS AND WORKS REPORT	82
13.1	Completion of the Works.....	82
13.2	Works Schedule Requirements	82
13.3	[Intentionally Deleted]	83
13.4	[Intentionally Deleted]	83
13.5	Notification of Early Substantial Completion.....	83
13.6	Works Report	83
14.	WORKS COMMITTEE	84
14.1	Establishment.....	84
14.2	Function and Role	84
14.3	Term of Works Committee	86
14.4	Replacement of Committee Members.....	86
14.5	Procedures and Practices.....	86
14.6	Proceeding at Risk	87
15.	QUALITY MANAGEMENT	88
15.1	Quality Management.....	88
16.	LAND ACCESS AND INVESTIGATION	89
16.1	Access to Metrolinx Lands	89
16.2	Non-Exclusive Rights to Metrolinx Lands and Development of Lands	91
16.3	[Intentionally Deleted]	92
16.4	Naming and Signage	92
16.5	No Interest in Land, Facilities or Infrastructure.....	92
16.6	Non-Disturbance Agreement	93
16.7	Adjustments to Metrolinx Lands Available to Project Co	93
16.8	Changes to Lands	95
16.9	Adequacy of the Lands	95
16.10	Inspection and Investigation of the Lands	96
16.11	No Warranty in Respect of Lands.....	96
16.12	No Claims in Respect of Lands.....	96
17.	ENCUMBRANCES.....	97
17.1	Project Co Shall Perform Obligations Under Encumbrances	97

17.2	No Encumbrances	97
17.3	Construction Act	99
18.	SITE CONDITIONS.....	99
18.1	Acceptance of Lands, Existing Infrastructure and Site Conditions	99
18.2	Geotechnical Site Conditions.....	100
18.3	Contamination.....	101
18.4	Items of Geological, Historical or Archaeological Interest or Value.....	102
18.5	Major Existing Infrastructure Defects.....	104
18.6	Mislocated or Unknown Utility Infrastructure.....	105
18.7	Species-at-Risk	106
18.8	Site Condition Contingency Fund and Gainshare Payments	107
19.	GOVERNMENTAL AND THIRD PARTY FINANCIAL OBLIGATIONS	110
19.1	Governmental and Utility Company Fees.....	110
20.	CONTRACTING AUTHORITY ACCESS AND MONITORING	111
20.1	Contracting Authority Access During the Works	111
20.2	Increased Monitoring.....	112
20.3	Right to Uncover.....	112
20.4	No Relief from Obligations	113
20.5	Access by Others.....	113
20.6	Public Use.....	114
21.	ENVIRONMENTAL REQUIREMENTS	115
21.1	[Intentionally Deleted].....	115
21.2	Environmental Requirements.....	115
21.3	[Intentionally Deleted].....	115
22.	INDEPENDENT CERTIFIER.....	115
22.1	Appointment	115
22.2	Role of Independent Certifier	115
22.3	Changes to Terms of Appointment	115
22.4	Right to Change Appointment	116
22.5	Cooperation.....	116
22.6	Payment of Independent Certifier.....	116
22.7	Replacement.....	116
23.	INTENTIONALLY DELETED	117
24.	INTENTIONALLY DELETED	117
25.	COMMISSIONING AND COMPLETION.....	117
25.1	Commissioning Activities.....	117
25.2	Final Commissioning Program	117
25.3	Commencement of Project Co Commissioning.....	118
25.4	Substantial Completion Certificate	118
25.5	Operation and Maintenance Manuals	121
25.6	[Intentionally Deleted].....	121
25.7	Countdown Notice and Substantial Completion Deliverables.....	121
25.8	Minor Deficiencies.....	122

25.9	Completion and Rectification of Minor Deficiencies	123
25.10	Failure to Rectify Minor Deficiencies	124
25.11	Final Completion Countdown Notice	125
25.12	Final Completion Certificate.....	125
25.13	Effect of Certificates/Use.....	127
25.14	Inspection, Commissioning and Handover of New Municipal Infrastructure	127
25A.	MILESTONE PAYMENTS	131
25A.1	Milestone Payment Completion Countdown Notice.....	131
25A.2	Certification of Milestone Payments.....	131
26.	HUMAN RESOURCES	133
26.1	Admittance of Personnel.....	133
26.2	Staff Competency.....	133
26.3	Notification of Convictions.....	133
26.4	Disciplinary Action.....	134
26.5	Human Resources Policies.....	134
26.6	Management Organizations	135
26.7	Governmental Authority	135
27.	CONTRACTING AUTHORITY'S REMEDIAL RIGHTS	135
27.1	Exercise of Remedial Rights.....	135
27.2	Emergency	136
27.3	Rectification.....	136
27.4	Costs and Expenses.....	137
27.5	Reimbursement Events	137
27.6	Reimbursement if Improper Exercise of Rights.....	138
28.	RECORDS, INFORMATION AND AUDIT	138
28.1	Records Provisions.....	138
28.2	Information and General Audit Rights.....	138
28.3	Lenders' Consultant Reports.....	140
29.	COMMUNICATIONS	140
29.1	Communications	140
30.	CHANGES IN LAW	140
30.1	Performance after Change in Law	140
30.2	Works Change in Law	140
30.3	Relevant Change in Law	141
30.4	Pandemic and Epidemic Change in Law	143
31.	VARIATIONS	145
31.1	Variation Procedure	145
31.2	Innovation and Value Engineering	146
32.	DELAY EVENTS.....	148
32.1	Definition	148
32.2	Consequences of a Delay Event.....	151
32.3	Mitigation.....	154

33.	COMPENSATION EVENTS.....	155
33.1	Definition.....	155
33.2	Consequences of a Compensation Event.....	155
33.3	Mitigation.....	156
33.4	Insured Exposure.....	157
33.5	Special Compensation Regarding Category 1 Utility Companies.....	157
34.	RELIEF EVENTS.....	158
34.1	Definition.....	158
34.2	Consequences of a Relief Event.....	159
34.3	Mitigation and Process.....	159
34.4	Insured Exposure.....	160
35.	FORCE MAJEURE.....	160
35.1	Definition.....	160
35.2	Consequences of Force Majeure.....	161
35.3	Mitigation and Process.....	162
35.4	Insured Exposure.....	162
35.5	Modifications.....	162
36.	PROJECT CO DEFAULT.....	163
36.1	Project Co Events of Default.....	163
36.2	Notification of Occurrence.....	166
36.3	Right to Termination.....	166
36.4	Remedy Provisions.....	166
36.5	Contracting Authority Costs.....	168
36.6	No Other Rights to Terminate.....	168
37.	CONTRACTING AUTHORITY DEFAULT.....	168
37.1	Contracting Authority Events of Default.....	168
37.2	Project Co's Options.....	169
37.3	Project Co's Costs.....	170
37.4	No Other Rights to Terminate.....	170
38.	RELIEF EVENT AND NON DEFAULT TERMINATION.....	170
38.1	Termination for Relief Event.....	170
38.2	Termination for Force Majeure.....	170
38.3	Termination for Convenience.....	170
38.4	Termination for Site Condition Event.....	171
38.5	Automatic Expiry on Expiry Date.....	171
38.6	Termination due to Protest Action.....	171
39.	EFFECT OF TERMINATION.....	171
39.1	Termination.....	171
39.2	Continued Effect – No Waiver.....	171
39.3	Continuing Performance.....	171
39.4	Effect of Notice of Termination.....	172
39.5	Ownership of Information.....	173
39.6	Provision in Subcontracts.....	174

39.7	Transitional Arrangements.....	174
39.8	Termination upon Aforesaid Transfer.....	174
39.9	Survival.....	174
40.	COMPENSATION ON TERMINATION.....	175
40.1	Compensation on Termination.....	175
40.2	Full and Final Settlement.....	175
41.	INTELLECTUAL PROPERTY	176
41.1	Ownership of Intellectual Property	176
41.2	Licences to Intellectual Property.....	176
41.3	Representation and Warranty.....	176
41.4	Jointly Developed Materials	176
41.5	Maintenance of Data	177
41.6	Contracting Authority Trade-Marks	178
41.7	Confidential Information	178
41.8	Government Use of Documents.....	178
41.9	Restrictions	179
42.	CONFIDENTIALITY.....	179
42.1	Disclosure	179
42.2	Redaction	180
42.3	Disclosure to Government	180
42.4	<i>Freedom of Information and Protection of Privacy Acts</i>	181
42.5	Use and Disclosure of Confidential Information.....	181
42.6	Exceptions.....	182
42.7	Survival of Confidentiality	183
42.8	Confidentiality of Intellectual Property	183
43.	PERSONAL INFORMATION.....	183
43.1	General.....	183
43.2	Protection of Personal Information.....	184
43.3	Personal Information.....	185
44.	INSURANCE AND PERFORMANCE SECURITY	185
44.1	General Requirements.....	185
44.2	No Relief from Liabilities and Obligations.....	185
44.3	Performance Guarantee of Construction Guarantor.....	185
45.	TITLE	186
45.1	Title.....	186
46.	INDEMNITIES.....	186
46.1	Project Co Indemnities to Contracting Authority	186
46.2	Contracting Authority Indemnities to Project Co	189
46.3	Conduct of Claims	190
46.4	Mitigation – Indemnity Claims.....	192
47.	LIMITS ON LIABILITY	192
47.1	Indirect Losses	192

47.2	No Liability in Tort.....	193
47.3	Sole Remedy	193
47.4	Maximum Liability	194
48.	DISPUTE RESOLUTION PROCEDURE	194
49.	ASSIGNMENT, SUBCONTRACTING AND CHANGES IN CONTROL	195
49.1	Project Co Assignment	195
49.2	Contracting Authority Assignment	195
49.3	Subcontracting	196
49.4	Changes in Ownership and Control	196
49.5	Contracting Authority’s Due Diligence	198
50.	PROHIBITED ACTS.....	198
50.1	Definition	198
50.2	Remedies.....	199
50.3	Permitted Payments	200
50.4	Notification	200
50.5	Replacement of Project Co Party	200
51.	NOTICES.....	200
51.1	Notices to Parties	200
51.2	Notices to Representatives	201
51.3	Electronic Submission	201
51.4	Change of Contact Information	201
51.5	Deemed Receipt of Notices	201
51.6	Service on Contracting Authority	202
52.	EMERGENCY MATTERS	202
52.1	Emergency	202
53.	CONTRACTING AUTHORITY’S DESIGNATE.....	203
53.1	Right to Designate.....	203
54.	GENERAL.....	203
54.1	Amendments	203
54.2	Waiver.....	203
54.3	Relationship Between the Parties.....	204
54.4	General Duty to Mitigate	204
54.5	Actual Knowledge	204
54.6	Entire Agreement.....	205
54.7	No Reliance.....	205
54.8	Severability	205
54.9	Enurement.....	205
54.10	Governing Law and Jurisdiction.....	205
54.11	Cumulative Remedies	206
54.12	Further Assurance	206
54.13	Costs.....	206
54.14	Language of Agreement.....	206
54.15	Proof of Authority.....	206

54.16	Counterparts.....	206
54.17	Province Persons and Contracting Authority Parties as Third Party Beneficiaries	207
54.18	Time is of the Essence	207
54.19	Copyright Notice.....	207

SCHEDULES

Schedule No.	Description
Schedule 1	- Definitions and Interpretation
Schedule 2	- Completion Documents
Schedule 3	- Subcontractor's Direct Agreement
Schedule 4	- Lenders' Direct Agreement
Schedule 5	- Construction Contractor's Direct Agreement
Schedule 6	- Independent Certifier Agreement
Schedule 7	- Warranty Letter of Credit
Schedule 8	- Project Co Parties
Schedule 9	- Key Individuals
Schedule 10	- Review Procedure
Schedule 11	- Quality Management
Schedule 12	- Works Schedule Requirements
Schedule 13	- Project Co Proposal Extracts
Schedule 14	- Outline Commissioning Program and Handover
Schedule 15	- Output Specifications
Schedule 16	- Encumbrances
Schedule 17	- Environmental Obligations
Schedule 18	- Communication and Public Engagement Protocol
Schedule 19	- [Intentionally Deleted]
Schedule 20	- Lands
Schedule 21	- Liquidated Damages and Construction Enforcement Regime
Schedule 22	- Variation Procedure
Schedule 23	- Compensation on Termination
Schedule 24	- Intellectual Property
Schedule 25	- Insurance and Performance Security Requirements
Schedule 26	- Record Provisions
Schedule 27	- Dispute Resolution Procedure
Schedule 28	- Refinancing
Schedule 29	- Form of Performance Guarantee of Construction Guarantor
Schedule 30	- Insurance Trust Agreement
Schedule 31	- Project Co Information
Schedule 32	- Financial Model
Schedule 33	- Works Report Requirements
Schedule 34	- Construction Safety
Schedule 35	- Incentive Payments
Schedule 36	- [Intentionally Deleted]
Schedule 37	- Geotechnical Baseline Reports
Schedule 38	- Payment Procedures

THIS PROJECT AGREEMENT is entered into as of the __ day of _____, 2021

BETWEEN:

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

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

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

AND:

STRABAG SCARBOROUGH PROJECT INC., [REDACTED]

(“**Project Co**”)

WHEREAS:

- A. The Province of Ontario’s New Subway Transit Plan for the Greater Toronto and Hamilton Area includes a number of priority projects, including the Scarborough Subway Extension, a 7.8 kilometre extension of the City of Toronto’s ‘Bloor-Danforth’ subway line from the existing terminal at Kennedy Station to the intersection of Sheppard Avenue and McCowan Road, including three new subway stations and improvements to Kennedy Station and supporting ancillary works.
- B. In connection with the Scarborough Subway Extension, Contracting Authority wishes to procure the design, construction and financing of an advance tunnel for the underground portion of the alignment between Kennedy Station and the intersection of Sheppard Avenue and McCowan Road and for other associated structures required for the Scarborough Subway Extension.
- C. Contracting Authority commenced the procurement process for the Project, as hereinafter defined, by issuance of a Request for Qualifications for the Project on March 6, 2020.
- D. Project Co will carry out the Works, which Works include the design, construction, and financing of the New Metrolinx Infrastructure and the New Third Party Infrastructure (the “**Project**”).
- E. Contracting Authority and Project Co wish to enter into this project agreement (the “**Project Agreement**”) which sets out the terms and conditions upon which Project Co shall perform the Works.
- F. The Project will proceed as a public-private partnership project approved by MOI.
- G. As a result, the Project shall follow five fundamental principles which guide the financing and procurement of public infrastructure projects in Ontario:

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

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

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions and Interpretation

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

Schedule No.	Description
Schedule 1	- Definitions and Interpretation
Schedule 2	- Completion Documents
Schedule 3	- Subcontractor's Direct Agreement
Schedule 4	- Lenders' Direct Agreement
Schedule 5	- Construction Contractor's Direct Agreement
Schedule 6	- Independent Certifier Agreement
Schedule 7	- Warranty Letter of Credit
Schedule 8	- Project Co Parties
Schedule 9	- Key Individuals
Schedule 10	- Review Procedure
Schedule 11	- Quality Management
Schedule 12	- Works Schedule Requirements

Schedule 13	-	Project Co Proposal Extracts
Schedule 14	-	Outline Commissioning Program and Handover
Schedule 15	-	Output Specifications
Schedule 16	-	Encumbrances
Schedule 17	-	Environmental Obligations
Schedule 18	-	Communication and Public Engagement Protocol
Schedule 19	-	[Intentionally Deleted]
Schedule 20	-	Lands
Schedule 21	-	Liquidated Damages and Construction Enforcement Regime
Schedule 22	-	Variation Procedure
Schedule 23	-	Compensation on Termination
Schedule 24	-	Intellectual Property
Schedule 25	-	Insurance and Performance Security Requirements
Schedule 26	-	Record Provisions
Schedule 27	-	Dispute Resolution Procedure
Schedule 28	-	Refinancing
Schedule 29	-	Form of Performance Guarantee of Construction Guarantor
Schedule 30	-	Insurance Trust Agreement
Schedule 31	-	Project Co Information
Schedule 32	-	Financial Model
Schedule 33	-	Works Report Requirements
Schedule 34	-	Construction Safety
Schedule 35	-	Incentive Payments
Schedule 36	-	[Intentionally Deleted]
Schedule 37	-	Geotechnical Baseline Reports
Schedule 38	-	Payment Procedures

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

- (g) The organization of the Output Specifications into divisions, sections and parts shall not control Project Co in dividing the Works among the Project Co Parties or in establishing the extent of the Works to be performed by a trade.

1.2 Conflict of Terms

- (a) In the event of ambiguities, conflicts or inconsistencies between or among any of the provisions of this Project Agreement, the provisions shall govern in the following order of precedence with each taking precedence over those listed subsequently:
- (i) the provisions of amendments in writing to this Project Agreement signed by the Parties and Variation Confirmations shall govern and take precedence only over those specific provisions of this Project Agreement expressly amended thereby;
 - (ii) any provision establishing a higher standard of safety, reliability, durability, performance or service shall take precedence over a provision establishing a lower standard of safety, reliability, durability, performance or service;
 - (iii) the body of this Project Agreement;
 - (iv) Schedule 1 – Definitions and Interpretation;
 - (v) Appendix A to Schedule 1 – Permits, Licences, Approvals and Agreements;
 - (vi) Schedule 20 – Lands;
 - (vii) Schedule 27 – Dispute Resolution Procedure;
 - (viii) Schedule 38 – Payment Procedures;
 - (ix) Schedule 21 – Liquidated Damages and Construction Enforcement Regime;
 - (x) Schedule 15 – Output Specifications;
 - (xi) Schedule 17 – Environmental Obligations;
 - (xii) Schedule 25 – Insurance and Performance Security Requirements;
 - (xiii) Schedule 22 – Variation Procedure;
 - (xiv) Schedule 10 – Review Procedure;
 - (xv) Schedule 14 – Outline Commissioning Program and Handover;
 - (xvi) Schedule 11 – Quality Management;
 - (xvii) Schedule 28 – Refinancing;
 - (xviii) Schedule 23 – Compensation on Termination;

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

1.3 Conflict of Documents

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

1.4 Legal Requirements

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

2. COMMERCIAL CLOSE AND FINANCIAL CLOSE

2.1 Effective Date

- (a) The provisions of Sections 1.1, 1.2, 1.3, 1.4, 2.1, 2.2, 2.3, 2.4, 3.1, 4.14 to 4.20, 5 to 15, 16.5, 17 to 22, 26 to 31, and 41 to 54 and Schedules 1 (including Appendices A and B to Schedule 1 – Permits, Licences, Approvals and Agreements), 2, 7 – 13, 16 – 18, 20 – 22, 24 – 27, 32, 34 and 37 of this Project Agreement will come into effect on the date of this Project Agreement (“**Commercial Close**”). All other provisions and schedules will come into effect only on Financial Close.

2.2 Standby Letter of Credit

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

2.3 Financial Close

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

- (c) If Project Co fails to deliver to Contracting Authority any of the documents referred to in Section 1 of Schedule 2 - Completion Documents by the Financial Close Target Date (other than as a direct result of a breach by Contracting Authority of its obligations under Section 2.3(b)(ii)) and Contracting Authority does not waive such requirement, Contracting Authority will be entitled to draw on the Standby Letter of Credit immediately and to retain the proceeds thereof as liquidated damages, and may terminate this Project Agreement in its entirety by written Notice having immediate effect. The Parties agree that such liquidated damages are not a penalty but represent a genuine and reasonable pre-estimate of the damages that Contracting Authority will suffer as a result of the happening of the specified event. Such payment shall constitute full and final settlement of any and all damages that may be claimed by Contracting Authority as a result of Project Co not achieving Financial Close. The Parties agree that such liquidated damages shall be payable whether or not Contracting Authority incurs or mitigates its damages, and that Contracting Authority shall not have any obligation to mitigate any such damages.
- (d) If Contracting Authority fails to deliver to Project Co any of the documents referred to in Section 2 of Schedule 2 - Completion Documents by the 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.
- (e) Project Co shall deliver to Contracting Authority each of the items referred to in Section 3 of Schedule 2 – Completion Documents by the applicable date set out in such Section.

2.4 Disruption in Financial Markets

- (a) If Financial Close cannot be achieved by the Financial Close Target Date by reason solely of a Severe Market Disruption, subject to Project Co's obligation to renew the Standby Letter of Credit pursuant to Section 2.2, the Financial Close Target Date will be extended until the date falling 10 Business Days (or such other period as the Parties agree, acting reasonably) after the date on which such Severe Market Disruption ceases.
- (b) If a Severe Market Disruption exists, then, at any time before such Severe Market Disruption ceases and prior to Financial Close, Contracting Authority may in its sole discretion either:
- (i) terminate this Project Agreement in its entirety by written Notice having immediate effect; or
 - (ii) direct Project Co to assign to a designee of Contracting Authority which has agreed to assume:
 - (A) the Project Agreement, and all of Project Co's right, title and interest in the Project Data, the Intellectual Property Rights and the Project Co Permits, Licences, Approvals and Agreements; and
 - (B) those contracts between Project Co and any Project Co Party which Contracting Authority elects to be assigned.

- (c) If Contracting Authority exercises its rights pursuant to Section 2.4(b), and, provided Project Co has, if directed, delivered the assignments provided for in Sections 2.4(b)(ii)(A) and 2.4(b)(ii)(B), Project Co will be entitled to the return of its Standby Letter of Credit and to payment of an amount equal to the Proposal Fee pursuant to Section 10.3.2 of the Request for Proposals plus [REDACTED] of such fee. Contracting Authority's obligation to return the Standby Letter of Credit and to pay such fee shall be contingent on the receipt of a waiver, in form and substance satisfactory to Contracting Authority, that such fee represents full and final satisfaction of any obligation or liability of Contracting Authority and any other Government Entity to Project Co and any Project Co Parties in connection with the Project Agreement and the Request for Proposals process (other than any obligation of Contracting Authority under or pursuant to the Early Works Agreement).

3. GUARANTEED PRICE

3.1 Guaranteed Price and Adjustments

- (a) Project Co represents and warrants that the Guaranteed Price, exclusive of HST, is [REDACTED], and is equal to the sum of the Cost of the Works and the Cost of the Financing. The Cost of the Works and the Cost of the Financing are as set out in the Financial Model.
- (b) Project Co represents and warrants that the Project Debt Interest Cost is based upon the Interest Reference Rate. The Project Debt Interest Cost will be adjusted once on, or within the two Business Days immediately prior to, Financial Close on the basis of the actual increase or decrease in the Project Debt Interest Cost resulting directly from any change upward or downward in the Interest Reference Rate as compared to the Interest Reference Rate as at the Financial Submission Deadline.
- (c) The Parties:
- (i) acknowledge that the Project Debt Interest Cost is a component of the Cost of the Financing and that the Project Debt Interest Cost is subject to adjustment under Section 3.1(b) as at the date set out in Section 3.1(b); and
 - (ii) acknowledge and agree that subject to adjustments made in accordance with the provisions of this Project Agreement, the final Guaranteed Price shall be determined on the basis of such final adjusted Cost of the Financing and the final adjusted Cost of the Works as of the date set out in Section 3.1(b).
- (d) Subject to the provisions of Section 3.1(c), the Parties agree that the Guaranteed Price will not be subject to adjustment despite changes in the Works, unless such changes in the Works arise pursuant to a Variation Confirmation. The Parties further agree that the Guaranteed Price will only be adjusted where the Project Agreement specifically and expressly refers to an adjustment to the Guaranteed Price, and no claim for an adjustment to the Guaranteed Price on any legal or equitable basis outside of the specific and express rights to an adjustment of the Guaranteed Price set out in the Project Agreement will be allowed. In order to be effective, any permitted adjustment to the Guaranteed Price must be provided for in a Variation Confirmation under Schedule 22 – Variation Procedure.

- (e) Project Co acknowledges and agrees that,
- (i) Project Co has satisfied itself as to the correctness and sufficiency of the Guaranteed Price, and has based the Guaranteed Price on the data, interpretations, necessary information, examinations and satisfaction as to all relevant matters and any further data relevant to the design;
 - (ii) the Guaranteed Price covers all of Project Co's obligations under the Project Agreement, and all things necessary for the proper design, execution and completion of the Works, and the remedying of any defects; and
 - (iii) the Guaranteed Price includes all premium time and overtime that may be required to perform the Works in accordance with this Project Agreement and Good Industry Practice.

4. PAYMENT

4.1 General

- (a) Subject to the provisions of the Project Agreement (including, for clarity Section 3.1(d)) and in accordance with and subject to Applicable Law respecting holdbacks, Contracting Authority shall make the payments set out in this Section 4.
- (b) Details of Payment Procedures are set out in Schedule 38 – Payment Procedures.

4.2 Acknowledgement by Project Co

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

4.3 Lump Sum Payments

- (a) Subject to Sections 4.4(a) and 4.8, Contracting Authority covenants and agrees to pay to Project Co the First Milestone Payment and the applicable HST on the applicable Milestone Payment Date.
- (b) Subject to Sections 4.4(a) and 4.8, Contracting Authority covenants and agrees to pay to Project Co the Second Milestone Payment and the applicable HST on the applicable Milestone Payment Date.
- (c) Subject to Sections 4.4(a) and 4.8, Contracting Authority covenants and agrees to pay to Project Co the Third Milestone Payment and the applicable HST on the applicable Milestone Payment Date.
- (d) Subject to Sections 4.4(a) and 4.8, Contracting Authority covenants and agrees to pay to Project Co the Substantial Completion Payment and the applicable HST, on the Substantial Completion Payment Date.

- (e) Each of the Parties shall comply with Schedule 35 – Incentive Payments.
- (f) Notwithstanding Section 4.3(d), if the Warranty Letter of Credit has not been delivered to Contracting Authority by the Substantial Completion Payment Date, Contracting Authority may withhold from the Substantial Completion Payment a holdback amount of [REDACTED] the “**Warranty Cash Amount**”). In such an event, the Warranty Cash Amount may be withheld by Contracting Authority until,
- (i) if the Warranty Letter of Credit is delivered to Contracting Authority after the Substantial Completion Payment Date, the date that is five Business Days following the date that the Warranty Letter of Credit has been delivered to Contracting Authority; or
 - (ii) if the Warranty Letter of Credit is not delivered to Contracting Authority after the Substantial Completion Payment Date, the Warranty Security Return Date,
- and, upon the applicable day, the Warranty Cash Amount, less the amount of any claims previously satisfied by a draw in accordance with Section 11.20(b), shall be paid by Contracting Authority to Project Co.
- (g) Until receipt of the Warranty Letter of Credit, Contracting Authority may use the Warranty Cash Amount in the place of, in the same manner as and for the same purpose as the Warranty Letter of Credit. The withholding of the Warranty Cash Amount in accordance with Section 4.3(f) shall be Contracting Authority’s sole remedy for failure on the part of Project Co to deliver the Warranty Letter of Credit by the Substantial Completion Payment Date and, for greater certainty, Contracting Authority shall not be entitled to withhold payment of the balance of the Substantial Completion Payment as a result of any such failure on the part of Project Co to deliver the Warranty Letter of Credit.
- (h) Project Co shall keep and allow Contracting Authority access to detailed records of all amounts invoiced to Project Co by the Category 1 Utility Companies and all amounts paid by Project Co to the Category 1 Utility Companies. Such records shall be of sufficient detail to enable Project Co to demonstrate and Contracting Authority to confirm that a Changed Cost for Utilities has arisen and the amount of such Changed Cost for Utilities. Project Co’s failure to keep and allow Contracting Authority access to such records shall be at Project Co’s risk.
- (i) Prior to Substantial Completion, Project Co shall provide its estimate of the cost adjustment that is to be applied to the payment made following Substantial Completion pursuant to Section 4.3(h). The “**Cost Adjustment – Utilities**” means an amount calculated in accordance with the following:
- (i) if the Changed Cost for Utilities is less than the Original Eligible Utilities Costs, (and the Changed Cost for Utilities is a positive number) the Substantial Completion Payment shall be increased by [REDACTED] of the Changed Cost for Utilities;
 - (ii) if the Changed Cost for Utilities is a negative number, the Substantial Completion Payment will be decreased by [REDACTED] of the Changed Cost for Utilities;
 - (iii) if Changed Cost for Utilities is greater than the Original Eligible Utilities Costs, the Substantial Completion Payment shall be increased by,

- (A) [REDACTED] of the Changed Cost for Utilities up to the point at which the Changed Cost for Utilities equals the Original Eligible Utilities Cost; plus
- (B) [REDACTED] of that portion of the Changed Cost for Utilities that exceeds the value of Original Eligible Utilities Cost.

4.4 Directions on Payments

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

4.5 Payment of Legislative Holdback

- (a) Payment of Legislative Holdback shall be made in accordance with Schedule 38 – Payment Procedures.

4.6 Payment of Finishing Holdback

- (a) Payment of Finishing Holdback shall be made in accordance with Schedule 38 – Payment Procedures.

4.7 Completion Holdback and Seasonal Works Holdback

- (a) Completion Holdback and Seasonal Works Holdback shall be paid in accordance with Schedule 38 – Payment Procedures.

4.8 Compensation on Termination

- (a) If this Project Agreement is terminated pursuant to Sections 36.3(a), 37.2(a)(ii), 38.1, 38.2, 38.3, 38.4 or 38.6, then:
- (i) Schedule 23 – Compensation on Termination shall apply and Contracting Authority shall pay Project Co any applicable compensation on termination; and
 - (ii) the provisions of Sections 4.3 through 4.7, inclusive, shall no longer apply.
- (b) Project Co hereby irrevocably directs Contracting Authority to make any Compensation Payment to the Lenders' Agent, or as the Lenders' Agent may direct. Contracting Authority shall pay the Compensation Payment as directed by the Lenders' Agent and shall not accept any redirection without the consent of Lenders' Agent. Contracting Authority will pay the Compensation Payment in accordance with the provisions of Schedule 23 – Compensation on Termination. Project Co acknowledges and agrees that payment by Contracting Authority of the Compensation Payment to the Lenders' Agent in accordance with this Section 4.8 constitutes payment by Contracting Authority to Project Co in satisfaction of Contracting Authority's obligation to pay the Compensation Payment to Project Co under this Project Agreement and in satisfaction of any trust obligation of Contracting Authority with respect to such payments under section 7 of the *Construction Act* (Ontario) pursuant to section 10 of the *Construction Act* (Ontario).

4.9 Payment Due under Insurance Policies

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

4.10 HST

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

4.11 Set-Off

- (a) The Parties agree that their rights of set-off at law or in equity are limited to the right of:
- (i) Contracting Authority, to set off against any amounts otherwise due to Project Co pursuant to the terms of this Project Agreement (other than any Milestone Payments), any amounts (including any amounts payable in accordance with Section 46, or any amounts payable as liquidated damages pursuant to Schedule 21 – Liquidated Damages and Construction Enforcement Regime) that,

- (A) are due or owed to Contracting Authority from or by Project Co pursuant to the terms of this Project Agreement or by the Construction Guarantor pursuant to the Performance Guarantee of Construction Guarantor; or
 - (B) are being disputed in accordance with Schedule 27 – Dispute Resolution Procedure; and
- (ii) Project Co to set-off against any amounts otherwise due to Contracting Authority pursuant to the terms of this Project Agreement, any amounts (including any amounts payable in accordance with Section 46) that:
- (A) are due or owed to Project Co from or by Contracting Authority pursuant to the terms of this Project Agreement; or
 - (B) are being disputed in accordance with Schedule 27 – Dispute Resolution Procedure.
- (b) Where a set-off, deduction or withholding is being exercised against amounts payable under a Proper Invoice, Contracting Authority shall deliver a notice of non-payment in the prescribed form and manner no later than 14 days after receiving the Proper Invoice.
- (c) For clarity, Contracting Authority is entitled to exercise its rights in accordance with Section 4.11(a)(i) immediately upon an amount becoming due or owed to Contracting Authority,
- (i) by Project Co pursuant to the terms of this Project Agreement; or
 - (ii) by the Construction Guarantor pursuant to Schedule 29 – Form of Performance Guarantee of Construction Guarantor.

4.12 Effect of Payment

- (a) Subject to Section 40.2, no payment hereunder shall be construed as an acceptance or approval of incomplete, defective or improper performance by Project Co of any of its obligations under this Project Agreement, nor shall it operate to relieve Project Co from the performance of any of its obligations under this Project Agreement which have not been performed.

4.13 No Other Entitlement

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

4.14 Taxes

- (a) All amounts specified in this Project Agreement, including, for clarity, any compensation payable on termination, are expressed exclusive of HST, but inclusive of all other Taxes payable pursuant to Applicable Law. For clarity, Contracting Authority shall not be required to pay any interest and/or penalties that are imposed on or assessed against Project Co or any Project Co Party for non-compliance with Applicable Law. If Project Co is required by Applicable Law to collect any

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

- (b) Contracting Authority shall pay when due and payable, all property taxes or payments in lieu of property taxes that are assessed in respect of ownership or use of the Metrolinx Lands, the New Metrolinx Infrastructure, the Existing Infrastructure and the New Third Party Infrastructure.
- (c) Contracting Authority shall pay all applicable HST properly payable in accordance with the *Excise Tax Act* (Canada) by Contracting Authority upon and in connection with payments by Contracting Authority to Project Co under this Project Agreement.

4.15 Changes in Scope of Taxation

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

4.16 Changes in Recoverability of Tax Credits

- (a) Contracting Authority will pay to Project Co from time to time, as the same is incurred by Project Co, amounts equal to any Irrecoverable Tax to the extent such Irrecoverable Tax results from a Change in Law. Project Co will pay to Contracting Authority from time to time, as the same is incurred by Project Co, amounts equal to any Recoverable Tax to the extent such Recoverable Tax results from a Change in Law.
- (b) For the purposes of this Section 4.16, the term “**Irrecoverable Tax**” means HST or an irrecoverable sales tax levied by the Province in lieu of all or a portion of HST incurred by Project Co in respect of the supply of any good or service to Contracting Authority which is consumed, used or supplied, or to be consumed, used or supplied, exclusively by Project Co in the course of carrying out the Works to the extent that Project Co is unable to recover or be credited with input tax credits, refunds, rebates or exemptions for such HST.
- (c) For the purposes of this Section 4.16, the term “**Recoverable Tax**” means HST incurred by Project Co in respect of the supply of any good or service to Contracting Authority which is consumed, used or supplied, or to be consumed, used or supplied, exclusively by Project Co in the course of carrying out the Works to the extent that Project Co is able to recover or be credited with input tax credits, refunds, rebates or exemptions for such HST.

4.17 Information and Assistance Provided by Project Co

- (a) Project Co shall, at Contracting Authority’s request and cost, assist Contracting Authority in applying for and obtaining all remissions and credits of Taxes to which Contracting Authority is entitled.
- (b) Contracting Authority may apply for a global or general exemption, waiver, remission, or refund of some or all Taxes which may otherwise be applicable in relation to this Project Agreement.

Project Co shall, at Contracting Authority's cost, assist Contracting Authority in making any applications for such global or general exemption, waiver, remission or refund and shall provide Contracting Authority with such documentation as Contracting Authority may reasonably require to support such application and, in any event, shall provide such consent as Contracting Authority may require. Any exemption, waiver, remission, refund or other recovery of Taxes obtained by Contracting Authority through such application shall accrue to the sole benefit of Contracting Authority.

- (c) Project Co will provide Contracting Authority with any information reasonably requested by Contracting Authority from time to time in relation to any Taxes chargeable in accordance with this Project Agreement and payable by Contracting Authority to Project Co from time to time.

4.18 Residency – Income Tax Act (Canada)

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

4.19 Taxes – General

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

4.20 Taxes – Indemnity

- (a) If (i) Project Co becomes a Non-Resident, or (ii) Contracting Authority is or becomes required by Applicable Law to deduct or withhold any amount in respect of Taxes on or in respect of any amounts paid or credited to Project Co or a Project Co Party by Contracting Authority under the Project Agreement or under any of the Project Documents, then Contracting Authority shall be entitled to make any applicable deductions or withholdings required by Applicable Law from any amount paid or credited or to be paid or credited to Project Co or a Project Co Party on or after the date on which (A) Project Co or the Project Co Party becomes a Non-Resident and at all times while it remains a Non-Resident; or (B) Contracting Authority is required by Applicable Law to deduct or withhold amounts in respect of any such amounts, in each case, in respect of all Taxes that are required by Applicable Law to be deducted or withheld from amounts paid or credited to a Non-Resident or otherwise as required by Applicable Law; and all amounts paid or credited by Contracting Authority under this Project Agreement or under any other Ancillary Document to Project Co or a Project Co Party shall be paid or credited net of such deductions or withholdings.
- (b) If (i) Project Co becomes a Non-Resident, or (ii) Contracting Authority is or becomes required by Applicable Law to deduct and withhold any amount in respect of Taxes on or in respect of any amounts paid or credited to Project Co or a Project Co Party by Contracting Authority under the Project Agreement or under any of the Project Documents, Project Co shall, in each case, indemnify and hold harmless Contracting Authority for (A) the full amount of all Taxes

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

5. SCOPE OF AGREEMENT

5.1 Scope of Agreement

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

6. REPRESENTATIONS AND WARRANTIES

6.1 Project Co Representations and Warranties

- (a) Project Co represents and warrants to Contracting Authority that as of Commercial Close:
 - (i) Project Co [REDACTED] 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;
 - (ii) Project Co and the Project Co Parties, collectively, have extensive experience and are knowledgeable in the design and construction of infrastructure and facilities similar to those included in the scope of the Project in scale, scope, type and complexity, and have the required ability, experience, skill and capacity to perform the Works in a timely and professional manner as set out in this Project Agreement;
 - (iii) Project Co has the requisite power, authority and capacity to execute, deliver and perform this Project Agreement, and to do all acts and things, and execute, deliver and perform all other agreements, instruments, undertakings and documents as are required by this Project Agreement to be done, executed, delivered or performed;

- (iv) no steps or proceedings have been taken or are pending to supersede or amend the constating documents, articles or by-laws of Project Co in a manner that would impair or limit its ability to perform the obligations of Project Co under this Project Agreement;
- (v) this Project Agreement has been duly authorized, executed, and delivered by Project Co and constitutes a legal, valid, and binding obligation of Project Co, enforceable against Project Co in accordance with its terms, subject only to:
 - (A) limitations with respect to the enforcement of remedies by bankruptcy, insolvency, moratorium, winding-up, arrangement, reorganization, fraudulent preference and conveyance and other laws of general application affecting the enforcement of creditors' rights generally; and
 - (B) general equitable principles and the fact that the availability of equitable remedies is in the discretion of a court and that a court may stay proceedings or the execution of judgments;
- (vi) the execution, delivery, and performance by Project Co of this Project Agreement does not and will not violate or conflict with, or constitute a default under:
 - (A) its constating, formation or organizational documents, including any by-laws;
 - (B) any Applicable Law; or
 - (C) any covenant, contract, agreement, or understanding to which it is a party or by which it or any of its properties or assets is bound or affected;
- (vii) no Project Co Event of Default has occurred and is continuing;
- (viii) all of the information regarding Project Co set out in Schedule 31 – Project Co Information is true and correct in all material respects;
- (ix) there are no actions, suits, proceedings, or investigations pending or threatened against Project Co or, to Project Co's knowledge, any Project Co Party at law or in equity before any Governmental Authority or arbitral body (whether or not covered by insurance) that individually or in the aggregate could result in any material adverse effect on the business, properties, or assets, or the condition, financial or otherwise, of Project Co or in any impairment of its ability to perform its obligations under this Project Agreement, and Project Co has no knowledge of any violation or default with respect to any order, writ, injunction, or decree of any Governmental Authority or arbitral body that could result in any such material adverse effect or impairment;
- (x) Project Co has reviewed the Background Information set out in Section 7 and conducted the investigations in respect of the Lands as set out in Section 16 and, without affecting anything in Section 7, Section 16 and Section 18, has conducted its own additional investigations (other than in respect of the Background Information and the Lands) and has carefully reviewed the whole of this Project Agreement, and all other documents made available to Project Co by or on behalf of Contracting Authority, and, to Project

Co's knowledge, nothing contained herein or therein inhibits or prevents Project Co from completing the Works or performing the Works in accordance with this Project Agreement in a good and safe manner so as to achieve and satisfy the requirements of this Project Agreement;

- (xi) Project Co is able to meet its obligations as they generally become due;
- (xii) Project Co is registered under Division V of Part IX of the *Excise Tax Act* (Canada) and its HST registration number is [REDACTED];
- (xiii) [Intentionally Deleted];
- (xiv) the Scheduled Substantial Completion Date is a realistic date and is achievable by Project Co performing the Works in accordance with this Project Agreement;
- (xv) Project Co is not a Non-Resident;
- (xvi) Project Co has obtained all necessary Project Co Permits, Licences, Approvals and Agreements required to commence the Works;
- (xvii) the management or supervisory personnel Project Co has assigned to the Project are highly experienced;
- (xviii) Project Co has a sufficient staff of qualified and competent personnel to replace its designated supervisors, subject to Contracting Authority's approval, in the event of death, incapacity or resignation;
- (xix) Project Co and certain of the Project Co Parties have conducted inspections of the Lands (as set out in Section 16) and an investigation and examination of the Project Agreement, the Background Information (as set out in Section 7) and any other documents made available to Project Co by Contracting Authority so as to ascertain the nature or location of the Works, the protocols, rules and regulations if any applicable to the Works, possible delays in commencing the Works, conditions relating to the transportation, handling and storage of materials and availability of labour and the character and availability of equipment, materials and facilities needed to perform the Works;
- (xx) Project Co has secured the Financing and is in a position to complete the Financing on or before the Financial Close Target Date, subject to the satisfaction of reasonable conditions that are customary in closing financing for projects similar to the Project;
- (xxi) 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;
- (xxii) to the knowledge of Project Co, no Restricted Person has directly or indirectly, an Economic Interest in Project Co or the Project; and
- (xxiii) either:

- (A) the COR-Certified Construction Project Co Party is in possession of its COR Certification in good standing as required under this Project Agreement and has the ability to maintain such COR Certification in good standing at all times during the performance of the Works in accordance with its terms, provisions and conditions; or
- (B) the COR-Qualified Construction Project Co Party:
 - (I) is in possession of its OHSAS 18001 Accreditation or ISO 45001 Accreditation which remains in good standing and has the ability to maintain such OHSAS 18001 Accreditation or ISO 45001 Accreditation in good standing at all times during the performance of the Works until such COR-Qualified Construction Project Co Party receives its COR Certification as required under this Project Agreement, and
 - (II) has made an application to the IHSA for its COR Certification as required under this Project Agreement.

6.2 Contracting Authority Representations and Warranties

- (a) IO represents and warrants to Project Co, on a several basis, that as of Commercial Close:
 - (i) IO is a non-share capital corporation amalgamated and continued under the *Ontario Infrastructure and Lands Corporation Act, 2011*, S.O. 2011, c. 9, Schedule 32, as amended, which provides all the requisite corporate power and authority for IO to own its properties and assets, to carry on its business as it is currently being conducted, and to enter into this Project Agreement as agent for the Province;
 - (ii) subject to Sections 6.2(a)(v)(C), (D), (E) and (F), as applicable, IO is entering into this Project Agreement as agent for the Province and has the requisite power, authority and capacity to execute and deliver this Project Agreement and to bind the Province to this Project Agreement, and Project Co is entitled to rely upon IO's authority to bind the Province in respect of all other agreements, instruments, undertakings and documents executed and delivered by IO as agent for the Province that are required by this Project Agreement to be executed and delivered by IO;
 - (iii) subject to Sections 6.2(a)(v)(C), (D), (E) and (F), IO has the requisite power, authority and capacity to perform its obligations under this Project Agreement and to do all acts and things, and execute, deliver and perform all other agreements, instruments, undertakings and documents as are required by this Project Agreement to be done, executed, delivered or performed;
 - (iv) subject to Sections 6.2(a)(v)(C), (D) and (E), IO has obtained all of the necessary approvals to enter into and perform its obligations under this Project Agreement;
 - (v) this Project Agreement has been duly authorized, executed, and delivered by IO and constitutes a legal, valid, and binding obligation of IO, enforceable against IO in accordance with its terms, subject only to:

- (A) limitations with respect to the enforcement of remedies by bankruptcy, insolvency, moratorium, winding-up, arrangement, reorganization, fraudulent preference and conveyance and other laws of general application affecting the enforcement of creditors' rights generally;
 - (B) general equitable principles and the fact that the availability of equitable remedies such as specific performance and injunction are not available against the Province and that a court may stay proceedings or the execution of judgments;
 - (C) statutory limitations of general application respecting the enforceability of claims against the Province or its property;
 - (D) section 11.3 of the *Financial Administration Act* (Ontario);
 - (E) any terms and conditions as are set out in the approval that has been provided in connection with this Project Agreement for the purposes of section 28 of the *Financial Administration Act* (Ontario); 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* (Ontario); and
- (vi) the execution, delivery, and performance by IO of this Project Agreement does not and will not violate or conflict with, or constitute a default under:
- (A) the *Ontario Infrastructure and Lands Corporation Act, 2011*, S.O. 2011, c. 9, Schedule 32, as amended, or any regulations made in respect thereof;
 - (B) the *Executive Council Act* (Ontario);
 - (C) any Applicable Law; or
 - (D) any covenant, contract, agreement, or understanding relating to the Project or the Lands to which it is a party or by which it or any of its properties or assets is bound or affected.
- (b) Metrolinx represents and warrants to Project Co, on a several basis, that as of Commercial Close:
- (i) Metrolinx is a non-share capital corporation continued under the *Metrolinx Act, 2006*, S.O. 2006, c. 16 and has all of the requisite corporate power and authority to own its properties and assets, to carry on its business as it is currently being conducted, and to enter into this Project Agreement in its own name as a Crown agency of the Province in accordance with section 3 of the *Metrolinx Act, 2006*, S.O. 2006, c. 16;
 - (ii) subject to Sections 6.2(b)(v)(C), (D) and (E), Metrolinx is entering into this Project Agreement in its own name as a Crown agency of the Province and has the requisite power, authority and capacity to execute and deliver this Project Agreement and to bind itself personally to this Project Agreement and to provide recourse to the Province in

accordance with the provisions of the *Metrolinx Act, 2006*, S.O. 2006, c. 16, including section 35 thereof, and Project Co is entitled to rely upon Metrolinx's authority to bind itself and the recourse to the Province on such basis in respect of all other agreements, instruments, undertakings and documents executed and delivered by Metrolinx that are required by this Project Agreement to be executed and delivered by Metrolinx;

- (iii) subject to Sections 6.2(b)(v)(C), (D) and (E), Metrolinx has the requisite power, authority and capacity to perform its obligations under this Project Agreement and to do all acts and things, and execute, deliver and perform all other agreements, instruments, undertakings and documents as are required by this Project Agreement to be done, executed, delivered or performed;
- (iv) Metrolinx has obtained all necessary approvals to enter into this Project Agreement as a Crown agency;
- (v) this Project Agreement has been duly authorized, executed, and delivered by Metrolinx and constitutes a legal, valid, and binding obligation of Metrolinx, enforceable against Metrolinx, subject to the provisions of the *Metrolinx Act, 2006*, S.O. 2006, c. 16, in accordance with its terms, subject only to:
 - (A) limitations with respect to the enforcement of remedies by bankruptcy, insolvency, moratorium, winding-up, arrangement, reorganization, fraudulent preference and conveyance and other laws of general application affecting the enforcement of creditors' rights generally;
 - (B) general equitable principles and the fact that the availability of equitable remedies such as specific performance and injunction may not be available against Metrolinx and the Province and that a court may stay proceedings or the execution of judgments;
 - (C) statutory limitations of general application respecting the enforceability of claims against Metrolinx or the Province or the property of Metrolinx or the Province;
 - (D) any terms and conditions set out in the approval that has been provided in connection with this Project Agreement for the purposes of section 28 of the *Financial Administration Act*, R.S.O. 1990, c. F.12; and
 - (E) with regard to the recourse against the Province, section 35 of the *Metrolinx Act, 2006*, S.O. 2006, c. 16 and the powers of the Minister of Finance to effect set-offs against amounts owing by the Province pursuant to section 43 of the *Financial Administration Act*, R.S.O. 1990, c. F.12;
- (vi) the execution, delivery, and performance by Metrolinx of this Project Agreement does not and will not violate or conflict with, or constitute a default under:
 - (A) the *Metrolinx Act, 2006*, S.O. 2006, c. 16, or any regulations made in respect thereof;

- (B) any Applicable Law; or
 - (C) any covenant, contract, agreement, or understanding relating to the Project or the Lands to which it is a party or by which it or any of its properties or assets is bound or affected; and
- (vii) Metrolinx has, or will have, licence rights of use and access to, on and over the Metrolinx Lands sufficient to enable Contracting Authority to grant or to cause to be granted to Project Co the access rights contemplated in Section 16.1.
- (c) Contracting Authority represents and warrants to Project Co, on a joint and several basis, that as of Commercial Close, no Contracting Authority Event of Default has occurred and is continuing.

7. BACKGROUND INFORMATION

7.1 Review of Background Information

- (a) Without limiting any of its rights under Sections 7.4, 18.2, 18.3, 18.4, 18.5, 18.6 and 18.7, Project Co acknowledges and agrees that it has and shall be deemed to have:
- (i) conducted its own review, due diligence and analysis of the Background Information in accordance with Good Industry Practice (which, for clarity, does not include any inspections in respect of the Lands beyond what is required pursuant to Section 16.10);
 - (ii) satisfied itself as to the accuracy, completeness and fitness for purpose of any such Background Information upon which it places reliance; and
 - (iii) identified and raised, prior to the Technical Submission Deadline, any and all ambiguities or issues requiring clarification associated with the Background Information (including the Technical Reports).

7.2 No Warranty for Background Information

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

7.3 No Claims or Liability in Respect of Background Information

- (a) Except as expressly provided in Sections 7.4, 18.2, 18.3, 18.4, 18.5, 18.6 and 18.7, none of Contracting Authority, any Province Person, or any Government Entity shall be liable to Project Co or any Project Co Party for, and Project Co or any Project Co Party shall not claim for, or seek to recover from Contracting Authority, any Province Person, or any Government Entity, any

damages, losses, costs, liabilities or expenses which may arise (whether in contract, tort or otherwise, including any claim for extensions of time or for additional payments under this Project Agreement) from:

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

7.4 Exceptions

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

7.5 MEI Post-Closing Reports

- (a) On or before the day that is 30 days following Financial Close (the “**MEI Post-Closing Report Deadline**”), Contracting Authority may deliver additional reports describing the condition of the Major Existing Infrastructure to Project Co (each such report being an “**MEI Post-Closing Report**” and, collectively, the “**MEI Post-Closing Reports**”).
- (b) Subject to Section 7.5(c), to the extent that any information contained in any MEI Post-Closing Report (being information regarding the Major Existing Infrastructure not described in any Background Information) increases Project Co's costs to perform the Works, Project Co shall, subject to and in accordance with Schedule 22 – Variation Procedure, be entitled to a Variation for such additional costs (an “**MEI Variation**”).
- (c) Project Co shall:

- (i) not be entitled to any additional time or schedule relief in respect of any delay to the Works resulting from any new information contained in any MEI-Post Closing Report (being information regarding the Major Existing Infrastructure not described in any Background Information); and
- (ii) only be entitled to an MEI Variation where:
 - (A) the relevant MEI Post-Closing Report was delivered by Contracting Authority prior to the MEI Post-Closing Report Deadline; and
 - (B) Project Co has delivered to Contracting Authority a Project Co Variation Notice in respect of such MEI Variation prior to the date that is 30 days following receipt of the relevant MEI-Post Closing Report by Project Co (“MEI Post-Closing Report Variation Deadline”).
- (d) Project Co shall, subject to and in accordance with Schedule 22 – Variation Procedure, be entitled to a Variation for any additional costs or delay in respect of the Works resulting from any new information disclosed in a MEI-Post Closing Report that is delivered following the MEI Post-Closing Report Deadline provided that Project Co provides a Project Co Variation Notice in respect of such MEI Post-Closing Report on or before the applicable MEI Post-Closing Report Variation Deadline.
- (e) The Parties acknowledge and agree that on the earlier of:
 - (i) the MEI Post-Closing Report Variation Deadline, and
 - (ii) the date upon which the applicable Project Co Variation Notice (if any) is submitted,the applicable MEI Post-Closing Report shall be deemed to be Background Information for all purposes of the Project Agreement as though it had been provided prior to the Technical Submission Deadline (regardless of whether Project Co submitted a Project Co Variation Notice in respect of such MEI Post-Closing Report).

8. PROJECT DOCUMENTS

8.1 Project Documents

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

Authority Representative a copy of any notices or consents delivered or received by Project Co under any of the Project Documents.

8.2 Ancillary Documents

- (a) Project Co shall not:
- (i) terminate or agree to the termination of all or part of any Ancillary Document, except pursuant to Sections 27.3, 49.3 and 50.2 or otherwise to prevent or cure a Project Co Event of Default (provided that commercially reasonable alternative measures would not prevent or cure such Project Co Event of Default);
 - (ii) make or agree to any amendment, restatement or other modification to any Ancillary Document that materially adversely affects Project Co's ability to perform its obligations under this Project Agreement or that has the effect of increasing any liability of Contracting Authority, whether actual or potential;
 - (iii) breach its obligations (or waive, exercise or allow to lapse any rights it may have) or permit others to breach their obligations (or waive, exercise or allow to lapse any rights they may have) under any Ancillary Document, if any such breach (or waiver, exercise or lapse) would materially adversely affect Project Co's ability to perform its obligations under this Project Agreement or that have the effect of increasing any liability of Contracting Authority, whether actual or potential; or
 - (iv) enter into, or permit the entry into by any other person of, any agreement replacing all or part of any Ancillary Document, except in the circumstances referenced in Section 8.2(a)(i),

without the prior written consent of Contracting Authority, provided that, where consent is requested pursuant to Section 8.2(a)(i) or Section 8.2(a)(iv), such consent shall not be withheld, and shall be provided within a reasonable time, where the relevant matter referred to in Section 8.2(a)(i) or Section 8.2(a)(iv) will not materially adversely affect Project Co's ability to perform its obligations under this Project Agreement or have the effect of increasing any liability of Contracting Authority, whether actual or potential. In the event of termination or agreement to the termination of all or part of any Ancillary Document as described in Section 8.2(a)(i), or the entering into of any agreement replacing all or part of any Ancillary Document as described in Section 8.2(a)(iv), Project Co shall, to the extent applicable, comply with all provisions herein relating to changes in Subcontractors, including Section 49.3.

8.3 Changes to Lending Agreements and Refinancing

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

8.4 Compliance with Lending Agreements

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

9. CONTRACTING AUTHORITY RESPONSIBILITIES

9.1 General

- (a) Contracting Authority shall, at its own cost and risk:
- (i) perform all of its obligations under, and observe all provisions of, this Project Agreement in compliance with Applicable Law;
 - (ii) obtain, maintain, and, as applicable, renew Contracting Authority Permits, Licences, Approvals and Agreements which may be required for the performance of the Works;
 - (iii) comply with all Permits, Licences, Approvals and Agreements in accordance with their terms; and
 - (iv) cooperate with Project Co in the fulfillment of the purposes and intent of this Project Agreement, provided, however, that Contracting Authority shall not be under any obligation to perform any of Project Co's obligations under this Project Agreement.
- (b) Contracting Authority shall, and shall cause all Contracting Authority Parties to, take reasonable steps to minimize undue interference with the provision of the Works by Project Co or any Project Co Party.
- (c) Nothing in this Project Agreement shall in any way fetter the right, authority and discretion of Contracting Authority or any Province Person or Government Entity in fulfilling its statutory or other functions under Applicable Law, and Project Co understands and agrees that nothing in this Project Agreement shall preclude IO's board of directors or Metrolinx's board of directors (or any respective designate appointed pursuant to Section 53.1 of this Project Agreement) from performing, discharging or exercising its duties, responsibilities, and powers under Applicable Law. Project Co further agrees that it shall comply, and shall cause all relevant Project Co Parties to comply, with all written directions issued by or on behalf of IO's board of directors and Metrolinx's board of directors (or any respective designate appointed pursuant to Section 53.1 of this Project Agreement) from time to time, subject to Section 31.1(b).
- (d) Except as set out in Section 6.2, IO and Metrolinx shall be liable, on a joint and several basis, for all of the obligations of Contracting Authority under this Project Agreement and for each covenant of the other under this Project Agreement. For clarity, the joint and several liability of Metrolinx pursuant to this Project Agreement is solely in its capacity as Crown agency of the Province.

10. PROJECT CO RESPONSIBILITIES – GENERAL**10.1 Other Business**

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

10.2 Complete and Operational New Metrolinx Infrastructure and New Third Party Infrastructure

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

10.3 General Responsibilities and Standards

- (a) Project Co shall, at its own cost and risk, perform and complete the Works:
- (i) in accordance with the Project Works Schedules and, in this regard, shall commence the Works no later than the day following Financial Close and, subject to adjustment as provided for in the Project Agreement,
 - (A) achieve Substantial Completion by the Scheduled Substantial Completion Date; and
 - (B) achieve Final Completion by the Scheduled Final Completion Date;
 - (ii) in compliance with Applicable Law;
 - (iii) so as to satisfy the Output Specifications;
 - (iv) in 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;
 - (v) in accordance with Good Industry Practice and to meet the standards followed by professionals, manufacturers, contractors and trades who are experienced in work on infrastructure that is comparable to the New Metrolinx Infrastructure and the New Third Party Infrastructure;
 - (vi) in a manner consistent with the Quality Plans and the Project Co Proposal Extracts;
 - (vii) in a timely and professional manner;
 - (viii) with due regard to the health and safety of persons and property;

-
- (ix) subject to the other provisions of this Project Agreement, in a manner which will not impair the ability of Contracting Authority, any Province Person or any Government Entity to comply with Applicable Law;
 - (x) subject to the other provisions of this Project Agreement, in a manner which will not impair the performance of the Governmental Activities;
 - (xi) coordinate with the applicable Municipality and MTO all Construction Activities relating to Existing Third Party Infrastructure owned by the applicable Municipality and MTO and the New Third Party Infrastructure, including the provision of any Project Works Schedule relating to such infrastructure, so as to minimize the impact of Construction Activities on the applicable Municipality and MTO services provided by the applicable Municipality and MTO to the public; and
 - (xii) in accordance with all other terms of this Project Agreement.
- (b) Project Co shall cooperate with Contracting Authority in the fulfillment of the purposes and intent of this Project Agreement, provided however that Project Co shall not be under any obligation to perform any of Contracting Authority's obligations under this Project Agreement.
- (c) [Intentionally Deleted]
- (d) Project Co shall, at its own cost and risk, immediately notify Contracting Authority upon the receipt or notice of (and provide Contracting Authority with copies of any correspondence received in relation to), any incident report, investigation report or similar correspondence (in each case, whether in draft or final form) issued by the MOL or any other Governmental Authority in respect of the Works.
- (e) If Metrolinx executes an agreement with MTO, a Municipality, or any third party owner of infrastructure which affects this Project (each, a "**Third Party Agreement**") and Metrolinx provides a copy of the Third Party Agreement or a template agreement upon which Metrolinx intends to base a Third Party Agreement (each, a "**Template Third Party Agreement**") to Project Co, then the following shall apply:
- (i) If, at any time prior to the Technical Submission Deadline, Metrolinx provides,
 - (A) a copy of an executed Third Party Agreement to Project Co; or
 - (B) a copy of a Template Third Party Agreement to Project Co, and Metrolinx subsequently enters into a Third Party Agreement on terms and conditions that are not materially inconsistent with the Template Third Party Agreement in a manner that would result in a material change to the Works (including, for clarity, if Metrolinx enters into the Third Party Agreement following the Technical Submission Deadline),

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

- (ii) If, at any time following the Technical Submission Deadline, Metrolinx provides a copy of a Third Party Agreement to Project Co (and provided that Metrolinx did not provide a copy of the applicable Template Third Party Agreement to Project Co prior to the Technical Submission Deadline in accordance with Section 10.3(e)(i)(B)), then,
 - (A) Project Co shall, at Project Co's own cost, ensure that Project Co and the Project Co Parties do not, in any way whatsoever, contravene or cause Metrolinx to contravene the Third Party Agreement; and
 - (B) to the extent that Project Co's performance of its obligations set out in Section 10.3(e)(ii)(A) would result in a material change to the Works and would not otherwise be required of Project Co under the Project Agreement, then such change shall, subject and in accordance with Schedule 22 – Variation Procedure, result in a Variation.
- (f) If Project Co has entered into any agreement with a Utility Company with respect to the Works, Project Co shall provide a copy of such agreement to Contracting Authority no later than 15 days after executing such agreement.
- (g) For greater certainty, the Parties hereby acknowledge and agree that:
 - (i) the Early Contractor Activities form part of the Works; and
 - (ii) any Early Contractor Activities performed or completed by Project Co prior to the date hereof are subject to the terms and provisions of this Agreement.

11. PROJECT CO RESPONSIBILITIES – DESIGN AND CONSTRUCTION

11.1 Development of Design

- (a) Project Co shall, at its own cost, develop and complete the design of the New Metrolinx Infrastructure and the New Third Party Infrastructure and all Design Data in accordance with the requirements of this Project Agreement, including Schedule 10 – Review Procedure and this Section 11.1.
- (b) In order to develop the detailed design of the New Metrolinx Infrastructure and New Third Party Infrastructure, Project Co shall consult with the Stakeholders (which consultation requirements pursuant to the Environmental Assessments are further described in Schedule 17 – Environmental Obligations) and the Contracting Authority Representative and the Contracting Authority Design Team in an interactive process. If the result of any consultation with Stakeholders is a change to the scope, configuration or size of any New Metrolinx Infrastructure or New Third Party Infrastructure or a change in the Works, then such change shall, subject to and in accordance with Schedule 22 – Variation Procedure, result in a Variation.
- (c) The further development of the design of the New Metrolinx Infrastructure and New Third Party Infrastructure and the process by which it is progressed must fully comply with the requirements of this Project Agreement.

-
- (d) The Parties agree that Appendices A and B to Schedule 10 – Review Procedure are initial lists of Design Data and other items that will require design review, which Design Data and other items shall include:
- (i) design development drawings, reports, schedules and specifications for the New Metrolinx Infrastructure and New Third Party Infrastructure, progressed from Commercial Close, showing all engineering and non-engineering design information sufficient to allow for the development of working drawing documentation (collectively, the “**Design Development Submittals**”);
 - (ii) working drawing documentation, being construction drawings, reports, schedules and specifications progressed from the Design Development Submittals, showing all architectural, engineering and non-engineering design information in accordance with the requirements of this Project Agreement (collectively, the “**Construction Document Submittals**”); and
 - (iii) all other documentation required pursuant to Schedule 10 – Review Procedure.
- (e) Project Co shall submit to the Contracting Authority Representative for review in accordance with Schedule 10 – Review Procedure all Design Data and other items listed in Section 11.1(d).
- (f) The Design Data and other items listed in Section 11.1(d) shall contain, at a minimum, the following additional information:
- (i) all design or construction drawings and specifications necessary to enable the Contracting Authority Representative to review and comment on the design pursuant to Schedule 10 – Review Procedure;
 - (ii) for each of the Construction Document Submittals, a schedule identifying all changes to the relevant documentation that has occurred from the Design Development Submittals; and
 - (iii) where changes have been submitted, an indication of how the changes meet the requirements of this Project Agreement.
- (g) Project Co shall coordinate and hold MTO related design review meetings, and otherwise comply with the MTO design requirements and MTO meeting requirements set out in Appendix B to Schedule 10 – Review Procedure.
- (h) If Project Co commences or permits the commencement of the next level of design or construction of any part or parts of the New Metrolinx Infrastructure prior to being entitled to proceed in accordance with Schedule 10 – Review Procedure and it is subsequently determined in accordance with Schedule 10 – Review Procedure or Schedule 27 – Dispute Resolution Procedure that the design or construction does not comply with this Project Agreement, then Project Co shall forthwith, at its own cost and risk, undo, remove from the New Metrolinx Infrastructure and/or Lands, replace and restore, as applicable, any parts of the design or construction that do not comply with this Project Agreement.

- (i) Project Co shall not commence or permit the commencement of construction of any part or parts of the New Third Party Infrastructure, unless Project Co has first obtained the written consent of the applicable third party to do so. If, after obtaining such written consent, Project Co commences or permits the commencement of construction of any part or parts of the New Third Party Infrastructure, prior to being entitled to proceed in accordance with Schedule 10 - Review Procedure and it is subsequently determined in accordance with Schedule 10 – Review Procedure or Schedule 27 - Dispute Resolution Procedure that the construction does not comply with this Project Agreement, then Project Co shall forthwith, at its own cost and risk,
- (i) obtain written consent from the applicable third party owner of the New Third Party Infrastructure to undo, remove from the New Third Party Infrastructure, and/or Lands, replace and restore, as applicable, any parts of the construction that do not comply with this Project Agreement; and
 - (ii) following the written consent contemplated in Section 11.1(i)(i), undo, remove from the New Third Party Infrastructure, and/or Lands, replace and restore, as applicable, any parts of the construction that do not comply with this Project Agreement.
- (j) Neither Contracting Authority nor any Province Person will have any liability:
- (i) if a document submitted by Project Co and reviewed by Contracting Authority, the Contracting Authority Representative or the Contracting Authority Design Team results in non-compliance with this Project Agreement by Project Co or a breach by Project Co of Applicable Law; or
 - (ii) for any loss or claim arising due to any defect in any documents, drawings, specifications or certificates submitted by Project Co.
- (k) Project Co and Contracting Authority will cooperate with each other in the design review process. Notwithstanding such cooperation by Contracting Authority, such review shall not constitute acceptance of the Works, and Project Co shall remain solely responsible for compliance in full with all requirements of this Project Agreement.
- (l) Project Co shall allow the Contracting Authority Representative and the Contracting Authority Design Team, at any time, a reasonable opportunity to view any items of Design Data, which shall be made available to the Contracting Authority Representative and/or Contracting Authority Design Team, as applicable, as soon as practicable following receipt of a written request from the Contracting Authority Representative.
- (m) Project Co shall cause the Construction Contractor to establish and maintain a computerized design database which Project Co and Contracting Authority may access remotely by computer to view drawings comprised within the Design Data and to electronically store and print copies of such Design Data.

11.2 Start-Up Meeting

- (a) Within 10 Business Days after Commercial Close, Project Co and the Design Team shall attend a start-up meeting (the “**Start-Up Meeting**”) with Contracting Authority to set out the design development process in greater detail.

- (b) The agenda for the Start-Up Meeting shall include the following:
- (i) Project Co's plan to develop a successful partnership with Contracting Authority for the purpose of supporting Contracting Authority in achieving its vision, mission and core values;
 - (ii) Project Co's plan to ensure that the Works are completed in accordance with the requirements set forth in this Project Agreement;
 - (iii) Project Co's process to ensure optimum design quality;
 - (iv) Project Co's approach to ensure that all Project Co Parties perform the Works, as applicable, as a fully integrated team;
 - (v) a proposed schedule of Works Submittals which is consistent with the Proposed Works Schedule and which provides for a progressive and orderly flow of Works Submittals from Project Co to the Contracting Authority Representative to allow sufficient time for review of each Works Submittal by the Contracting Authority Representative, taking into account both the resources available to the Contracting Authority Representative to conduct such review and whether delay in the review of the subject matter of the Works Submittal will have a material impact on Project Co's ability to progress future anticipated Works Submittals and the Works in accordance with the Baseline Works Schedule;
 - (vi) Project Co's plan to successfully integrate feedback from consultations with Stakeholders and the Contracting Authority Design Team;
 - (vii) Project Co's approach to timing, construction and adjustment; and
 - (viii) a communication process that includes an electronic data room and the use of a computerized document tracking system that has the capacity to report, on request, the status of all design and construction documentation and that takes into account the document control and security protocol described in Section 42.5(f).

11.3 Design Review Meetings

- (a) In order to obtain input in the preparation of, and prior to submitting, the Design Development Submittals and the Construction Document Submittals, Project Co and the Design Team shall hold design review meetings with the Contracting Authority Design Team (the "**Design Review Meetings**") upon the following terms:
- (i) the Project Co Representative shall arrange the Design Review Meetings in consultation with the Contracting Authority Representative;
 - (ii) all Design Review Meetings shall be held in person in the City of Toronto, Ontario, except where otherwise agreed by the Parties, acting reasonably;

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

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

11.4 Performance of Design Obligations

- (a) In the design and engineering of the Project, Project Co, its consultants and the Project Co Parties shall, at a minimum, exercise the standard of care normally exercised by 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.

11.5 Works Submittals

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

11.6 Documents

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

- (b) Project Co shall, where practical, keep one copy of current standards and manufacturers' literature specified in the Project Documents in good order and readily accessible and available to Contracting Authority Representative and Lenders' Consultant and their representatives for the duration of the Works.

11.7 General Construction Obligations

- (a) Without limiting Section 10.3:
- (i) Project Co is solely responsible for all construction means, methods and techniques used to undertake the Works and must provide everything (including labour, Plant, equipment and materials) necessary for the construction and commissioning of the New Metrolinx Infrastructure and the New Third Party Infrastructure, and all other performance of the Works.
- (ii) Project Co shall in a timely and professional manner and in accordance with the requirements of this Project Agreement:
- (A) construct the Works diligently, expeditiously and in a thorough and workman-like manner consistent with Schedule 11 – Quality Management;
- (B) ensure that
- (I) no works other than the Works under this Project Agreement are constructed on the Lands, the New Metrolinx Infrastructure, the New Third Party Infrastructure or the Existing Infrastructure by Project Co, any Project Co Party or any person for whom Project Co is responsible at law; and
- (II) the New Metrolinx Infrastructure is constructed only on the Metrolinx Lands and MTO Lands in accordance with Schedule 15 – Output Specifications;
- (C) protect the Works from all of the elements, casualty and damage;
- (D) in respect of Plant, equipment, Products and materials incorporated in the Works, use Plant, equipment, Products and materials that:
- (I) are of a kind that are consistent with the Output Specifications;
- (II) are new, of good quality and are used, handled, stored and installed in accordance with Applicable Law and Good Industry Practice, including, with respect to health and safety, so as not to be hazardous or dangerous; and
- (III) where they differ from the Output Specifications, have been substituted with Contracting Authority's prior written consent in accordance with Section 11.22.

- (iii) Without limiting Project Co's obligations pursuant to Section 11.13 or Project Co's indemnity pursuant to Section 46.1, Project Co shall, at all times prior to the Substantial Completion Date, and, subject to Section 11.13(g), thereafter any time Project Co is undertaking Construction Activities, be responsible for maintaining and securing the Metrolinx Lands to prevent access onto the Metrolinx Lands, the New Metrolinx Infrastructure, the New Third Party Infrastructure and the Existing Infrastructure of any persons not entitled to be there, and the licence granted to Project Co pursuant to Section 16.1 shall include rights for Project Co to do so.
 - (iv) Project Co shall not, and Project Co shall ensure that the Project Co Parties do not, in any way whatsoever, contravene or cause a contravention of any labour-related contractual obligation or agreement or any provision of any collective agreement to which the City of Toronto is a party that is applicable to the New Third Party Infrastructure owned by the City of Toronto and constructed pursuant to this Project Agreement, as such collective agreements or labour-related agreements may be amended from time to time.
- (b) Project Co shall provide a construction site office for use by Contracting Authority, at the location(s) specified in Schedule 15 – Output Specifications, and in accordance with the requirements set out in Schedule 15 – Output Specifications.

11.8 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 Works;
 - (ii) except for those obligations which are identified as Contracting Authority obligations in Appendix A to Schedule 1 – Permits, Licences, Approvals and Agreements, assume all of the obligations of Contracting Authority under the Contracting Authority Permits, Licences, Approvals and Agreements (and for greater certainty, the Development Approvals);
 - (iii) comply with all Permits, Licences, Approvals and Agreements in accordance with their terms;
 - (iv) comply with and perform all obligations and requirements of Project Co which are identified in the "Responsibility and Requirements" column in Appendix A to Schedule 1 – Permits, Licences, Approvals and Agreements;
 - (v) provide all security, including all letters of credit, that may be required in connection with any Project Co Permits, Licences, Approvals and Agreements, provided that, if Contracting Authority is able to obtain an exemption from such security on behalf of Project Co and with respect to the Project,
 - (A) Project Co shall provide to Contracting Authority an accurate accounting of the costs and expenses avoided by Project Co as a result of any such exemption; and

- (B) notwithstanding any other provision of this Project Agreement, Contracting Authority shall be permitted to deduct an amount equal to all costs and expenses that were avoided by Project Co as a result of any such exemption from the Substantial Completion Payment or any Milestone Payment; and
- (vi) implement a tracking system in respect of all Permits, Licences, Approvals and Agreements for which Project Co is responsible to obtain, provide or perform under the Project Agreement in accordance with the requirements set out in Appendix A to Schedule 1 – Permits, Licences, Approvals and Agreements.

Notwithstanding the foregoing, if Project Co is required to provide a letter of credit or other performance security to MTO in respect of an MTO Encroachment Permit, Contracting Authority shall be responsible for the costs associated with such letter of credit or performance security.

- (b) Where any Permits, Licences, Approvals and Agreements have requirements that may impose any conditions, liabilities or obligations on Contracting Authority or any Province Person, Project Co shall not obtain, amend or renew such Permits, Licences, Approvals and Agreements without the prior written consent of Contracting Authority, provided that neither Contracting Authority nor any Province Person shall be responsible for obtaining or for the failure of Project Co to obtain any Permit, Licence, Approval and Agreement or for the failure of Project Co to renew any Contracting Authority Permit, Licence, Approval and Agreement. Contracting Authority shall comply, or shall require compliance, with any conditions, liabilities or obligations as are imposed on Contracting Authority or any Province Person by the requirements of any Permit, Licence, Approval and Agreement obtained with Contracting Authority's consent under this Section 11.8(b).
- (c) Contracting Authority 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 11.8(a)(ii), Contracting Authority shall,
 - (i) provide Project Co with relevant information and copies of notices received under the applicable Contracting Authority Permits, Licences, Approvals and Agreements; and
 - (ii) execute any documents under the applicable the Contracting Authority Permits, Licences, Approvals and Agreements which Applicable Law dictates that only Contracting Authority can execute.
- (d) Project Co shall, at its own cost, provide or cause to be provided such information, documentation, and administrative assistance as Contracting Authority may request and as Project Co may reasonably be able to provide, and shall execute such applications or documents as are required to be in its name, to enable Contracting Authority to obtain, maintain or renew any Contracting Authority Permits, Licences, Approvals and Agreements or to demonstrate compliance with any Permits, Licences, Approvals and Agreements, provided that Project Co shall not be responsible for obtaining or for any delay in obtaining or for the failure of Contracting Authority to obtain any of the Contracting Authority Permits, Licences, Approvals and Agreements, unless such delay or failure is caused by any act or omission of Project Co, any Project Co Party or any other person for whom Project Co is responsible at law.

11.9 MTO Encroachment Permit

- (a) If, at any time prior to the Scheduled Final Completion Date, MTO fails to issue to Project Co, on or before the applicable MTO Encroachment Permit Deadline, an MTO Encroachment Permit with no terms or conditions or with terms and conditions that are consistent with the MTO Encroachment Permit Requirements, then any delay or additional costs in respect of the Works caused by the circumstances set out in this Section 11.9(a) shall, subject to and in accordance with Section 32, be treated as a Delay Event and, subject to and in accordance with Section 33, be treated as a Compensation Event, provided that:
- (i) Project Co has complied with Applicable Law;
 - (ii) Project Co has fulfilled and complied with all MTO Encroachment Permit Requirements, in each case in accordance with any deadline imposed by this Project Agreement or MTO, including providing timely and thorough responses to questions or concerns posed by MTO in respect of the applicable MTO Encroachment Permit;
 - (iii) if the application for an MTO Encroachment Permit includes or is required to include the design of the New Metrolinx Infrastructure or the New Third Party Infrastructure, then prior to submitting such application,
 - (A) Project Co has represented the design of the New Metrolinx Infrastructure or New Third Party Infrastructure in the application by including the Construction Document Submittals that pertain to such infrastructure; and
 - (B) the Construction Document Submittals for the New Metrolinx Infrastructure or New Third Party Infrastructure has received a “NO COMMENT” or “MINOR NON-CONFORMANCE” (without the additional comment “RE-SUBMIT”) by the Contracting Authority Representative under Schedule 10 – Review Procedure;
 - (iv) Project Co’s application for the applicable MTO Encroachment Permit and Project Co’s responses to all questions or concerns posed by MTO were in accordance with Good Industry Practice and met the MTO Encroachment Permit Requirements;
 - (v) Project Co has submitted the application for the applicable MTO Encroachment Permit in accordance with the timing required for such submission in:
 - (A) the Baseline Works Schedule, Recovery Works Schedule, or the Progress Works Schedule most recently delivered prior to the submission of the application for the applicable MTO Encroachment Permit, as applicable; and
 - (B) the Three Week Look-Ahead Schedule most recently delivered prior to the submission of the applicable application; and
 - (vi) Project Co has provided Notice to Contracting Authority with respect to its applications for MTO Encroachment Permits in accordance with the following requirements:

- (A) no later than two Business Days after submitting an application for an MTO Encroachment Permit, Project Co shall provide Contracting Authority with a copy of such application, together with evidence of receipt of such application by MTO;
 - (B) if Project Co has not received a notification from MTO that its application for an MTO Encroachment Permit is complete by the day that is 10 Business Days following the date of Project Co's submittal of an application for an MTO Encroachment Permit, Project Co shall provide a Notice to Contracting Authority of such occurrence on the first Business Day following such 10th Business Day;
 - (C) no later than two Business Days after receipt by Project Co from MTO of notification that Project Co's application for an MTO Encroachment Permit is complete, Project Co shall provide Contracting Authority with a copy of each such notification;
 - (D) Project Co shall provide Notice to Contracting Authority 15 Business Days prior to each MTO Encroachment Permit Deadline, and shall set out in the Notice whether or not MTO has issued the applicable MTO Encroachment Permit by such date; and
 - (E) no later than two Business Days after receipt by Project Co of an MTO Encroachment Permit, Project Co shall provide a copy of such MTO Encroachment Permit to Contracting Authority; and
- (vii) the MTO Encroachment Permit Tracking System is fully functional and available to Contracting Authority and the MTO, and the MTO Encroachment Permit Tracking System contains accurate information as to the status of the applicable MTO Encroachment Permit, all in accordance with the requirements set out in Section 11.10A.
- (b) For the purposes of the Project Agreement, the “**MTO Encroachment Permit Deadline**” for an MTO Encroachment Permit shall be the date that is 45 Business Days following receipt by MTO of Project Co's completed application for that MTO Encroachment Permit. For clarity, if MTO rejects an application for an MTO Encroachment Permit on the basis that it is incomplete, the MTO Encroachment Permit Deadline shall be re-determined based upon the date that MTO is in receipt of a revised and complete application for the MTO Encroachment Permit.
- (c) For clarity, Section 11.9(a) does not entitle Project Co to a Delay Event or a Compensation Event:
- (i) in the event that the MTO has issued the MTO Encroachment Permit on or before the applicable MTO Encroachment Permit Deadline, but has attached to the MTO Encroachment Permit terms and conditions that are consistent with the MTO Encroachment Permit Requirements but are unfavourable to Project Co or that Project Co disagrees with; or
 - (ii) with respect to:

- (A) Permits, Licences, Approvals and Agreements that are related to, but are not MTO Encroachment Permits; or
 - (B) the Traffic and Transit Management Plan.
- (d) For clarity, Project Co shall not be entitled to a Delay Event pursuant to Section 32.1(a)(xiii) or a Compensation Event pursuant to Section 33 unless all Project Co requirements set out in Section 11.9(a) have been satisfied.

11.10 Listed Project Co PLAAs

- (a) If, prior to the Scheduled Substantial Completion Date, an Issuing Authority fails to issue to Project Co, on or before the expiration of [REDACTED] times the number of Business Days designated for the applicable Listed Project Co PLAA in Appendix B to Schedule 1 – Definitions and Interpretation (each, a “Listed Project Co PLAA Deadline”), a Listed Project Co PLAA with no terms and conditions or with terms and conditions that are consistent with the Listed Project Co PLAA requirements, then any delay or additional costs in respect of the Works caused by the circumstances set out in this Section 11.10(a) shall, subject to and in accordance with Section 32, be treated as a Delay Event and, subject to and in accordance with Section 33, be treated as a Compensation Event, provided that:
- (i) the applicable Project Co Permit, Licence, Approval or Agreement is a Listed Project Co PLAA;
 - (ii) Project Co has fulfilled all obligations pursuant to the Applicable Law and has fulfilled and complied with all Listed Project Co PLAA Requirements, in each case, in accordance with any deadline imposed by this Project Agreement or an Issuing Authority, including providing timely and thorough responses to questions or concerns posed by such Issuing Authority in respect of the Listed Project Co PLAA;
 - (iii) Project Co has submitted a complete Listed Project Co PLAA application to the applicable Issuing Authority;
 - (iv) Project Co has submitted the application for the applicable Listed Project Co PLAA in accordance with the timing for such submission in:
 - (A) the Baseline Works Schedule, Recovery Works Schedule, or the Progress Works Schedule most recently delivered prior to the submission of the application for the applicable Listed Project Co PLAA, as applicable; and
 - (B) the Three Week Look-Ahead Schedule most recently delivered prior to the submission of the applicable application; and
 - (v) Project Co’s application for the Listed Project Co PLAA and Project Co’s responses to all questions or concerns posed by the Issuing Authority were in accordance with Good Industry Practice.

For clarity, if an Issuing Authority rejects an application for a Listed Project Co PLAA on the basis that it is incomplete, the Listed Project Co PLAA Deadline shall be re-determined based

upon the date that the Issuing Authority is in receipt of a revised and complete application for the Listed Project Co PLAA.

- (b) For clarity, Section 11.10(a) does not entitle Project Co to a Delay Event or a Compensation Event,
- (i) in the event that an Issuing Authority has issued the Listed Project Co PLAA on or before the applicable Listed Project Co PLAA Deadline, but has attached to the Listed Project Co PLAA terms and conditions that are consistent with the Listed Project Co PLAA Requirements but are unfavourable to Project Co or that Project Co disagrees with;
 - (ii) in the event that an Issuing Authority fails to issue to Project Co a Listed Project Co PLAA in respect of a Permit, Licence, Approval or Agreement that is not explicitly listed as a Listed Project Co PLAA;
 - (iii) with respect to,
 - (A) Permits, Licences, Approvals and Agreements that are related to, but not explicitly included on, the Listed Project Co PLAAs; or
 - (B) the Traffic and Transit Management Plan; or
 - (iv) if the Listed Project Co PLAA Tracking System is not fully functional and available to Contracting Authority and the applicable Issuing Authority, or if the Listed Project Co PLAA Tracking System does not contain accurate information as to the status of the applicable Listed Project Co PLAA, all in accordance with the requirements of Section 11.10A.

11.10A PLAA Tracking Systems

- (a) Project Co shall, at its sole cost and expense, provide Contracting Authority with a web-based interface to track the status of:
- (i) each Listed Project Co PLAA (including information on each stage of preparation, submission and approval, as applicable) (the “**Listed Project Co PLAA Tracking System**”);
 - (ii) each MTO Encroachment Permit (including information on each stage of preparation, submission and approval, as applicable) (the “**MTO Encroachment Permit Tracking System**”); and
 - (iii) the progress made by the Category 1 Utility Companies in performing the activities described in Section 32.1(a)(xx)(A), Section 32.1(a)(xx)(B) and Section 32.1(a)(xx)(C) (the “**Category 1 Utilities Tracking System**”),

in each case, to a level of detail satisfactory to Contracting Authority (each a “**PLAA Tracking System**”).

- (b) The PLAA Tracking Systems shall:

-
- (i) include functionality to provide automated email alerts to a customizable frequency and list of email addresses
 - (ii) be updated by Project Co each Business Day; and
 - (iii) be available to Contracting Authority, the MTO and any applicable Issuing Authority in real time each Business Day;
- (c) The Listed Project Co PLAA Tracking System shall:
- (i) be operational no later than the date upon which the first Listed Project Co PLAA application is submitted;
 - (ii) include a feature that highlights to Contracting Authority and each Issuing Authority each outstanding applicable Listed Project Co PLAA when it reaches the following milestone triggers:
 - (A) **[REDACTED]** of the number of Business Days designated by the applicable Issuing Authority in Appendix B to Schedule 1 – Definitions and Interpretation for the applicable Listed Project Co PLAA;
 - (B) **[REDACTED]** of the number of Business Days designated by the applicable Issuing Authority in Appendix B to Schedule 1 – Definitions and Interpretation for the applicable Listed Project Co PLAA; and
 - (C) five Business Days prior to the expiration of the Listed Project Co PLAA Deadline; and
 - (iii) contain accurate information as to the status of the applicable Listed Project Co PLAA;
- (d) The MTO Encroachment Permit Tracking System shall:
- (i) be operational no later than the date upon which the first MTO Encroachment Permit application is submitted; and
 - (ii) include a feature that highlights to Contracting Authority and the MTO each outstanding applicable MTO Encroachment Permit when it reaches the milestone triggers set out in Section 11.9(a)(vi).
- (e) The Category 1 Utilities Tracking System shall:
- (i) be operational no later than the date upon which the first Listed Project Co PLAA application is submitted; or Category 1 Utility Company activity described in Section 32.1(a)(xx)(A), Section 32.1(a)(xx)(B) and Section 32.1(a)(xx)(C) is commenced.
 - (ii) include a feature that highlights to Contracting Authority and the Category 1 Utility Companies each outstanding applicable activity described in Section 32.1(a)(xx)(A), Section 32.1(a)(xx)(B) and Section 32.1(a)(xx)(C) when it reaches the following milestone triggers:

- (A) [REDACTED] of the number of Business Days designated for completion by the Category 1 Utility Company in the applicable Final Utility Baseline Document for the applicable activity described in Section 32.1(a)(xx)(A), Section 32.1(a)(xx)(B) and Section 32.1(a)(xx)(C); and
 - (B) [REDACTED] of the number of Business Days designated for completion by the Category 1 Utility Company in the applicable Final Utility Baseline Document for the applicable activity described in Section 32.1(a)(xx)(A), Section 32.1(a)(xx)(B) and Section 32.1(a)(xx)(C).
- (f) Project Co shall submit documentation on the proposed design, functionality, and usage of the PLAA Tracking Systems to the Contracting Authority Representative in accordance with Schedule 10 – Review Procedure no later than 60 days after Financial Close.
- (g) Project Co shall provide separate written notice to the Contracting Authority Representative with respect to any outstanding Listed Project Co PLAA or Category 1 Utility Company activity described in Section 32.1(a)(xx)(A), Section 32.1(a)(xx)(B) and Section 32.1(a)(xx)(C) when it reaches the milestone triggers outlined in Section 11.10A(c)(ii) or 11.10A(e)(ii), as applicable.
- (h) With respect to any failure by a Category 1 Utility Company to perform the obligations set out in Section 32.1(a)(xx)(A), Section 32.1(a)(xx)(B) and Section 32.1(a)(xx)(C), Project Co shall not be entitled to the Delay Event or Compensation Amount pursuant to Section 32.1(a)(xx) unless the tracking system as described in Section 11.10A is fully functional and available to Contracting Authority and contains accurate information as to the progress made by the Category 1 Utility Companies in performing the activities described in Section 32.1(a)(xx)(A), Section 32.1(a)(xx)(B) and Section 32.1(a)(xx)(C).

11.11 Protection of Works and Property

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

- (iii) the Existing Third Party Infrastructure is damaged or destroyed at any time during the Project Term as a result of an act or omission of Project Co or a Project Co Party; or
- (iv) any existing property of Contracting Authority on the Lands, including any Existing Infrastructure, or any property adjacent to the Lands, is damaged or destroyed as a result of an act or omission of Project Co or a Project Co Party,

then Project Co shall, at its own cost and expense, Make Good the Works (including the New Metrolinx Infrastructure and the New Third Party Infrastructure) and the Existing Infrastructure, and repair and replace the property of Contracting Authority on the Lands, including the Existing Infrastructure and any property adjacent to the Lands, or any part thereof, as applicable, (the “**Reinstatement Work**”) promptly and in any event as soon as practicable in the circumstances. Except as otherwise expressly provided in this Project Agreement, damage to or destruction of all or any part of the Works (including the New Metrolinx Infrastructure or the New Third Party Infrastructure) shall not terminate this Project Agreement or relieve Project Co of any of its obligations hereunder or entitle Project Co to any compensation from Contracting Authority. For clarity, after Handover of New Third Party Infrastructure, damage or destruction to the New Third Party Infrastructure shall be dealt with pursuant to the Project Agreement as damage or destruction to the property of third parties.

- (c) Project Co shall not undertake to repair and/or replace any damage or destruction whatsoever to adjacent property, or Existing Third Party Infrastructure, without first consulting Contracting Authority, and, in the case of infrastructure owned by MTO, without first consulting with MTO, and in each case, and receiving written instructions from Contracting Authority as to the course of action to be followed.
- (d) Without derogating from any obligations which Project Co may have under any MTO Encroachment Permit, Project Co acknowledges and agrees that the timely performance of Reinstatement Work relating to damage or destruction to Existing Third Party Infrastructure owned by MTO is critical to the ability of MTO to maintain effective operations of such infrastructure. To the extent that Project Co is required to perform Reinstatement Work on Existing Third Party Infrastructure owned by MTO pursuant to this Section 11.11, Project Co shall respond to any requirement by MTO to perform such Reinstatement Work within the time periods required by MTO. Project Co acknowledges and agrees that if MTO is unable to contact Project Co, or if Project Co is unable to perform such Reinstatement Work within the time specified by MTO, MTO may take such emergency steps as are reasonable and appropriate to correct any damage or destruction or failures to comply with the Project Agreement, at Project Co’s sole risk, cost and expense. Except in the case of damage caused by MTO’s own forces, such emergency steps taken by MTO shall not invalidate any Project Co warranties in respect of any of the Works.
- (e) Notwithstanding Sections 11.11(b) and 11.11(f), and without derogating from Project Co’s obligations under Section 11.11(d) or any MTO Encroachment Permit, Reinstatement Work carried out by Project Co in respect of Existing Third Party Infrastructure and New Third Party Infrastructure that is not owned by a Municipality shall be planned and implemented by Project Co in consultation with the applicable third party.

- (f) If the Reinstatement Work is reasonably estimated to cost more than [REDACTED] or in any other case where the Contracting Authority Representative, having regard to the nature of the damage or destruction, notifies Project Co that a Reinstatement Plan is required (excluding where the damage or destruction occurs before the Final Completion Date and the Contracting Authority Representative acting reasonably considers that the continued application of the Design and Construction Certification Procedure would be able to adequately address the Reinstatement Work without the need for a separate Reinstatement Plan), Project Co shall, as soon as practicable and in any event within 20 Business Days after the occurrence of the damage or destruction or receipt of notification from the Contracting Authority Representative, as the case may be, (or if, with the exercise of all due diligence more than 20 Business Days is reasonably required for such purposes, then within such longer period of time after the occurrence of such damage or destruction or receipt of notification from the Contracting Authority Representative, as the case may be, as may be reasonably required with the exercise of all due diligence, provided Project Co exercises and continues to exercise all such due diligence) submit to the Contracting Authority Representative pursuant to Schedule 10 - Review Procedure a plan (a “**Reinstatement Plan**”) prepared by Project Co for carrying out the Reinstatement Work setting out, in reasonable detail, *inter alia*:
- (i) a description of the Reinstatement Work required to restore, replace and reinstate the damage or destruction;
 - (ii) Project Co’s proposed schedule for the execution of the Reinstatement Work; and
 - (iii) the information required pursuant to Schedule 22 – Variation Procedure as if such plan were an Estimate,
- and the Reinstatement Work must not be commenced until the Contracting Authority Representative consents thereto in accordance with Schedule 10 - Review Procedure except to the extent necessary to address any Emergency or public safety needs. Notwithstanding Section 11.11(c), where there is danger to life or property which arises out of or in connection with the performance of the Works, either Party may, but Project Co shall, immediately take such emergency action as is necessary to remove the danger.
- (g) Project Co shall cause the Reinstatement Work to be carried out in accordance with the Output Specifications and all other applicable requirements under this Project Agreement and, where applicable, in accordance with the Reinstatement Plan consented to by the Contracting Authority Representative in accordance with Schedule 10 - Review Procedure. All designs, plans and specifications in respect of the Reinstatement Work shall be subject to the Design and Construction Certification Procedure. If requested by the Contracting Authority Representative, the persons (and if applicable, a suitable parent entity thereof acceptable to Contracting Authority) retained by Project Co to design and carry out any Reinstatement Work shall, as a condition to their retainer and prior to commencing any Reinstatement Work or design work in connection therewith, enter into a construction contract with Project Co and a direct agreement with Contracting Authority in substantially the same forms as the Design and Construction Contract and the Construction Contractor’s Direct Agreement.
- (h) In the event any Insurance Proceeds under Insurance Policies as referred to in Schedule 30 - Insurance Trust Agreement are available to carry out the Reinstatement Work, such Insurance

Proceeds shall be paid into the Insurance Trust Account and shall be dispensed in accordance with the provisions of the Insurance Trust Agreement to carry out the Reinstatement Work.

- (i) If any Project Co Party has caused damage or destruction to the work of another contractor related to the Project, Project Co agrees upon due notice to settle with the other contractor by negotiation or arbitration in accordance with Section 11.14(g) and Schedule 27 – Dispute Resolution Procedure. If the other contractor makes a claim against Contracting Authority on account of damage or destruction alleged to have been so sustained, the dispute shall be dealt with in substantially the same manner as contemplated in Section 11.14(g) and Schedule 27 – Dispute Resolution Procedure.

11.12 Liability Unaffected

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

11.13 Safety

- (a) Project Co shall until the Substantial Completion Date, and following the Substantial Completion Date, solely in relation to Construction Activities:
 - (i) comply with the Contractor Site Specific Safety Manual;
 - (ii) keep the Site (including Existing Infrastructure on the Site), the Works, the New Metrolinx Infrastructure and the New Third Party Infrastructure in a safe and orderly state, as appropriate in accordance with Good Industry Practice, to avoid danger to persons on the Site (including Existing Infrastructure on the Site), the New Metrolinx Infrastructure and the New Third Party Infrastructure and in the immediate vicinity of the Site (including Existing Infrastructure on the Site), the New Metrolinx Infrastructure and the New Third Party Infrastructure;
 - (iii) take such measures as are reasonable in accordance with Good Industry Practice to prevent access to the Site (including Existing Infrastructure on the Site), the New Metrolinx Infrastructure and the New Third Party Infrastructure of any persons or creatures not entitled to be there;
 - (iv) comply, and cause each Project Co Party to comply,

- (A) with Applicable Law relating to health and safety, including the *Occupational Health and Safety Act* (Ontario) and all regulations thereto; and
 - (B) with the Traffic and Transit Management Plan and all rules, requirements and restrictions relating to access, road safety and operations, as set out in the Project Agreement, including, for clarity, Schedule 15 – Output Specifications;
- (v) register the Project with the MOL by way of a Notice of Project, pursuant to the Applicable Law, with the purpose of designating Project Co as the “constructor” for all Works on the Site;
 - (vi) with respect to the Works, cause a COR-Certified Construction Project Co Party or, prior to receipt of COR Certification, a COR-Qualified Construction Project Co Party, to perform, all of the obligations of the “constructor”, and indemnify Contracting Authority, each Province Person and each Government Entity against any and all of the liabilities of the “constructor”, under the *Occupational Health and Safety Act* (Ontario) and all regulations thereto;
 - (vii) provide Contracting Authority with a certificate of good standing from WSIB or any successor thereto once every 90 days; and
 - (viii) facilitate and provide cooperation with respect to any inquiry or investigation of the MOL with respect to the Project.
- (b) Project Co shall cause the Construction Contractor to deliver at least one copy of the Contractor Site Specific Safety Manual to the Site no later than the first Business Day following Financial Close (or such other date as may be agreed by the Parties) and maintain the Contractor Site Specific Safety Manual (as it may be amended by the Construction Contractor from time to time) at the Site until the Final Completion Date.
 - (c) New Third Party Infrastructure shall, for all purposes of this Project Agreement, become Existing Third Party Infrastructure upon the earlier of,
 - (i) the date that there is a Handover of that portion of the New Third Party Infrastructure from Project Co to the applicable third party; and
 - (ii) Final Completion.
 - (d) At any time that the Works are being carried out in or around the Existing Infrastructure, Project Co shall at all times:
 - (i) ensure that it complies with all safety requirements set out in the Project Agreement, including those set out in Section 11.13(a) above; and
 - (ii) keep the Existing Infrastructure in a safe and orderly state, as appropriate and in accordance with Good Industry Practice, to avoid any danger to employees, visitors and other persons attending the Existing Infrastructure.

-
- (e) If the MOL determines, pursuant to the *Occupational Health and Safety Act* (Ontario), that Project Co is not the “constructor” for the Site or any portion thereof, then the following shall apply:
- (i) Project Co shall comply with the instructions of the “constructor” relating to matters of health and safety on the Site, methods and manner of construction, and coordination and scheduling of the “constructor’s” works with the Works;
 - (ii) If the activity or presence of Project Co or a Project Co Party on the Site caused, in whole or in part, MOL to determine that Project Co is not the “constructor” for the Site or any portion thereof, Project Co will immediately take any necessary remedial action, including vacating the Site to ensure that the MOL determines that Project Co is the “constructor”;
 - (iii) If a third party is named “constructor” by MOL, Project Co shall not interfere with or delay the third party’s work, and shall not do anything whatsoever that causes the third party to be in contravention of its obligations under the *Occupational Health and Safety Act* (Ontario). Project Co shall immediately cease and desist any activity that results or has a likelihood of resulting in such interference with or delay of the work of the third party; and
 - (iv) If the MOL determines that either IO or Metrolinx, or both of IO and Metrolinx or a third party contractor has been designated as the “constructor” under the *Occupational Health and Safety Act* (Ontario), and such determination by the MOL is due to an act or omission of Project Co, Project Co shall indemnify Contracting Authority and the Province Persons and each of their respective directors, officers, employees, agents and representatives from and against any and all of the liabilities arising from such determination by the MOL.
- (f) In the event that an act or omission of Project Co causes or contributes to an MOL determination that Project Co is not the “constructor” for the Site or any portion thereof, or if Project Co is denied access to the Site pursuant to Section 11.13(e)(ii), Project Co will not be eligible for a Delay Event or a Compensation Event.
- (g) Project Co acknowledges and agrees that, following the Substantial Completion Date, Project Co’s access to, and control of the Site may be subject to the activities of the Contracting Authority, Contracting Authority Parties or Other Contractors, and that Project Co may be required to undertake all or a portion of the Works under circumstances where a person other than Project Co is the “constructor” for all or a portion of the Site. Following the Substantial Completion Date, Project Co shall:
- (i) provide Contracting Authority with at least 15 Business Days advance Notice of its intention to undertake Construction Activities on the Site, providing reasonable particulars;
 - (ii) participate with Contracting Authority and any party fulfilling the role of “constructor” in reviewing and coordinating construction schedules, when requested to do so by Contracting Authority;

- (iii) coordinate its access to the Site with Contracting Authority and any party fulfilling the role of “constructor” in respect of all or a portion of the Site; and
 - (iv) comply with the instructions of any party that is fulfilling the role of “constructor” under the *Occupational Health and Safety Act* (Ontario) relating to matters of health and safety, methods and manner of construction (where applicable), and coordination and scheduling of the Works. Project Co shall not interfere with, and shall not do anything whatsoever that causes the “constructor” to be in contravention of its obligations under the *Occupational Health and Safety Act* (Ontario).
- (h) Project Co shall comply with Schedule 34 – Construction Safety.

11.14 Additional Works and Third Party Works

- (a) Project Co shall, having regard to Project Co’s obligations set out in Section 17, arrange and carry out all coordination of the Works with the Third Party Works directly with the applicable Third Party Contractor.
- (b) Contracting Authority may, in its sole discretion, carry out Additional Works.
- (c) Contracting Authority may assign the responsibility for directing methods and manner of construction (where applicable) of the Additional Works, the coordination and scheduling of the Additional Works and the safety training in respect of the Additional Works to Project Co. For clarity, Contracting Authority may, in its sole discretion, assign such responsibilities to Project Co.
- (d) In connection with the Additional Works taking place prior to the Substantial Completion Date, or thereafter where Project Co is designated as the “constructor”, Contracting Authority shall,
 - (i) cause Additional Contractors to comply with the instructions of Project Co relating to matters of health and safety on the Site, methods and manner of construction (where applicable), and coordination and scheduling of the Additional Works with the Works;
 - (ii) enter into separate contracts with Additional Contractors,
 - (A) under conditions of contract which are compatible with the conditions of this Project Agreement;
 - (B) that require Additional Contractors to comply with Section 11.14(e) and all directions of Project Co in respect of any matter regarding health and safety on the Site, and methods and manner of construction (where applicable); and
 - (C) that require Additional Contractors to comply with Project Co’s coordination and scheduling of the Additional Works; and
 - (iii) ensure that insurance coverage is provided by each Additional Contractor as would be required by a prudent owner similarly situated and coordinate such insurance with the insurance coverage of Project Co and in any event, such insurance shall provide for liability insurance of not less than [REDACTED].

-
- (e) In connection with the Additional Works, if Contracting Authority has assigned responsibilities to Project Co pursuant to this Section 11.14, Project Co shall,
- (i) provide for the methods and manner of construction (where applicable) of the Additional Works and the coordination and scheduling of the Additional Works with the Works to be performed under this Project Agreement;
 - (ii) assume overall responsibility for compliance with all aspects of,
 - (A) Applicable Law relating to health and safety at the Site, including all the responsibilities of the “constructor” under the *Occupational Health and Safety Act* (Ontario); and
 - (B) the Traffic and Transit Management Plan and all rules, requirements and restrictions relating to access, rail safety and operations and track protection, and road safety and operations, as set out in the Project Agreement, including, for clarity, Schedule 15 – Output Specifications,prior to the Substantial Completion Date and, exercised in a manner consistent with the *Occupational Health and Safety Act* (Ontario), at any time that Project Co is acting as a “constructor” on the Site following the Substantial Completion Date;
 - (iii) provide Additional Contractors reasonable opportunity to introduce and store their products and use their construction machinery and equipment to execute the Additional Works, as applicable;
 - (iv) participate with Contracting Authority and Additional Contractors in reviewing the construction schedules of Additional Contractors, when directed to do so by Contracting Authority; and
 - (v) if part of the Works is affected by or depends upon, for its proper execution, the Additional Works, promptly report to Contracting Authority in writing and prior to proceeding with that part of the Works any readily apparent deficiencies in the Additional Works. Failure by Project Co to so report shall invalidate any claims against Contracting Authority by reason of such readily apparent deficiencies.
- (f) In the case of Additional Works carried out prior to Substantial Completion, if:
- (i) any Additional Contractors cause any damage to the Works;
 - (ii) Project Co incurs any additional costs or there is any delay in the Works as a result of any Additional Contractors not complying with the coordination, scheduling and safety instructions of Project Co; or
 - (iii) subject to the performance by Project Co of its obligations under this Section 11.14, if Project Co incurs any additional costs or there is any delay in the Works as a result of any such Additional Works (other than Additional Work that is required to meet the Output Specifications and provided such Additional Work is performed by such Additional

Contractors in accordance with Good Industry Practice and in accordance with the terms of their respective contracts or engagements with Contracting Authority),

then any such delay in the Works or additional costs in respect of the Works shall, subject to and in accordance with Section 32 be treated as a Delay Event and, subject to and in accordance with Section 33, be treated as a Compensation Event.

- (g) Claims, disputes, and other matters in question between Project Co and Additional Contractors shall be dealt with in substantially the same manner as contemplated in Schedule 27 – Dispute Resolution Procedure provided that the Additional Contractors and Contracting Authority have made commercially reasonable efforts to ensure that provisions similar to Schedule 27 – Dispute Resolution Procedure have been included in the contracts between Contracting Authority and the Additional Contractors. Project Co shall be deemed to have consented to arbitration of any dispute with any Additional Contractor whose contract with Contracting Authority contains a similar agreement to arbitrate.
- (h) In connection with the Additional Works, Project Co may request a Variation as follows:
- (i) Project Co shall have a period of 10 Business Days following Notice from Contracting Authority of Contracting Authority’s intention to carry out such Additional Works, including a reasonable description of such Additional Works, to request a Variation if such Additional Works are,
- (A) reasonably expected to make void a warranty made in favour of Project Co from a Project Co Party or equipment supplier and given in accordance with Good Industry Practice; or
- (B) reasonably expected to have a material negative consequence on Project Co’s ability to perform any of the Works;
- (ii) If Project Co has made a request for a Variation in accordance with Section 11.14(h)(i), Contracting Authority shall, within 10 Business Days after such request, either issue a Variation Enquiry or give Notice to Project Co that it does not agree that a Variation is required;
- (iii) Either Party may refer the question of whether a Variation is required as the result of a warranty risk or risk in the performance of the Works for resolution in accordance with Schedule 27 – Dispute Resolution Procedure; and
- (iv) If Contracting Authority has, under Section 11.14(h)(ii), given Notice to Project Co that it does not agree that a Variation is required, Contracting Authority shall, within 10 Business Days after a subsequent agreement or of a determination that a Variation is required, issue a Variation Enquiry and the relevant provisions of Schedule 22 – Variation Procedure shall apply except that:
- (A) Contracting Authority shall not be entitled to withdraw any such Variation Enquiry unless Contracting Authority determines not to proceed with the Additional Works or to proceed only in a manner that the Additional Works will not result in a warranty becoming void or will not result in any material

negative consequence on Project Co's ability to perform any of the Works and Project Co has agreed with such conclusion, or the Parties otherwise agree; and

- (B) the Parties shall, without prejudice to their respective general obligations to comply with the terms of this Project Agreement, use commercially reasonable efforts to mitigate the adverse effects with respect to any void or voidable warranty and take commercially reasonable steps to minimize any increase in costs arising from any void warranty.
- (i) Placing, installing, applying or connecting the Additional Works performed by Additional Contractors on and to the Works performed by Project Co shall not relieve Project Co from its obligations under the Project Agreement with respect to the Works, except to the extent expressly described in any Variation Confirmation.

11.15 Protest and Trespass

- (a) Except as otherwise provided in this Project Agreement, Contracting Authority shall not be responsible for the presence of any persons participating in a Protest Action (“**Protesters**”) or any other persons otherwise not entitled to be on or around the Lands (“**Trespassers**”). For greater certainty, the presence of, or interference by, any Protesters or Trespassers on or around the Metrolinx Lands shall not be a breach of the obligation of Contracting Authority to grant licence rights of use and access to Project Co on and over the Metrolinx Lands pursuant to Section 16 nor a breach of any other obligation, representation or warranty under this Project Agreement.
- (b) The management of any Protesters or Trespassers shall be the responsibility of Project Co in respect of the Site (including Existing Infrastructure on the Site), Metrolinx Lands, New Third Party Infrastructure and New Metrolinx Infrastructure, to the extent such management is not otherwise the responsibility of the Police Service.
- (c) If Protesters or Trespassers occupy the Site, lands, facilities or infrastructure referred to in Section 11.15(b), or access to such Site, lands, facilities, or infrastructure is prevented or interfered with by Protesters or Trespassers, Project Co shall use all appropriate measures reasonable in the circumstances to manage such Protesters or Trespassers and promptly notify the Contracting Authority Representative of such occurrence and of the action which Project Co proposes to take in respect thereof. Project Co may exercise any legal remedy available to it to remove Protesters or Trespassers from the Site, lands, facilities or infrastructure referred to in Section 11.15(b), provided that if Project Co does elect to exercise any such legal remedy, Project Co shall give the Contracting Authority Representative at least 24 hours' Notice prior to commencing any such legal proceeding (except in a case of Emergency, danger to persons or material destruction or material damage to property where, in such circumstances, such Notice may be given to Contracting Authority less than 24 hours prior to the commencement of such legal proceeding) and shall continually update the Contracting Authority Representative as to the status of any such legal proceeding in reasonable detail and at reasonable intervals, and provided further that:
- (i) Project Co shall not give directly or indirectly to any Protester or Trespasser any inducement, monetary or otherwise, with a view to avoiding, limiting or influencing the

manner of protest activities by that Protester or Trespasser or by other Protesters or Trespassers; and

- (ii) Project Co shall not by virtue of this Section 11.15(c) be prevented from entering into *bona fide* settlements of claims brought against it by Protesters or Trespassers which provide for reasonable payments in satisfaction of such claims or agreeing to any reasonable cost orders in any proceedings.
- (d) Project Co may request the assistance of Contracting Authority (at the cost of Project Co) to remove Protesters or Trespassers from the Site, lands, facilities or infrastructure, set out in Section 11.15(b) if Project Co demonstrates to Contracting Authority's reasonable satisfaction that:
- (i) Project Co is pursuing all legal remedies available to it to remove the Protesters or Trespassers (provided that for this purpose Project Co may, but shall not be obligated to, prosecute injunctive or other judicial remedies beyond the court of first instance); and
 - (ii) the continued presence of the Protesters or Trespassers is having a material adverse effect on the conduct of the Works that Project Co is unable to mitigate.

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

- (e) If Project Co experiences a Protest Action on the Site (including Existing Infrastructure on the Site), Metrolinx Lands, New Third Party Infrastructure and New Metrolinx Infrastructure and Project Co has,
- (i) fully complied with the provisions of Sections 11.13, 11.15(a), 11.15(b), 11.15(c) and 11.15(d); and
 - (ii) has exhausted all legal remedies available to it to seek injunctive relief or other judicial remedies from a court of first instance and to enforce such injunction or other remedy granted by such court to remove Protesters and Trespassers in such Protest Action from the Site (including Existing Infrastructure on the Site), Metrolinx Lands, New Third Party Infrastructure and New Metrolinx Infrastructure, provided that Project Co shall not be obligated to prosecute injunctive or other judicial remedies beyond the court of first instance with respect to such removal of Protestors and Trespassers,
- then,
- (iii) such Protest Action shall, subject to and in accordance with Section 32, be treated as a Delay Event; and
 - (iv) Project Co shall be entitled to a Variation subject to and in accordance with Schedule 22 – Variation Procedure except that payment to Project Co in accordance with this Section

11.15(e)(iv) shall exclude, in accordance with Section 11.15(f), the first [REDACTED] of all Direct Costs incurred by Project Co cumulatively in connection with all Protest Actions throughout the Project Term which would have been payable to Project Co in accordance with this Section 11.15(e)(iv);

- (f) For clarity, the first [REDACTED] of all Direct Costs incurred by Project Co cumulatively in connection with all Protest Actions throughout the Project Term which would have been payable to Project Co by Contracting Authority under Section 11.15(e)(iv) shall be at Project Co's sole cost and expense. For the purposes of calculating the first [REDACTED] of such Direct Costs, such amount shall not include,
- (i) any amount or amounts which Project Co or a Project Co Party recovers, or is entitled to recover, under any insurance policy, or would have recovered if it had complied with the requirements of this Project Agreement in respect of insurance or the terms of any policy of insurance required under this Project Agreement, which amount, for greater certainty, shall not include any excess or deductibles or any amount over the maximum amount insured under any such insurance policy; or
 - (ii) any Senior Debt Service Amount or Junior Debt Service Amount accrued and paid or which became payable in accordance with the Lending Agreements during the period of the Delay Event set out in Section 11.15(e)(iii), which, but for such Delay Event, would not have been paid by Project Co to the Lenders.

11.16 Adjacent Developments

- (a) Project Co shall coordinate and cooperate with Contracting Authority and any relevant Municipality with respect to the Metrolinx Development Review Process, recognizing that:
- (i) Contracting Authority, in association with any relevant Municipality, will be responsible for carrying out reviews of development applications in accordance with the Metrolinx Development Review Process, including the issuance of any corridor development permits as contemplated under the *Building Transit Faster Act (2020)*;
 - (ii) Contracting Authority, in association with any relevant Municipality, will be responsible for providing development applications for Adjacent Developments to Project Co for review;
 - (iii) Project Co shall, at its own cost, be responsible for reviewing and commenting on development applications, inclusive of classifying and completing the review of all technical review submission materials; and
 - (iv) the Metrolinx Development Review Process will be fully integrated into the Municipality's development review process.
- (b) Project Co shall, at its own cost:
- (i) review and comment on all submittal materials received from Contracting Authority with respect to Adjacent Developments within ten Business Days of receipt, utilizing a standard comment form to be provided by Contracting Authority; and

- (ii) where possible, obtain necessary approvals for all Construction Activities prior to construction of Adjacent Developments to ensure that no adverse impacts will be caused to the New Metrolinx Infrastructure and New Third Party Infrastructure.
- (c) For clarity, Project Co shall, as required by Contracting Authority,
- (i) provide all commercially reasonable assistance to,
 - (A) facilitate the discussion, agreement and any implementation of proposals with respect to Adjacent Developments; and
 - (B) avoid or mitigate any adverse impact of an Adjacent Development on the Works and the New Metrolinx Infrastructure;
 - (ii) permit the Adjacent Developer to post or affix signage in respect of the Adjacent Development, which signage may identify the Adjacent Development project architect, engineer and lender, and other members of the Adjacent Developer's project team;
 - (iii) permit an Adjacent Developer to post or affix signage, as required in connection with a development application; and
 - (iv) provide, to the Adjacent Developer, all Project documentation in respect of the design and construction of any elements of the New Metrolinx Infrastructure that are relevant to the Adjacent Development, subject to the Adjacent Developer executing a confidentiality agreement and a waiver of liability, each in a form and substance satisfactory to Contracting Authority and Project Co, each acting reasonably.
- (d) All work and activities undertaken by Project Co or any Project Co Party pursuant to this Section 11.16, shall be at Project Co's own cost, provided that in the event that more than 36 Adjacent Development applications are referred to Project Co by Contracting Authority in any calendar year then Project Co shall be entitled to a Variation in respect of such excess Adjacent Development applications referred to it.

11.17 Defective Works

- (a) Prior to Substantial Completion:
- (i) Project Co shall promptly Make Good any deficiency, defect or error in the Works or failure of the Works to conform to the Project Agreement, or any deficiency, defect or error in relation to any Product (collectively, a "**Construction Defect**") whether or not such Construction Defect has been incorporated into the New Metrolinx Infrastructure or the New Third Party Infrastructure and whether or not the Construction Defect is the result of poor workmanship, use of defective Products or equipment or damage through carelessness or other act or omission of Project Co. The correction of Construction Defects shall be at Project Co's sole cost and expense. Project Co shall Make Good, in a manner acceptable to the Independent Certifier, all Construction Defects, whether or not they are specifically identified by the Independent Certifier, and Project Co shall prioritize the correction of any Construction Defects so as not to interfere with or derogate from the Project Works Schedules, provided that Project Co shall prioritize the

correction of any Construction Defects that in the sole discretion of Contracting Authority is determined to adversely affect the day to day operation of Contracting Authority.

- (ii) Project Co shall Make Good promptly other contractors' work destroyed or damaged by such rectifications at Project Co's expense.
- (iii) If in the opinion of the Independent Certifier it is not expedient for Project Co to correct any Construction Defects, Contracting Authority may deduct from the amount of the Guaranteed Price the difference in value between the Works as performed and that called for by the Project Agreement. If Contracting Authority and Project Co do not agree on the difference in value, they shall refer the matter to the Independent Certifier for a determination and the determination will be issued as a Variation.

11.18 Warranty Obligations

- (a) Project Co represents, warrants and covenants that:
 - (i) the Works, including the New Metrolinx Infrastructure, the New Third Party Infrastructure, and all Products, parts and workmanship, including those replaced during the Warranty Period, shall,
 - (A) conform to the requirements and specifications set out in this Project Agreement, Good Industry Practice, Applicable Law and all professional engineering principles generally accepted as standards of the industry in the Province of Ontario;
 - (B) be free of defects, including design defects, errors and omissions; and
 - (C) be new, of good quality material, of merchantable quality and fit for the intended purpose of constructing a tunnel, as described in the Project Agreement; and
 - (ii) materials and equipment shall be of good quality and in compliance with this Project Agreement.
- (b) During each Warranty Period, Project Co shall promptly, at its sole cost and expense,
 - (i) subject to Section 11.18(b)(ii), correct and Make Good all Construction Defects arising in respect of the Works. For greater certainty, Project Co is required to correct and Make Good Construction Defects related to any Product and any equipment during the applicable Warranty Period despite Project Co having obtained on Contracting Authority's behalf industry-standard or other equipment warranties in accordance with Section 11.18(e); and
 - (ii) 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 Works ("Construction Latent Defect"), provided Contracting Authority gives 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).

- (c) The warranties set out in this Section 11.18 shall each cover labour and material, including, the costs of removal and replacement of covering materials. None of the warranties shall limit extended warranties on any Product or any item of equipment called for elsewhere in Schedule 15 - Output Specifications or otherwise provided by any manufacturer of such Product or item of equipment. Project Co shall ensure that all extended warranties specified in the Project Agreement are provided and shall, in the case of the New Third Party Infrastructure, assign to the third party owner of the New Third Party Infrastructure all such extended warranties as the third party owner may direct.
- (d) [Intentionally Deleted]
- (e) Project Co shall obtain warranties from the manufacturers of each of the Products and items of equipment for the duration(s) and in accordance with the applicable requirements specified in Schedule 15 - Output Specifications in the name of and to the benefit of Project Co, Contracting Authority in the case of New Metrolinx Infrastructure, and the applicable third party owner in the case of New Third Party Infrastructure. Where, in respect of a Product warranty or equipment warranty, the Output Specifications do not specify a specific duration and/or other requirements, Project Co shall obtain industry-standard warranties from the applicable manufacturers in the name of and to the benefit of Project Co and Contracting Authority which shall extend no less than the applicable Warranty Period. Each Product warranty and equipment warranty shall be issued by the applicable manufacturer and delivered to Project Co no later than 30 days prior to, in the case of New Metrolinx Infrastructure and New Third Party Infrastructure, the Substantial Completion Date. Project Co shall ensure that each Product warranty and equipment warranty, including any Product warranty or equipment warranty extended under this Section 11.18(e), is fully assigned to Contracting Authority or the third party owner of New Third Party Infrastructure, as applicable, at no cost or expense to Contracting Authority or the third party owner, at the end of the Warranty Period, as such Warranty Period may be extended in accordance with Section 11.19(a).
- (f) Contracting Authority may, in its sole discretion, assign the Project Co warranties set out in this Section 11.18 to the applicable third party owner of the New Third Party Infrastructure, and shall provide Notice to Project Co of any such assignment of Project Co warranties. On the commencement of the first Warranty Period for each of the New Metrolinx Infrastructure and the New Third Party Infrastructure, Project Co shall provide at least two copies of each of the compilations of warranty certificates, one compilation for each of the New Metrolinx Infrastructure and one compilation for each category of New Third Party Infrastructure, as categorized by ownership of the New Third Party Infrastructure. Project Co shall update all copies of each of the compilations from time to time as each Warranty Period commences. Each of the compilations shall indicate the start and completion date of each Project Co warranty.
- (g) Subject to Section 11.14, Project Co acknowledges that,
 - (i) with respect to the New Metrolinx Infrastructure, Contracting Authority may, in its sole discretion; and

- (ii) with respect to the New Third Party Infrastructure, the applicable third party owner may, in its sole discretion,

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

11.19 Warranty Work and Prompt Repair of Warranty Work

- (a) Project Co shall carry out all work, including correcting Construction Defects and Construction Latent Defects, to satisfy the warranties provided pursuant to Section 11.18 and this Section 11.19, and in accordance with the applicable Warranty Period, and Project Co shall also Make Good any damage to other works caused by the repairing of such defects, deficiencies, or failures to comply (the “**Warranty Work**”). All Warranty Work shall be carried out and completed at Project Co’s sole cost and expense and Warranty Work shall not be the basis of a claim for a Delay Event, a Compensation Event, a Variation, additional compensation or damages. The applicable Warranty Period shall be extended for a further two years from the date of the last Warranty Work completed and accepted by Contracting Authority in respect of the New Metrolinx Infrastructure and by the applicable third party owner in respect of the New Third Party Infrastructure. For clarity, any extension of a Warranty Period for the purposes of a correction shall only apply to the relevant Warranty Work and not the Works as a whole.
- (b) Project Co acknowledges and agrees that, the timely performance of Warranty Work is critical to the ability of Contracting Authority to maintain effective operations of the New Metrolinx Infrastructure, and to the ability of the third party owners to maintain effective operations of the New Third Party Infrastructure. Project Co shall use commercially reasonable efforts to respond to any requirement by Contracting Authority or the third party owner to perform Warranty Work within the time periods required by Contracting Authority or the third party owner to perform the Warranty Work for the New Metrolinx Infrastructure or the New Third Party Infrastructure. Project Co shall commence and complete Warranty Work as expeditiously as possible and at times convenient to Contracting Authority, which may require work outside normal working hours at Project Co’s expense. Any extraordinary measures required to complete such Warranty Work, as directed by Contracting Authority or the applicable third party to accommodate the operation of the New Metrolinx Infrastructure, the New Third Party Infrastructure, the Existing Infrastructure or other aspects of the Project as constructed, shall be at Project Co’s sole cost and expense. In relation to critical areas required for effective operations, Project Co shall commence, carry out and complete Warranty Work on an urgent basis with all due haste, taking into account the circumstances and any timelines for commencement and completion as may be communicated by Contracting Authority, with respect to the New Metrolinx Infrastructure, or the third party owner, with respect to the New Third Party Infrastructure, to Project Co.
- (c) Project Co acknowledges and agrees that if,
 - (i) Contracting Authority with respect to the New Metrolinx Infrastructure; or
 - (ii) the third party owner of the New Third Party Infrastructure,

is unable to contact Project Co and/or obtain the Warranty Work promptly, or, in the case of urgent Warranty Work within the time period set out in Section 11.19(b), Contracting Authority and the applicable third party owner, as applicable, may take such emergency steps as are reasonable and appropriate to correct any defects, deficiencies or failures to comply with the Project Agreement, at Project Co's sole cost and expense. Except in the case of damage caused by Contracting Authority's or the third party owner's own forces, such emergency steps taken by Contracting Authority's or the third party owner's own forces, as applicable, shall not invalidate any Project Co warranties in respect of the Works.

- (d) If Project Co fails to carry out the Warranty Work in accordance with Section 11.18, and in the time specified in Section 11.19(b) or subsequently agreed upon, without prejudice to any other right or remedy Contracting Authority may have, Contracting Authority and the third party owner, as applicable, may correct the Works at the sole risk, cost and expense of Project Co and may draw down on the Warranty Letter of Credit to fund or as reimbursement for such costs and expenses.
- (e) Project Co acknowledges and agrees that all rules, requirements and restrictions relating to access, rail safety and operations and track protection, as set out in Schedule 15 – Output Specifications, apply to Project Co's performance of its obligations in accordance with Sections 11.18 and 11.19.
- (f) After the Handover of the New Third Party Infrastructure, Project Co shall be solely responsible for obtaining access from the applicable third party for the purpose of carrying out Warranty Work. Project Co acknowledges that such access to the New Third Party Infrastructure may be subject to such limitations as may be imposed by the applicable third party owner, and that Project Co may be required to obtain a Permit, Licence, Approval or Agreement to access the New Third Party Infrastructure for the purpose of carrying out Warranty Work. Without limiting Project Co's obligation to carry out the Warranty Work, if Project Co,
 - (i) has made commercially reasonable efforts to access New Third Party Infrastructure for the purpose of carrying out Warranty Work and is otherwise in compliance with all of Project Co's obligations pursuant to the Project Agreement; and
 - (ii) is denied access to all or a portion of the Third Party Infrastructure such that Project Co is unable to perform the Warranty Work,

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

- (g) The warranties set out in Sections 11.18 and 11.19 shall not deprive Contracting Authority or any third party owner of New Third Party Infrastructure of any action, right or remedy otherwise available to Contracting Authority or the third party owner at law or in equity, and the periods referred to in this Section 11.19, shall not be construed as a limitation on the time in which Contracting Authority or the third party owner may pursue such other action, right or remedy.

- (h) Neither test results, nor selection or approval by Contracting Authority or the Contracting Authority Representative of testing entities, nor any other thing in the Project Agreement shall have the effect of limiting or shortening or otherwise affecting in any way whatsoever the duration, effectiveness or content of any guarantee or warranty set forth in any other document or material forming part of the Project Agreement.

11.20 Warranty Letter of Credit

- (a) On or before the Substantial Completion Date, Project Co shall deliver, or cause to be delivered, to Contracting Authority an unconditional and irrevocable letter of credit from any one or more of the Schedule I Canadian chartered banks or any other financial institutions approved by Contracting Authority in Contracting Authority's sole and absolute discretion, in each case, whose current long-term issuer rating is at least "A" by Standard & Poor's and "A2" by Moody's Investor Services or an equivalent rating by another party acceptable to Contracting Authority, in its sole and absolute discretion, in favour and for the direct and exclusive benefit of Contracting Authority, in the form set out in Schedule 7 – Warranty Letter of Credit (the "**Warranty Letter of Credit**"). The Warranty Letter of Credit shall be in the amount equal to [REDACTED] (the "**Required Amount**").
- (b) Contracting Authority shall be entitled to draw on the Warranty Letter of Credit or the Warranty Cash Amount, as applicable:
- (i) in an amount equal to the amount of the costs estimated by the Independent Certifier for:
- (A) Contracting Authority to rectify defects, deficiencies or non-compliant items in the Works, including any costs incurred by Contracting Authority in accordance with Sections 11.18 and 11.19 as a result of Project Co's failure to comply with its obligations under Sections 11.18 and 11.19; and
- (B) all other damages suffered by Contracting Authority, excluding,
- (I) any liquidated damages that Project Co may have incurred pursuant to Schedule 21 – Liquidated Damages and Construction Enforcement Regime; and
- (II) any Direct Losses arising out of the Project Co indemnities set out in Section 46.1; and
- (ii) to satisfy any amounts that are due and have remained outstanding for 30 days by Project Co pursuant to the terms of this Project Agreement or by the Construction Guarantor pursuant to Schedule 29 – Form of Performance Guarantee of Construction Guarantor.
- (c) Contracting Authority may make multiple calls on the Warranty Letter of Credit.
- (d) In the event that Contracting Authority draws on the Warranty Letter of Credit or the Warranty Cash Amount, Project Co shall forthwith, and in any event within five Business Days following such draw, provide Contracting Authority with a replacement or additional letter of credit such that the Warranty Letter(s) of Credit is at all times during the period between Substantial Completion and the Warranty Security Return Date in the Required Amount.

- (e) Unless the Warranty Letter of Credit is fully drawn by Contracting Authority in accordance with the provisions of this Project Agreement, Contracting Authority shall release and deliver the Warranty Letter of Credit to Project Co on the Warranty Security Return Date.
- (f) In the event that the Warranty Letter of Credit has an expiry date that is prior to the Warranty Security Return Date and Project Co does not renew (or does not cause the renewal of) the Warranty Letter of Credit and does not provide (or cause the provision of) proof of such renewal to Contracting Authority before the date that is 20 days before the Warranty Letter of Credit's expiry date, then at any time during such 20 day period and upon providing prior written Notice to Project Co, Contracting Authority may draw upon the full amount of the Warranty Letter of Credit and deposit the cash proceeds thereof in a segregated bank account selected by Project Co (provided that such bank account must be at a bank that meets the thresholds described in Section 11.20(a) and if Project Co does not promptly select such bank account then such bank account may be selected by Contracting Authority in its sole and absolute discretion) and such cash proceeds shall thereupon stand in place of the Warranty Letter of Credit until Project Co delivers (or causes the delivery of) a replacement Warranty Letter of Credit to Contracting Authority. All interest earned on such cash proceeds shall be for the benefit of Project Co. Contracting Authority shall be entitled to withdraw such cash proceeds in the same manner that it is permitted to draw upon the Warranty Letter of Credit under Section 11.20(b). Upon the delivery of a replacement Warranty Letter of Credit by Project Co to Contracting Authority, all remaining cash proceeds and all accrued interest thereon from such segregated bank account shall be returned to Project Co or as Project Co may direct within five Business Days after the delivery of such replacement Warranty Letter of Credit by Project Co to Contracting Authority.
- (g) For clarity, if Contracting Authority elects to draw down on the Warranty Letter of Credit in accordance with this Section 11.20, Contracting Authority shall not be entitled to exercise its rights pursuant to the Performance Guarantee of Construction Guarantor to fund or as reimbursement for the costs and expenses Contracting Authority has already been compensated for pursuant to this Section 11.20.

11.21 Coordination and Minimization of Disruption and Interference

- (a) Project Co shall perform the Works so as to coordinate with,
- (i) the operations of, and the performance of any services by, Contracting Authority, any Province Persons, any Governmental Authority, any Other Contractor, any Utility Company, MTO, any Municipality, and any Transit System, including the performance of the Governmental Activities and the Other Works; and
 - (ii) the construction of the interface, connection or inter-connection between the New Metrolinx Infrastructure, the New Third Party Infrastructure, and any existing transit systems, highway systems, bus routes and any other Ontario, or City of Toronto road or roadway.
- (b) Project Co acknowledges and agrees that,

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

under the control or in the possession of Contracting Authority or any other person, and Project Co shall minimize any lane or ramp closures or diversions, track closures or diversions and traffic diversions or restrictions.

- (d) To the extent that the Project necessitates interference, in any way, with the operation of the existing transit systems, existing highway systems, or Existing Infrastructure, including the imposition of any closures or detours on the existing highway systems or Existing Infrastructure, Project Co shall use commercially reasonable efforts to cooperate with Contracting Authority, Province Persons, Governmental Authorities, Other Contractors, Utility Companies, MTO, Municipalities, and Transit Systems and other relevant third parties to ensure the continued operation of the existing transit systems, highway systems, and Existing Infrastructure.
- (e) Project Co shall develop and implement protocols in furtherance of its obligations as set out in this Section 11.21 in accordance with the Traffic and Transit Management Plan and the Output Specifications.

11.22 Substitutions

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

11.23 Change in Standards

- (a) Where this Project Agreement requires Project Co to comply with a technical standard in respect of the design and construction of the New Metrolinx Infrastructure and the New Third Party Infrastructure, 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 Contracting Authority of such change. If, after such Notice, Contracting Authority requires compliance with the changed standard (rather than the standard applicable as of the date of 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 Contracting Authority does 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 11.23 shall not apply where a change in a technical standard is also a Change in Law.

11.24 Subcontractors and Suppliers

- (a) Project Co shall preserve and protect the rights of the Parties under this Project Agreement with respect to the works to be performed under Subcontract, and shall:

- (i) enter into Subcontracts or written agreements with Project Co Parties to require them to perform their work as provided in the Project Agreement;
 - (ii) incorporate the relevant terms and conditions of the Project Agreement into all contracts or written agreements with Project Co Parties; and
 - (iii) be as fully responsible to Contracting Authority for acts and omissions of the Project Co Parties as for acts and omissions of persons directly employed by Project Co.
- (b) Attached in Part 1 of Schedule 8 – Project Co Parties is a list of all Project Co Parties that Project Co has engaged or caused to be engaged for the performance of the Work as of the date of execution of this Project Agreement. Project Co agrees to update such list from time to time as additional Project Co Parties are engaged. Any of these named Project Co Parties listed by Project Co may be changed by Project Co upon prior Notice to (but without the approval of) the Contracting Authority Representative, provided however, that if the Contracting Authority Representative reasonably objects to any change to a Prequalified Subcontractor that is a Project Co Party, then Project Co shall select an alternative replacement Prequalified Subcontractor to which the Contracting Authority Representative does not reasonably object.
- (c) Project Co hereby agrees to contractually obligate the Construction Contractor to enter into the Construction Contractor’s Direct Agreement and, subject to Section 11.24(d), to cause the Construction Contractor to cause each of the other Project Co Parties, including Suppliers leasing any construction machinery and equipment, to enter into the Subcontractor’s Direct Agreement, to evidence, among other things, that Contracting Authority shall have the right to cure any default by the Construction Contractor under the Subcontract.
- (d) With the exception of the Subcontracts specifically listed in Part 2 of Schedule 8 – Project Co Parties, none of Project Co, the Construction Contractor or the applicable Project Co Party are obliged to enter into a Subcontractor’s Direct Agreement in respect of Subcontracts having a total estimated cost of [REDACTED] or less.
- (e) Subject to Section 11.24(d), Project Co agrees to deliver to Contracting Authority the Subcontractor’s Direct Agreements by the applicable due dates set out in Part 2 of Schedule 8 – Project Co Parties. If, following the date that issued for construction Works Submittals are submitted to Contracting Authority in accordance with Schedule 10 – Review Procedure, Project Co is required to enter into any additional Subcontractor’s Direct Agreement pursuant to this Section 11.24, Project Co shall deliver such Subcontractor’s Direct Agreements to Contracting Authority within 30 days after execution.

11.25 Apprenticeship and Workforce Development Plan

- (a) No later than 90 days after Financial Close, Project Co shall provide a plan setting out Project Co’s Project-specific approach to promoting apprenticeship training and workforce development opportunities in connection with the completion of the Works on the Project (the “**Apprenticeship and Workforce Development Plan**”) for review by Contracting Authority. The Apprenticeship and Workforce Development Plan shall include,

- (i) the identification of trades and subtrades determined to be in-demand for the Project on a trade-by-trade basis and an estimate of the year they would be required;
 - (ii) a description of specific objectives and methods for training apprentices for the Project on a trade-by-trade basis;
 - (iii) a description of specific objectives and methods for training and placement opportunities for students through the Ontario Youth Apprenticeship Program and pre-apprentices for the Project;
 - (iv) a description of apprenticeship opportunities, including the number of apprentice and skilled worker hires for in-demand trades and subtrades, and estimated apprentice work hours for each trade required on the Project;
 - (v) a description of the specific training and certifications needed for apprentices, pre-apprentices, students and other skilled workers on a trade-by-trade basis and training methods for upskilling;
 - (vi) a description of Project Co's plans to liaise with MLTSD on available financial incentives to enhance apprenticeship opportunities through the Project;
 - (vii) the number of apprentices to be employed for the Works, which shall be in accordance with journey person to apprentice ratios established in section 60 of the *Ontario College of Trades and Apprenticeships Act, 2009*, S.O. 2009, c. 22, as amended from time to time; and
 - (viii) a confirmation that apprenticeships will be registered with the Ministry of Training, Colleges and Universities and the Ontario College of Trades, as applicable.
- (b) Contracting Authority may, in its sole discretion, release Project Co's Apprenticeship and Workforce Development Plan to the public. Project Co's Apprenticeship and Workforce Development Plan shall not be Confidential Information.
- (c) Contracting Authority shall provide a summary of Project Co's Apprenticeship and Workforce Development Plan to Ministry of Labour, Training and Skills Development staff to inform policy design related to workforce development.

11.26 [Intentionally Deleted]

11.27 COR Certification

- (a) Project Co shall, at its own cost and risk, at all times during the performance of the Works cause a COR-Qualified Construction Project Co Party or COR-Certified Construction Project Co Party, as the case may be, to:
- (i) to the extent a COR-Qualified Construction Project Co Party has not obtained COR Certification prior to Financial Close,

-
- (A) use best efforts to obtain its COR Certification no later than 18 months following Financial Close. In the event that Contracting Authority is satisfied, in its sole discretion, that the COR-Qualified Construction Project Co Party has used best efforts to obtain its COR Certification in accordance with this Section 11.27 and the COR-Qualified Construction Project Co Party has not obtained COR Certification by the end of such 18 month period, then Contracting Authority shall establish a time period during which the COR-Qualified Construction Project Co Party shall obtain its COR Certification, which time period shall not be less than 30 days; and
 - (B) maintain in good standing and, as applicable, renew its OHSAS 18001 Accreditation or ISO 45001 Accreditation until such time as the COR-Qualified Construction Project Co Party has obtained its COR Certification;
- (ii) once the COR-Qualified Construction Project Co Party is certified (hereafter referred to as a **“COR-Certified Construction Project Co Party”**), maintain in good standing, and, as applicable, renew its COR Certification; and
 - (iii) comply with all requirements of its OHSAS 18001 Accreditation or ISO 45001 Accreditation (if a COR-Qualified Construction Project Co Party) or COR Certification (if a COR-Certified Construction Project Co Party), in accordance with its terms.
- (b) Without limiting any other provision of this Project Agreement, if at any time during the performance of the Works:
- (i) a COR-Qualified Construction Project Co Party fails to obtain its COR Certification in accordance with this Project Agreement and Contracting Authority determines that the failure to obtain the COR Certification is as a result of such COR-Qualified Construction Project Co Party not using best efforts to obtain such certification and Contracting Authority delivers a Notice to Project Co indicating that a COR-Qualified Construction Project Co Party has failed to obtain its COR Certification in accordance with this Project Agreement;
 - (ii) a COR-Qualified Construction Project Co Party fails to maintain its OHSAS 18001 Accreditation or ISO 45001 Accreditation in good standing in accordance with its terms or in accordance with this Project Agreement; or
 - (iii) a COR-Certified Construction Project Co Party fails to maintain its COR Certification in good standing in accordance with its terms or in accordance with this Project Agreement, (each a **“H&S Certification Default Event”**);
 - (iv) Contracting Authority delivers a Notice to Project Co indicating that Contracting Authority is of the opinion that a COR-Qualified Construction Project Co Party will fail to maintain its OHSAS 18001 Accreditation or ISO 45001 Accreditation in good standing in accordance with its terms or in accordance with this Project Agreement; or
 - (v) Contracting Authority delivers a Notice to Project Co indicating that Contracting Authority is of the opinion that a COR-Certified Construction Project Co Party will fail to

maintain its COR Certification in good standing in accordance with its terms or in accordance with this Project Agreement,

Project Co shall:

- (vi) immediately upon the occurrence of a H&S Certification Default Event, notify Contracting Authority that a H&S Certification Default Event has occurred, and:
 - (A) produce and deliver to Contracting Authority a report identifying the reasons for the failure to obtain or maintain in good standing the COR Certification, OHSAS 18001 Accreditation or ISO 45001 Accreditation, as the case may be;
 - (B) produce and deliver to Contracting Authority a plan showing the steps that are to be taken to have the COR Certification, OHSAS 18001 Accreditation or ISO 45001 Accreditation, as the case may be, obtained or reinstated in good standing within a period of not more than 30 days (the “**H&S Certification Reinstatement Plan**”), which H&S Certification Reinstatement Plan shall be subject to review and approval by Contracting Authority and, to the extent Contracting Authority requires any amendments or revisions to be made to the H&S Certification Reinstatement Plan, Project Co shall take, and shall cause the COR-Qualified Construction Project Co Party or the COR-Certified Construction Project Co Party, as the case may be, to take, all reasonable steps as may be necessary to make all such required amendments and revisions and deliver to Contracting Authority an amended H&S Certification Reinstatement Plan not more than five Business Days from the date on which such request is made by Contracting Authority;
 - (C) no later than five Business Days after the H&S Certification Default Event occurs, arrange to have conducted a complete H&S Construction Inspection in accordance with Section 15.1(b); and
 - (D) arrange to have conducted an H&S Construction Re-Inspection in accordance with Section 15.1(e), if required; or
- (vii) within five Business Days after receipt of the Notice from Contracting Authority under Section 11.27(b)(iv) or Section 11.27(b)(v):
 - (A) produce and deliver to the Contracting Authority Representative a report identifying the manner in which the COR Certification, OHSAS 18001 Accreditation or ISO 45001 Accreditation, as the case may be, shall be maintained in good standing or obtained, as applicable;
 - (B) produce and deliver to the Contracting Authority Representative a plan showing the steps that are to be taken to ensure that the COR Certification, OHSAS 18001 Accreditation or ISO 45001 Accreditation, as the case may be, will be maintained in good standing without interruption (the “**H&S Certification Maintenance Plan**”), which H&S Certification Maintenance

Plan shall be subject to review and approval by Contracting Authority and, to the extent Contracting Authority requires any amendments or revisions to be made to the H&S Certification Maintenance Plan, Project Co shall take all reasonable steps as may be necessary to make all such required amendments and revisions and deliver to Contracting Authority an amended and H&S Certification Maintenance Plan not more than five Business Days from the date on which such request is made by Contracting Authority;

- (C) arrange to have conducted a complete H&S Construction Inspection in accordance with Section 15.1(b), and
- (D) arrange to have conducted an H&S Construction Re-Inspection in accordance with Section 15.1(e), if required.

11.28 Demolition Requirements

- (a) Without limiting Project Co's obligation to perform the Works at all times in accordance with Applicable Law, in respect of any Demolition, Project Co shall, and shall cause each applicable Project Co Party that is performing any part of the Demolition to, at such person's own cost and risk and at all times during the performance of the Works:
 - (i) conduct all work in connection with any Demolition at all times in compliance with section 3 of the Performance Standards Regulation and the Building Code;
 - (ii) ensure that all Project Co Parties having responsibility for the supervision of any such Demolition are qualified as either a professional engineer, limited license holder or provisional license holder (as such terms are used in the Performance Standards Regulation) (such person is hereinafter referred to as a "**Demolition Supervisor**");
 - (iii) observe and perform the Demolition in a manner that is consistent with the recommendations set forth in the Demolition Guidelines in all material respects; and
 - (iv) in respect of any Complex Structure Demolition to be conducted by Project Co or any applicable Project Co Party:
 - (A) prepare detailed specifications relating to such Complex Structure Demolition which specifications will include a detailed risk assessment and risk mitigation plan assessing all apparent or inferable risks that might be associated with the Demolition, colour-coded Load-Path Diagrams (which will include a description of the Demolition Requirements set forth herein) to supplement the Site work plans and blueprints relating to the Demolition and all other technical requirements relating to the Complex Structure Demolition (the "**Demolition Specifications**");
 - (B) at all times when a Complex Structure Demolition is being performed that the Demolition Specifications, Demolition work plans and Load-Path Diagram, be present and available at the Site at which such Complex Structure Demolition is being performed; and

- (C) ensure at all times when a Complex Structure Demolition is being performed that a Demolition Supervisor will be on the Site at which such Complex Structure Demolition is being performed and actively supervising all activities in respect of the Complex Structure Demolition,
- (collectively the “**Demolition Requirements**”).
- (b) If at any time while any Demolition is being performed pursuant to this Project Agreement, Project Co or any Project Co Party that is performing any part of any Demolition receives Notice from Contracting Authority or any Province Persons or Governmental Authority that the Demolition is being conducted in a manner that is either not in compliance with the Demolition Requirements or not otherwise in accordance with this Project Agreement (such event referred to as a “**Demolition Default Event**”), Project Co shall and shall cause any applicable Project Co Party to:
- (i) be required immediately upon the occurrence of a Demolition Default Event, notify Contracting Authority that a Demolition Default Event has occurred, unless Contracting Authority was the person that provided Notice of the Demolition Default Event;
 - (ii) cease all work in respect of such Demolition; and
 - (iii) within five Business Days after receipt of a Notice of a Demolition Default Event produce and deliver to the Contracting Authority Representative:
 - (A) a report identifying the reasons for the occurrence of the Demolition Default Event; and
 - (B) a Demolition Plan showing the steps that are to be taken to rectify the Demolition Default Event within a period of not more than 30 days from the occurrence of the Demolition Default Event, which Demolition Plan shall be subject to review and approval by Contracting Authority and, to the extent Contracting Authority requires any amendments or revisions to be made to such Demolition Plan, Project Co and the applicable Project Co Parties shall take all reasonable steps as may be necessary to make all such required amendments and revisions and deliver to Contracting Authority an amended and revised Demolition Plan not more than five Business Days from the date on which such request is made by Contracting Authority.
- (c) No Demolition shall be recommenced at the Site that was the subject of the Demolition Default Event until:
- (i) Contracting Authority is satisfied that Project Co or the applicable Project Co Party has taken all necessary steps to remediate such Demolition Default Event in accordance with Demolition Plan; and
 - (ii) Contracting Authority has received a report, in form and substance satisfactory to Contracting Authority, prepared by a professional engineer that the Demolition Default Event has been remediated and the Site has been properly prepared for the Demolition to proceed in accordance with the Demolition Plan.

- (d) For clarity, Project Co shall not be eligible for a Delay Event or a Compensation Event in connection with a Demolition Default Event or the recommencement of a Demolition pursuant to Section 11.28(c).

11.29 Liquidated Damages and Construction Enforcement Regime

- (a) Project Co shall comply with Schedule 21 – Liquidated Damages and Construction Enforcement Regime, and shall be liable to Contracting Authority for all liquidated damages and Construction Period Deductions in accordance with the terms of Schedule 21 – Liquidated Damages and Construction Enforcement Regime and this Project Agreement.

11.30 Works, Goods, Equipment, Consumables and Materials

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

and shall, as soon as practicable after receiving a request from the Contracting Authority Representative, supply to the Contracting Authority Representative evidence to demonstrate its compliance with this Section 11.30(a).

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

11.31 [Intentionally Deleted]

11.32 Executive Project Meetings

- (a) Subject to Sections 11.32(b) and 11.32(c), during the Project Term, either Party may, in its sole discretion and from time to time, schedule and hold meetings with senior executives of Contracting Authority, Project Co and the Project Co Parties for such individuals to provide senior executives of Contracting Authority with an update on the progress of and issues with the Project (each is an “**Executive Project Meeting**”).
- (b) Either Party may, in its sole discretion, elect to schedule and hold an Executive Project Meeting upon the delivery of no fewer than 10 Business Days’ prior Notice to the other Party.
- (c) The precise date, time and location of each Executive Project Meeting shall be scheduled by Contracting Authority, acting reasonably.
- (d) Contracting Authority shall have the right to request the attendance of specific employees, officers, directors and other representatives of Project Co or any Project Co Party at each

Executive Project Meeting, and, if requested to attend such meeting, Project Co shall use commercially reasonable efforts to ensure all such individuals attend.

- (e) No later than five Business Days prior to the date of each Executive Project Meeting, Project Co shall prepare and submit to Contracting Authority a one page (11" x 17" sized) summary (the "**Executive Project Meeting Document**"), which shall include the following information and be current to such date:
- (i) the date of the Executive Project Meeting Document (in month and year format);
 - (ii) Project information, including the name of the Project, the name of Project Co and the names of the Project Co Parties, including their respective representatives in attendance;
 - (iii) a high-level Project schedule in respect of the Works, including Commercial Close, Financial Close, the design development phase, the construction phase, the testing and commissioning phases, the Scheduled Substantial Completion Date, the Anticipated Substantial Completion Date if such date is different from the Scheduled Substantial Completion Date, the Scheduled Final Completion Date, and any other material high-level items on the critical path of, as applicable, the Proposed Works Schedule or the Baseline Works Schedule;
 - (iv) a brief description of the status of the design process to date, including the number of (A) Works Submittals submitted to Contracting Authority pursuant to Schedule 10 – Review Procedure; (B) Works Submittals for which the Contracting Authority Representative has assigned a comment of "NO COMMENT", "MINOR NON-CONFORMANCE" or "MAJOR NON-CONFORMANCE" pursuant to Schedule 10 – Review Procedure; (C) Works Submittals under review by Contracting Authority pursuant to Schedule 10 – Review Procedure; and (D) Works Submittals scheduled to be submitted to Contracting Authority pursuant to Schedule 10 – Review Procedure within six months following the Executive Project Meeting;
 - (v) a brief high-level description of the Construction Activities undertaken since the previous Executive Project Meeting, including three distinct progress photos;
 - (vi) Earned Value Metrics (as defined in Schedule 12 – Works Schedule Requirements) progress per construction month;
 - (vii) a brief description of the top five issues Project Co desires to bring to the attention of Contracting Authority;
 - (viii) the number of total recordable injuries, lost time injuries, and non-lost time injuries per construction month;
 - (ix) the number of Non-Conformance Reports issued since Financial Close for each construction month by type (i.e. Critical Non-Conformance, Major Non-Conformance, and Minor Non-Conformance);
 - (x) the number of Project Co Permits, Licences, Approvals and Agreements opened and closed with an emphasis on delayed applications; and

- (xi) any other information requested by Contracting Authority, acting reasonably.
- (f) All discussions at an Executive Project Meeting and documents exchanged between the Parties in respect of an Executive Project Meeting shall be on a without prejudice basis, and shall not limit or prejudice any Party's rights or obligations under this Project Agreement, including under Schedule 27 – Dispute Resolution Procedure.

11.33 Tunnel Boring Machine

- (a) The Parties acknowledge the uniqueness of the Tunnel Boring Machine being procured by or on behalf of Project Co or the Construction Contractor for the Project and the extended period of time for the manufacturing of same (as generally reflected in the Project Works Schedule) (the “**Procured TBM**”). The Parties acknowledge that loss of or damage to the Tunnel Boring Machine during the marine transport of same to the Lands (such loss or damage being a “**TBM Marine Event**”) may result in a critical path delay to the Project Works Schedule. For purposes of this Section 11.33, the Procured TBM shall include the Tunnel Boring Machine and all of its component parts in the case of transportation of the Tunnel Boring Machine in portions, and “marine transport” shall include the transportation of the Procured TBM over water only, and, for greater clarity, shall not include loading or unloading the Tunnel Boring Machine onto or off of the marine vessel on which it is being transported.
- (b) In the event that a TBM Marine Event occurs that results in demonstrated critical path delay to the Project Works Schedule of 60 Business Days or more arising from such TBM Marine Event, Project Co shall be entitled to a Delay Event pursuant to Section 32, provided that:
 - (i) Project Co has satisfied the Notice requirements set out in Sections 11.33(f) and 11.33(g); and
 - (ii) the seaworthiness of the vessel used for the marine transport of the Procured TBM did not, directly or indirectly, materially contribute to the TBM Marine Event.
- (c) For clarity, Project Co shall not be entitled to a Delay Event due to the occurrence of a TBM Marine Event in the event that the critical path delay to the Project Works Schedule arising therefrom is less than 60 Business Days. If Project Co demonstrates a critical path delay of 60 Business Days or more arising from a TBM Marine Event, Project Co shall be entitled to time relief pursuant to Section 32 for the entire duration of such critical path delay. Project Co shall take all commercially available measures reasonably appropriate under the circumstances to mitigate any delay arising from any TBM Marine Event.
- (d) Neither Project Co nor its Subcontractors shall be entitled to a Compensation Event or any other monetary compensation whatsoever from Contracting Authority under this Project Agreement as a result of any TBM Marine Event, regardless of the impact of such TBM Marine Event. In that regard, Project Co shall procure (or shall require the procurement of) marine transit insurance and marine delay-in start up insurance to mitigate the monetary losses arising from or relating to any TBM Marine Event.
- (e) Project Co (or the Construction Contractor) shall use commercially reasonable efforts to include within the purchase agreement (or supply contract, as the case may be) for the Procured TBM the

requirement of the vendor or supplier of the Procured TBM to deliver a certificate of seaworthiness with respect to each vessel that will be used in the marine transportation of the Procured TBM to the Lands. If, despite using commercially reasonable efforts, such requirement is not included in the purchase agreement (or supply contract, as the case may be) for the Procured TBM, then Project Co (or the Construction Contractor) shall request and shall use commercially reasonable efforts to obtain a certificate of seaworthiness from either the insurer issuing the marine transit insurance and marine delay-in start up insurance policies applicable to the Procured TBM, or the operator (or operators) of the marine vessel (or vessels) transporting the Procured TBM. If a certificate of seaworthiness is obtained, Project Co shall promptly deliver same to the Contracting Authority and the Lender's Agent and such certificate shall establish a rebuttable presumption of the seaworthiness of the vessel (or vessels) transporting the Procured TBM. If a certificate of seaworthiness is not obtained, then the seaworthiness of the vessel (or vessels) transporting the Procured TBM to the Lands will be determined as at the time of the loss without presumption.

- (f) If Project Co believes that a TBM Marine Event has occurred and that as a result Project Co will experience a critical path delay to the Project Works Schedule of no less than 60 Business Days, Project Co shall submit written Notice to Contracting Authority of such TBM Marine Event within 10 Business Days following the date on which Project Co first became aware of the occurrence of the TBM Marine Event. This Notice shall include (i) preliminary details as to the circumstances of the TBM Marine Event, and (ii) a preliminary estimate of the critical path delay attributable to the TBM Marine Event.
- (g) Within 20 days after receipt by Contracting Authority of the Notice from Project Co to referred to in Section 11.33(f), Project Co shall submit to Contracting Authority a detailed written Notice which shall include a delay analysis and the effect that the TBM Marine Event will have on Project Co's ability to perform its obligations under this Project Agreement. As Project Co receives or becomes aware of any further information relating to the TBM Marine Event, it shall submit such further information to Contracting Authority as soon as practicable. Project Co shall supply any further information that Contracting Authority may reasonably require as promptly as practicable after such request.
- (h) Within 30 days after the Notice referred to in Section 11.33(g) has been delivered to Contracting Authority, Project Co and the Contracting Authority shall agree upon the time relief directly attributable to the TBM Marine Event in question (or it shall be determined pursuant to the Dispute Resolution Procedure), which time relief shall result in a corresponding extension to the Scheduled Substantial Completion Date.

11.34 Pandemic and Epidemic Plans

- (a) No later than 90 days following Financial Close, Project Co shall, at its cost, submit a plan to Contracting Authority that sets out the activities and reporting to Contracting Authority that Project Co will implement as part of the Works to prepare for and respond to any potential or actual pandemic or epidemic that may affect the Works (including the COVID-19 pandemic or any subsequent outbreak of COVID-19) and satisfies the requirements of Section 11.34(b) (the "**Pandemic and Epidemic Response and Mitigation Plan**").

- (b) The Pandemic and Epidemic Response and Mitigation Plan shall, at a minimum, satisfy the following requirements:
- (i) outline the detailed steps Project Co and its Subcontractors have undertaken and will undertake to prepare for and respond to the effects of the COVID-19 pandemic or any potential future pandemic or epidemic that could occur and affect the Works, including a subsequent outbreak of COVID-19; and
 - (ii) in the event that, at any time during the Project Term, a specific pandemic or epidemic (including the COVID-19 pandemic or subsequent outbreak of COVID-19) is reasonably foreseeable and imminently likely to occur and affect the Works, Project Co shall update its Pandemic and Epidemic Response and Mitigation Plan accordingly, which shall, at a minimum, satisfy the requirements set out in Section 11.34(a), and be applicable mutatis mutandis in respect of such pandemic or epidemic.
- (c) The Pandemic and Epidemic Response and Mitigation Plan and all updates to such plan shall be subject to review by Contracting Authority pursuant to Schedule 10 – Review Procedure.
- (d) In the event that, at any time prior to Substantial Completion, a specific pandemic or epidemic (including a the COVID-19 pandemic or any subsequent outbreak of COVID-19) is reasonably foreseeable and likely to occur and affect the Works or otherwise occurs and affects the Works, Project Co shall, at its cost, promptly (at the request of Contracting Authority or on its own volition) update the Pandemic and Epidemic Response and Mitigation Plan on a monthly basis and submit each update with the next Works Report until such time as the Parties agree, acting reasonably, that either the pandemic or epidemic will not occur and affect the Works or such epidemic or pandemic has ended, no longer affects the Works and no further updates to such plan are required. Following the review by Contracting Authority of each updated Pandemic and Epidemic Response and Mitigation Plan pursuant to Schedule 10 – Review Procedure, Project Co shall, without limiting any other obligation of Project Co under the Project Agreement or Applicable Law, implement such plan in accordance with Schedule 10 – Review Procedure, at its cost and risk other than as provided for in Section 30.4.
- (e) Any Pandemic and Epidemic Response and Mitigation Plan (including any update thereto) or the potential or actual impact of any pandemic or epidemic on the Works may, at the request of a Party, be discussed at any meeting of the Works Committee or at any other meeting between the Parties if reasonably requested by a Party during the Project Term. Any Party may, acting reasonably, require that any such other meeting be on a “without prejudice basis”.

11.35 Utility Agreements

- (a) For each Utility Agreement to be entered into between Project Co and the subject Utility Company, the form of which was made available as Background Information on or prior to the date that was 10 days prior to the Technical Submission Deadline (each being a “**Form of Utility Agreement**”), Project Co shall, or shall cause a Subcontractor to, execute and deliver each such Utility Agreement no later than 90 days after Financial Close, such Utility Agreement to be substantially in the form of the Form of Utility Agreements.

- (b) Project Co acknowledges and agrees that any revisions to the terms or conditions of a Form of Utility Agreement unilaterally proposed or required by Project Co, or are minor or administrative in nature, shall be at Project Co's cost and risk.
- (c) In the event that Project Co executes and delivers to the Utility Company a completed Utility Agreement in the Form of Utility Agreement or in a form otherwise agreed to between Project Co and the applicable Utility Company as described in Section 11.34(a), and such Utility Company fails to execute and deliver such Utility Agreement within 30 days of the date of the delivery of the Utility Agreement by Project Co to the Utility Company, and such failure to execute and deliver such Utility Agreement will materially adversely interfere with Project Co's ability to perform the Works or will materially adversely affect Project Co's cost of performing the Works, then:
- (i) Project Co shall promptly provide Notice to Contracting Authority; and
 - (ii) then such failure shall, subject to and in accordance with Section 32 be treated as a Delay Event and, subject to and in accordance with Section 33, be treated as a Compensation Event.
- (d) In the event that Project Co executes and delivers a completed Utility Agreement in the Form of Utility Agreement or in a form otherwise agreed to between Project Co and the applicable Utility Company as described in Section 11.35(a), and such Utility Company executes and delivers such Utility Agreement containing a Post-CC Utility Agreement Amendment (or communicates to Project Co that it will only enter into a Utility Agreement that incorporates a Post-CC Utility Agreement Amendment), then:
- (i) Project Co shall promptly provide Notice to Contracting Authority informing Contracting Authority that a Post-CC Utility Agreement Amendment has been proposed by the subject Utility Company and providing details regarding such Post-CC Utility Agreement Amendment (a "**Post-CC Utility Agreement Amendment Notice**");
 - (ii) Project Co shall, during the 30 day period following the date upon which Contracting Authority receives the Post-CC Utility Agreement Amendment Notice (or such longer period of time as the Parties may otherwise agree), use commercially reasonable efforts to resolve and settle the Post-CC Utility Agreement Amendment with the subject Utility Company; and
 - (iii) if:
 - (A) Project Co has complied with its obligations under Sections 11.35(d)(i) and 11.35(d)(ii); and
 - (B) Project Co and the subject Utility Company are unable to resolve and settle the Post-CC Utility Agreement Amendment resulting in Project Co and such Utility Company failing to enter into the subject Utility Agreement, and such failure to enter into such Utility Agreement will materially adversely interfere with Project Co's ability to perform the Works or will materially adversely affect Project Co's cost of performing the Works, then:

- (I) Project Co shall promptly provide Notice to Contracting Authority of the matters described in Section 11.35(d)(iii)(B); and
 - (II) subject to and in accordance with Schedule 22 - Variation Procedure, Project Co shall be entitled to a Variation.
- (e) If, pursuant to and in accordance with a Utility Agreement, the subject Utility Company identifies to Project Co, and requires the performance of, any works relating to the Utility Infrastructure that is the subject matter of such Utility Agreement, and in Project Co's reasonable opinion, such works are unreasonable and unnecessary for Project Co to perform as part of the Works, or are otherwise outside the scope of work contemplated by such Utility Agreement, and if the performance of such works will or is likely to affect the Works so as to cause a delay in achieving Substantial Completion by the Scheduled Substantial Completion Date:
- (i) Project Co shall promptly deliver Notice to Contracting Authority describing such works and providing such opinion; and
 - (ii) without limiting or prejudice to any right of Contracting Authority under the Project Agreement, Project Co may deliver a Project Co Variation Notice to Contracting Authority pursuant to and in accordance with Schedule 22 – Variation Procedure in respect of such works.

11.36 Cash Allowances

- (a) Project Co shall open the Cash Allowance Account, deposit the Cash Allowance Amount into the Cash Allowance Account on the dates and in the amounts set out in the Financial Model at Financial Close and manage the Cash Allowance Account in accordance with this Section 11.36.
- (b) The cash flow process applicable to the Cash Allowance Account will be as follows:
 - (i) Project Co will deposit the Cash Allowance Amount into the Cash Allowance Account on the dates and in the amounts set out in the Financial Model at Financial Close;
 - (ii) Project Co will hold and manage all monies in the Cash Allowance Account in trust for the benefit of and as directed by Contracting Authority;
 - (iii) interest earned on the Cash Allowance Account will accrue in the Cash Allowance Account and will be for the benefit of Contracting Authority;
 - (iv) Project Co shall provide a reconciliation of the Cash Allowance Account to Contracting Authority on a monthly basis;
 - (v) subject to Project Co's obligation to fund the Cash Allowance Account pursuant to Section 11.36(b)(i), Contracting Authority shall make deposits into the Cash Allowance Account on agreed upon date(s) in the event that the payment requirements for Cash Allowance Items, including applicable HST, for invoices approved by Contracting Authority, exceed the then balance of the Cash Allowance Account, for clarity, determined on an aggregate basis across all Cash Allowance Items;

- (vi) if, at Final Completion, there exists a positive balance in the Cash Allowance Account, such balance will be the property of Contracting Authority and will be paid by Project Co to Contracting Authority or as Contracting Authority directs; and
 - (vii) the Parties agree to mutually review the operation of the Cash Allowance Account on a regular basis and make any appropriate modifications to ensure its efficient operation.
- (c) Project Co shall provide monthly reports to the Contracting Authority Representative that include the following information:
- (i) itemized and aggregate amounts committed to date for all Cash Allowance Items;
 - (ii) itemized and aggregate amounts spent to date for all Cash Allowance Items; and
 - (iii) the projected cost of each remaining Cash Allowance Item and the projected effect of such costs on the Cash Allowance Account.
- (d) In addition to the monthly report described in Section 11.36(c), Project Co shall, on a monthly basis, provide to the Contracting Authority Representative a request for payment approval (each, a “**Request for Payment Approval**”) that includes the following information:
- (i) details of all vendor or Project Co Party invoices that are due for payment that month, including relevant supporting documentation;
 - (ii) evidence that the commitment by Project Co to perform the work and activities that constitute Cash Allowance Items has been approved by Contracting Authority;
 - (iii) any discounts, rebates, refunds, chargebacks, credits, price adjustments and other allowances available to Project Co in connection with the Cash Allowance Items;
 - (iv) all costs paid or incurred by Project Co related and attributable to such Cash Allowance Items, with each component of the work, services, supplies, materials or equipment utilized in respect thereof separately itemized and setting forth a general description of such component together with the costs thereof or associated therewith; and
 - (v) sufficient information to demonstrate to Contracting Authority’s satisfaction, acting reasonably that Project Co has used commercially reasonable efforts to obtain the best value for money, and has complied with Good Industry Practice, regarding all costs paid or incurred by Project Co related and attributable to such Cash Allowance Items, including using commercially reasonable efforts to mitigate such costs and to ensure that with respect to any work, services, supplies, materials or equipment procured by Project Co regarding such Cash Allowance Items, Project Co has used commercially reasonable efforts to obtain the best value for money therefor, and has complied with all Good Industry Practice in relation to any such procurement, to a standard no less than Project Co would apply if all costs incurred were to its own account without recourse to Contracting Authority.
- (e) Contracting Authority shall, within 10 Business Days of receipt of a Request for Payment Approval, advise Project Co, in writing, whether or not payment of the invoices set out in such

Request for Payment Approval is approved. Contracting Authority shall only be permitted to withhold its approval if Contracting Authority determines that the Request for Payment Approval does not contain the information that Contracting Authority requires, acting reasonably, to discharge its obligations under this Section 11.36. If Contracting Authority withholds its approval pursuant to this Section 11.36(e) and subsequently receives the information that Contracting Authority requires, acting reasonably, to discharge its obligations under this Section 11.36, it shall, within 10 Business Days of its receipt of such information, provide to Project Co, in writing, Contracting Authority's approval of the invoices set out in the aforementioned Request for Payment Approval.

- (f) If Contracting Authority approves the payment of the invoices set out in a Request for Payment Approval, Project Co shall make payment to the relevant vendors or Project Co Party from the Cash Allowance Account.
- (g) Project Co acknowledges and agrees that:
 - (i) neither it, nor any Project Co Party, shall be entitled to any mark-ups for profit, overhead or other costs associated with the Cash Allowance Items;
 - (ii) all discounts, rebates, refunds, chargebacks, credits, price adjustments and other allowances available to Project Co in connection with the Cash Allowance Items shall be attributed solely to and shall benefit the pricing of the Cash Allowance Items;
 - (iii) all costs and expenses related to the administration of the Cash Allowance Account, including, without limitation, the preparation of Requests for Payment Approval and any required reporting, shall be borne by Project Co and shall not be charged to the Cash Allowance Account; and
 - (iv) the Cash Allowance Amount will be deposited and the Cash Allowance Account will be managed in accordance with the Interim Baseline Works Schedule and the Baseline Works Schedule and any costs, expense or delays related to funding or managing the Cash Allowance Account are the responsibility of Project Co.

11.37 Category 2 Utility Agreements

- (a) If pursuant to a Utility Agreement with a Category 2 Utility Company, Project Co and such Category 2 Utility Company are to agree and settle a completed scope of work, as well as schedule and cost for completion thereof in respect of Category 2 Utility Work to be performed under such Utility Agreement (a "**Category 2 UA Deliverable**") and Project Co and such Utility Company are unable to agree on the terms of such Category 2 UA Deliverable after Project Co has exercised commercially reasonable efforts in furtherance thereof, then:
 - (i) Project Co shall promptly provide Notice to Contracting Authority of such failure to agree; and
 - (ii) Project Co shall, during the 30 day period following the date upon which Contracting Authority receives Notice pursuant to Section 11.37(a)(i) (or such longer period of time as the Parties may otherwise agree), use commercially reasonable efforts to resolve and settle such Category 2 UA Deliverable with such Category 2 Utility Company; and

- (iii) if:
- (A) Project Co has complied with its obligations under Sections 11.37(a)(i) and 11.37(a)(ii); and
 - (B) Project Co and such Category 2 Utility Company are unable to resolve and settle such Category 2 UA Deliverable, and such failure in this regard will materially adversely interfere with Project Co's ability to perform the Works or will materially adversely affect Project Co's cost of performing the Works, then:
 - (I) Project Co shall promptly provide Notice to Contracting Authority of the matters described in Section 11.37(a)(iii)(B); and
 - (II) subject to and in accordance with Schedule 22 - Variation Procedure, Project Co shall be entitled to a Variation.
- (b) In the event that a Category 2 Utility Company fails to perform any of its obligations set out in a settled agreed-upon Category 2 Utility Deliverable (each a "**Category 2 UA Deliverable Failure**"), including the failure to:
- (i) inspect or review, as applicable, the Utility Work contemplated by the Category 2 UA Deliverable in accordance with the deadlines for inspection or review set out therein;
 - (ii) design or construct Utility Infrastructure in accordance with the provisions set out therefor in the Category 2 UA Deliverable (including, for clarity, deadlines for design and construction), but only in those circumstances where it is a requirement of such Category 2 UA Deliverable that such Category 2 Utility Company must carry out the design and construction of such Utility Infrastructure itself (by such Category 2 Utility Company's own forces or by a subcontractor retained by such Category 2 Utility Company); or
 - (iii) carry out the same scope of the work as that set out in such Category 2 UA Deliverable, but only in those circumstances where it is a requirement of such Category 2 UA Deliverable that such Category 2 Utility Company must carry out such scope of work of itself (or through a subcontractor of such Category 2 Utility Company),
- provided, in each case, that such failure does not arise (directly or indirectly) as a result of any act or omission of Project Co or any Project Co Party, then Project Co shall:
- (iv) promptly provide Notice to Contracting Authority informing Contracting Authority that a Category 2 UA Deliverable Failure has occurred (a "**Category 2 UA Deliverable Failure Notice**"); and
 - (v) during the 30 day period following the date upon which Contracting Authority receives the Category 2 UA Deliverable Failure Notice (or such longer period of time as the Parties may otherwise agree), use commercially reasonable efforts to resolve and settle the Category 2 UA Deliverable Failure with the subject Category 2 Utility Company; and

- (vi) if:
- (A) Project Co has complied with its obligations under Sections 11.37(b)(iv) and 11.37(b)(v);
 - (B) Project Co has provided to Contracting Authority with a copy of the subject Category 2 UA Deliverable within two (2) Business Days of settling the final form of such Category 2 UA Deliverable, to permit Contracting Authority, if it so elects, to exercise its rights pursuant to Part IV of the *Building Transit Faster Act, 2020*; and
 - (C) the Category 2 UA Deliverable Failure remains unresolved and such failure will materially adversely interfere with Project Co's ability to perform the Works or will materially adversely affect Project Co's cost of performing the Works, then:
 - (I) Project Co shall promptly provide Notice to Contracting Authority of the matters described in Section 11.37(b)(vi)(C); and
 - (II) subject to and in accordance with Schedule 22 - Variation Procedure, Project Co shall be entitled to a Variation.
- (c) For clarity, a Utility Company can be both a Category 1 Utility Company and a Category 2 Utility Company.

12. REPRESENTATIVES

12.1 The Contracting Authority Representative

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

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

12.2 The Project Co Representative

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

12.3 Communications to Representatives

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

12.4 Key Individuals

- (a) The individuals who are critical to the performance of the Works are identified in Schedule 9 – Key Individuals. Project Co shall use commercially reasonable efforts to ensure that such persons remain involved in the Works in the capacity set out in Schedule 9 – Key Individuals (unless such Key Individuals are not available for reasons beyond the control of Project Co or a Project Co Party). Project Co or a Project Co Party shall not, for the duration of the Works, require or request any such person to be involved in any other project, if, in the reasonable opinion of Contracting Authority such involvement would have a material adverse effect on the Works. For clarity, Project Co and the Project Co Parties' reasonable commercial efforts, in accordance with this Section 12.4(a), shall include the denial of promotions or relocations of a Key Individual as permitted by the Applicable Law.
- (b) Subject to Project Co's obligations to ensure that Key Individuals remain involved in the Works as set out in Section 12.4(a), if it becomes necessary for Project Co to replace any individual identified in Schedule 9 - Key Individuals, Project Co shall nominate a competent suitably qualified and experienced permanent replacement or replacements, having regard to the qualifications set out in Schedule 9 – Key Individuals, as soon as practicable and provide Contracting Authority with relevant information on the proposed replacement and shall consult with Contracting Authority before finalizing the appointment of such replacement. Project Co shall not replace any of the individuals identified in Schedule 9 - Key Individuals without the prior written consent of Contracting Authority, which consent shall not be withheld or delayed where Project Co is compliant with Sections 12.4(a) and 12.4(c) and the proposed replacement is suitably qualified and experienced, having regard to the qualifications set out in Schedule 9 – Key Individuals.
- (c) If Contracting Authority determines, acting reasonably, that it is in the best interests of Contracting Authority that any individual identified in Schedule 9 - Key Individuals be replaced, Contracting Authority shall notify Project Co (including a detailed explanation of the reasons for such determination), and, within 30 days after receipt by Project Co of such Notice, Project Co shall provide Contracting Authority with relevant information on the proposed replacement and shall consult with Contracting Authority before finalizing the appointment of such replacement.

13. WORKS SCHEDULE REQUIREMENTS AND WORKS REPORT

13.1 Completion of the Works

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

13.2 Works Schedule Requirements

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

13.3 [Intentionally Deleted]

13.4 [Intentionally Deleted]

13.5 Notification of Early Substantial Completion

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

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

13.6 Works Report

- (a) Project Co shall continuously monitor the progress of the Works in relation to the Baseline Works Schedule and, within 15 Business Days after the end of each calendar month from Financial Close until the Final Completion Date, Project Co shall provide to the Independent Certifier and submit to the Contracting Authority Representative in accordance with Schedule 10 – Review Procedure a works report (each, a “**Works Report**”), which will include:
- (i) an executive summary describing the general status of the Works and progress made over the relevant month;
 - (ii) a table setting out and responding to items of Project Agreement non-compliance and deficiencies in ongoing Works as identified by Contracting Authority and Project Co;
 - (iii) a Progress Works Schedule, Basis of Works Schedule Report, and Works Schedule Report all in accordance with Schedule 12 – Works Schedule Requirements;
 - (iv) a narrative description of any Disputes related to the Works, including any action that has taken place over the relevant month to resolve such Disputes;

- (v) a narrative description of the status of any Proceeding at Risk Matter that has not been resolved pursuant to Section 14.6(d), in accordance with Schedule 27 – Dispute Resolution Procedure or otherwise;
- (vi) an update on those matters set out in Schedule 33 – Works Report Requirements;
- (vii) a detailed, narrative description of all issues relating to Warranty Work and warranties set out in Sections 11.18 and 11.19; and
- (viii) any other information specifically requested by Contracting Authority on the progress of the Works,

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

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

14. WORKS COMMITTEE

14.1 Establishment

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

14.2 Function and Role

- (a) The Works Committee shall assist the Parties by promoting cooperative and effective communication with respect to matters related to the Works.
- (b) The Works Committee shall be responsible for receiving and reviewing all matters related to the Works, including:

-
- (i) any design, construction and commissioning issues;
 - (ii) the Project Works Schedules, the Basis of Works Schedule Reports and the Works Schedule Reports;
 - (iii) any issues arising from reports or documents provided by Project Co or the Independent Certifier;
 - (iv) any quality assurance and safety and security issues, including any design, configuration control, interfacing, training, testing, operational impact and other matters creating or giving rise to a safety or security issue or otherwise requiring attention and oversight;
 - (v) the Works Reports;
 - (vi) any special matters referred to the Works Committee by Contracting Authority or Project Co;
 - (vii) any Proceeding at Risk Matters referred to the Works Committee in accordance with Section 14.6;
 - (viii) any community and media relations issues in accordance with Schedule 18 – Communication and Public Engagement Protocol;
 - (ix) any issues related to the Traffic and Transit Management Plan and any issues related to the rules, requirements and restrictions relating to access, rail safety and operations and track protection, as set out in Schedule 15 – Output Specifications;
 - (x) monitoring the Final Commissioning Program;
 - (xi) any issues related to the Construction Enforcement Regime; and
 - (xii) any other issues pertaining to the Works.
- (c) Subject to Section 14.2(d), any unanimous decision of the Works Committee shall be final and binding on the Parties. If the Works Committee is unable to reach a unanimous decision, either Party may refer the matter for resolution in accordance with Schedule 27 – Dispute Resolution Procedure.
- (d) The Works Committee shall not have authority to make decisions with respect to or approve:
- (i) any amendment to or waiver of any provision of this Project Agreement;
 - (ii) any change to a major milestone date set out in any Project 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 Contracting Authority has a right of consent or in respect of which Contracting Authority may exercise discretion pursuant to this Project Agreement.

14.3 Term of Works Committee

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

14.4 Replacement of Committee Members

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

14.5 Procedures and Practices

- (a) The members of the Works Committee may:
 - (i) adopt such procedures and practices for the conduct of the activities of the Works Committee as they consider appropriate from time to time;
 - (ii) invite to any meeting of the Works Committee such other persons as the members of the Works Committee may agree;
 - (iii) exclude from any meeting of the Works Committee such persons as the members of the Works Committee may agree; and
 - (iv) receive and review reports from any person or organization agreed to by the members of the Works Committee.
- (b) Once established, the Works Committee shall meet at least once each month from Financial Close until the Final Completion Date, unless otherwise agreed by the members of the Works Committee or the Parties.
- (c) Any one of the Project Co Representatives or the Contracting Authority Representatives on the Works Committee may convene a special meeting of the Works Committee at any time. Special meetings of the Works Committee may be convened on not less than five Business Days' Notice to all members of the Works Committee identifying the agenda items to be discussed at the special meeting, provided that, in an Emergency, a meeting may be called at any time on such Notice as may be reasonable in the circumstances.

- (d) Unless otherwise agreed by the members of the Works Committee, the Works Committee shall meet in the City of Toronto, 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) Three representatives appointed by Contracting Authority (one of whom shall be the Contracting Authority Representative) and two representatives appointed by Project Co (one of whom shall be the Project Co Representative) shall constitute a quorum at any meeting of the Works Committee. A quorum of members may exercise all the powers of the Works Committee. The members shall not transact business at a meeting of the Works Committee unless a quorum is present.
- (f) Minutes of all meetings, recommendations and decisions of the Works Committee, including those made by telephone or other form of communication, shall be recorded and maintained by Project Co. Project Co shall circulate copies of such minutes within five Business Days after the holding of the meeting or the making of the recommendation or decision. Unless Contracting Authority notifies Project Co within five Business Days after receipt of the minutes that Contracting Authority disagrees with the contents of the minutes, Project Co and Contracting Authority shall be deemed to have approved such minutes. Project Co shall maintain a complete set of all minutes of the meetings of the Works Committee and shall make such minutes available for inspection by Contracting Authority during regular business hours.

14.6 Proceeding at Risk

- (a) If at any time:
- (i) in the reasonable opinion of Contracting Authority, Project Co is performing the Works in a manner that may result in Project Co becoming unable to satisfy the requirements for Substantial Completion; or
 - (ii) the Contracting Authority Representative has noted a Works Submittal as “CRITICAL NON-CONFORMANCE” in accordance with Schedule 10 – Review Procedure;
- (each of the matters described in Sections 14.6(a)(i) and 14.6(a)(ii) a “**Proceeding at Risk Matter**”), then Contracting Authority may issue to Project Co (with a copy to the Independent Certifier) a Notice (the “**Proceeding at Risk Notice**”) identifying Contracting Authority’s reasons for issuing the Proceeding at Risk Notice and requesting Project Co to deliver any relevant Design Data and any other information reasonably required by Contracting Authority from Project Co to review the Proceeding at Risk Matter.
- (b) Following the issuance of a Proceeding at Risk Notice, the Contracting Authority Representative and the Project Co Representative, together with the other members of the Works Committee, shall each promptly and diligently make a reasonable *bona fide* effort to resolve the Proceeding at Risk Matter.

- (c) Contracting Authority may, in its sole discretion, give notice to the Lenders' Agent pursuant to Section 15 of the Lenders' Direct Agreement that Project Co is Proceeding at Risk, together with a copy of the Proceeding at Risk Notice.
- (d) Following the issuance of a Proceeding at Risk Notice, either Party may refer the Proceeding at Risk Matter for resolution in accordance with Schedule 27 – Dispute Resolution Procedure.
- (e) The Proceeding at Risk Notice, review, and comments made during the process set out in this Section 14.6 are for general conformity to the obligations and requirements of this Project Agreement, and any such Notice, review and comment shall not relieve Project Co of the risk and responsibility for the Works and for meeting all of its obligations under and satisfying all requirements of this Project Agreement, and shall not create any new or additional obligations or liabilities for Contracting Authority.

15. QUALITY MANAGEMENT

15.1 Quality Management

- (a) Project Co shall comply with the provisions of Schedule 11 – Quality Management.
- (b) Subject to Section 15.1(c), Project Co shall cause the Construction Contractor, at its sole cost and expense, to conduct an inspection of its facilities and of its health and safety management systems on an annual basis until Final Completion or as otherwise required in accordance with Sections 11.27(b)(vi)(C) or 11.27(b)(vii)(C) (each, an “**H&S Construction Inspection**”), which H&S Construction Inspections shall:
 - (i) be conducted by a Certified H&S Inspector, and
 - (ii) during the performance of the Works, include, at a minimum,
 - (A) a review of general compliance with all applicable Occupational Health and Safety Act (Ontario) requirements, compliance with all safety manuals applicable to the Site at which the Works are being conducted, including the Contractor Site Specific Safety Manual; and
 - (B) a review of the Construction Contractor's job hazard analysis documentation on any portion of the Lands which could endanger or put at risk the safety of any person working on any portion of the Lands;
- (c) The first H&S Construction Inspection shall occur no later than the 90th day following Financial Close or, if that day is not a Business Day, on the Business Day immediately succeeding such day.
- (d) Project Co shall cause the results of each H&S Construction Inspection (such results referred to as the “**H&S Construction Inspection Report**”) to be delivered to Contracting Authority and the Works Committee not more than five Business Days from the date on which a H&S Construction Inspection is completed. An H&S Construction Inspection Report arising from an H&S Construction Inspection shall be tabled and presented by Project Co for discussion by the Works

Committee at the next meeting of the Works Committee that follows the date on which such H&S Construction Inspection Report was issued.

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

16. LAND ACCESS AND INVESTIGATION

16.1 Access to Metrolinx Lands

- (a) Subject to this Section 16 and the provisions of Schedule 20 – Lands, including any restrictions on the use and access to the Metrolinx Lands set out Schedule 20 – Lands, Contracting Authority shall grant or have caused to be granted, and shall continuously grant or cause to be granted, to Project Co and all Project Co Parties non-exclusive licence rights of use and access to, on and over the Metrolinx Lands, except such rights set out as a Project Co responsibility to obtain under the Permits, Licences, Approvals and Agreements tables attached as Appendix A to Schedule 1 – Permits, Licences, Approvals and Agreements, as are required by Project Co and such Project Co Parties and sufficient (subject to Project Co performing its obligations described in the Permits, Licences, Approvals and Agreements tables attached as Appendix A to Schedule 1 – Permits, Licences, Approvals and Agreements and subject to the timing and extent of the grant of use and

access to the Metrolinx Lands set out in Schedule 20 – Lands) to allow Project Co and such Project Co Parties to perform that part of the Works to be performed on Metrolinx Lands. The rights granted to Project Co pursuant to this Section 16.1(a) shall be effective on the later of,

- (i) the date of Financial Close; and
 - (ii) the commencement date for access to individual parcels of lands that comprise the Metrolinx Lands as set out in Schedule 20 – Lands.
- (b) Subject to Project Co’s obligation to comply with the other terms and conditions set forth in this Project Agreement and the other Project Documents, Project Co shall ensure that each Project Co Party shall at all times, when entering the Lands, act in a manner consistent with the obligations of Project Co under the Project Agreement.
- (c) In consideration for the use and access rights granted pursuant to Section 16.1(a), Project Co shall provide the Works subject to and in accordance with this Project Agreement.
- (d) Without derogating from any of Contracting Authority’s rights hereunder, and subject to any restrictions set out in Schedule 20 – Lands, Contracting Authority acknowledges that, in respect of the Works, Project Co and the Project Co Parties require, and Contracting Authority shall provide, access to the Metrolinx Lands without material interference by Contracting Authority or any Province Person for such period of time identified in Section 16.1(a). Project Co further acknowledges that following the Substantial Completion Date, Project Co’s access to the Metrolinx Lands shall be subject to the Contracting Authority Activities and Other Works.
- (e) Subject to Section 16.1(f), none of the rights granted pursuant to this Section 16.1 shall grant access to,
- (i) any lands beyond the boundaries of the Metrolinx Lands, or to any lands other than the Metrolinx Lands, other than easements and similar interests of Contracting Authority which benefit the Metrolinx Lands, obtained after the date of this Project Agreement, to the extent the same are necessary for the Works or exceed any restrictions set out in Schedule 20 – Lands; or
 - (ii) any facilities or infrastructure of Contracting Authority, MTO, Municipalities, Utility Companies, or any other third parties, except as set out in Schedule 20 – Lands (which access, if any, is subject to Section 16.1(b)).
- (f) Contracting Authority shall provide Project Co with limited access to the Existing Metrolinx Infrastructure, to the extent necessary to perform the Works and subject to such reasonable conditions as are imposed by Contracting Authority.
- (g) The use and access rights provided in this Section 16.1 shall automatically terminate as of the Termination Date, save and except for any earlier termination of the use and access rights specified in Schedule 20 – Lands.
- (h) For greater certainty, the use and access rights provided in this Section 16.1 shall not entitle Project Co or any Project Co Party to extract any mineral from the Metrolinx Lands for use in the Works.

- (i) Contracting Authority shall acquire use of and access to the Metrolinx Lands described in Schedule 20 – Lands on or prior to the applicable commencement date for access set out in Schedule 20 – Lands. Contracting Authority shall provide Notice to Project Co of the commencement of access rights to the Metrolinx Lands as such access is obtained by Contracting Authority.

16.2 Non-Exclusive Rights to Metrolinx Lands and Development of Lands

- (a) Project Co acknowledges and agrees that the rights granted to Project Co and the Project Co Parties hereunder to the Metrolinx Lands shall be non-exclusive and that Contracting Authority and any person authorized by Contracting Authority may occupy and possess the Metrolinx Lands, the New Metrolinx Infrastructure, the New Third Party Infrastructure and the Existing Infrastructure (in each case, on the Metrolinx Lands) without the prior consent of Project Co, including for the purposes of carrying out the Governmental Activities and the Other Works. In exercising its rights Project Co shall not, and shall require that the Project Co Parties shall not, except as permitted under this Project Agreement, disrupt the performance of the Governmental Activities or the Other Works.
- (b) Without limiting Section 16.2(a), Project Co acknowledges that Contracting Authority may from time to time use or develop (including by way of subdivision or expansion), or permit the use or development of, or dispose of, portions of the Metrolinx Lands, other than those portions of the Metrolinx Lands (or interests in the Metrolinx Lands) necessary for the performance of the Works. To the extent that such use, development or disposition materially adversely interferes with Project Co's licence rights hereunder or materially adversely interferes with Project Co's ability to perform the Works, such use, development or disposition shall, subject to and in accordance with Schedule 22 – Variation Procedure, result in a Variation. For greater certainty, but without limiting the generality of the foregoing, Project Co acknowledges and agrees that certain of the Metrolinx Lands shall be subject to the restrictions set out in Schedule 20 – Lands and Schedule 15 – Output Specifications.
- (c) Project Co shall be solely responsible to arrange all access to lands that it requires to access Existing Third Party Infrastructure except in the case of Existing Third Party Infrastructure located on the Metrolinx Lands, in which case, access to the Metrolinx Lands is provided for in accordance with Schedule 20 – Lands and any Permits, Licences, Approvals and Agreements. Project Co shall be solely responsible to obtain permission from the applicable third party to access the Existing Third Party Infrastructure or any component thereof owned by third parties.
- (d) Project Co acknowledges and agrees with Contracting Authority that Contracting Authority has no authority to grant use and access to lands other than the Metrolinx Lands. Use and access of lands other than the Metrolinx Lands must be sought from the applicable third party in accordance with the Applicable Law and any Permit, Licence, Approval or Agreement or other requirements imposed by the applicable third party.

16.3 [Intentionally Deleted]**16.4 Naming and Signage**

- (a) Project Co acknowledges that Contracting Authority and the applicable owners of the New Third Party Infrastructure and the Existing Third Party Infrastructure reserve and retain,
- (i) all rights to designate the name for the New Metrolinx Infrastructure, the New Third Party Infrastructure and the Existing Infrastructure, and any part thereof and to retain all revenues derived from the sponsorship of such names;
 - (ii) all rights to signage in relation to the Lands and any part of the New Metrolinx Infrastructure, the New Third Party Infrastructure and the Existing Infrastructure; and
 - (iii) all rights, Trade-Marks, naming or branding regarding any part of the New Metrolinx Infrastructure, the New Third Party Infrastructure and the Existing Infrastructure.
- (b) Without limiting Contracting Authority's rights pursuant to Section 16.4(a), with the prior written consent of Contracting Authority, which may take into consideration,
- (i) any applicable governmental or other guidelines, including the guidelines set out in Schedule 15 – Output Specifications or Schedule 18 – Communication and Public Engagement Protocol; and
 - (ii) any provision or restriction set out in Schedule 20 – Lands,

Project Co, the Project Co Parties and the Senior Lenders may, for the period prior to Substantial Completion, erect and maintain signage (which may include such parties' logos and trade names) at or on the Metrolinx Lands identifying their respective roles in connection with the development and construction of the Project, provided that such signage is erected and maintained in accordance with the requirements and restrictions set out in this Project Agreement, including Schedule 15 – Output Specifications and Schedule 18 – Communication and Public Engagement Protocol.

16.5 No Interest in Land, Facilities or Infrastructure

- (a) Project Co acknowledges and agrees that neither Project Co nor the Lenders shall acquire any estate, right, title or ownership interest in the Lands or any part of the New Metrolinx Infrastructure, the New Third Party Infrastructure or the Existing Infrastructure, or any other interest in land, facilities or infrastructure pursuant to this Project Agreement, the Project Documents or otherwise. Notwithstanding any provision herein or in any of the Project Documents to the contrary, all fee simple interest in and freehold title to the Lands, or any part thereof, and the Project, shall at all times remain unencumbered by any interest of Project Co or the Lenders. Project Co and the Lenders shall have access to the Metrolinx Lands, the New Metrolinx Infrastructure, and the Existing Metrolinx Infrastructure under and subject to the licences and access rights granted under this Section 16 and the Lenders' Direct Agreement, respectively.

16.6 Non-Disturbance Agreement

- (a) If Contracting Authority mortgages, charges or otherwise encumbers the Metrolinx Lands, Contracting Authority shall notify Project Co and, at the request of Project Co, provide Project Co with an agreement, in form satisfactory to Project Co, acting reasonably, executed by the mortgagee, chargee or other encumbrancer of the Metrolinx Lands permitting Project Co and the Lenders' Agent to access and use the Metrolinx Lands under the use and access granted pursuant to this Section 16 and the Lenders' Direct Agreement, respectively, free from interference from the mortgagee, chargee or other encumbrancer or any person claiming by or through the mortgagee, chargee or other encumbrancer. This Section 16.6 shall not apply in respect of any portion of the Metrolinx Lands used or developed pursuant to Section 16.2(b) if neither the licence granted pursuant to this Section 16 nor the Works pertain to such portion of the Metrolinx Lands.

16.7 Adjustments to Metrolinx Lands Available to Project Co

- (a) Project Co may propose, by written request to Contracting Authority, that Contracting Authority acquire ownership of, or obtain rights or interests in or to additional lands which, in Project Co's opinion, would improve the efficiency of Project Co's performance of the Works (each an "**Additional Lands Request**").
- (b) Project Co shall include in each Additional Lands Request,
- (i) for each of the Additional Lands requested, supporting reasons, justifications and detailed plans evidencing, at a minimum,
 - (A) how each of the proposed Additional Lands would improve the efficiency of the delivery of the Works; and
 - (B) that the lands, rights or interests, if acquired, would be sufficient, but not excessive, to achieve the objective described in Section 16.7(b)(i)(A);
 - (ii) the legal description related to the Additional Lands being proposed, together with all relevant parcel register for property identifier documents and, if the Additional Lands cannot be fully legally defined, a sketch depicting the location and limits of the Additional Lands and a legal survey of such Additional Lands to establish the boundaries. Whenever the Additional Lands are part of a larger lands parcel, the legal survey must define a smaller parcel sufficient for delivery of the Works;
 - (iii) a plan for conducting any necessary investigations of the Additional Lands including, with respect to contamination and other environmental conditions, utilities, geotechnical conditions, fossils, artifacts and other objects having artistic, historic, archaeological or monetary value, including human remains and burial sites, located on, in or under such lands (a "**Site Investigation Plan**"). If required by Contracting Authority, Project Co shall implement the Site Investigation Plan and shall provide all reports prepared or issued in connection with the Site Investigation Plan ("**Site Investigation Reports**") to Contracting Authority. Contracting Authority shall be an addressee of all such Site Investigation Reports and shall be entitled to rely on the Site Investigation Reports;

-
- (iv) where the Additional Lands will contain New Third Party Infrastructure that is for the City of Toronto, written confirmation from the City of Toronto that it will accept: (A) such New Third Party Infrastructure; and (B) in accordance with this Section 16.7, conveyance by Contracting Authority of the applicable Additional Lands in connection with the Handover of such New Third Party Infrastructure; and
 - (v) any savings in Direct Costs to Project Co that will result in a reduction in the compensation payable to Project Co in accordance with Section 1.11(a) of Schedule 22 – Variation Procedure.
- (c) Project Co shall promptly provide such additional information as Contracting Authority may request from time to time in relation to the Additional Lands Request.
- (d) Contracting Authority may, in its sole discretion, accept or reject any Additional Lands Request, or prescribe conditions, restrictions and requirements in connection with its agreement to an Additional Lands Request. In the event that Contracting Authority agrees to an Additional Lands Request, such acquisition shall become part of the Metrolinx Lands once acquired and shall, subject to and in accordance with this Section 16.7 and Schedule 22 – Variation Procedure, result in a Variation, provided that such additional lands, rights or interests shall become “**Additional Lands**” and part of the Metrolinx Lands only if and when,
- (i) Contracting Authority has issued a Variation Confirmation pursuant to Schedule 22 – Variation Procedure; and
 - (ii) Contracting Authority has successfully acquired or obtained such rights, title or interest in the proposed Additional Lands.
- (e) Project Co acknowledges and agrees that any decision of Contracting Authority pursuant to Section 16.7(d) shall be final and binding on the Parties and in the event that Contracting Authority does not agree to an acquisition of Additional Lands pursuant to Section 16.7(d), Project Co acknowledges and agrees that Contracting Authority’s decision or determination shall not be subject to dispute resolution pursuant to Schedule 27 – Dispute Resolution Procedure.
- (f) Additional Lands acquired or obtained by Contracting Authority pursuant to this Section 16.7 shall constitute Metrolinx Lands for the purposes of this Project Agreement, provided that, notwithstanding anything to the contrary in this Project Agreement:
- (i) Project Co shall be responsible for and shall indemnify and hold harmless Contracting Authority and the Province Persons from and against all costs, risks, obligations, and liabilities in respect of, or arising in connection with, such Additional Lands (and any portion of such Additional Lands comprising the Site) including claims relating to Site Conditions thereon and therein, including with respect to Geotechnical Site Conditions, Contamination, Items of Interest or Value, Major Existing Infrastructure, Contracting Authority Utility Infrastructure, Mislocated Utility Infrastructure or Species-at-Risk;
 - (ii) Contracting Authority provides no representation or warranty, and shall have no obligation to Project Co, in respect of, or arising in connection with, any Additional Lands (and any portion of Additional Lands comprising a Site), including for certainty,

pursuant to Sections 6.2, 9.1, 11.15, 18.2, 18.3, 18.4, 18.5, 18.6 and 18.7, other than to grant or cause to be granted to Project Co and the Project Co Parties, non-exclusive license rights of use and access to, on and over the Additional Lands to allow Project Co and such Project Co Parties to carry out those Works to be performed on the Additional Lands;

(iii) to the extent related to or arising in connection with the Additional Lands Request or Additional Lands, Project Co shall not be entitled to claim any cost or schedule relief, including any Delay Event, Compensation Event, Relief Event or event of Force Majeure. In no event will Contracting Authority be liable for any delay by Contracting Authority, any Contracting Authority Party or any third party in:

- (A) reviewing or processing Additional Lands Requests; or
- (B) acquiring or obtaining Additional Lands,

pursuant to this Section 16.7; and

(iv) Project Co shall be solely responsible for and shall indemnify and hold harmless Contracting Authority from and against all costs and expenses of Contracting Authority in connection with any Additional Lands Request, (including, for clarity, any costs incurred by Contracting Authority in acquiring or obtaining any rights or interests in the Additional Lands) whether or not such Additional Lands Request results in the acquisition or obtainment of Additional Lands.

(g) Project Co shall be entitled to acquire ownership of or obtain rights or interests in or to any properties at its own cost and expense, however, such properties shall not, for the purposes of this Project Agreement, form part of the Metrolinx Lands and no New Metrolinx Infrastructure shall be located on, or rely in any way upon, any properties which Project Co acquires ownership of or obtains rights or interests in or to pursuant to this Section 16.7(g).

16.8 Changes to Lands

(a) Notwithstanding any other provision in this Project Agreement, the Parties acknowledge and agree that any alteration, addition or variation to or in the Metrolinx Lands described in Schedule 20 – Lands or the dates by which Contracting Authority grants to Project Co access to the Metrolinx Lands pursuant to Section 16.1(a) shall be effected by way of Variation, subject to and in accordance with Schedule 22 – Variation Procedure and, as applicable, Section 16.7.

16.9 Adequacy of the Lands

(a) Without limiting any of Project Co's rights under Sections 18.2, 18.3, 18.4, 18.5, 18.6 and 18.7, Project Co acknowledges and agrees that it has and shall be deemed to have satisfied itself as to:

- (i) the adequacy of the Lands, rights of access to, from and through the Lands and any accommodation it may require for the purposes of fulfilling its obligations under this Project Agreement;

- (ii) the possibility of interference by persons of any description whatsoever with access to or use of, or rights in respect of, the Lands; and
- (iii) the precautions, times and methods of working necessary to prevent any nuisance or interference, whether public or private, being caused to any third parties.

16.10 Inspection and Investigation of the Lands

- (a) Without limiting any of Project Co's rights under Sections 18.2, 18.3, 18.4, 18.5, 18.6 and 18.7, Project Co acknowledges and agrees that it has and shall be deemed to have, as of the Financial Submission Deadline conducted a visual inspection of the Lands in accordance with Good Industry Practice (the "**Project Co Land Inspections**").
- (b) Without limiting any of Project Co's rights under Sections 18.2, 18.3, 18.4, 18.5, 18.6 and 18.7 and without affecting the investigations required as part of the Project Co Land Inspections, Project Co acknowledges and agrees that nothing in this Section 16.10 shall relieve Project Co from its obligations, following Commercial Close, to conduct all necessary investigations on the Lands in accordance with Good Industry Practice prior to commencing the Works (or any applicable portion of the Works).

16.11 No Warranty in Respect of Lands

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

16.12 No Claims in Respect of Lands

- (a) Except as expressly provided in Sections 18.2, 18.3, 18.4, 18.5, 18.6 and 18.7, Project Co shall not be entitled to make any claim of any nature whatsoever against Contracting Authority or any Province Person on any grounds relating to the Lands, the Existing Infrastructure or the Site Conditions including:
 - (i) the fact that Project Co was not provided any opportunity to inspect the Lands prior to the Financial Submission Deadline other than the visual inspection conducted pursuant to Section 16.10;
 - (ii) any claim that the Lands are inadequate; or
 - (iii) any claim that incorrect, inaccurate, incomplete or insufficient information on any matter relating to the Lands, the Existing Infrastructure or the Site Conditions was given to it by any person, whether or not Contracting Authority or a Province Person.

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

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

17.2 No Encumbrances

- (a) Project Co shall not create, incur, permit or suffer to exist any Encumbrance to be created, filed, issued or registered upon or against the Lands or any part of them or any interest therein (i) due to an act or omission of Project Co or any Project Co Party, or (ii) arising in relation to the Works.
- (b) Project Co does not have title to the Lands or any interest therein, and no act or omission by Project Co or any Project Co Party shall give rise to a right for any person to obtain title to or any interest in the Lands or any part thereof, except:
 - (i) as may be expressly agreed to in writing by Contracting Authority or the applicable third party owner of the Lands;
 - (ii) as may be expressly permitted by the terms of this Project Agreement; or
 - (iii) as may be permitted under Applicable Law, but without limiting Project Co's obligations under Sections 17.2(c)(i) and 17.3(a).
- (c) In the event that the Lands or any part thereof or any interest therein becomes subject to any Encumbrance following Financial Close,
 - (i) due to an act or omission of Project Co or any Project Co Party (which has not been consented to in writing by Contracting Authority), or arising in relation to the Works, Project Co shall immediately take all steps necessary to terminate, remove, vacate or discharge such Encumbrance. If such Encumbrance is not terminated, removed, vacated or discharged within 10 Business Days after Project Co becoming aware of the creation, filing, issuance or registration of such Encumbrance, then, without prejudice to any other

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

- (ii) due to an act or omission of Project Co or any Project Co Party (which has been consented to in writing by Contracting Authority), or arising in relation to the Works, Project Co shall perform all obligations under such Encumbrance in accordance with Sections 17.1 and 17.3 (as is applicable) and at its sole cost and expense; or
- (iii) which is not due to an act or omission of Project Co or any Project Co Party, or which has not arisen in relation to the Works, prior to performing obligations under any such Encumbrance, Project Co shall promptly notify Contracting Authority of any such Encumbrance and Contracting Authority may elect, in its sole discretion, to:
 - (A) have such Encumbrance be removed, vacated or discharged;
 - (B) perform the required obligations thereunder; or
 - (C) instruct Project Co to perform the required obligations thereunder.
- (d) For the purposes of this Section 17, if,
 - (i) an encumbrance otherwise identified in Sections (b) (viii), (ix) or (x) of Schedule 16 – Encumbrances has not been complied with (excluding non-compliance by Project Co) and such non-compliance materially interferes with the use of the Lands for the purposes of the Works; or
 - (ii) an encumbrance otherwise identified in Sections (b) (vii), (viii), (ix) or (x) of Schedule 16 – Encumbrances was not disclosed to Project Co and was not ascertainable through commercially standard off-title searches, and such encumbrance materially interferes with the use of the Lands for the purposes of the Works,

Contracting Authority shall be entitled to the same election as set out in Section 17.2(c)(iii), subject to Section 17.2(e). Project Co shall promptly notify Contracting Authority of any such encumbrance upon Project Co becoming aware of such encumbrance.

- (e) If Project Co is instructed to perform obligations under an Encumbrance pursuant to Section 17.2(c)(iii) or Section 17.2(d), which performance imposes costs or delays in the performance of Works, such performance shall, subject to and in accordance with Section 32, be treated as a Delay Event and, subject to and in accordance with Section 33, be treated as a Compensation Event.

17.3 Construction Act

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

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

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

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

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

- (b) For greater certainty, except as expressly set out in this Project Agreement, nothing in this Section 18 shall relieve Project Co from performing any of its obligations hereunder (including its obligations under Section 10.3 and Section 11.13).

18.2 Geotechnical Site Conditions

- (a) **“Differing Geotechnical Site Condition”** means any Geotechnical Site Condition which is the subject of a Geotechnical Baseline Statement to the extent that it differs from such Geotechnical Baseline Statement as determined in accordance with Schedule 37 – Geotechnical Baseline Report, provided that such difference was not:
 - (i) within the Knowledge of the Project Manager as of the Financial Submission Deadline; or
 - (ii) caused or contributed to by Project Co or a Project Co Party.
- (b) Project Co shall be responsible, at its sole cost and expense, for all Geotechnical Site Conditions other than Differing Geotechnical Site Conditions (including, but not limited to, any delays, additional costs, or actions required as a result of such Geotechnical Site Conditions).
- (c) Any Differing Geotechnical Site Condition experienced by Project Co shall, subject to and in accordance with Section 32, be treated as a Delay Event and, subject to and in accordance with Section 33, be treated as a Compensation Event.
- (d) Upon the discovery of any Differing Geotechnical Site Condition, Project Co shall immediately inform the Contracting Authority Representative.
- (e) In the event that Contracting Authority wishes Project Co to perform actions in respect of any Differing Geotechnical Site Condition then Contracting Authority shall issue an instruction to Project Co specifying what action Contracting Authority requires Project Co to take and Project Co shall promptly and diligently comply with all such instructions at Contracting Authority’s cost, subject to and in accordance with Section 18.2(f).
- (f) If Section 18.2(e) requires Project Co to perform any alteration, addition, Demolition, extension or variation in the Works as a result of instructions given by Contracting Authority pursuant to Section 18.2(e) and which would not otherwise be required under this Project Agreement, then Project Co shall be entitled to a Variation for any such alteration, addition, Demolition, extension or variation in the Works in accordance with Schedule 22 – Variations.

- (g) The Parties agree that any Disputes in respect of a claim pursuant to Section 18.2(c) shall be referred to the CDB for a decision pursuant to Section 6.6(a) of Schedule 27 – Dispute Resolution Process.

18.3 Contamination

- (a) **“Project Co Known Contamination”** means any Contamination that:
- (i) was within the Knowledge of the Project Manager as of the Financial Submission Deadline;
 - (ii) is described in a Geotechnical Baseline Statement;
 - (iii) was readily apparent from the Project Co Land Inspections; or
 - (iv) is caused or contributed to by Project Co or any Project Co Party but only to the extent of such cause or contribution (**“Project Co Caused Contamination”**).
- (b) **“Project Co On-Site Contamination”** means any Project Co Known Contamination that is on, in or under the Lands (including any migrating Project Co Known Contamination while on, in or under the Lands);
- (c) **“Project Co Off-Site Migrating Contamination”** means:
- (i) any Project Co Known Contamination (other than Project Co Caused Contamination) migrating to or from the Lands to the extent such migration to or from the Lands is caused by Project Co or a Project Co Party other than as a result of the Bored Tunnel Construction Works;
 - (ii) any Project Co Caused Contamination migrating to or from the Lands; and
 - (iii) any Contamination migrating to or from the Lands that is caused by a negligent act or omission of Project Co or a Project Co Party;
- (d) **“Project Co Contamination”** means the Project Co On-Site Contamination and the Project Co Off-Site Migrating Contamination.
- (e) **“Contracting Authority Contamination”** means all Contamination on, in or under the Lands or migrating to or from the Lands, other than Project Co Contamination provided that, in the case of Contamination that is described in a Geotechnical Baseline Statement, Contracting Authority shall only be responsible for such Contamination to the extent that it differs from such Geotechnical Baseline Statement as determined in accordance with Schedule 37 – Geotechnical Baseline Report.
- (f) Project Co shall be responsible, at its sole cost and expense, for
- (i) the Project Co Contamination; and
 - (ii) any Worsened Contamination.

- (g) Any Contracting Authority Contamination encountered by Project Co shall, subject to and in accordance with Section 32 be treated as a Delay Event and, subject to and in accordance with Section 33, be treated as a Compensation Event.
- (h) Upon the discovery of any Contamination, Project Co shall immediately inform the Contracting Authority Representative, and shall comply, and ensure compliance by all Project Co Parties, with all Applicable Law and Schedule 17 – Environmental Obligations in respect thereof:
 - (i) at Contracting Authority’s cost pursuant to Section 18.3(g) in respect of any Contracting Authority Contamination; and
 - (ii) at its own cost in respect of all Project Co Contamination or Worsened Contamination.
- (i) Except to the extent required to prevent or mitigate an Emergency or to comply with Applicable Law, Project Co shall not undertake any significant work pursuant to Section 18.3(h) in respect of any Contracting Authority Contamination until the Contracting Authority Representative has been given a reasonable opportunity to review the nature and extent of the Contamination and has instructed Project Co to proceed with such work.
- (j) In the event that Contracting Authority wishes Project Co to perform actions in respect of any Contamination which are in addition to any required pursuant to Section 18.3(h), then Contracting Authority shall issue an instruction to Project Co specifying what action Contracting Authority requires Project Co to take and Project Co shall promptly and diligently comply with all such instructions at Contracting Authority’s cost, pursuant to Section 18.3(k).
- (k) If Section 18.3(j) requires Project Co to perform any alteration, addition, demolition, extension or variation in the Works as a result of any Contracting Authority Contamination, or as a result of any instructions given by Contracting Authority pursuant to Section 18.3(j), then Project Co shall be entitled to a Variation for any such alteration, addition, Demolition, extension or variation in the Works in accordance with Schedule 22 – Variations.
- (l) The Parties agree that any Disputes in respect of a claim pursuant to Section 18.3(g) shall be referred to the CDB for a decision pursuant to Section 6.6(a) of Schedule 27 – Dispute Resolution Process.

18.4 Items of Geological, Historical or Archaeological Interest or Value

- (a) As between the Parties, all fossils, artifacts and other objects having artistic, historic, archaeological or monetary value, including human remains and burial sites, which may be found on, in or under the Lands (collectively the “**Items of Interest or Value**”) are or shall be the sole and absolute property of Contracting Authority or the owner of the relevant property, as applicable.
- (b) “**Project Co Items of Interest or Value**” shall mean any Items of Interest or Value that:
 - (i) were within the Knowledge of the Project Manager as of the Financial Submission Deadline; or

- (ii) were described in or readily apparent from the Archaeological Reports, the Cultural Heritage Reports or the Environmental Assessments as of the Technical Submission Deadline.
- (c) “**Contracting Authority Items of Interest or Value**” means all Items of Interest or Value other than the Project Co Items of Interest or Value.
- (d) Project Co shall be responsible, at its sole cost and expense, for the Project Co Items of Interest and Value.
- (e) Any Contracting Authority Items of Interest or Value encountered by Project Co shall, subject to and in accordance with Section 32 be treated as a Delay Event and, subject to and in accordance with Section 33, be treated as a Compensation Event.
- (f) Upon the discovery of any Items of Interest or Value, Project Co shall:
 - (i) promptly inform the Contracting Authority Representative of such discovery; and
 - (ii) take all steps not to disturb the Items of Interest or Value and, if necessary, cease any Works in so far as performing such Works would endanger the Items of Interest or Value or prevent or impede their excavation, take all necessary steps to preserve and ensure the preservation of the Items of Interest or Value in the same position and condition in which it was found, and comply, and ensure that all Project Co Parties comply, with the requirements of Schedule 17 – Environmental Obligations, the Metrolinx Interim Heritage Management Protocol (2013), Applicable Law and all requirements of Governmental Authorities with respect to such discovery, including the *Funeral, Burial and Cremations Services Act* (Ontario) and the *Standards & Guidelines for Conservation of Provincial Heritage Properties issued under the Ontario Heritage Act* (Ontario):
 - (A) at Contracting Authority’s cost pursuant to Section 18.4(e) in respect of any Contracting Authority Items of Interest or Value; and
 - (B) at its own cost in respect of any Project Co Item of Interest or Value.
- (g) In the event that Contracting Authority wishes Project Co to perform actions in respect of any discovery of any Items of Interest or Value which are in addition to any required pursuant to Section 18.4(f), then Contracting Authority shall issue an instruction to Project Co specifying what action Contracting Authority requires Project Co to take and Project Co shall promptly and diligently comply with all such instructions at Contracting Authority’s cost subject to and in accordance with Section 18.4(h).
- (h) If Section 18.4(g) requires Project Co to perform any alteration, addition, Demolition, extension or variation in the Works, or to suspend or delay performance of the Works, as a result of any instructions given by Contracting Authority pursuant to Section 18.4(g), then Project Co shall be entitled to a Variation for any such alteration, addition, Demolition, extension or variation in the Works in accordance with Schedule 22 – Variations.

- (i) The Parties agree that any Disputes in respect of a claim pursuant to Section 18.4(e) shall be referred to the CDB for a decision pursuant to Section 6.6(a) of Schedule 27 – Dispute Resolution Process.

18.5 Major Existing Infrastructure Defects

- (a) **“Project Co Major Existing Infrastructure Defect”** shall mean any Major Existing Infrastructure Defect that:
- (i) was within the Knowledge of the Project Manager as of the Financial Submission Deadline;
 - (ii) was described in or readily apparent from the Background Information as of the Technical Submission Deadline;
 - (iii) was readily apparent from the Project Co Land Inspections;
 - (iv) was readily apparent from the MEI Post-Closing Reports; or
 - (v) was caused or contributed to by Project Co or a Project Co Party but only to the extent of such cause or contribution (a **“Project Co Caused Major Existing Infrastructure Defect”**).
- (b) **“Contracting Authority Major Existing Infrastructure Defect”** shall mean any Major Existing Infrastructure Defect other than a Project Co Major Existing Infrastructure Defect.
- (c) Project Co shall be responsible, at its sole cost and expense, for all Project Co Major Existing Infrastructure Defects but shall be under no obligation to remediate any Project Co Major Existing Infrastructure Defects except as otherwise set out in this Section 18.5.
- (d) Any Contracting Authority Major Existing Infrastructure Defect encountered by Project Co shall, subject to and in accordance with Section 32 be treated as a Delay Event and, subject to and in accordance with Section 33, be treated as a Compensation Event.
- (e) Upon the discovery of a Contracting Authority Major Existing Infrastructure Defect or a Project Co Caused Major Existing Infrastructure Defect, Project Co shall immediately inform the Contracting Authority Representative.
- (f) Except to the extent required to mitigate Emergency or to comply with Applicable Law, Project Co shall not undertake any work in respect of any Contracting Authority Major Existing Infrastructure Defect or Project Co Caused Major Existing Infrastructure Defect until the Contracting Authority Representative has been given a reasonable opportunity to review the nature and extent of the defect and has instructed Project Co to proceed with such work.
- (g) In the event that Contracting Authority wishes Project Co to perform actions in respect of any Contracting Authority Major Existing Infrastructure Defect or Project Co Caused Major Existing Infrastructure Defect then Contracting Authority shall issue an instruction to Project Co specifying what action Contracting Authority requires Project Co to take and Project Co shall promptly and diligently comply with all such instructions:

- (i) at Contracting Authority's cost subject to and in accordance with Section 18.5(h) in respect of any Contracting Authority Major Existing Infrastructure Defect; and
 - (ii) at its own cost in respect of any Project Co Caused Major Existing Infrastructure Defect.
- (h) If Section 18.5(g)(i) requires Project Co to perform any alteration, addition, Demolition, extension or variation in the Works then Project Co shall be entitled to a Variation for any such alteration, addition, Demolition, extension or variation in the Works in accordance with Schedule 22 – Variations.
- (i) The Parties agree that any Disputes in respect of a claim pursuant to Section 18.5(d) shall be referred to the CDB for a decision pursuant to Section 6.6(a) of Schedule 27 – Dispute Resolution Process.

18.6 Mislocated or Unknown Utility Infrastructure

- (a) **“Project Co Utility Infrastructure”** shall mean all Utility Infrastructure on, in, or under the Lands that:
- (i) was within the Knowledge of the Project Manager, as of the Financial Submission Deadline;
 - (ii) was described in or is readily apparent from the Subsurface Utility Engineering (SUE) Reports as of the Technical Submission Deadline other than Mislocated Utility Infrastructure;
 - (iii) Utility Infrastructure on, in, or under the City Road Allowance that is outside of the study area limits of the Subsurface Utility Engineering (SUE) Reports;
 - (iv) was readily apparent from the Project Co Land Inspections;
 - (v) is a service connection;
 - (vi) is street lighting and traffic signal cables owned by a Municipality or MTO; or
 - (vii) is any of the following owned by a Municipality or MTO:
 - (A) watermains of nominal diameter less than 150mm;
 - (B) combined sewers or storm sewers of nominal diameter less than 300mm;
 - (C) sanitary sewers of nominal diameter less than 250mm; and
 - (D) street lighting and traffic signal cables.
- (b) **“Contracting Authority Utility Infrastructure”** means:
- (i) any Mislocated Utility Infrastructure; and

- (ii) any other Utility Infrastructure on, or in the Lands, other than Project Co Utility Infrastructure.
- (c) Project Co shall be responsible, at its sole cost and expense, for all Project Co Utility Infrastructure.
- (d) Any Contracting Authority Utility Infrastructure encountered by Project Co shall, subject to and in accordance with Section 32 be treated as a Delay Event and, subject to and in accordance with Section 33, be treated as a Compensation Event.
- (e) Project Co shall promptly notify Contracting Authority in writing upon the discovery of any Contracting Authority Utility Infrastructure.
- (f) Project Co shall not undertake any work in respect of any Contracting Authority Utility Infrastructure until the Contracting Authority Representative has been given a reasonable opportunity to review the nature and extent of the Contracting Authority Utility Infrastructure and has instructed Project Co to proceed with such work.
- (g) In the event that Contracting Authority wishes Project Co to perform actions in respect of any Contracting Authority Utility Infrastructure then Contracting Authority shall issue an instruction to Project Co specifying what action Contracting Authority requires Project Co to take and Project Co shall promptly and diligently comply with all such instructions at Contracting Authority's cost, subject to and in accordance with Section 18.6(h).
- (h) If Section 18.6(g) requires Project Co to perform any alteration, addition, Demolition, extension or variation in the Works then Project Co shall be entitled to a Variation for any such alteration, addition, Demolition, extension or variation in the Works in accordance with Schedule 22 – Variations.
- (i) The Parties agree that any Disputes in respect of a claim pursuant to Section 18.6(d) shall be referred to the CDB for a decision pursuant to Section 6.6(a) of Schedule 27 – Dispute Resolution Process.

18.7 Species-at-Risk

- (a) **“Project Co Species-at-Risk”** shall mean any Species-at-Risk which may be found on, in, at, or under the Lands:
 - (i) that were Species-at-Risk as of the Technical Submission Deadline and the occurrence of which was described in the Environmental Assessments (including the location in which it was found);
 - (ii) the occurrence of which is caused or contributed to by a failure of Project Co to comply with, or a breach by Project Co of, the provisions of the Project Agreement (but only to the extent of such cause or contribution); or
 - (iii) that are new populations of Species-at-Risk in locations on the Lands caused by a failure of Project Co to comply with, or a breach by Project Co of, the provisions of the Project

Agreement and which resulted in the creation of conditions deemed suitable habitat for Species-at-Risk in accordance with Applicable Law.

- (b) “**Contracting Authority Species-at-Risk**” shall mean any Species-at-Risk which may be found on, in, at, or under the Lands other than Project Co Species-at-Risk.
- (c) Project Co shall be responsible, at its sole cost and expense, for all Project Co Species-at-Risk.
- (d) Any Contracting Authority Species-at-Risk encountered by Project Co shall, subject to and in accordance with Section 32 be treated as a Delay Event and, subject to and in accordance with Section 33, be treated as a Compensation Event.
- (e) Upon the discovery of any Species-at-Risk, Project Co shall immediately inform the Contracting Authority Representative, and shall comply, and ensure compliance by all Project Co Parties, with all Applicable Law and the provisions of Schedule 15 – Output Specifications and Schedule 17 – Environmental Obligations in respect thereof (including taking all necessary steps to preserve the respective habitat and relocate the Species-at-Risk):
 - (i) at Contracting Authority’s cost pursuant to Section 18.7(d) in respect of Contracting Authority Species-at-Risk; and
 - (ii) at its own cost in respect of Project Co Species-at-Risk.
- (f) In the event that Contracting Authority wishes Project Co to perform any actions which are in addition to any required pursuant to Section 18.7(e), then Contracting Authority shall issue an instruction to Project Co specifying what action Contracting Authority requires Project Co to take and Project Co shall promptly and diligently comply with all such instructions at Contracting Authority’s cost pursuant to Section 18.7(g).
- (g) If Section 18.7(f) requires Project Co to perform any alteration, addition, Demolition, extension or variation in the Works as a result of any Contracting Authority Species-at-Risk or as a result of any instructions given by Contracting Authority pursuant to Section 18.7(f) and which would not otherwise be required under this Project Agreement, then Project Co shall be entitled to a Variation for any such alteration, addition, Demolition, extension or variation in the Works in accordance with Schedule 22 – Variations.
- (h) The Parties agree that any Disputes in respect of a claim pursuant to Section 18.7(d) shall be referred to the CDB for a decision pursuant to Section 6.6(a) of Schedule 27 – Dispute Resolution Process.

18.8 Site Condition Contingency Fund and Gainshare Payments

- (a) Following Commercial Close, Contracting Authority shall establish a contingency fund in the amount of [REDACTED] (the “**Site Condition Contingency Fund**”) for the Compensation Events arising from the events set out in Sections 32.1(a)(v), 32.1(a)(vi), 32.1(a)(vii), 32.1(a)(viii), 32.1(a)(ix) and 32.1(a)(x), and any Variations related to such events (each, a “**Site Condition Event**”).

- (b) If it has been determined, in accordance with Section 33.2(b), that a Site Condition Event has occurred, provided that Project Co complies with its obligations as set out in Sections 32 and 33, Contracting Authority shall draw from the Site Condition Contingency Fund in order to make payment to Project Co for that Site Condition Event, subject to and in accordance with Section 33.
- (c) Contracting Authority shall provide a reconciliation of the Site Condition Contingency Fund upon each payment to Project Co in accordance with Section 18.8(b). The reconciliation shall consist of the amount drawn from the fund to date and the remaining balance of the fund to date.
- (d) Project Co shall be entitled to payment of a gainshare amount with respect to the remaining balance in the Site Condition Contingency Fund as of the Substantial Completion Date, subject to and in accordance with the following rules:
- (i) Subject to Section 18.8(d)(ii), if, on the Substantial Completion Date, there exists a positive balance in the Site Condition Contingency Fund, Project Co shall be entitled to **[REDACTED]** of such remaining amount (the “**Site Condition Gainshare Amount (Substantial Completion)**”). The Site Condition Gainshare Amount (Substantial Completion) shall be paid by Contracting Authority to Project Co as directed by Project Co no later than 30 days following the Substantial Completion Date.
 - (ii) If, on the Substantial Completion Date, the aggregate amount of Project Co claims for Site Condition Events exceed the initial size of the Site Condition Contingency Fund, Project Co is not entitled to payment of any gainshare amount or any payment whatsoever with respect to the remaining balance of the Site Condition Contingency Fund.
 - (iii) For clarity, if, on the Substantial Completion Date, the Site Condition Contingency Fund has been depleted such that there is zero or a negative balance remaining in the Site Condition Contingency Fund, Project Co is not entitled to payment of any gainshare amount or any additional payment whatsoever with respect to the Site Condition Contingency Fund.
- (e) If, prior to the Substantial Completion Date:
- (i) Contracting Authority terminates the Project Agreement for convenience in accordance with Section 38.3; or
 - (ii) Project Co terminates the Project Agreement for a Contracting Authority Event of Default in accordance with Section 37.2(a)(ii),

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

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

[REDACTED]

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

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

[REDACTED]

- (v) Project Co shall not be entitled to payment in accordance with this Section 18.8(e) unless Project Co has commenced underground tunneling Construction Activities for the Bored Tunnels.
 - (vi) For clarity, if, on the Termination Date, the Site Condition Contingency Fund has been depleted such that there is zero or a negative balance remaining in the Site Condition Contingency Fund, Project Co is not entitled to payment of any gainshare amount or any additional payment whatsoever with respect to the Site Condition Contingency Fund.
 - (vii) For clarity, Project Co shall not be entitled to any gainshare amount or any payment whatsoever with respect to the remaining balance of the Site Condition Contingency Fund if the Project Agreement is terminated by either Party in any way other than as set out in Section 38.3 or Section 37.2(a)(ii).
- (f) Project Co acknowledges and agrees that,
- (i) the establishment and funding of the Site Condition Contingency Fund in accordance with Section 18.8(a) is a one-time event, and Contracting Authority shall not, and shall not be under any obligation to, insert additional funds into the Site Condition Contingency Fund at any time;
 - (ii) Contracting Authority shall hold and manage the Site Condition Contingency Fund in a manner as determined by Contracting Authority, in its sole discretion; and
 - (iii) neither Project Co, nor any Project Co Party, shall be entitled to any interest that may be earned on the amount in the Site Condition Contingency Fund, and any such interest shall be for the benefit of Contracting Authority.
- (g) The establishment of the Site Condition Contingency Fund is not intended to derogate, in any way, from Project Co's right to a Compensation Event, subject to and in accordance with Sections 32 and 33 of the Project Agreement. For clarity, if the Site Condition Contingency Fund is depleted in full, Project Co shall remain entitled to claim for Compensation Events arising from the events set out in Sections 32.1(a)(v), 32.1(a)(vi), 32.1(a)(vii), 32.1(a)(viii), 32.1(a)(ix) and 32.1(a)(x), subject to and in accordance with the terms of the Project Agreement.

19. GOVERNMENTAL AND THIRD PARTY FINANCIAL OBLIGATIONS**19.1 Governmental and Utility Company Fees**

- (a) Project Co shall be responsible for,
- (i) all Financial Obligations under or in respect of all Project Co Permits, Licences, Approvals and Agreements, including,
 - (A) any engineering, administration and inspection fees required in respect of works or services to be performed;
 - (B) any security deposits required under any Project Co Permits, Licences, Approvals and Agreements; and
 - (C) any other amounts payable under any Project Co Permits, Licences, Approvals and Agreements; and
 - (ii) all Financial Obligations in respect of Contracting Authority Permits, Licences, Approvals and Agreements that are set out as being Project Co's responsibility in Schedule 15 – Output Specifications, Schedule 17 – Environmental Obligations or Appendix A to Schedule 1 – Permits, Licences, Approvals and Agreements, including any engineering, administration and inspection fees required in respect of works or services to be performed.
- (b) For clarity, and notwithstanding Section 19.1(a), Project Co shall not be responsible for payment of any development charges relating to the Works, the New Metrolinx Infrastructure, the New Third Party Infrastructure or the Lands.
- (c) Subject to Section 19.1(a)(ii), Contracting Authority shall be responsible for all Financial Obligations under or in respect of all the Contracting Authority Permits, Licences, Approvals and Agreements including such Financial Obligations, as applicable in either case, to MTO, a Municipality, any Utility Company, any Governmental Authority or any other third party in respect of the Works, including:
- (i) any engineering administration and inspection fees required in respect of works or services required to be performed;
 - (ii) any security deposits required under any Contracting Authority Permits, Licences, Approvals and Agreements; and
 - (iii) any other amounts payable under any Contracting Authority Permits, Licences, Approvals and Agreements.
- (d) The Parties agree that any refund, partial rebate or credit granted by Contracting Authority, MTO, a Municipality, any applicable Utility Company, or any applicable Governmental Authority or any other third party relating to the Financial Obligations referred to in Sections 19.1(a), 19.1(b) and 19.1(c) shall be for the benefit of Contracting Authority to the extent such Financial Obligations were paid by Contracting Authority and shall be for the benefit of Project Co to the

extent such Financial Obligations were paid by Project Co. Without limiting the generality of the foregoing, to the extent that Contracting Authority enters into any cost sharing or cost reduction arrangements with MTO, a Municipality, any Utility Company, any Governmental Authority or any third party, Project Co acknowledges and agrees that Contracting Authority shall be the sole beneficiary of any such cost sharing or cost reduction arrangements and Project Co shall have no entitlement whatsoever to any benefit arising from any such cost sharing or cost reduction arrangements.

20. CONTRACTING AUTHORITY ACCESS AND MONITORING

20.1 Contracting Authority Access During the Works

- (a) Subject to Section 20.1(b) but without limiting any of Contracting Authority's rights in respect of the Lands, the New Metrolinx Infrastructure, the New Third Party Infrastructure or the right of any third party in relation to that third party's portion of the Lands or New Third Party Infrastructure, Project Co acknowledges and agrees that Project Co shall not restrict the access of Contracting Authority, the Province Persons, and the Government Entities and their respective representatives, to,
- (i) the Lands, the New Metrolinx Infrastructure, the New Third Party Infrastructure or any workshop where materials, Plant or equipment are being manufactured, prepared or stored at all reasonable times during normal working hours, including for the purposes of general inspection or audit, or of attending any test or study being carried out in respect of the Works, or to fulfill any statutory, public or other duties or functions; or
 - (ii) the Lands, the New Metrolinx Infrastructure, or the New Third Party Infrastructure for the purpose of their respective operations.

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

- (b) In exercising their access rights under Section 20.1(a) in respect of the Metrolinx Lands, Contracting Authority shall, and shall cause the Province Persons, the Government Entities, and their respective representatives, to:
- (i) provide reasonable prior Notice appropriate to the circumstances (other than for any offices or other facilities provided for the use of Contracting Authority, Province Persons and/or Government Entities);
 - (ii) comply with all relevant safety procedures and any reasonable directions with regard to site safety that may be issued by or on behalf of the Project Co Representative from time to time; and
 - (iii) if required by Project Co, be accompanied by a representative of Project Co or a Project Co Party.

20.2 Increased Monitoring

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

20.3 Right to Uncover

- (a) Project Co shall ensure that Contracting Authority is afforded advance Notice of, and that Contracting Authority is afforded a full opportunity to witness, all inspection and test activity in accordance with the Inspection and Test Plan. If Project Co does not provide such Notice and opportunity, Project Co shall at the request of Contracting Authority uncover any relevant part of the Works which have been covered up or otherwise put out of view or remove any relevant part of the Works that have been proceeded with in order to permit Contracting Authority to witness the relevant inspection or test activity. Project Co shall bear all costs of any such uncovering or removal, regardless of whether or not any defect is discovered in the relevant Works.
- (b) Contracting Authority shall have the right, at any time prior to the Final Completion Date, to request Project Co to uncover or open up and inspect (or allow Contracting Authority to inspect) any part or parts of the Works, or to require testing of any part or parts of the Works, where Contracting Authority reasonably believes that such part or parts of the Works is or are defective or that Project Co has failed to comply with the requirements of this Project Agreement (including the Design Data) relevant to such part or parts of the Works, and Project Co shall comply with such request. When Contracting Authority makes such a request, Contracting Authority shall include reasonably detailed reasons with such request.
- (c) If an inspection shows that the relevant part or parts of the Works is or are defective or that Project Co has failed to comply with the requirements of this Project Agreement (including the Design Data) relevant to such part or parts of the Works, Project Co shall rectify all such defects and non-compliance diligently and at no cost to Contracting Authority and Project Co shall not be entitled to any additional compensation or extension of time in relation thereto.
- (d) If an inspection shows that the relevant part or parts of the Works is or are not defective and that Project Co has complied with the requirements of this Project Agreement (including the Design Data) relevant to such part or parts of the Works, the exercise by Contracting Authority of its rights pursuant to this Section 20.3 shall, subject to and in accordance with Section 32, be treated as a Delay Event and, subject to and in accordance with Section 33, be treated as a Compensation Event.

20.4 No Relief from Obligations

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

20.5 Access by Others

- (a) Subject to Section 20.5(b) and subject to and in accordance with Section 11.14 (to the extent applicable), Project Co shall ensure that throughout the Project Term, without prejudice to any access rights of any such person as a member of the general public or pursuant to Applicable Law, that it does not restrict access to the Lands, New Metrolinx Infrastructure, Existing Infrastructure, or New Third Party Infrastructure for:
- (i) the Independent Certifier to the extent required to perform its obligations pursuant to Schedule 6 - Independent Certifier Agreement;
 - (ii) inspectors and other persons authorized to act on behalf of Contracting Authority and owners of New Third Party Infrastructure and Existing Third Party Infrastructure, for inspection and/or acceptance purposes;
 - (iii) all Other Contractors, including the owners or operators of any Third Party Facilities and their agents at all reasonable times to exercise any right or power or perform any duty or obligation under any Applicable Law or the Utility Agreements or encroachment permits, provided that, subject to Section 20.5(d), prior to the Substantial Completion Date, and any time after the Substantial Completion Date where Project Co is acting as the “constructor” in accordance with the *Occupational Health and Safety Act* (Ontario), wherever consistent with the requirements of Applicable Law and the requirements of this Project Agreement, Project Co may limit such access so as to not unnecessarily impede or restrict traffic flows, the operation of the Existing Infrastructure or any Works;
 - (iv) all Governmental Authorities and Emergency Service Providers in order to carry out any work (including surveys and inspections) in accordance with or to exercise any right or power or perform any duty or obligation under any Applicable Law and provided that, subject to Section 20.5(d), prior to the Substantial Completion Date, and any time after the Substantial Completion Date where Project Co is acting as the “constructor” in accordance with the *Occupational Health and Safety Act* (Ontario), whenever consistent with the applicable requirements of such Governmental Authority, Emergency Service Providers or Applicable Law and the requirements of this Project Agreement (as the case may be), Project Co may limit such access so as to not unnecessarily impede or restrict traffic flows, the operation of the Existing Infrastructure or any Works;
 - (v) any Province Persons, Other Contractors, owners or operators of Third Party Facilities, Governmental Authorities, Emergency Service Providers, Utility Companies, MTO, Municipalities, and transit systems for the purposes of access to and from any other lands and/or facilities adjacent to or in proximity to the Lands, the New Metrolinx Infrastructure, the New Third Party Infrastructure and Existing Infrastructure owned or operated by such person or in which such person has any interest, provided that, subject

to Section 20.5(d), prior to the Substantial Completion Date, and any time after the Substantial Completion Date where Project Co is acting as the “constructor” in accordance with the *Occupational Health and Safety Act* (Ontario), whenever consistent with the requirements of Applicable Law and the requirements of this Project Agreement, Project Co may limit such access so as to not unnecessarily impede or restrict traffic flows, the operation of the Existing Infrastructure or any Works; and

- (vi) any Province Person to undertake emergency training in relation to the New Metrolinx Infrastructure.
- (b) Subject to Section 20.5(c), Contracting Authority shall require persons accessing Site(s) on the Metrolinx Lands in accordance with access rights under Section 20.5(a) to:
- (i) provide reasonable prior Notice to Project Co appropriate to the circumstances;
 - (ii) comply with all relevant health and safety procedures and any reasonable directions with regard to health and safety that may be issued by or on behalf of the Project Co Representative from time to time; and
 - (iii) if reasonably required by Project Co, be accompanied by a representative of Project Co or a Project Co Party.
- (c) Section 20.5(b) shall not apply,
- (i) to Additional Contractors, who shall instead comply with any instructions or procedures made by Project Co pursuant to Section 11.14;
 - (ii) in the case of access rights described in Section 20.5(a) for the purpose of responding to an Emergency;
 - (iii) for the purposes of responding to an emergency declared by Contracting Authority or by a Governmental Authority; and
 - (iv) in circumstance where the requirements of Section 20.5(b) are inconsistent with the requirements of the applicable Governmental Authority or Emergency Service Provider.
- (d) Notwithstanding Sections 20.5(a)(iii), 20.5(a)(iv), and 20.5(a)(v) or any other provision of the Project Agreement, Project Co shall not be entitled to limit or restrict access to MTO to the MTO Lands, nor shall it be entitled to restrict or limit access to any contractor retained by MTO to perform works or services on the MTO Lands, without the prior written consent of MTO, in its sole and absolute discretion. For certainty, Project Co shall not be entitled to Delay Event or Compensation Event or any other compensation of any kind whatsoever arising from any delay or refusal by MTO to provide such consent.

20.6 Public Use

- (a) Project Co shall have no right to grant, to the general public, the right to use either the New Metrolinx Infrastructure or the New Third Party Infrastructure. It shall be the right of Contracting Authority to grant the right of use to the general public to the New Metrolinx Infrastructure. It

shall be the right of the applicable third party owner of the New Third Party Infrastructure to grant the right of use to the general public to the New Third Party Infrastructure.

- (b) Except as otherwise expressly provided in this Project Agreement, Project Co shall not have any claim whatsoever against Contracting Authority, any Province Person, any Emergency Service Providers or any other Governmental Authority for, or in respect of any lane or ramp closure or diversion or any track closure or diversion, including any such closure or diversion as a result of the exercise of any other rights or powers or the discharge of any other duties or functions by any such authority, affecting all or any part of the Lands, the New Metrolinx Infrastructure or the New Third Party Infrastructure, at any time.

21. ENVIRONMENTAL REQUIREMENTS

21.1 [Intentionally Deleted]

21.2 Environmental Requirements

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

21.3 [Intentionally Deleted]

22. INDEPENDENT CERTIFIER

22.1 Appointment

- (a) On or prior to Financial Close, the Parties shall appoint an independent and suitably qualified and experienced consultant to act as the Independent Certifier for the purposes of this Project Agreement and such consultant will be required to have independent, impartial and suitably qualified representatives able to serve as adjudicators, to adjudicate disputes pursuant to Schedule 27 – Dispute Resolution Procedure and shall enter into an agreement with the Independent Certifier substantially in the form of Schedule 6 – Independent Certifier Agreement. If the Parties are unable to agree upon the Independent Certifier within such period of time, then the determination of the Independent Certifier shall be made in the same manner as the identification of a replacement Independent Certifier under Section 22.7(b).
- (b) Neither Party shall, without the prior written consent of the other Party, enter into any agreement with the Independent Certifier in connection with the Project other than the Independent Certifier Agreement, and Project Co shall ensure that no Project Co Party enters into any separate agreement with the Independent Certifier in connection with the Project.

22.2 Role of Independent Certifier

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

22.3 Changes to Terms of Appointment

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

- (i) waive, settle, compromise or otherwise prejudice any rights or claims which the other may from time to time have against the Independent Certifier; or
 - (ii) vary the terms of the Independent Certifier Agreement or the services performed or to be performed by the Independent Certifier.
- (b) The Parties shall perform their respective obligations arising under or in connection with the Independent Certifier Agreement.

22.4 Right to Change Appointment

- (a) The Parties agree that the Independent Certifier shall not provide any services or reports or other information to Project Co, the Lenders, the Project Co Parties or any other person other than pursuant to the performance of the functions of the Independent Certifier under this Project Agreement unless agreed to in writing by the Parties. The Parties may agree to terminate the Independent Certifier Agreement upon 30 days' Notice to the Independent Certifier. If such Notice is given, then, pursuant to Section 22.7, 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.

22.5 Cooperation

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

22.6 Payment of Independent Certifier

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

22.7 Replacement

- (a) In the event of the Independent Certifier's engagement being terminated otherwise than for full performance, the Parties shall liaise and cooperate with each other in order to appoint a replacement consultant to act as the Independent Certifier as soon as reasonably practicable. The identity of any such replacement shall be as agreed by the Parties and the terms of his/her appointment shall, unless otherwise agreed by the Parties, be as set out in the Independent Certifier Agreement.
- (b) In the event the Parties fail to agree upon the identity of a replacement Independent Certifier within five Business Days after the termination of the original Independent Certifier's appointment, then a replacement Independent Certifier shall be chosen as follows:

- (i) each Party shall, within five Business Days thereafter, select three suitably qualified and experienced replacements that would be acceptable to that Party, and shall provide Notice thereof to the other Party, with a ranking of preference for replacements;
- (ii) if the Parties have both selected a common replacement, then such common replacement shall be the Independent Certifier, and if there is more than one common replacement, then the common replacement with the highest overall ranking (calculated by adding together the ordinal rank assigned by the Parties) shall be selected, and in the event of a tie, the lowest-cost of such tied replacements shall be selected; and
- (iii) if the Parties have not selected a common replacement, then the determination of the new replacement may be referred for resolution in accordance with Schedule 27 – Dispute Resolution Procedure.

23. INTENTIONALLY DELETED

24. INTENTIONALLY DELETED

25. COMMISSIONING AND COMPLETION

25.1 Commissioning Activities

- (a) Project Co shall perform all Project Co Commissioning pursuant to the Final Commissioning Program.

25.2 Final Commissioning Program

- (a) Project Co shall prepare a draft of the Final Commissioning Program in respect of the Project Co Commissioning and shall provide a copy thereof to the Independent Certifier and the Contracting Authority Representative not less than 180 days prior to the Scheduled Substantial Completion Date.
- (b) The Final Commissioning Program shall, at a minimum:
 - (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) 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;
 - (iii) be consistent with the Outline Commissioning Program and impose no greater or more onerous obligations on Contracting Authority than those set out in the Outline Commissioning Program, unless otherwise agreed to by Contracting Authority;

- (iv) include the names of the individuals or companies proposed to perform all Project Co Commissioning;
 - (v) include a schedule of each of the Project Co Commissioning Tests proposed to be performed and the timeframe for completion, with start and end dates;
 - (vi) include a schedule of meetings to be held between the Parties to coordinate the performance of the Project Co Commissioning; and
 - (vii) 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) Contracting Authority shall provide Project Co with comments on the draft Final Commissioning Program in accordance with the procedures contemplated by Schedule 10 – Review Procedure, and Project Co shall revise the draft Final Commissioning Program to the extent contemplated by Schedule 10 – Review Procedure within 30 days after receipt of any comments from Contracting Authority.
- (d) When agreed by the Parties, the Final Commissioning Program shall replace the Outline Commissioning Program with respect to Substantial Completion and Final Completion.

25.3 Commencement of Project Co Commissioning

- (a) Project Co shall give 30 days' written Notice to the Independent Certifier and the Contracting Authority Representative of the proposed commencement of the Project Co Commissioning.
- (b) Project Co shall give at least five Business Days' Notice to, and shall invite, the Independent Certifier and the Contracting Authority Representative to witness, and to comment on, each aspect of the Project Co Commissioning. Project Co shall, together with such Notice, provide all information that the Independent Certifier and the Contracting Authority Representative may reasonably require in relation thereto, including:
- (i) tests proposed;
 - (ii) test methodology; and
 - (iii) expected test results.

25.4 Substantial Completion Certificate

- (a) Project Co shall give the Independent Certifier and the Contracting Authority Representative at least 10 Business Days' Notice prior to the date upon which Project Co anticipates delivering the Substantial Completion Notice (the "**Substantial Completion 10-Day Notice**").
- (b) Project Co shall deliver Notice to the Independent Certifier and the Contracting Authority Representative upon the satisfaction of all of the requirements for Substantial Completion under this Project Agreement (the "**Substantial Completion Notice**"). The Substantial Completion Notice shall (i) describe, in reasonable detail, the satisfaction of the requirements for Substantial

Completion, (ii) include as appendices all of the Substantial Completion Deliverables described in the Substantial Completion Deliverables List, and (iii) include Project Co's opinion that the conditions for issuance of the Substantial Completion Certificate under this Project Agreement have been satisfied.

- (c) Within two Business Days of receiving the Substantial Completion Notice from Project Co, the Independent Certifier shall review the Substantial Completion Notice to determine whether or not the Substantial Completion Notice includes all of the Substantial Completion Deliverables described in the Substantial Completion Deliverables List. For the purposes of this Section 25.4(c), if the Substantial Completion Notice contains a Substantial Completion Deliverable that, in the reasonable opinion of the Independent Certifier, is of such poor quality that it would impede, in a material way, the ability of Contracting Authority and the Independent Certifier to assess whether or not the requirements for Substantial Completion under this Project Agreement have been satisfied, then such Substantial Completion Deliverable shall be deemed to have not been included as part of the Substantial Completion Notice. Following such review and determination by the Independent Certifier and before the expiry of such two Business Day period, the Independent Certifier shall either deliver notice to Project Co and Contracting Authority:
- (i) confirming that the Substantial Completion Notice includes all of the Substantial Completion Deliverables described in the Substantial Completion Deliverables List (the "**IC Substantial Completion Deliverables Confirmation**"); or
 - (ii) setting out a list of the Substantial Completion Deliverables that were not included in the Substantial Completion Notice (an "**IC Substantial Completion Deliverables Deficiencies List**").

If the Independent Certifier provides a notice to Project Co and Contracting Authority setting out an IC Substantial Completion Deliverables Deficiencies List pursuant to this Section 25.4(c), then Project Co shall subsequently submit a new and replacement version of the Substantial Completion Notice pursuant to Section 25.4(b), which, for greater certainty, includes all of the Substantial Completion Deliverables, and the process described in this Section 25.4(c) shall be repeated until the IC Substantial Completion Deliverables Confirmation is provided by the Independent Certifier to Project Co and Contracting Authority.

- (d) Contracting Authority shall, within five Business Days after receipt of the IC Substantial Completion Deliverables Confirmation, provide the Independent Certifier and Project Co with Contracting Authority's opinion as to whether the conditions for issuance of the Substantial Completion Certificate have been satisfied or, if applicable, any reasons as to why Contracting Authority considers that the Substantial Completion Certificate should not be issued.
- (e) Within five Business Days after Project Co's receipt of Contracting Authority's opinion pursuant to Section 25.4(d), the Parties shall cause the Independent Certifier to determine whether the conditions for issuance of the Substantial Completion Certificate have been satisfied, having regard for the opinions of both Project Co and Contracting Authority, to determine whether any Minor Deficiencies exist, and to issue to Contracting Authority and to Project Co either:

-
- (i) the Substantial Completion Certificate confirming the date of issue as the Substantial Completion Date and setting out the Minor Deficiencies List (if applicable) in accordance with Section 25.8; 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.
- (f) Where the Independent Certifier has issued a report in accordance with Section 25.4(e)(ii) and Project Co has not referred a Dispute in relation thereto for resolution in accordance with Schedule 27 – Dispute Resolution Procedure, Project Co shall, within five Business Days after receipt of such report, provide the Independent Certifier and the Contracting Authority Representative with:
- (i) a detailed list indicating the rectification actions proposed for all matters raised in such report;
 - (ii) the schedule for completion of all such rectification actions; and
 - (iii) any additional 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, and for each subsequent application for Substantial Completion, Project Co shall submit a new Substantial Completion 10-Day Notice and a new Substantial Completion Notice and the process described in Sections 25.4(c) to (f), inclusive, shall be repeated until the Substantial Completion Certificate has been issued.
- (g) In the event that the Substantial Completion Certificate has not been issued within 30 days after the delivery of a Substantial Completion 10-Day Notice or the delivery of a Substantial Completion Notice, such Substantial Completion 10-Day Notice or Substantial Completion Notice, as applicable, shall be deemed to have been rescinded by Project Co and Project Co shall be required to deliver a new Substantial Completion 10-Day Notice in order to initiate a new application for Substantial Completion.
- (h) For greater certainty, the Independent Certifier’s decision to issue the IC Substantial Completion Deliverables Confirmation shall not limit or otherwise affect (i) any of Project Co’s obligations under this Project Agreement to satisfy the requirements of Substantial Completion or (ii) the opinion of Contracting Authority or the determination of the Independent Certifier as to whether the conditions for issuance of the Substantial Completion Certificate have been satisfied pursuant to Section 25.4(d) and Section 25.4(e) respectively.
- (i) The Independent Certifier’s decision to issue or not to issue the Substantial Completion Certificate shall be final and binding on the Parties solely in respect of determining the Substantial Completion Payment Date, and a Dispute in relation to the Substantial Completion Payment Date shall not be subject to resolution pursuant to Schedule 27 – Dispute Resolution Procedure, provided, however, that any other Dispute in relation to the Independent Certifier’s

decision to issue or not to issue the Substantial Completion Certificate may be referred for resolution pursuant to the Dispute Resolution Procedure.

- (j) Project Co shall provide As Built Drawings, Record Drawings and specifications, Design Data, spare parts and Shop Drawings as soon as possible and in any event no later than the Substantial Completion Date.
- (k) The submission of the Substantial Completion Notice by Project Co in accordance with Section 25.4(b) shall constitute a waiver by Project Co of all claims whatsoever against Contracting Authority under this Project Agreement, arising prior to the submission of the Substantial Completion Notice, except:
 - (i) without prejudice to specific notice requirements in this Project Agreement, those made in writing by Project Co (either on its own account or arising out of a claim of a Project Co Party) arising prior to the submission of the Substantial Completion Notice and still unsettled; and
 - (ii) any third party claim which was not known to Project Co or a Project Co Party or could not reasonably have been known to Project Co or a Project Co Party at such time and with respect to which Project Co or a Project Co Party is entitled to indemnification from Contracting Authority in accordance with this Project Agreement.

25.5 Operation and Maintenance Manuals

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

25.6 [Intentionally Deleted]

25.7 Countdown Notice and Substantial Completion Deliverables

- (a) Project Co shall deliver a Notice (the “**Countdown Notice**”) to Contracting Authority and the Independent Certifier specifying the date on which Project Co anticipates that Substantial Completion will be achieved (the “**Anticipated Substantial Completion Date**”).
- (b) The Countdown Notice shall be delivered not less than 90 days prior to the Anticipated Substantial Completion Date. If Project Co fails to deliver the Countdown Notice not less than 90 days prior to the Scheduled Substantial Completion Date, the Anticipated Substantial Completion Date shall be deemed to be the same date as the Scheduled Substantial Completion Date.
- (c) In accordance with Section 13.5(a), any Anticipated Substantial Completion Date shall not be earlier than the Scheduled Substantial Completion Date, without the prior written consent of Contracting Authority, in its sole discretion.
- (d) Within 15 Business Days of the Independent Certifier’s receipt of the Countdown Notice in accordance with Section 25.7(a), the Independent Certifier, in consultation with Project Co and

Contracting Authority, shall prepare and deliver to Project Co and Contracting Authority a list of deliverables (the “**Substantial Completion Deliverables List**”) that (A) are to be appended to and form part of the Substantial Completion Notice to be submitted by Project Co pursuant to Section 25.4(b), and (B) will constitute a minimum amount of evidence necessary for Project Co, in the Substantial Completion Notice, to describe, in reasonable detail, the satisfaction of the requirements for Substantial Completion and to support Project Co’s opinion that the conditions for issuance of the Substantial Completion Certificate have been satisfied (collectively, the “**Substantial Completion Deliverables**”).

- (e) From time to time until the date that is 60 days prior to the Anticipated Substantial Completion Date, the Independent Certifier, in consultation with Project Co and Contracting Authority, may amend the Substantial Completion Deliverables List, including to set out any additional Substantial Completion Deliverables not identified in the Substantial Completion Deliverables List pursuant to Section 25.7(d). Each amended Substantial Completion Deliverables List shall, following its preparation, be deemed to be the Substantial Completion Deliverables List for the purposes of this Project Agreement and be promptly delivered to Project Co and Contracting Authority.
- (f) For greater certainty, nothing in Section 25.7(d) or Section 25.7(e) limits or otherwise affects any of Project Co’s obligations under this Project Agreement to satisfy the requirements of Substantial Completion or to describe, in reasonable detail, the satisfaction of such requirements in the Substantial Completion Notice pursuant to Section 25.4(b).

25.8 Minor Deficiencies

- (a) In the event that any Minor Deficiencies exist when Project Co gives a Substantial Completion Notice, the Independent Certifier, in consultation with Project Co and Contracting Authority, shall prepare a list of all Minor Deficiencies (the “**Minor Deficiencies List**”) identified at that time and an estimate of the cost for Contracting Authority and the time for Project Co, to complete and rectify such Minor Deficiencies. Contracting Authority may withhold from the Substantial Completion Payment a holdback amount that is [REDACTED] of the amount estimated by the Independent Certifier for Contracting Authority, to complete and rectify all such Minor Deficiencies identified on the Minor Deficiencies List (the “**Completion Holdback**”), which holdback shall be held in an interest bearing account.
- (b) The Minor Deficiencies List will contain the schedule for the completion and rectification of the Minor Deficiencies. The timeframe for the completion or rectification of each Minor Deficiency shall be no later than six months following the Substantial Completion Date, other than for Minor Deficiencies that are seasonal in nature and cannot be completed within six months following the Substantial Completion Date (“**Seasonal 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,
 - (i) comply with the Traffic and Transit Management Plan and all rules, requirements and restrictions relating to access, rail safety and operations and track protection, and road safety and operations, as set out in the Project Agreement, including, for clarity, Schedule 15 – Output Specifications; and

- (ii) minimize, to the greatest extent reasonably possible,
 - (A) any disruption of the Works or restrictions or other impairment of the public's use and enjoyment of the New Metrolinx Infrastructure, the New Third Party Infrastructure, the Existing Infrastructure, or any portion thereof; and
 - (B) any disruption of the operations of Contracting Authority, any Province Person, any Governmental Authority or any Other Contractor, including the performance of the Governmental Activities and the Other Works.
- (c) The Independent Certifier must prepare the Minor Deficiencies List in relation to the Substantial Completion Notice as soon as reasonably practicable, and, in any event, before the Substantial Completion Certificate is issued, but shall not withhold the Substantial Completion Certificate by reason solely that there are Minor Deficiencies.
- (d) No later than 20 Business Days prior to the Anticipated Final Completion Date, Contracting Authority may direct the Independent Certifier to amend, in consultation with Project Co and Contracting Authority, the Minor Deficiencies List on one occasion to include a list of any and all Minor Deficiencies that were identified after the preparation of, or not included in, the Minor Deficiencies List pursuant to Section 25.8(a). The Independent Certifier shall prepare the amended Minor Deficiencies List as soon as reasonably practicable and, in any event, within 10 Business Days after such direction given by Contracting Authority. The amended Minor Deficiencies List shall, following its preparation, be deemed to be the Minor Deficiencies List for the purposes of this Project Agreement, including for the purposes of Sections 25.8 to 25.9 inclusive. The amount of the Completion Holdback or the Seasonal Works Holdback, as applicable, shall not be affected by the amended Minor Deficiencies List.
- (e) Where the Independent Certifier has been directed by Contracting Authority to amend the Minor Deficiencies List pursuant to Section 25.8(d), the Independent Certifier shall specify a completion and rectification time for any newly added Minor Deficiencies that is no greater than 10 Business Days from the date of the issuance of such amended Minor Deficiencies List.
- (f) Contracting Authority may, in its sole discretion, waive any requirement for Substantial Completion, and the failure to meet any such requirement shall constitute a Minor Deficiency.

25.9 Completion and Rectification of Minor Deficiencies

- (a) Project Co shall, in consultation with the Contracting Authority Representative and so as to,
 - (i) comply with the Traffic and Transit Management Plan and all rules, requirements and restrictions relating to access, rail safety and operations and track protection, and road safety and operations, as set out in the Project Agreement including, for clarity, Schedule 15 – Output Specifications; and
 - (ii) minimize, to the greatest extent reasonably possible,
 - (A) any disruption of the Works or restrictions or other impairment of the public's use and enjoyment of the New Metrolinx Infrastructure, the New

Third Party Infrastructure, the Existing Infrastructure, or any portion thereof;
and

- (B) any disruption of the operations of Contracting Authority, any Province Person, any Governmental Authority or any Other Contractor, including the performance of the Governmental Activities and the Other Works; and
- (iii) complete and rectify all Minor Deficiencies:
- (A) within 45 days after the issuance of the Minor Deficiencies List pursuant to Section 25.8(a) for all Minor Deficiencies other than Seasonal Minor Deficiencies where no time for completion and rectification has been specified by the Independent Certifier;
 - (B) within the time for completion and rectification of any Minor Deficiency where such a time was specified by the Independent Certifier in the Minor Deficiencies List;
 - (C) no later than six months following the Substantial Completion Date for all Minor Deficiencies other than Seasonal Minor Deficiencies; and
 - (D) no later than six months following the Minor Deficiencies Completion Date for all Seasonal Minor Deficiencies.
- (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 New Metrolinx Infrastructure, the New Third Party Infrastructure, the Existing Infrastructure, or any portion thereof and to ensure compliance with the Traffic and Transit Management Plan and all rules, requirements and restrictions relating to access, rail safety and operations and track protection, and road safety and operations, as set out in the Project Agreement, including, for clarity, Schedule 15 – Output Specifications.

25.10 Failure to Rectify Minor Deficiencies

- (a) If Project Co fails to complete and rectify any Minor Deficiency within the time for its completion and rectification specified in Section 25.9, Contracting Authority may engage others to perform the work necessary to complete and rectify such Minor Deficiency at the risk and cost of Project Co, and Contracting Authority may deduct such cost from the Completion Holdback or the Seasonal Works Holdback, as applicable, and interest accrued thereon.
- (b) Where there exist incomplete or unrectified Seasonal Minor Deficiencies and all other Minor Deficiencies have been completed or rectified, within two Business Days after completion and rectification of all Minor Deficiencies other than Seasonal Minor Deficiencies (the “**Minor Deficiencies Completion Date**”), Contracting Authority shall release to Project Co the amount of the Completion Holdback less:
 - (i) a holdback amount that is the greater of:

- (A) [REDACTED] of the amount estimated by the Independent Certifier pursuant to Section 25.8(a) for Contracting Authority to complete and rectify all remaining Seasonal Minor Deficiencies identified by the Independent Certifier; and
 - (B) [REDACTED] of the Completion Holdback,

(the “**Seasonal Works Holdback**”), which holdback shall be held in an interest bearing account;
- (ii) any amounts deducted in accordance with Section 25.10(a), together with all interest accrued thereon and applicable HST; and
 - (iii) the amount of any Finishing Holdback required to be maintained by Contracting Authority as at such date, which Finishing Holdback amount shall be paid by Contracting Authority to Project Co in accordance with Schedule 38 – Payment Procedures.
- (c) Within two Business Days after Final Completion, Contracting Authority shall release to Project Co the amount of the Completion Holdback or the Seasonal Works Holdback, as applicable (less any amounts deducted in accordance with Section 25.10(a), together with all interest accrued thereon and applicable HST) less the amount of any Finishing Holdback required to be maintained by Contracting Authority as at such date, which Finishing Holdback amount shall be paid by Contracting Authority to Project Co in accordance with Schedule 38 – Payment Procedures. Where Contracting Authority exercises its rights pursuant to Section 25.10(a), if the cost of such completion and rectification exceeds the amount of the Completion Holdback or the Seasonal Works Holdback, as applicable, and interest, then Project Co shall reimburse Contracting Authority for all such excess cost.

25.11 Final Completion Countdown Notice

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

25.12 Final Completion Certificate

- (a) Project Co shall give the Independent Certifier and the Contracting Authority Representative at least 10 Business Days’ Notice prior to the date upon which Project Co anticipates delivering the Final Completion Notice.
- (b) Project Co shall give the Independent Certifier and the Contracting Authority Representative Notice (the “**Final Completion Notice**”) upon the satisfaction of all requirements for Final

Completion, which Final Completion Notice shall describe, in reasonable detail, the satisfaction of the requirements for Final Completion, including the completion and rectification of all Minor Deficiencies, together with Project Co's opinion as to whether the conditions for issuance of the Final Completion Certificate have been satisfied. The Final Completion Notice shall also include the following documentation:

- (i) Project Co's written request for release of the Completion Holdback or the Seasonal Works Holdback, as applicable, including a declaration that no written notice of lien arising in relation to the performance of the Works has been received by it that has not been withdrawn by the lien claimant;
 - (ii) Project Co's Statutory Declaration CCDC 9A (2001);
 - (iii) Project Co's WSIB Certificate of Clearance; and
 - (iv) a written statement that the Works have been performed to the requirements of the Ancillary Documents, itemizing approved changes in the Works, the Independent Certifier's written instructions, and modifications required by Governmental Authorities.
- (c) Contracting Authority shall, within five Business Days after receipt of the Final Completion Notice, provide the Independent Certifier and Project Co with Contracting Authority's opinion as to whether the conditions for issuance of the Final Completion Certificate have been satisfied and, if applicable, any reasons as to why they consider that the Final Completion Certificate should not be issued.
- (d) Within five Business Days after Project Co's receipt of Contracting Authority's opinion pursuant to Section 25.12(c), the Parties shall cause the Independent Certifier to determine whether the conditions for issuance of the Final Completion Certificate have been satisfied, having regard for the opinions of both Project Co and Contracting Authority, and to issue to Contracting Authority and to Project Co either:
- (i) the Final Completion Certificate confirming the date of issue as the Final Completion Date; or
 - (ii) a report detailing the matters that the Independent Certifier considers are required to be performed by Project Co to satisfy the conditions for issuance of the Final Completion Certificate, including any items on the Minor Deficiencies List which remain outstanding.
- (e) Where the Independent Certifier has issued a report in accordance with Section 25.12(d)(ii) and Project Co has not referred a Dispute in relation thereto for resolution in accordance with Schedule 27 – Dispute Resolution Procedure, Project Co shall, within five Business Days after receipt of such report, provide the Independent Certifier and the Contracting Authority Representative with:
- (i) a detailed list indicating the rectification actions proposed for all matters raised in such report;
 - (ii) the schedule for completion of all such rectification actions; and

- (iii) any additional 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 in a timely manner. Upon completion thereof, Project Co may give a further Final Completion Notice and Sections 25.12(c) to 25.12(e), inclusive, shall be repeated until the Final Completion Certificate has been issued.

- (f) Any Dispute in relation to the Independent Certifier's decision to issue or not to issue the Final Completion Certificate may be referred for resolution in accordance with Schedule 27 – Dispute Resolution Procedure.
- (g) The submission of the Final Completion Notice by Project Co in accordance with Section 25.12(b), shall constitute a waiver by Project Co of all claims whatsoever against Contracting Authority, arising prior to the submission of the Final Completion Notice, except:
 - (i) without prejudice to specific notice requirements in this Project Agreement, those made in writing by Project Co (either on its own account or arising out of a claim of a Project Co Party) prior to the Final Completion Notice and still unsettled; and
 - (ii) any third party claim which was not known to Project Co or a Project Co Party or could not reasonably have been known to Project Co or a Project Co Party at such time and with respect to which Project Co or a Project Co Party is entitled to indemnification from Contracting Authority in accordance with this Project Agreement

25.13 Effect of Certificates/Use

- (a) The issue of a Substantial Completion Certificate or the Final Completion Certificate, the commencement of use by Contracting Authority or the public of any part of the New Metrolinx Infrastructure or New Third Party Infrastructure under the terms of this Project Agreement or the commencement of any Governmental Activities, shall, in no way:
 - (i) limit the obligations of Project Co under this Project Agreement including in respect of any defects, deficiencies or items of outstanding work existing or discovered prior to or after the date of any of such certificates or the date of the Minor Deficiencies List, the amended Minor Deficiencies List described in Section 25.8(d); or
 - (ii) be construed as an approval by Contracting Authority of the Works or the way in which they have been carried out.

25.14 Inspection, Commissioning and Handover of New Municipal Infrastructure

- (a) Project Co acknowledges and agrees that New Municipal Infrastructure will be inspected, commissioned and handed over to the owner of the New Municipal Infrastructure upon completion of the New Municipal Infrastructure.
- (b) For the purposes of this Section 25.14, Contracting Authority may delegate the responsibility for carrying out interim inspections, final inspections, warranty inspections and Handover activities, on behalf of Contracting Authority, to the owner of the New Municipal Infrastructure, in respect of the New Municipal Infrastructure, by providing Notice to Project Co of any such delegation

(any such Notice referred to as a “**Notice of Delegation**”), and Contracting Authority may, in its sole discretion, and at any time revise such delegation by Notice to Project Co. For clarity, Contracting Authority may delegate the foregoing responsibility in respect of all or any component of New Municipal Infrastructure. Project Co acknowledges and agrees that, for the purposes of this Section 25.14, Project Co shall Handover all New Municipal Infrastructure directly to Contracting Authority unless Contracting Authority has delivered to Project Co a Notice of Delegation in respect of the New Municipal Infrastructure, as applicable, in which case, Project Co shall Handover such New Municipal Infrastructure, directly to the owner of the New Municipal Infrastructure.

- (c) No later than five days prior to the anticipated completion of the New Municipal Infrastructure, Project Co shall provide Notice to Contracting Authority or, where a Notice of Delegation has been provided to Project Co, Project Co shall provide Notice to the owner of the New Municipal Infrastructure of the date on which the New Municipal Infrastructure will be completed and ready for inspection and testing. Project Co and Contracting Authority, or Project Co and the applicable third party (where a Notice of Delegation has been provided) shall carry out a joint inspection of such New Municipal Infrastructure. Such joint inspection shall occur no later than 90 days after the date of completion of the New Municipal Infrastructure. The inspection and testing of the New Municipal Infrastructure pursuant to this Section 25.14(c) shall follow the inspection and testing requirements set out in the Inspection and Test Plan and the Inspection and Test Sub-Plans. Such inspection shall be for the purposes of:
- (i) assessing whether the New Municipal Infrastructure has been constructed in accordance with the Output Specifications and is otherwise in compliance with the requirements in the Project Agreement; and
 - (ii) identifying any defects or deficiencies to the New Municipal Infrastructure that Project Co must correct, repair or restore before Project Co completes the Project Co Commissioning of the New Municipal Infrastructure before the Handover of the New Municipal Infrastructure to the owner of the New Municipal Infrastructure.
- (d) Prior to final inspection of the New Municipal Infrastructure, Project Co shall:
- (i) prepare a record of the following, and submit it to Contracting Authority for review in accordance with Schedule 10 - Review Procedure at least 30 Business Days before the final inspection:
 - (A) a list of the New Municipal Infrastructure to be inspected;
 - (B) the tests, inspection methods and procedures to be used and performed and the standards that apply in respect of tests, inspection methods and procedures, which test and inspection shall follow the inspection and testing requirements set out in the Inspection and Test Plan and the Inspection and Test Sub-Plans;
 - (C) the scheduled date for testing and inspection of the New Municipal Infrastructure;

- (D) a list of the names and employers of persons to represent Project Co and Contracting Authority or, if a Notice of Delegation has been issued in respect of the New Municipal Infrastructure, a list of the names and employers of persons to represent Project Co and the owner of the New Municipal Infrastructure, at the inspection; and
- (E) a list of existing systems that may be impacted by the tests and inspection;
- (ii) ensure that:
 - (A) all defects and deficiencies that have been identified by Contracting Authority and the owner of the New Municipal Infrastructure, during any interim inspections, have been rectified; and
 - (B) any damage to the New Municipal Infrastructure is repaired by Project Co in accordance with Section 11.11 of this Project Agreement.
- (e) Project Co shall prepare a record of each inspection carried out pursuant to Section 25.14(c) in inspection report format including: (i) a list of defects or deficiencies to the New Municipal Infrastructure identified during the inspection; and (ii) actions to be taken by Project Co to correct each defect or deficiency and to rectify the damage. Project Co shall submit the inspection reports to Contracting Authority within three Business Days after each inspection for review in accordance with Schedule 10 - Review Procedure.
- (f) After the inspection of the New Municipal Infrastructure pursuant to Section 25.14(c), Project Co shall make all arrangements in respect of the New Municipal Infrastructure, as applicable to,
 - (i) correct all defects and deficiencies to the New Municipal Infrastructure, and repair any damage to the New Municipal Infrastructure;
 - (ii) complete Project Co Commissioning of the New Municipal Infrastructure, in accordance with Schedule 14 – Outline Commissioning Program and Handover;
 - (iii) in respect of New Municipal Infrastructure, comply with all requirements in respect of New Municipal Infrastructure set out in Appendix A of Schedule 14 – Outline Commissioning Program and Handover (including, for clarity, those set out in Attachment 1 of Appendix A) prior to, and as a pre-condition of Handover of New Municipal Infrastructure;
 - (iv) complete Handover of the New Municipal Infrastructure to Contracting Authority or, where Contracting Authority has delivered to Project Co a Notice of Delegation in respect of the New Municipal Infrastructure, complete Handover to the owner of the New Municipal Infrastructure; and
 - (v) seek, receive, and document confirmation from Contracting Authority or, where Contracting Authority has delivered to Project Co a Notice of Delegation in respect of the New Municipal Infrastructure, as applicable, seek, receive, and document confirmation from the owner of the New Municipal Infrastructure, that such Project Co Commissioning and Handover has been completed.

- (g) Project Co shall provide Notice to Contracting Authority when Project Co has completed Project Co Commissioning and has achieved Handover of the New Municipal Infrastructure to the applicable third party owner. Such Notice to Contracting Authority shall include the following:
- (i) a clear identification of the New Municipal Infrastructure that is the subject of the Notice;
 - (ii) the date of Handover of the New Municipal Infrastructure (as set out in the written confirmation required by Section 25.14(g)(iii)); and
 - (iii) a written confirmation, signed by an authorized representative of the applicable third party owner that Project Co Commissioning and Handover of the New Municipal Infrastructure has been completed, including the confirmed date of Handover.
- (h) The applicable owner of the New Municipal Infrastructure and Contracting Authority, may,
- (i) at any time and from time to time, on providing 30 Business Days' Notice to Project Co, require a joint interim inspection of the New Municipal Infrastructure, as applicable, to be carried out for the purposes of:
 - (A) assessing whether such New Municipal Infrastructure, as applicable, has been constructed in accordance with the Output Specifications and is otherwise in compliance with the requirements of the Project Agreement; and
 - (B) identifying any defects or deficiencies to the New Municipal Infrastructure;
 - (ii) at any time and from time to time, on providing 30 Business Days' Notice to Project Co, require a joint warranty inspection to be carried out in respect of the New Municipal Infrastructure for the purpose of identifying any defects or deficiencies.
- (i) In addition to the warranty inspections that may be performed from time to time pursuant to Section 25.14(h), a joint warranty inspection of the New Municipal Infrastructure shall be carried out no earlier than 60 days and no later than 30 days prior to the end of the applicable Warranty Period for such New Municipal Infrastructure.
- (j) In the event of a dispute between Project Co and Contracting Authority (including Contracting Authority as a representative of the interests of the applicable owner of New Municipal Infrastructure, with respect to final inspection, Project Co Commissioning or Handover of New Municipal Infrastructure, as applicable), the following shall apply:
- (i) Project Co shall make commercially reasonable efforts to resolve all outstanding concerns of Contracting Authority or the applicable owner of the New Municipal Infrastructure, as applicable, in a prompt manner; and
 - (ii) any Project Co Commissioning or Handover issue that is unresolved after the expiration of 90 days after Project Co and Contracting Authority, or Project Co and the applicable third party owner (where a Notice of Delegation has been provided), have carried out the joint inspection pursuant to Section 25.14(c) shall be referred to the Independent Certifier for final determination on an expedited basis with such final determination being made

no later than the earlier of (A) 60 days from the date of referral; and (B) the Substantial Completion Date.

25A. MILESTONE PAYMENTS

25A.1 Milestone Payment Completion Countdown Notice

- (a) For each of the First Milestone Payment, Second Milestone Payment, and Third Milestone Payment, Project Co shall deliver a notice (the “**Milestone Payment Completion Countdown Notice**”) to Contracting Authority and the Independent Certifier specifying the date on which Project Co anticipates the applicable requirements for Milestone Payment Completion shall be satisfied (the “**Anticipated Milestone Payment Completion Date**”).
- (b) Each Milestone Payment Completion Countdown Notice shall be delivered no later than 90 days prior to the applicable Scheduled Milestone Payment Completion Date. If Project Co fails to deliver a Milestone Payment Completion Countdown Notice not less than 90 days prior to the Scheduled First Milestone Payment Completion Date, Scheduled Second Milestone Payment Completion Date, or Scheduled Third Milestone Payment Completion Date the applicable Anticipated Milestone Payment Completions Date shall be deemed to be the same date as the Scheduled First Milestone Payment Completion Date, Scheduled Second Milestone Payment Completion Date or Scheduled Third Milestone Payment Completion Date, as applicable.
- (c) Project Co acknowledges and agrees that Contracting Authority requires a minimum of 90 days’ notice prior to each applicable Anticipated Milestone Payment Completion Date.

25A.2 Certification of Milestone Payments

- (a) Project Co shall give Contracting Authority and the Independent Certifier at least 10 Business Days’ notice prior to the date upon which Project Co anticipates the applicable requirements for Milestone Payment Completion shall be satisfied.
- (b) Project Co shall give Contracting Authority and the Independent Certifier notice (the “**Milestone Payment Completion Notice**”), upon the satisfaction of the applicable requirements for Milestone Payment Completion which shall:
 - (i) describe, in reasonable detail, the satisfaction of requirements for Milestone Payment Completion, together with Project Co’s opinion as to whether the conditions for Milestone Payment Completion have been satisfied;
 - (ii) include evidence that the Financing amounts have been drawn, advanced, paid, funded or released, as the case may be, to Project Co. Acceptable evidence would include wire transfer statements, bank statements or any other acceptable form of certification or document that is agreed to in writing by Contracting Authority, Project Co and the Independent Certifier; and
 - (iii) include all construction progress reports relating to the applicable requirements for Milestone Payment Completion for the First Milestone Payment, the Second Milestone Payment and the Third Milestone Payment, as applicable, certified by the Lenders’ Consultant.

-
- (c) Project Co shall, and shall cause the Lenders' Consultant to, co-operate with the Independent Certifier to permit the Independent Certifier to verify the Lenders' Consultant's construction progress reports.
- (d) Contracting Authority shall, within five Business Days after receipt of each Milestone Payment Completion Notice, provide Project Co and the Independent Certifier with Contracting Authority's opinion as to whether Project Co has satisfied the applicable requirement for Milestone Payment Completion for the First Milestone Payment, Second Milestone Payment or the Third Milestone Payment, as applicable, and, if applicable, any reasons as to why it considered that Project Co has not satisfied the applicable requirements for Milestone Payment Completion for the First Milestone Payment, Second Milestone Payment or Third Milestone Payment, as applicable.
- (e) Within five Business Days after Project Co's receipt of Contracting Authority's opinion pursuant to Section 25A.2(d), the Parties shall cause the Independent Certifier to determine whether the applicable requirements for Milestone Payment Completion for the First Milestone Payment, Second Milestone Payment or the Third Milestone Payment, as applicable, have been met, having regard to the opinions of both Project Co and Contracting Authority, and to issue to Contracting Authority and Project Co either:
- (i) a notice that the requirements for Milestone Payment Completion for the First Milestone Payment, the Second Milestone Payment or the Third Milestone Payment, as applicable, have been met (the "**First Milestone Payment Completion Date**", "**Second Milestone Payment Completion Date**" or "**Third Milestone Payment Completion Date**", as applicable); or
 - (ii) a report setting out the percentage of the Funded Capital Costs that the Independent Certifier considers remains to be completed in order to satisfy the applicable requirements for Milestone Payment Completion for the First Milestone Payment, the Second Milestone Payment or the Third Milestone Payment, as applicable.
- (f) Where the Independent Certifier has issued a report in accordance with Section 25A.2(e)(ii), Project Co shall, within five Business Days after receipt of such report, provide the Independent Certifier and Contracting Authority with a letter which acknowledges the percentage of the Funded Capital Costs that remains to be completed (as set out in the Independent Certifier's report) to achieve the applicable requirements for Milestone Payment Completion and includes a schedule for completing such Work. Upon completion thereof, Project Co may give a further Milestone Payment Completion Notice and then Sections 25A.2(d) to (f), inclusive, shall be repeated until the Independent Certifier issues a notice pursuant to Section 25A.2(e)(i).
- (g) Where the Independent Certifier has issued a notice in accordance with Section 25A.2(e)(i), Contracting Authority shall make the First Milestone Payment, the Second Milestone Payment or the Third Milestone Payment on the applicable Milestone Payment Date.

26. HUMAN RESOURCES**26.1 Admittance of Personnel**

- (a) Contracting Authority shall have the right to order the removal from the Lands, the New Metrolinx Infrastructure or the New Third Party Infrastructure of any person employed by (or acting on behalf of) Project Co, or any Project Co Party, whose presence, in the reasonable opinion of Contracting Authority is likely to have an adverse effect on the Other Works or the Governmental Activities or who, in the reasonable opinion of Contracting Authority is not a fit and proper person to be on the Lands, the New Metrolinx Infrastructure or the New Third Party Infrastructure for any reason, including a failure to comply with any Contracting Authority policy or any immediate obligation of Contracting Authority to ensure the safety and well-being of persons on the Lands, the New Metrolinx Infrastructure and the New Third Party Infrastructure.
- (b) Any action taken under this Section 26.1 shall promptly be confirmed by Contracting Authority to Project Co and, for greater certainty, shall not relieve Project Co of any of its obligations under this Project Agreement.
- (c) Any decision of Contracting Authority made pursuant to this Section 26.1 shall be final and conclusive.

26.2 Staff Competency

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

26.3 Notification of Convictions

- (a) Project Co (to the extent permitted by Applicable Law) shall, and shall cause such Project Co Party to, ensure that all potential employees (including, for greater certainty, permanent,

temporary, full time and part time employees) and persons who may otherwise perform the Works:

- (i) are questioned concerning Relevant Convictions; and
 - (ii) are required to complete and deliver to Project Co a criminal records search form.
- (b) To the extent permitted by Applicable Law, Project Co shall, and shall cause each Project Co Party to, ensure that no person who discloses any Relevant Conviction, or who is found to have any Relevant Conviction following the completion of a criminal records search, in either case of which Project Co or a Project Co Party is aware or ought to be aware, is allowed access to the Lands, the New Metrolinx Infrastructure or the New Third Party Infrastructure to perform any Works, without the prior written consent of Contracting Authority, in its sole discretion.
- (c) To the extent permitted by Applicable Law, Project Co shall ensure that Contracting Authority is kept immediately notified and kept advised at all times of any person employed or engaged by Project Co or any Project Co Party in the provision of any of the Works who, subsequent to the commencement of such employment or engagement, (i) has been arrested or detained; (ii) receives a Relevant Conviction; or (iii) is charged with an offence that could lead to a Relevant Conviction (of which Project Co or a Project Co Party becomes aware or whose previous Relevant Convictions become known to Project Co or a Project Co Party). Project Co shall use commercially reasonable efforts to obtain, or to cause all Project Co Parties to obtain, all consents as may be required by Applicable Law or otherwise authorizing the disclosure of such information to Contracting Authority as contemplated in this Section 26.3.

26.4 Disciplinary Action

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

26.5 Human Resources Policies

- (a) Project Co shall ensure that there are set up and maintained by it and by all Project Co Parties, human resources policies and procedures covering all relevant matters relating to the Works (including, for example, health and safety). Project Co shall ensure that the terms and the implementation of such policies and procedures comply with Applicable Law, Authority Requirements, and Good Industry Practice and that they are published in written form and that

copies of them (and any revisions and amendments to them) are directly issued to Contracting Authority and all Project Co Parties.

26.6 Management Organizations

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

26.7 Governmental Authority

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

27. CONTRACTING AUTHORITY'S REMEDIAL RIGHTS

27.1 Exercise of Remedial Rights

- (a) Contracting Authority may exercise all rights set out in this Section 27 at any time and from time to time if:
- (i) Contracting Authority, acting reasonably, considers that a breach by Project Co of any obligation under this Project Agreement, or any act or omission on the part of Project Co or any Project Co Party:
- (A) does or can reasonably be expected to create a serious threat to the health, safety or security of any person, including any Province Person;
 - (B) does or can reasonably be expected to materially prejudice the performance of any Governmental Activities; or
 - (C) may potentially compromise Contracting Authority's reputation or integrity, or the nature of the public transit system in any one or more of the Municipalities or the Province of Ontario, so as to affect public confidence in that system or the Project,

provided that:

- (D) 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 27.1(a)(i)(A) and 27.1(a)(i)(B), Contracting Authority shall not exercise its rights under this Section 27 unless Project Co has failed to cure the relevant breach, act or omission within five Business Days after Notice from Contracting Authority or, if such breach, act or omission cannot reasonably be cured within such five 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 27.1(a)(i)(A) and 27.1(a)(i)(B) actually occur; and

- (E) in respect of Section 27.1(a)(i)(C), Contracting Authority shall not exercise its rights under this Section 27 unless Project Co has failed to cure the relevant breach, act or omission within five Business Days after Notice from Contracting Authority or, if such breach, act or omission cannot reasonably be cured within such five Business Day period, Project Co thereafter fails to diligently and continuously pursue such cure and to cure such breach, act or omission within a reasonable period thereafter;
- (ii) Project Co has not caused the COR-Qualified Construction Project Co Party or the COR-Certified Construction Project Co Party, as the case may be, to perform its obligations with respect to its COR Certification, OHSAS 18001 Accreditation or ISO 45001 Accreditation, as the case may be, in accordance with Section 11.27, or Project Co has not caused the COR-Qualified Construction Project Co Party or the COR-Certified Construction Project Co Party, as the case may be, to perform its obligations with respect to H&S Construction Inspections in accordance with Section 15.1(b), or to perform its obligations to rectify any non-compliance noted in any H&S Construction Inspection Report in accordance with Section 15.1(e);
- (iii) Project Co has not performed or is not performing its obligations in respect of the Demolition Requirements in accordance with Section 11.28 or Project Co has not performed or is not performing its obligations to rectify any Demolition Default Event in accordance with Section 11.28; or
- (iv) Project Co has failed to comply with any written direction issued by or on behalf of Contracting Authority.

27.2 Emergency

- (a) Notwithstanding that Project Co is not in breach of its obligations under this Project Agreement, Contracting Authority may exercise all of the rights set out in this Section 27 at any time and from time to time if Contracting Authority, acting reasonably, considers the circumstances to constitute an Emergency.

27.3 Rectification

- (a) Without prejudice to Contracting Authority's rights under Section 36 and any other rights under this Project Agreement, in any of the circumstances set out in Sections 27.1 or 27.2, Contracting Authority may, by written Notice, require Project Co to take such steps as Contracting Authority, acting reasonably, considers necessary or expedient to mitigate, rectify or protect against such circumstance, including, if applicable, the termination and replacement of Subcontractors or a limited suspension of the performance of the Works, and Project Co shall use commercially reasonable efforts to comply with Contracting Authority's requirements as soon as reasonably practicable.

- (b) If Contracting Authority gives Notice to Project Co pursuant to Section 27.3(a) and either:
- (i) Project Co does not either confirm, within five Business Days after such Notice or such shorter period as is appropriate in the case of an Emergency that it is willing to take the steps required in such Notice or present an alternative plan to Contracting Authority to mitigate, rectify and protect against such circumstances that Contracting Authority may accept or reject acting reasonably; or
 - (ii) Project Co fails to take the steps required in such Notice or accepted alternative plan within such time as set out in such Notice or accepted alternative plan or within such longer time as Contracting Authority, acting reasonably, shall think fit,

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

- (c) Notwithstanding the foregoing provisions of this Section 27.3, in the event of an Emergency, the Notice under Section 27.3(a) shall be given as promptly as possible having regard to the nature of the Emergency and Contracting Authority may, prior to Project Co's confirmation under Section 27.3(b)(i), take such steps as are appropriate having regard to the nature of the Emergency.

27.4 Costs and Expenses

- (a) Subject to Contracting Authority's obligations pursuant to Sections 27.5 and 27.6:
- (i) Project Co shall bear all costs and expenses incurred by Project Co in relation to the exercise of Contracting Authority's rights pursuant to this Section 27; and
 - (ii) Project Co shall reimburse Contracting Authority for all reasonable costs and expenses incurred by Contracting Authority in relation to the exercise of Contracting Authority's rights pursuant to this Section 27, including in relation to Contracting Authority taking such steps, either itself or by engaging others (including a third party) to take any such steps as Contracting Authority considers appropriate and as are in accordance with this Section 27.

27.5 Reimbursement Events

- (a) In this Section 27.5, a "**Reimbursement Event**" means:
- (i) an act or omission of Project Co or any Project Co Party or a breach by Project Co or any Project Co Party of any obligation under this Project Agreement, but only to the extent such act, omission or breach is caused by Contracting Authority or a Contracting Authority Party; or
 - (ii) an Emergency that is not caused or contributed to by an act or omission of Project Co or any Project Co Party or a breach by Project Co or any Project Co Party of any obligation under this Project Agreement.

- (b) If Contracting Authority either takes steps itself or requires Project Co to take steps in accordance with this Section 27 as a result of a Reimbursement Event:
- (i) Contracting Authority shall reimburse Project Co for the reasonable costs and expenses incurred by Project Co in relation to the exercise of Contracting Authority's rights pursuant to this Section 27 that would not otherwise have been incurred by Project Co in the proper performance of its obligations under this Project Agreement; and
 - (ii) Contracting Authority shall bear all costs and expenses incurred by Contracting Authority in relation to the exercise of Contracting Authority's rights pursuant to this Section 27.

27.6 Reimbursement if Improper Exercise of Rights

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

28. RECORDS, INFORMATION AND AUDIT

28.1 Records Provisions

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

28.2 Information and General Audit Rights

- (a) Project Co shall provide, and shall cause each Subcontractor to provide, to Contracting Authority all information, reports, documents, records and the like, including as referred to in Schedule 26 – Record Provisions, in the possession of, or available to, Project Co as Contracting Authority may reasonably require from time to time for any purpose in connection with this Project Agreement, other than Sensitive Information. Project Co shall use commercially reasonable efforts to ensure that, for such purpose, all such information, reports, documents, records and the like in the possession of, or available to, the Construction Contractor shall be available to Project Co and Project Co shall include relevant terms in all Subcontracts to this effect.
- (b) Project Co shall also provide to Contracting Authority, and shall require each Subcontractor, including the Construction Contractor, to provide to Contracting Authority (at Contracting Authority's reasonable cost), all information, reports, documents, records and the like required to be provided pursuant to Section 28.2(a) which subsequently come into the possession of, or

become available to, Project Co or each Subcontractor, as Contracting Authority may reasonably require from time to time to enable Contracting Authority to provide reports, notices, returns and the like pursuant to Applicable Law, including information and documentation pertaining to the physical condition of the Lands, the New Metrolinx Infrastructure and the New Third Party Infrastructure, security, health and safety, fire safety, emergency preparedness, environmental matters, employees and human resources related matters, other than Sensitive Information.

- (c) Project Co shall promptly after receipt provide Contracting Authority with a copy of any material notice, order, direction, requirement or other similar communication received by it or by any Subcontractor from any Governmental Authority in relation to any of the Works, the Lands, the New Metrolinx Infrastructure and the New Third Party Infrastructure, and Project Co shall include relevant terms in all Subcontracts to this effect.
- (d) Project Co shall promptly notify Contracting Authority of any actions, suits, proceedings, or investigations commenced, pending or threatened against Project Co or, to Project Co's knowledge, any Subcontractor at law or in equity before any Governmental Authority or arbitral body (whether or not covered by insurance) that individually or in the aggregate could result in any material adverse effect on the business, properties, or assets or the condition, financial or otherwise, of Project Co or in any impairment of its ability to perform its obligations under this Project Agreement.
- (e) All information, reports, documents and records in the possession of, or available to, Project Co, including as referred to in Schedule 26 – Record Provisions, which are required to be provided to or available to Contracting Authority hereunder, shall be subject and open to inspection and audit by Contracting Authority at any time and from time to time, which inspection and audit shall take place during normal business hours and at Project Co's normal places of business unless Contracting Authority and Project Co otherwise agree. Contracting Authority shall also have the right to monitor and audit the performance of any and all parts of the Works wherever located, and Project Co shall cooperate with, and shall require each Subcontractor to cooperate with, and provide access to the representatives of Contracting Authority monitoring and auditing such parts of the Works, including providing them with access and copies (at Contracting Authority's reasonable cost) of all relevant information, reports, documents and records pertaining to the performance of such parts of the Works. Except as otherwise provided herein, all of Contracting Authority's costs for the inspections, audits and monitoring shall be borne by Contracting Authority.
- (f) In conducting an audit of Project Co under Section 28.2(e) or as otherwise provided under this Project Agreement, Contracting Authority shall have all rights necessary or incidental to conducting an audit, including the right to have access to and inspect and take copies (at Contracting Authority's reasonable cost) of all books and records of Project Co required to be provided to or available to Contracting Authority hereunder, upon reasonable Notice and at reasonable times. Project Co shall fully cooperate with Contracting Authority and its auditors in the conduct of any audits, including by making available all such records and accounts (other than Sensitive Information) in existence at that time as they may require to perform a full and detailed audit, and Project Co further agrees to promptly review and settle with Contracting Authority all matters arising from such audits, including the refunding of monies to Contracting Authority where applicable. At the reasonable request of Contracting Authority's auditors, Project Co shall

provide such information, reports, documents and records as Contracting Authority's auditors may reasonably require, other than Sensitive Information.

- (g) Contracting Authority's rights pursuant to this Section 28.2 shall be in addition to, and shall not limit, any other audit, information, inspection or similar rights under this Project Agreement.
- (h) Contracting Authority's rights pursuant to this Section 28.2 shall not limit or restrict any Governmental Authority's right of review, audit, information or inspection under Applicable Law. Contracting Authority's right pursuant to this Section 28.2 may also be exercised by the Auditor General of Ontario, Her Majesty the Queen in right of Canada and the Auditor General of Canada without the requirement for further action on the part of Contracting Authority.
- (i) Without limiting the generality of Section 28.2(a) and subject to Sections 42.1(a) and 42.3, in the event that Contracting Authority is required to provide information, including financial information, in relation to the Project, to the Province for corporate or financial reporting purposes, Project Co shall provide such information to Contracting Authority as Contracting Authority may reasonably require in order to comply with its corporate or financial reporting obligations. Project Co acknowledges and agrees that such information may include Sensitive Information.

28.3 Lenders' Consultant Reports

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

29. COMMUNICATIONS

29.1 Communications

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

30. CHANGES IN LAW

30.1 Performance after Change in Law

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

30.2 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 after such Notice to consult with respect to the effect of the Works Change in Law and to reach an agreement on whether a Variation is required as a result of such Works Change in Law, and, if the Parties have not, within 10 Business Days after this meeting, reached an agreement, either Party may refer the question of whether a Works Change in Law has occurred or the effect of any Works Change in Law for resolution in accordance with Schedule 27 – Dispute Resolution Procedure; and
- (iii) Contracting Authority shall, within 10 Business Days after agreement or determination that a Variation is required, issue a Variation Enquiry and the relevant provisions of Schedule 22 – Variation Procedure shall apply except that:
 - (A) Project Co may only object to any such Variation Enquiry on the grounds that the implementation of the Variation would not enable it to comply with the Works Change in Law;
 - (B) Project Co shall be responsible for obtaining all Development Approvals and Project Co Permits, Licences, Approvals and Agreements required in respect of the Variation;
 - (C) Contracting Authority shall not be entitled to withdraw any such Variation Enquiry unless the Parties otherwise agree;
 - (D) Project Co shall proceed to implement the Variation within such period as will enable it to comply with the Works Change in Law as soon as reasonably practicable; and
 - (E) Project Co shall not be entitled to any payment or other compensation or relief from performance of its obligations under this Project Agreement in respect of any Works Change in Law or associated Variation other than as established pursuant to Schedule 22 – Variation Procedure.

30.3 Relevant Change in Law

- (a) On the occurrence of a Relevant Change in Law, either Party shall be entitled to seek compensation for any increase or decrease (as the case may be) in the net cost to Project Co of performing the Works 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 30.3.
- (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 after such Notice to consult with respect to the effect of the Relevant Change in Law and to reach an agreement on whether a Variation is required as a result of such Relevant Change in Law, and, if the Parties have not, within 10 Business Days after this meeting, reached an agreement, either Party may

refer the question of whether a Relevant Change in Law has occurred or the effect of any Relevant Change in Law for resolution in accordance with Schedule 27 – Dispute Resolution Procedure; and

- (iii) Contracting Authority shall, within 10 Business Days after agreement or determination that a Variation is required, issue a Variation Enquiry and the relevant provisions of Schedule 22 – Variation Procedure shall apply except that:
- (A) Project Co may only object to any such Variation Enquiry on the grounds that the implementation of the Variation would not enable it to comply with the Relevant Change in Law;
 - (B) Project Co shall be responsible for obtaining all Development Approvals and Project Co Permits, Licences, Approvals and Agreements required in respect of the Variation;
 - (C) Contracting Authority shall not be entitled to withdraw any such Variation Enquiry unless the Parties otherwise agree;
 - (D) Project Co shall proceed to implement the Variation within such period as will enable it to comply with the Relevant Change in Law as soon as reasonably practicable;
 - (E) the Parties shall, without prejudice to their respective general obligations to comply with the terms of this Project Agreement:
 - (I) use commercially reasonable efforts to mitigate the adverse effects of any Relevant Change in Law and take commercially reasonable steps to minimize any increase in costs arising from such Relevant Change in Law; and
 - (II) use commercially reasonable efforts to take advantage of any positive or beneficial effects of any Relevant Change in Law and take commercially reasonable steps to maximize any reduction in costs arising from such Relevant Change in Law; and
 - (F) any entitlement to compensation payable shall be in accordance with this Section 30.3, and any calculation of compensation shall take into consideration, inter alia:
 - (I) any failure by a Party to comply with Section 30.3(b)(iii)(E);
 - (II) any increase or decrease in its costs resulting from such Relevant Change in Law; and
 - (III) any amount which Project Co recovers under any insurance policy (or would recover if it complied with its obligations to insure under this Project Agreement or the terms of any policy of insurance required under this Project Agreement) which amount, for greater certainty, shall not

include the amount of any excess or deductibles or any amount above the maximum insured amount applicable to any such insurance policy.

- (c) Project Co shall not be entitled to any payment or compensation or, except as provided in Section 32 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 30.3, and Section 33 shall be construed accordingly.

30.4 Pandemic and Epidemic Change in Law

- (a) Subject to Section 30.4(d) on the occurrence of a Pandemic and Epidemic Change in Law, either Party shall be entitled to seek compensation for any increase or decrease (as the case may be) in the net cost to Project Co of performing the Works (“**Pandemic and Epidemic Change in Law Compensation**”). Any such compensation shall be calculated in accordance with this Section 30.4.
- (b) On the occurrence of a Pandemic and Epidemic Change in Law:
- (i) either Party may give notice to the other of the need for a Variation as a result of such Pandemic and Epidemic Change in Law;
 - (ii) the Parties shall meet within ten Business Days of such notice (or such longer period of time agreed to between the Parties, acting reasonably) to consult with respect to the effect of the Pandemic and Epidemic Change in Law and to reach an agreement on whether a Variation is required as a result of such Pandemic and Epidemic Change in Law, and, if the Parties have not, within ten Business Days (or such longer period of time agreed to between the Parties, acting reasonably) of this meeting, reached an agreement, either Party may refer the question of whether a Pandemic and Epidemic Change in Law has occurred or the effect of any Pandemic and Epidemic Change in Law for resolution in accordance with Schedule 27 – Dispute Resolution Procedure; and
 - (iii) Contracting Authority shall, within ten Business Days (or such longer period of time agreed to between the Parties, acting reasonably) of agreement or determination that a Variation is required, issue a Variation Enquiry and the relevant provisions of Schedule 22 – Variation Procedure shall apply except that:
 - (A) no profit shall be payable to Project Co, the Construction Contractor or any Subcontractor as Pandemic and Epidemic Change in Law Compensation and accordingly:
 - i. any Pandemic and Epidemic Change in Law Compensation shall include Overhead calculated in accordance with Appendix C to Schedule 22 - Variation Procedure; and
 - ii. Overhead and Profit pursuant to Schedule 22 – Variation Procedure shall not apply;

- (B) Project Co may only object to any such Variation Enquiry on the grounds that the implementation of the Variation would not enable it to comply with the Pandemic and Epidemic Change in Law;
- (C) Contracting Authority shall not be entitled to withdraw any such Variation Enquiry unless the Parties otherwise agree;
- (D) without limiting any requirement of this Project Agreement, including Schedule 22 – Variation Procedure, Project Co shall provide Contracting Authority with any evidence and proper documentation Contracting Authority may reasonably require in order to assess the reasonableness of the Pandemic and Epidemic Change in Law Compensation. The Parties agree that evidence and proper documentation shall include:
- i. proof of the Pandemic and Epidemic Change in Law;
 - ii. any proposed changes to the critical path of the Works;
 - iii. detailed information quantifying the change in costs incurred or to be incurred by Project Co and its Subcontractors in performing the Works related to the Pandemic and Epidemic Change in Law, including information on the financial impact of the Pandemic and Epidemic Change in Law on Project Co and its Subcontractors, invoices, proof of payments, and information setting out overhead, labour rates, unit rates, and other prices and quantities for materials, products, supplies, equipment, services, facilities and transportation and any other Direct Cost described in Appendix A of Schedule 22 – Variation Procedure; and
 - iv. information confirming any amounts described in Section 30.4(b)(iii)(G)(III) received or that will or are likely to be received by Project Co and its Subcontractors.
- (E) Project Co shall proceed to implement the Variation within such period as will enable it to comply with the Pandemic and Epidemic Change in Law as soon as reasonably practicable;
- (F) the Parties shall, without prejudice to their respective general obligations to comply with the terms of this Project Agreement:
- i. use commercially reasonable efforts to mitigate the adverse effects of any Pandemic and Epidemic Change in Law and take commercially reasonable steps to minimize any increase in costs arising from such Pandemic and Epidemic Change in Law; and
 - ii. use commercially reasonable efforts to take advantage of any positive or beneficial effects of any Pandemic and Epidemic Change in Law and take commercially reasonable steps to maximize any

reduction in costs arising from such Pandemic and Epidemic Change in Law; and

- (G) any entitlement to Pandemic and Epidemic Change in Law Compensation payable shall be in accordance with this Section 30.4, and any calculation of such compensation shall take into consideration, inter alia:
- i. any failure by a Party to comply with Section 30.4(b)(iii)(C) or Section 30.4(b)(iii)(E);
 - ii. any increase or decrease in its costs resulting from such Pandemic and Epidemic Change in Law; and
 - iii. any amount which Project Co or a Subcontractor:
 - i. recovers under any insurance policy (or would recover if it complied with its obligations to insure under this Project Agreement or the terms of any policy of insurance required under this Project Agreement), which amount, for greater certainty, shall not include the amount of any excess or deductibles or any amount above the maximum insured amount applicable to any such insurance policy; or
 - ii. receives as financial relief or support from a Governmental Authority.
- (c) Project Co shall not be entitled to any payment or compensation or, except as expressly provided in Section 32 or otherwise in this Project Agreement, relief in respect of any Pandemic and Epidemic Change in Law, or the consequences thereof, other than in accordance with this Section 30.4, and Section 33 shall be construed accordingly.
- (d) Project Co shall not be entitled to any relief under this Section 30.4 for a Pandemic and Epidemic Supply Chain Delay that may result from a Pandemic and Epidemic Change in Law. Any relief or compensation for Project Co for any Pandemic and Epidemic Supply Chain Delay shall be addressed in accordance with Section 34 of this Project Agreement.

31. VARIATIONS

31.1 Variation Procedure

- (a) Except as otherwise expressly provided in this Project Agreement, Schedule 22 – Variation Procedure shall apply in respect of Variations.
- (b) For greater certainty, Project Co shall, subject to and in accordance with Schedule 22 – Variation Procedure, be entitled to a Variation if a written direction issued by or on behalf of Contracting Authority to Project Co or any Project Co Party results in a variation, addition, reduction, substitution, omission, modification, deletion, removal or other change to the whole or any part of the Works.

- (c) Without limiting Project Co's obligations pursuant to Section 11.12(a) and Schedule 22 – Variation Procedure, Project Co shall include in each Subcontract, and shall cause each Project Co Party to comply with, the Variation Procedure, to the extent that the Variation Procedure requires Project Co to minimize the cost and impact of Variations.

31.2 Innovation and Value Engineering

- (a) Project Co acknowledges that Contracting Authority at all times desires to reduce the overall cost to Contracting Authority of the Project, and Project Co agrees to cooperate, explore and work with Contracting Authority in investigating and considering innovation and value engineering and other cost saving measures.
- (b) If an innovation and value engineering proposal is at any time and from time to time originated and initiated solely by Project Co, Project Co may make a proposal (the “**Innovation Proposal**”) by Notice to Contracting Authority.
- (c) The Parties agree that the subject of an Innovation Proposal shall not include:
- (i) any Variation Enquiry initiated by Contracting Authority;
 - (ii) any Variation resulting from a Change in Law; or
 - (iii) any change to the Contracting Authority Activities.
- (d) The Innovation Proposal must:
- (i) set out sufficient detail to enable Contracting Authority to evaluate the Innovation Proposal in full;
 - (ii) specify Project Co's reasons and justification for proposing the Innovation Proposal;
 - (iii) request Contracting Authority to consult with Project Co with a view to deciding whether to agree to the Innovation Proposal and, if so, what consequential changes Contracting Authority requires as a result;
 - (iv) indicate any implications of the Innovation Proposal, including a difference between the existing and the proposed requirements of this Project Agreement, and the comparative advantages of each to Project Co and Contracting Authority;
 - (v) indicate if there are any dates by which a decision by Contracting Authority must be made;
 - (vi) indicate the capital cost of the Innovation Proposal, including the cost of financing; and
 - (vii) include such other information and documentation as may be reasonably requested by Contracting Authority to fully evaluate and consider the Innovation Proposal.
- (e) Contracting Authority shall, acting in good faith, evaluate the Innovation Proposal, taking into account all relevant issues, including whether:

-
- (i) the Innovation Proposal affects the quality of the Works, the New Metrolinx Infrastructure, the New Third Party Infrastructure, or the likelihood of successful completion of the Works;
 - (ii) the Innovation Proposal will benefit or interfere with the efficient operation of the New Metrolinx Infrastructure, the New Third Party Infrastructure or the performance of the Contracting Authority Activities;
 - (iii) the Innovation Proposal will interfere with the relationship between Contracting Authority and third parties;
 - (iv) the financial strength of Project Co is sufficient to deliver the changed Works;
 - (v) the residual value of the New Metrolinx Infrastructure, or the New Third Party Infrastructure is affected;
 - (vi) the Innovation Proposal materially affects the risks or costs to which Contracting Authority is exposed; or
 - (vii) any other matter Contracting Authority considers relevant.
- (f) Contracting Authority may request clarification or additional information regarding the Innovation Proposal, and may request modifications to the Innovation Proposal.
- (g) Contracting Authority may, in its sole discretion, accept or reject any Innovation Proposal.
- (h) If Contracting Authority accepts the Innovation Proposal, with or without modification, the relevant Innovation Proposal shall be documented and evidenced by a written Variation Confirmation, together with any other documents necessary to amend this Project Agreement or any relevant Project Documents to give effect to the Innovation Proposal.
- (i) If, after taking into account the agreed implementation and reasonably allocated development costs incurred by Project Co in connection with the Innovation Proposal and any other uses of the Innovation Proposal by Project Co, the Innovation Proposal causes or will cause the costs of Project Co and/or of a Subcontractor to decrease, the net savings in the costs of Project Co and/or the Subcontractor will be shared equally by Project Co and Contracting Authority, and Contracting Authority's share of the net savings shall, if the Parties agree, be reflected in a lump sum payment.
- (j) If an Innovation Proposal causes or will cause the costs of Contracting Authority to decrease, the net savings in the costs of Contracting Authority will be shared:
- (i) equally by Project Co and Contracting Authority following the implementation of the Innovation Proposal until the Termination Date; and
 - (ii) thereafter, Contracting Authority shall be entitled to the full benefit of the net savings in costs (if applicable),
- and Project Co's share of the net savings shall be reflected in a lump sum payment.

32. DELAY EVENTS**32.1 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 that Project Co has identified such delay in its Estimate and such delay has been documented in the Variation Confirmation;
 - (ii) subject to compliance by Project Co with the provisions of Section 11.14, damage, costs or delays from the execution of Additional Works on the Metrolinx Lands by Additional Contractors, as applicable, in the circumstances described in Section 11.14(f);
 - (iii) a requirement that Project Co perform obligations under an Encumbrance pursuant to Section 17.2(c)(iii) or Section 17.2(d), which performance imposes costs or delays in the performance of the Works;
 - (iv) any breach by Contracting Authority of any of Contracting Authority’s obligations under this Project Agreement (including, subject to Sections 16.8 and 32.2(p), any delay by Contracting Authority in giving access to the Metrolinx Lands pursuant to Section 16.1(a), any obstruction of the rights afforded to Project Co under Section 16.1(a) or any delay by Contracting Authority in carrying out its obligations set forth in Schedule 10 – Review Procedure), except to the extent that any such breach is caused, or contributed to, by Project Co or any Project Co Party;
 - (v) any Differing Geotechnical Site Condition pursuant to Section 18.2(c);
 - (vi) any Contracting Authority Contamination pursuant to Section 18.3(g);
 - (vii) any Contracting Authority Items of Interest or Value pursuant to Section 18.4(e);
 - (viii) any Contracting Authority Major Existing Infrastructure Defect pursuant to Section 18.5(d);
 - (ix) any Contracting Authority Utility Infrastructure pursuant to Section 18.6(d);
 - (x) any Contracting Authority Species-at-Risk pursuant to Section 18.7(d);
 - (xi) an uncovering of the Works pursuant to Section 20.3 where such Works are not subsequently found to be defective or not in compliance with the requirements of this Project Agreement (including the Output Specifications, the Project Co Proposal Extracts and the Design Data), unless such opening up of the Works was reasonable in the light of other defects or non-compliance previously discovered by Contracting Authority in respect of the same or a similar component of the Works or subset of the Works;
 - (xii) a requirement pursuant to Schedule 27 – Dispute Resolution Procedure for Project Co to proceed in accordance with the direction of Contracting Authority during the pendency of

- a Dispute, to the extent that the Dispute is subsequently determined in Project Co's favour;
- (xiii) subject to and in accordance with Section 11.9, MTO's failure to issue to Project Co an MTO Encroachment Permit on or before the applicable MTO Encroachment Permit Deadline;
 - (xiv) subject to and in accordance with Section 11.10, an Issuing Authority's failure to issue to Project Co a Listed Project Co PLAA on or before the applicable Listed Project Co PLAA Deadline;
 - (xv) a stop work order issued by MTO in respect of an MTO Encroachment Permit, provided that such order was not issued as a result of a Relief Event, an act of Force Majeure, or as a result of an act, omission or fault of Project Co or a Project Co Party or as a result of a breach by Project Co or a Project Co Party of its or their respective obligations under such MTO Encroachment Permit or under the Project Agreement;
 - (xvi) any change to the terms, conditions or requirements of the Environmental Assessments, except, in each case, to the extent resulting from any change by Project Co in the design of the Project or from any other act or omission on the part of Project Co;
 - (xvii) a Relief Event;
 - (xviii) an event of Force Majeure;
 - (xix) a Relevant Change in Law;
 - (xx) a failure by one or more Category 1 Utility Companies to perform each of their respective obligations, as set out in the Final Utility Baseline Documents, to:
 - (A) inspect or review, as applicable, the Utility Work in accordance with the deadlines for inspection or review set out in the applicable Final Utility Baseline Document;
 - (B) design or construct Utility Infrastructure in accordance with the provisions set out in the applicable Final Utility Baseline Document (including, for clarity, deadlines for design and construction), but only in those circumstances where it is a requirement of the applicable Final Utility Baseline Document that the Category 1 Utility Company must carry out the design and construction of the Utility Infrastructure itself (by the Category 1 Utility Company's own forces or by a subcontractor retained by the Category 1 Utility Company); or
 - (C) carry out the same scope of the work as that set out in the applicable Final Utility Baseline Document, but only in those circumstances where it is a requirement of the applicable Final Utility Baseline Document that the Category 1 Utility Company must carry out the scope of work of the Utility Infrastructure itself (or through a subcontractor of the Category 1 Utility Company),

provided, in each case, that such failure does not arise (directly or indirectly) as a result of any act or omission of Project Co or any Project Co Party. For the purposes of determining whether a failure by any one or more Category 1 Utility Companies has caused a delay in achieving Substantial Completion by the Scheduled Substantial Completion Date, the Parties shall, subject to Section 32.2(q), have regard to the cumulative effect of each and all failures by Category 1 Utility Companies in accordance with Section 32.1(a)(xx)(A), Section 32.1(a)(xx)(B) and Section 32.1(a)(xx)(C);

- (xxi) a TBM Marine Event, pursuant to Section 11.33(b);
 - (xxii) a Pandemic and Epidemic Change in Law;
 - (xxiii) subject to and in accordance with Section 11.35(c), the failure of a Utility Company to execute and deliver a completed Utility Agreement in the Form of Utility Agreement applicable to such Utility Company or in a form otherwise agreed to between Project Co and such Utility Company;
 - (xxiv) subject to compliance by Project Co with the provisions of Section 11.21, a failure by Contracting Authority to complete or to cause the completion of the Utility preparatory activities on or before the dates set out in Sections 3.14.6.4(l)(iii), 3.14.6.4(m)(i)B., 3.14.6.4(m)(ii)B., 3.14.6.4(n)(i)B., 3.14.6.4(n)(ii)B., 3.14.6.4(o)(i)B., 3.14.6.4(o)(ii)B., 3.14.6.4(o)(iii)B., 3.14.6.4(p)(iii), and 3.14.6.4 (q)(iii) of the Output Specifications, subject to and in accordance with the terms and conditions of Section 3.14.6.4(k) to Section 3.14.6.4 (q) of the Output Specifications;
 - (xxv) a stop work order issued by a Governmental Authority in respect of the New Metrolinx Infrastructure, the New Third Party Infrastructure or the Works, provided that such order was not issued as a result of a Relief Event, an act of Force Majeure, or as a result of an act, omission or fault of Project Co or a Project Co Party;
 - (xxvi) a Protest Action, subject to and in accordance with Section 11.15(e); or
 - (xxvii) a Category 2 UA Deliverable Failure in accordance with Section 11.37(b).
- (b) For clarity, in respect of Section 32.1(a)(xx), a failure by one or more Category 1 Utility Companies to perform each of their respective obligations as set out in Section 32.1(a)(xx)(A), Section 32.1(a)(xx)(B) and Section 32.1(a)(xx)(C) shall not, in any event, be cause for a Delay Event unless Project Co has:
- (i) fully complied with its obligations pursuant to the applicable Utility Agreement and the applicable Final Utility Baseline Document;
 - (ii) properly coordinated the work being performed by the applicable Category 1 Utility Company with the Works; and
 - (iii) provided sufficient access to the Site to the applicable Category 1 Utility Company for the purposes of carrying out the Category 1 Utility Company's work.

- (c) For further clarity, Section 32.1(a)(xx) does not apply in respect of:
- (i) Category 1 Utility Companies in circumstances other than those specifically set out in Section 32.1(a)(xx)(A), Section 32.1(a)(xx)(B) and Section 32.1(a)(xx)(C);
 - (ii) Category 2 Utility Companies, including failures of a Category 2 Utility Company to perform in accordance with the applicable Utility Agreement; or
 - (iii) the Works carried out by Project Co or Project Co Parties or goods or services provided by Project Co or Project Co Parties to the Utility Companies.
- (d) For further clarity, to the extent that any of the events or circumstances described in Section 32.1(a) occur during the performance of the Early Contractor Activities, such event or circumstance will constitute a Delay Event (and a Compensation Event, if applicable pursuant to Section 33.1).

32.2 Consequences of a Delay Event

- (a) Project Co shall provide written Notice to the Contracting Authority Representative and the Independent Certifier within five Business Days after becoming aware of the occurrence of any event or circumstances described in Section 32.1(a)(ii), Section 32.1(a)(iii), Section 32.1(a)(iv), Section 32.1(a)(v), Section 32.1(a)(vi), Section 32.1(a)(vii), Section 32.1(a)(viii), Section 32.1(a)(ix), Section 32.1(a)(x), Section 32.1(a)(xi), Section 32.1(a)(xii), Section 32.1(a)(xiii), Section 32.1(a)(xiv), Section 32.1(a)(xv), Section 32.1(a)(xvi), Section 32.1(a)(xx), 32.1(a)(xxii), Section 32.1(a)(xxiii), 32.1(a)(xxiv), 32.1(a)(xxv), 32.1(a)(xxvi) and 32.1(a)(xxvii) which, at the time of its occurrence, is reasonably likely to form the basis of a future claim by Project Co for relief under Section 32.2(e) as a Delay Event.
- (b) Project Co shall, within 10 Business Days (or such longer period of time as the Parties may agree) after delivering such notification under Section 32.2(a), provide further written details to the Contracting Authority Representative and the Independent Certifier which shall include:
- (i) identification of the category of Delay Event on which Project Co's future claim for relief would be based if such event or circumstances were to form the basis of a claim for relief as a Delay Event;
 - (ii) details of the event or circumstances forming the basis of Project Co's notification under Section 32.2(a);
 - (iii) details of the contemporary records which Project Co shall thereafter maintain to substantiate its claim for extra time if the event or circumstances detailed in accordance with Section 32.2(b)(ii) forms the basis of a future claim by Project Co for relief as a Delay Event;
 - (iv) details of the consequences (whether direct or indirect, financial or non-financial) that such event or circumstances may have upon the Scheduled Substantial Completion Date, or Scheduled Final Completion Date, if such event or circumstances forms the basis of a future claim by Project Co for relief as a Delay Event;

- (v) details of any measures that Project Co proposes to adopt to prevent such event or circumstances from forming the basis of a future claim by Project Co for relief as a Delay Event or to mitigate the consequences of such claim if such event or circumstances were to become a Delay Event; and
 - (vi) in respect of the circumstances described in Section 32.1(a)(v) or Section 32.1(a)(vi), such additional information as may be required by Schedule 37 – Geotechnical Baseline Report.
- (c) As soon as possible but in any event within three Business Days after Project Co receiving, or becoming aware of, any supplemental information pertaining to the event or circumstances disclosed in Section 32.2(a), Project Co shall submit further particulars based on such information to the Contracting Authority Representative and the Independent Certifier.
- (d) The Contracting Authority Representative shall, after receipt of written details under Section 32.2(b), or of further particulars under Section 32.2(c), be entitled by written Notice to require Project Co to provide such further supporting particulars as the Contracting Authority Representative may reasonably consider necessary. Project Co shall comply with such further requests and afford the Contracting Authority Representative and the Independent Certifier reasonable facilities for their investigations, including on-site inspection.
- (e) In addition to complying with its obligations under Sections 32.2(a) and 32.2(b), Project Co shall provide written Notice to the Contracting Authority Representative and the Independent Certifier within five Business Days after becoming aware that an event or circumstances has satisfied, or will satisfy, in the opinion of Project Co, the applicable definition of a Delay Event. Project Co shall, within 10 Business Days after such notification, provide further written details of the Delay Event to the Contracting Authority Representative and the Independent Certifier, including, if and as applicable, to substitute or supplement the information given in Sections 32.2(a), 32.2(b) and 32.2(c), to substantiate or support Project Co's claim which shall include, to the extent not previously provided:
- (i) a statement of which Delay Event upon which the claim is based;
 - (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, including a critical path analysis of the event or circumstances, indicating the impact upon the Scheduled Substantial Completion Date or the Scheduled Final Completion Date; and
 - (v) details of any measures which Project Co proposes to adopt to mitigate the consequences of such Delay Event.
- (f) As soon as possible, but in any event within three Business Days after Project Co receiving, or becoming aware of, any supplemental information which may further substantiate or support

Project Co's claim under Section 32.2(e), Project Co shall submit further particulars based on such information to the Contracting Authority Representative and the Independent Certifier.

- (g) The Contracting Authority Representative shall, after receipt of written details under Section 32.2(e), or of further particulars under Section 32.2(f), be entitled by written Notice to require Project Co to provide such further supporting particulars as the Contracting Authority Representative may reasonably consider necessary. Project Co shall comply with such further requests and afford the Contracting Authority Representative and the Independent Certifier reasonable facilities for investigating the validity of Project Co's claim, including on-site inspection.
- (h) Subject to the provisions of this Section 32, the Contracting Authority Representative shall allow Project Co an extension of time equal to the delay to the Scheduled Substantial Completion Date or Scheduled Final Completion Date caused by the Delay Event and shall fix (A) a revised Scheduled Substantial Completion Date, or (B) a revised Scheduled Final Completion Date, as applicable, as soon as reasonably practicable and in any event within 10 Business Days following the later of:
- (i) the date of receipt by the Contracting Authority Representative of Project Co's Notice given in accordance with Section 32.2(e) and the date of receipt of adequate further particulars (if such are required under Section 32.2(f)), whichever is later; and
 - (ii) the date of receipt by the Contracting Authority Representative of any supplemental information supplied by Project Co or requested by Contracting Authority in accordance with Section 32.2(f) and the date of receipt of any further particulars (if such are required under Section 32.2(g)), whichever is later.
- (i) For the avoidance of doubt, there shall be no extension to the Project Term as a result of any delay caused by a Delay Event.
- (j) If:
- (i) the Contracting Authority Representative declines to fix (A) a revised Scheduled Substantial Completion Date; or (B) a revised Scheduled Final Completion Date, as applicable;
 - (ii) Project Co considers that a different (A) Scheduled Substantial Completion Date, or (B) Scheduled 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 resolution in accordance with Schedule 27 – Dispute Resolution Procedure.
- (k) **[Intentionally Deleted]**
- (l) To the extent that Project Co does not comply with its obligations under Sections 32.2(a), (b), (c), (d), (e), (f) or (g), and subject to Section 32.2(m), such failure shall be taken into account in determining Project Co's entitlement to relief pursuant to this Section 32.

- (m) If Project Co does not provide further written details to the Contracting Authority Representative and the Independent Certifier as required under Section 32.2(b) within the 10 Business Day period referred to in such Section, Project Co acknowledges and agrees that, after a further 10 Business Days, Project Co shall not be entitled to rely upon, and Contracting Authority shall not be obligated to consider, the Notice given under Section 32.2(a) for the purposes of determining Project Co's entitlement to relief under this Section 32.
- (n) If the Works are behind schedule for a reason other than a Delay Event, or if a Project Co Party delays the progress of any portion of the Works necessary to complete the Works on schedule, Project Co shall use all reasonable measures to bring the Works back on schedule. Project Co shall exercise all means within its discretion, such as directing any Project Co Party that is creating delays to increase their labour forces and equipment, to improve the organization and expediting of the Works, or to work overtime as may be necessary. Project Co shall provide any additional supervision, coordination and expediting, including overtime by its own personnel as may be required to achieve this end. The costs and expenses incurred by the use of such measures and overtime shall be borne by Project Co and/or the Project Co Parties and there shall be no adjustment to the Guaranteed Price as a result of such costs and expenses and for clarity, no extension to the Scheduled Substantial Completion Date.
- (o) Where there are concurrent delays, some of which are caused by Contracting Authority or others for whom Contracting Authority is responsible, and some of which are caused by Project Co or others for whom Project Co is responsible, Project Co shall not be entitled to an extension in the Scheduled Substantial Completion Date or additional compensation to the extent of the concurrent delays. Concurrent delays are those that are caused by two or more independent events which affect the Scheduled Substantial Completion Date where the time period over which such delays occur overlap in time, but only for the duration of the overlap.
- (p) Subject to Sections 11.21(b) and 11.21(c), Contracting Authority shall provide Project Co with access to and use of the Metrolinx Lands and the Existing Metrolinx Infrastructure as required pursuant to Section 16 of this Project Agreement in a manner consistent with the applicable Project Works Schedule(s) and in accordance with the notification requirements and restrictions set out in the Project Agreement, provided that Project Co agrees that the inability of Contracting Authority to provide Project Co with access to an area for construction activities not on the critical path for reasons set out in Sections 11.21(b) and 11.21(c) will not result in the occurrence of a Delay Event (and, for greater certainty, there shall not be a resulting change to the Scheduled Substantial Completion Date) or a Compensation Event (and, for certainty, there shall not be any resulting change to the Guaranteed Price).
- (q) In no event shall the extension of time for a Delay Event be more than the necessary extension of the critical path as a result of the Delay Event.

32.3 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 32.3, such failure shall be taken into account in determining Project Co's entitlement to an extension of time pursuant to this Section 32.

33. COMPENSATION EVENTS

33.1 Definition

- (a) For the purposes of this Project Agreement, "**Compensation Event**" means any event referred to in Sections 32.1(a)(ii), 32.1(a)(iii), 32.1(a)(iv) (subject to Section 32.2(p)), 32.1(a)(v), 32.1(a)(vi), 32.1(a)(vii), 32.1(a)(viii), 32.1(a)(ix), 32.1(a)(x), 32.1(a)(xi), 32.1(a)(xii), 32.1(a)(xiii), 32.1(a)(xiv), 32.1(a)(xv), 32.1(a)(xvi), 32.1(a)(xxiii), 32.1(a)(xxiv), 32.1(a)(xxv), 32.1(a)(xxvi) and 32.1(a)(xxvii) 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.

33.2 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 33. 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 32.1(a)(i);
 - (ii) Section 35, in the case of a Delay Event referred to in Section 32.1(a)(xviii);
 - (iii) Section 34, in the case of a Delay Event referred to in Section 32.1(a)(xvii);
 - (iv) Section 30, in the case of a Delay Event referred to in Section 32.1(a)(xix);
 - (v) Section 33.5 in the case of a Delay Event referred to in Section 32.1(a)(xx);
 - (vi) Section 30.4, in the case of a Delay Event referred to in Section 32.1(a)(xxii); and
 - (vii) Section 11.15(e) in the case of a Delay Event referred to in Section 32.1(a)(xxvi).
- (b) Subject to Sections 33.2(c), 33.3 and 33.4, if it is agreed, or determined in accordance with Schedule 27 – Dispute Resolution Procedure, that there has been a Compensation Event, Project Co shall be entitled to such compensation as would place Project Co in no better and no worse position than it would have been in had the relevant Compensation Event not occurred. For greater certainty, in respect of a Compensation Event that is also a Delay Event, such compensation will include amounts which, but for the Delay Event, would have been paid by Contracting Authority to Project Co. Project Co shall promptly provide the Contracting

Authority Representative with any information the Contracting Authority Representative may require in order to determine the amount of such compensation.

- (c) If Contracting Authority is required to compensate Project Co pursuant to this Section 33.2, then Contracting Authority may either pay such compensation as a lump sum payment or payments at times and in a manner to be agreed with Project Co, acting reasonably.
- (d) To the extent that Project Co does not comply with its obligations under Sections 32.2(a), (b), (c), (d), (e), (f) or (g), and subject to Section 32.2(m), such failure shall be taken into account in determining Project Co's entitlement to relief pursuant to this Section 33.
- (e) If an event listed in Section 32.1(a)(i) to Section 32.1(a)(xxvi) caused Project Co to be delayed as of the time of the applicable Scheduled Milestone Payment Completion Date, when delay is measured in accordance with Section 32.2, and such delay resulted in Project Co failing to achieve Milestone Payment Completion for any Milestone Payment, and to the extent that such failure was not caused, or contributed to, by Project Co or any Project Co Party,
 - (i) in the case of the First Milestone Payment, Contracting Authority shall pay an amount equal to the increase in the Cost of the Financing in respect of the First Milestone Payment arising from the applicable period of delay, provided Project Co has complied with its obligations pursuant to Section 33.3 without duplication of any amounts already paid by Contracting Authority in accordance with Section 33.2;
 - (ii) in the case of the Second Milestone Payment, Contracting Authority shall pay an amount equal to the increase in the Cost of the Financing in respect of the Second Milestone Payment arising from the applicable period of delay, provided Project Co has complied with its obligations pursuant to Section 33.3 and without duplication of any amounts already paid by Contracting Authority in accordance with Section 33.2 including any amounts already paid pursuant to Section 33.2(e)(i);
 - (iii) in the case of the Third Milestone Payment, Contracting Authority shall pay an amount equal to the increase in the Cost of the Financing in respect of the Third Milestone Payment arising from the applicable period of delay, provided Project Co has complied with its obligations pursuant to Section 33.3 and without duplication of any amounts already paid by Contracting Authority in accordance with Section 33.2 including any amounts already paid pursuant to Section 33.2(e)(i) and 33.2(e)(ii);
 - (iv) all compensation owed to Project Co arising from Sections 33.2(e)(i), 33.2(e)(ii) and 33.2(e)(iii) shall be calculated as of the applicable Milestone Payment Completion Date and shall be limited to only the compensation set out in Sections 33.2(e)(i), 33.2(e)(ii) and 33.2(e)(iii); and
 - (v) any amount payable by Contracting Authority pursuant to Section 33.2(e) shall be payable on the applicable Milestone Payment Completion Date.

33.3 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 33 in relation to any Compensation Event.

- (b) To the extent that Project Co does not comply with its obligations under this Section 33.3, such failure shall be taken into account in determining Project Co's entitlement to relief pursuant to this Section 33.

33.4 Insured Exposure

- (a) The compensation payable to Project Co pursuant to this Section 33 shall be reduced by any amount which Project Co or a Project Co Party recovers, or is entitled to recover, under any insurance policy, or would have recovered if it had complied with the requirements of this Project Agreement in respect of insurance or the terms of any policy of insurance required under this Project Agreement, which amount, for greater certainty, shall not include any excess or deductibles or any amount over the maximum amount insured under any such insurance policy.

33.5 Special Compensation Regarding Category 1 Utility Companies

- (a) For the purposes of the special compensation regarding Category 1 Utility Companies, the following shall apply:
 - (i) Sections 33.3 and 33.4 shall apply to the compensation set out in this Section 33.5, notwithstanding that the Delay Event referred to in Section 32.1(a)(xx) is not a Compensation Event.
- (b) If it is agreed, or determined in accordance with Schedule 27 - Dispute Resolution Procedure, that there has been a Delay Event referred to in Section 32.1(a)(xx), Project Co shall be entitled to the following:
 - (i) an amount excluding any increase in price by a Category 1 Utility Company compensated pursuant to Section 4.3(i), calculated in accordance with the following:
 - (A) for the purpose of this Section 33.5(b)(i) "**Compensation Amount**" means an amount that would place Project Co in no better and no worse position than it would have been in had the applicable Delay Event referred to in Section 32.1(a)(xx) not occurred (and shall include any interest or financing costs accrued and paid or which became payable in accordance with the Lending Agreements during the period of the applicable Delay Event);
 - (B) if the applicable Delay Event delays Substantial Completion for 90 or fewer days, Contracting Authority shall pay to Project Co an amount equal **[REDACTED]** of the Compensation Amount in respect of the number of days of delay; and
 - (C) if the applicable Delay Event delays Substantial Completion for more than 90 days, Contracting Authority shall pay to Project Co an amount equal to **[REDACTED]** of the Compensation Amount in respect of the number of days exceeding 90 days of delay.

34. RELIEF EVENTS

34.1 Definition

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

- (i) fire, explosion, lightning, storm, tempest, hurricane, tornado, flood, bursting or overflowing of water tanks, apparatus or pipes, ionizing radiation (to the extent it does not constitute Force Majeure), or earthquake;
- (ii) failure by any Utility Company, local authority or other like body to perform works or provide services (solely in its role as utility service provider or similar service provider to the Project), provided, however, that such a failure shall not, in any event, be cause for a Relief Event, unless Project Co:
 - (A) has performed its obligations under any applicable agreement with the Utility Company with respect to the provision of such services and the relevant Utility Company has failed to meet its obligations thereunder; and
 - (B) has made all, and is continuing to make all, commercially reasonable efforts to diligently enforce its legal rights under any applicable agreement in respect of such services and otherwise cause the Utility Company to perform those works or services.

For clarity, Section 34.1(a)(ii) shall apply only in circumstances where the Utility Company is providing services to Project Co of the type provided by the Utility Company in the normal course of its business. For further clarity, Section 34.1(a)(ii) shall not apply in circumstances where Project Co has entered into an agreement for the design and construction of Utility Infrastructure and the applicable Utility Company has failed to comply with its obligations under such an agreement;

- (iii) accidental loss or damage to the Works and/or the New Metrolinx Infrastructure or any roads servicing the Lands;
- (iv) without prejudice to any obligation of Project Co to provide stand-by power facilities in accordance with this Project Agreement, failure or shortage of power, fuel or transport;
- (v) blockade or embargo that is not a Protest Action and that falls short of an event of Force Majeure;
- (vi) any official or unofficial strike, lockout, work to rule or other labour-related action generally affecting the New Metrolinx Infrastructure, the New Third Party Infrastructure or construction industry (or a significant sector of that industry) in the Province of Ontario; or
- (vii) the occurrence of a Pandemic and Epidemic Supply Chain Delay,

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

- (b) For further clarity, to the extent that any of the events or circumstances described in Section 34.1(a) occur during the performance of the Early Contractor Activities, such event or circumstance will constitute a Relief Event.

34.2 Consequences of a Relief Event

- (a) Subject to Section 34.3, no right of termination, other than either Party's right to terminate this Project Agreement pursuant to Section 38.1, shall arise under this Project Agreement by reason of any failure by a Party to perform any of its obligations under this Project Agreement, but only to the extent that such failure to perform is caused by the occurrence of a Relief Event (it being acknowledged and agreed by the Parties that all other rights and obligations of the Parties under this Project Agreement remain unaffected by the occurrence of a Relief Event).
- (b) In respect of a Relief Event that is also a Delay Event pursuant to Section 32.1(a)(xvii):
 - (i) Project Co shall only be relieved of its obligations under this Project Agreement to the extent, if any, provided for in Section 32; and
 - (ii) in respect of a Relief Event referred to in Sections 34.1(a)(ii) (but only in respect of failure by a Utility Company to perform works or provide services), 34.1(a)(v), 34.1(a)(vi), or 34.1(a)(vii) on the earlier of (A) the Substantial Completion Date and (B) the date of payment of the Contracting Authority Default Termination Sum or Non-Default Termination Sum (and as a part thereof) in accordance with Schedule 23 – Compensation on Termination, Contracting Authority shall pay to Project Co an amount equal to the Senior Debt Service Amount accrued and paid or that became payable in accordance with the Lending Agreements during the period of delay by Project Co or any Project Co Party to the Senior Lenders up to and including the Scheduled Substantial Completion Date or the date of payment of the Contracting Authority Default Termination Sum or Non-Default Termination Sum, as applicable, together with interest thereon at the rate payable on the Senior Debt Amount, which, but for the Delay Event, would not have been paid by Project Co to the Senior Lenders.
- (c) If a Relief Event occurs, Project Co shall not be entitled to receive any compensation other than as expressly provided in Sections 34.2(b)(ii) and 40.
- (d) Subject to Section 40, 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 34.

34.3 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 34.3, such failure shall preclude such Party's entitlement to relief pursuant to this Section 34.
- (c) The Party claiming relief shall give written Notice to the other Party within five Business Days after such Party becoming aware of the relevant Relief Event. Such initial Notice shall give sufficient details to identify the particular event claimed to be a Relief Event.
- (d) A subsequent written Notice shall be given by the Party claiming relief to the other Party within a further five Business Days of the initial Notice, which Notice shall contain such relevant information relating to the failure to perform (or delay in performing) as is available, including the effect of the Relief Event on the ability of the Party to perform, the action being taken in accordance with Section 34.3(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 34.3(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.

34.4 Insured Exposure

- (a) The compensation payable to Project Co pursuant to this Section 34 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.

35. FORCE MAJEURE

35.1 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 New Metrolinx Infrastructure and/or the Lands, unless Project Co or any Project Co Party is the source or cause of the contamination;

- (iii) chemical or biological contamination of the Works, the New Metrolinx Infrastructure and/or the Lands from any event referred to in Section 35.1(a)(i);
 - (iv) pressure waves caused by devices traveling at supersonic speeds; or
 - (v) the discovery of any fossils, artifacts and other objects having artistic, historic, archaeological or monetary value, including human remains and burial sites, which, as a result of Applicable Law, requires the Works to be abandoned.
- (b) For further clarity, to the extent that any of the events or circumstances described in Section 35.1(a) occur during the performance of the Early Contractor Activities, such event or circumstance will constitute an event of Force Majeure.

35.2 Consequences of Force Majeure

- (a) Subject to Section 35.3, 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 32.1(a)(xviii):
- (i) Project Co shall only be relieved of its obligations under this Project Agreement to the extent, if any, provided for in Section 32; and
 - (ii) on the earlier of (A) the Substantial Completion Date and (B) the date of payment of the Contracting Authority Default Termination Sum or Non-Default Termination Sum (and as a part thereof) in accordance with Schedule 23 – Compensation on Termination, Contracting Authority shall pay to Project Co an amount equal to the Senior Debt Service Amount and the Junior Debt Service Amount accrued and paid or that accrued in accordance with the Lending Agreements during the period of delay by Project Co or any Project Co Party to the Lenders up to and including the Scheduled Substantial Completion Date or the date of payment of the Contracting Authority Default Termination Sum or Non-Default Termination Sum, as applicable, together with interest thereon at the rate payable on the principal amount of debt funded under the Lending Agreements, which, but for the Delay Event, would not have been paid by Project Co to the Lenders.
- (c) If an event of Force Majeure occurs prior to the Substantial Completion Date, Project Co shall not be entitled to receive any compensation other than as expressly provided in Sections 35.2(b)(ii) and 40.
- (d) **[Intentionally Deleted]**
- (e) Subject to Section 40, 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 35.

35.3 Mitigation and Process

- (a) Where a Party is (or claims to be) affected by an event of Force Majeure, such Party shall take commercially reasonable steps to mitigate the consequences of such event of Force Majeure upon the performance of its obligations under this Project Agreement, shall resume performance of its obligations affected by the event of Force Majeure as soon as practicable and shall use commercially reasonable efforts to remedy its failure to perform, including efforts to minimize any negative impact of the event of Force Majeure on the Project Works Schedules.
- (b) To the extent that the Party claiming relief does not comply with its obligations under this Section 35.3, such failure shall be taken into account in determining such Party's entitlement to relief pursuant to this Section 35.
- (c) The Party claiming relief shall give written Notice to the other Party within five Business Days after such Party becoming aware of the relevant event of Force Majeure. Such initial Notice shall give sufficient details to identify the particular event claimed to be an event of Force Majeure.
- (d) A subsequent written Notice shall be given by the Party claiming relief to the other Party within a further five Business Days of the initial Notice, which Notice shall contain such relevant information relating to the failure to perform (or delay in performing) as is available, including the effect of the event of Force Majeure on the ability of the Party to perform, the action being taken in accordance with Section 35.3(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 35.3(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.

35.4 Insured Exposure

- (a) The compensation payable to Project Co pursuant to this Section 35 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.

35.5 Modifications

- (a) The Parties shall use commercially reasonable efforts to agree to any modifications to this Project Agreement which may be equitable having regard to the nature of an event or events of Force Majeure. Schedule 27 – Dispute Resolution Procedure shall not apply to a failure of Contracting Authority and Project Co to reach agreement pursuant to this Section 35.5.

36. PROJECT CO DEFAULT**36.1 Project Co Events of Default**

- (a) For the purposes of this Project Agreement, “**Project Co Event of Default**” means any one or more of the following events or circumstances:
- (i) the occurrence of any of the following events other than as a consequence of a breach by Contracting Authority of its payment obligations hereunder:
- (A) Project Co admits in writing its inability to pay its debts generally as they become due, or makes a general assignment for the benefit of creditors, or a receiver, manager, administrator, administrative receiver, receiver and manager, trustee, custodian or other similar official or any other like person is appointed by or on behalf of or at the instance of a creditor of Project Co with respect to Project Co or any of the property, assets or undertaking of Project Co, or any creditor of Project Co takes control, or takes steps to take control, of Project Co or any of Project Co’s assets, or any proceedings are instituted against Project Co that result in Project Co being declared or ordered bankrupt or in administration, liquidation, winding-up, reorganization, compromise, arrangement, adjustment, protection, relief or composition of it or with respect to it or its debts or obligations, or any such proceedings are instituted by Project Co seeking any such result, or any such proceedings are instituted by a person other than Project Co, Contracting Authority, a Contracting Authority Party or a person related to any of them seeking such result and such proceedings have or will have a material adverse effect on the performance of the Works or of the Contracting Authority Activities (where such proceedings have not been withdrawn, stayed, discharged, or are otherwise of no further effect, within 90 days after being instituted), under any Applicable Law (including the *Bankruptcy and Insolvency Act* (Canada) and the *Companies’ Creditors Arrangement Act* (Canada)) relating to bankruptcy, insolvency or reorganization of or relief with respect to debtors or debtors’ obligations or assets or other similar matters, or seeking the appointment of a receiver, manager, administrator, administrative receiver, receiver and manager, trustee, custodian or other similar official or like person for it or with respect to any of its assets, or any resolutions are passed or other corporate actions of Project Co are taken to authorize any of the actions set forth in this Section 36.1(a)(i);
- (B) Project Co ceases performing a substantial portion of its business, or a substantial portion of such business is suspended or is not being performed, whether voluntarily or involuntarily, that has or will have a material adverse effect on Project Co’s ability to perform its obligations under this Project Agreement;
- (C) if any execution, sequestration, extent, garnishment or other process of or order by any court becomes enforceable against Project Co or if a distress or analogous process is levied against any property of Project Co that

materially adversely affects Project Co's ability to perform its obligations hereunder; or

- (D) Project Co suffers any event, or any event or set of circumstances occurs or comes about, analogous to the foregoing events or sets of circumstances set out in this Section 36.1(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 36.1(a)(i)(A), (B) or (C), constitute a Project Co Event of Default;
- (ii) Project Co failing to achieve Substantial Completion within 360 days after the Scheduled Substantial Completion Date (the "**Longstop Date**");
- (iii) Project Co:
 - (A) failing to deliver a Recovery Works Schedule under Section 14.1(b)(i) of Schedule 12 – Works Schedule Requirements;
 - (B) delivering a Recovery Works Schedule under Section 14.1(b)(i) of Schedule 12 – Works Schedule Requirements which indicates that Project Co will not achieve Substantial Completion by the Longstop Date; or
 - (C) delivering a Recovery Works Schedule under Section 14.1(b)(i) of Schedule 12 – Works Schedule Requirements that is not acceptable to the Independent Certifier, acting reasonably, as to the matters set out in Section 14.1(c)(ii) of Schedule 12 – Works Schedule Requirements;
- (iv) Project Co making any representation or warranty herein that is false or misleading when made, and that has or will have at any time a material adverse effect on the performance of Works, or the Governmental Activities, or that may compromise (A) Contracting Authority's reputation or integrity, or (B) the nature of the public transit system in any one or more of the Municipalities or the Province of Ontario so as to affect public confidence in the public transit system in one or more of the Municipalities or the Province of Ontario or the Project, and, in the case of a false or misleading representation or warranty that is capable of being remedied, such breach is not remedied within 10 Business Days after receipt of Notice of the same from Contracting Authority;
- (v) Project Co committing a breach of Sections 42 or 43;
- (vi) Project Co committing a breach of its obligations under this Project Agreement which has or will have a material adverse effect on the performance of Contracting Authority operations or Contracting Authority Activities (other than a breach that is otherwise referred to in Sections 36.1(a)(i) to (v) inclusive or (vii) to (xvi) inclusive) other than where such breach is a consequence of a breach by Contracting Authority of its obligations under this Project Agreement, and upon becoming aware of such breach Project Co failing to remedy such breach in accordance with all of the following:
 - (A) Project Co shall:

- (I) immediately commence and thereafter diligently continue to remedy the breach and to mitigate any adverse effects on Contracting Authority and the performance of Contracting Authority's operations and the Contracting Authority Activities;
 - (II) put forward, within five Business Days after receipt of Notice of such breach from Contracting Authority, a reasonable plan and schedule for diligently remedying the breach and mitigating its effect, which plan and schedule shall specify in reasonable detail the manner in which, and the latest date by which, such breach is proposed to be remedied, which latest date shall in any event be within 60 days after Notice of such breach, or if such breach is not capable of being rectified in such period then such longer period as is reasonable in the circumstances; and
 - (III) thereafter perform its obligations to achieve all elements of such plan and schedule in accordance with its terms within the time for the performance of its obligations thereunder;
- (vii) Project Co wholly abandoning the Works for a period which exceeds three Business Days from receipt by Project Co of a written request to return to the Site, other than as a consequence of a breach by Contracting Authority of its obligations under this Project Agreement;
 - (viii) Project Co failing to comply with Sections 49.1 or 49.3;
 - (ix) the occurrence of any Change in Ownership or Change in Control which is prohibited by Section 49.4;
 - (x) Project Co failing to remove an Encumbrance that arose (i) due to an act or omission of Project Co or any Project Co Party (other than any Encumbrance derived through Contracting Authority), or (ii) in relation to the Works, in either case, within 45 days following the earlier of:
 - (A) the registration of such Encumbrance against title to the Lands or any part thereof; and
 - (B) the date on which Project Co or any Project Co Party knew, or ought to have known, about the existence of the Encumbrance;
 - (xi) Project Co failing to pay any sum or sums due to Contracting Authority under this Project Agreement, which sum or sums are not being disputed in accordance with Schedule 27 – Dispute Resolution Procedure or have not been set-off by Project Co pursuant to Section 4.11(a)(ii), and which sum or sums, either singly or in aggregate, exceed(s) [REDACTED] and such failure continues for 30 days from receipt by Project Co of a Notice of non-payment from Contracting Authority;
 - (xii) Project Co failing to comply with Section 50;
 - (xiii) Project Co failing to comply with Section 8.3 or Schedule 28 – Refinancing;

- (xiv) Project Co failing to obtain any bond, security or insurance required to be obtained by or on behalf of Project Co pursuant to this Project Agreement or any such bond, security or insurance being vitiated or otherwise ceasing to be in full force and effect or in material compliance with the requirements set out in this Project Agreement, other than as a consequence of a breach by Contracting Authority of its obligations under this Project Agreement, and:
 - (A) in respect of insurance, such breach by Project Co is not remedied within 10 Business Days after the occurrence of the breach; and
 - (B) in respect of a bond or security, such breach by Project Co is not remedied within five Business Days after Project Co becoming aware of such breach;
- (xv) Project Co failing to comply with any determination, decision, order or award made against Project Co in accordance with Schedule 27 – Dispute Resolution Procedure; or
- (xvi) a default by Project Co or any Project Co Party under any of the Ancillary Documents following the expiry of any applicable notice and cure periods thereunder.

36.2 Notification of Occurrence

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

36.3 Right to Termination

- (a) On the occurrence of a Project Co Event of Default, or at any time after Contracting Authority becomes aware of a Project Co Event of Default, Contracting Authority may, subject to Section 36.4, terminate this Project Agreement in its entirety by written Notice having immediate effect, prior to and without the need to obtain confirmation through the Dispute Resolution Procedure, such Notice to be given to Project Co, and to any person specified in the Lenders' Direct Agreement to receive such Notice. The Parties agree that no irreparable harm shall occur if this Project Agreement is terminated and that any termination of the Project Agreement by either Party, if found to be wrongful, would be adequately compensated for by an award of damages.

36.4 Remedy Provisions

- (a) In the case of a Project Co Event of Default referred to in Sections 36.1(a)(i)(B), 36.1(a)(i)(C), 36.1(a)(i)(D) (where the Project Co Event of Default referred to in Section 36.1(a)(i)(D) is analogous to a Project Co Event of Default referred to in Section 36.1(a)(i)(B) or 36.1(a)(i)(C)), 36.1(a)(iii), 36.1(a)(iv), 36.1(a)(v), 36.1(a)(vii), 36.1(a)(viii), 36.1(a)(ix), (where the Project Co Event of Default referred to in Section 36.1(a)(ix) is capable of being remedied), 36.1(a)(xi), 36.1(a)(xiii), 36.1(a)(xiv) (where the Project Co Event of Default referred to in Section 36.1(a)(xiv) is not in respect of insurance), 36.1(a)(xv), or 36.1(a)(xvi), Contracting Authority shall, prior to being entitled to terminate this Project Agreement, give Notice of default to Project

Co, and to any person specified in the Lenders' Direct Agreement to receive such Notice, and Project Co shall:

- (i) within five Business Days after such Notice of default, put forward a reasonable plan and schedule for diligently remedying the Project Co Event of Default, which schedule shall specify in reasonable detail the manner in, and the latest date by which, such Project Co Event of Default is proposed to be remedied, which latest date shall, in any event, be within 30 days after the Notice of default, or if such breach is not capable of being remedied in such period then such longer period as is acceptable to Contracting Authority, acting reasonably; and
 - (ii) thereafter, perform its obligations to achieve all elements of such plan and schedule in accordance with its terms within the time for the performance of its obligations thereunder.
- (b) Where Project Co puts forward a plan and schedule in accordance with Section 36.4(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, Contracting Authority shall have five Business Days from receipt of the same within which to notify Project Co that Contracting Authority does not accept such longer period in the plan and schedule and that the 30 day limit will apply, failing which Contracting Authority shall be deemed to have accepted the longer period in the plan and schedule.
- (c) If a Project Co Event of Default, of which a Notice of default was given under Section 36.4(a), occurs and:
- (i) Project Co fails to immediately commence and thereafter diligently continue to remedy the Project Co Event of Default and to mitigate any adverse effects on Contracting Authority and the Governmental Activities; or
 - (ii) Project Co fails to put forward a plan and schedule pursuant to Section 36.4(a)(i); or
 - (iii) such Project Co Event of Default is not remedied within 30 days after such Notice of default or such longer period as is established pursuant to the plan and schedule established pursuant to Sections 36.4(a) and (b); or
 - (iv) where Project Co puts forward a plan and schedule pursuant to Section 36.4(a)(i) and Project Co fails to perform its obligations thereunder necessary to achieve all elements of such plan and schedule in accordance with its terms within the time for the performance of its obligations,

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

- (d) Notwithstanding that Contracting Authority may give the Notice referred to in Section 36.4(a), and without prejudice to the other rights of Contracting Authority in this Section 36.4, at any time during which a Project Co Event of Default is continuing, Contracting Authority may, at Project Co's risk and expense, take such steps as Contracting Authority considers appropriate, either themselves or by engaging others (including a third party) to take such steps, to perform or obtain

the performance of Project Co's obligations under this Project Agreement or to remedy such Project Co Event of Default.

- (e) Upon the occurrence of a Project Co Event of Default that Project Co has remedied pursuant to this Section 36.4, such occurrence of a Project Co Event of Default shall thereafter cease to be a Project Co Event of Default and Contracting Authority shall not be entitled to terminate this Project Agreement for that occurrence of a Project Co Event of Default.

36.5 Contracting Authority Costs

- (a) Project Co shall reimburse Contracting Authority for all reasonable costs (including all applicable Taxes and all legal or professional services, legal costs being on a full indemnity basis) properly incurred by Contracting Authority in exercising its rights under this Section 36, including any relevant increased administrative expenses. Contracting Authority shall take commercially reasonable steps to mitigate such costs.

36.6 No Other Rights to Terminate

- (a) Contracting Authority shall have no right or entitlement to terminate this Project Agreement, or to accept any repudiation of this Project Agreement, and shall not purport to exercise any such right or entitlement except as set forth in Sections 36 and 38.

37. CONTRACTING AUTHORITY DEFAULT

37.1 Contracting Authority Events of Default

- (a) For the purposes of this Project Agreement, "**Contracting Authority Event of Default**" means any one or more of the following events or circumstances:
 - (i) Contracting Authority failing to pay any sum or sums due to Project Co under this Project Agreement, which sum or sums are not being disputed in accordance with Schedule 27 – Dispute Resolution Procedure or have not been set off by Contracting Authority pursuant to Section 4.11(a)(i), and which sum or sums, either singly or in aggregate, exceed(s) [REDACTED], and:
 - (A) in respect of the Substantial Completion Payment or Legislative Holdback, such failure continues for a period of 10 Business Days;
 - (B) in respect of the First Milestone Payment, Second Milestone Payment or Third Milestone Payment, such failure continues for a period of 30 days; or
 - (C) in respect of any other payment due and payable by Contracting Authority to Project Co under this Project Agreement, such failure continues for a period of 90 days,

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

- (ii) Contracting Authority committing a material breach of its obligations under Section 16 (other than as a consequence of a breach by Project Co of its obligations under this Project Agreement), which breach materially adversely affects the ability of Project Co to perform all or substantially all of its remaining Works obligations under this Project Agreement for a continuous period of not less than 60 days, and after receipt of a Notice of such breach from Project Co, Contracting Authority failing to remedy such breach in accordance with all of the following:
 - (A) Contracting Authority shall:
 - (I) immediately commence and thereafter diligently continue to remedy the breach and to use commercially reasonable efforts to mitigate any adverse effects on Project Co;
 - (II) put forward, within five Business Days of receipt of the Notice referred to in this Section 37.1(a)(ii), a reasonable plan and schedule for diligently remedying the breach and mitigating its effect, which plan and schedule shall specify in reasonable detail the manner in which, and the latest date by which, such breach is proposed to be remedied, which latest day shall in any event be within 60 days of such Notice, or if such breach is not capable of being rectified in such period, then such longer period as is reasonable in the circumstances; and
 - (III) thereafter, perform its obligations to achieve all elements of such plan and schedule in accordance with its terms within the time for the performance of its obligations thereunder; or
- (iii) an act of any Governmental Authority which renders it impossible for Project Co to perform all or substantially all of its remaining Works obligations under this Project Agreement (other than as a consequence of a breach by Project Co of its obligations under this Project Agreement) for a continuous period of not less than 60 days, provided that, for greater certainty, the non-issuance of, or the imposition of any conditions or limitations in, any of the Project Co Permits, Licences, Approvals and Agreements shall not constitute an “act of any Governmental Authority”.

37.2 Project Co’s Options

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

Authority Event of Default, terminate this Project Agreement in its entirety by Notice in writing having immediate effect.

37.3 Project Co's Costs

- (a) Contracting Authority shall reimburse Project Co for all reasonable costs (including all applicable Taxes and all legal or professional services, legal costs being on a full indemnity basis) properly incurred by Project Co in exercising its rights under this Section 37, including any relevant increased administrative expenses. Project Co shall take commercially reasonable steps to mitigate such costs.

37.4 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.

38. RELIEF EVENT AND NON DEFAULT TERMINATION

38.1 Termination for Relief Event

- (a) 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 34.3(c), either Party may, at any time thereafter, terminate this Project Agreement by written Notice to the other Party having immediate effect, provided that the effects of the Relief Event continue during such period to prevent either Party from performing all or substantially all of its obligations under this Project Agreement.

38.2 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 35.5 within 180 days after the date on which the Party affected gives Notice to the other Party as set out therein, either Party may, at any time thereafter, terminate this Project Agreement by written Notice to the other Party having immediate effect, provided that the effects of the event of Force Majeure continue during such period to prevent either Party from performing all or substantially all of its obligations under this Project Agreement.

38.3 Termination for Convenience

- (a) Contracting Authority shall, in its sole discretion and for any reason whatsoever, be entitled to terminate this Project Agreement at any time on 180 days written Notice to Project Co.
- (b) In the event of Notice being given by Contracting Authority in accordance with this Section 38.3, Contracting Authority shall, at any time before the expiration of such Notice, be entitled to direct Project Co to refrain from commencing, or allowing any third party to commence, the Works, or any part or parts of the Works where such Works have not yet been commenced.

38.4 Termination for Site Condition Event

- (a) If a Site Condition Event occurs which entitles Project Co to Delay Event relief pursuant to Section 32, and the effects of the Site Condition Event continue for 180 days from the date on which either Party becomes aware of such event, Contracting Authority may, at any time thereafter, terminate this Project Agreement by written Notice to Project Co having immediate effect, provided that the effects of the Site Condition Event continue during such period to prevent either Party from performing a material part of its obligations under the Project Agreement.

38.5 Automatic Expiry on Expiry Date

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

38.6 Termination due to Protest Action

- (a) If a Protest Action occurs which entitles Project Co to Delay Event relief pursuant to Section 32 and the effects of such Protest Action continue for 180 days from the date on which Project Co gives Notice to Contracting Authority pursuant to Section 32.2(a), Contracting Authority may, at any time thereafter, terminate this Project Agreement by written Notice to Project Co having immediate effect, provided that the effects of such Protest Action continue during such period.

39. EFFECT OF TERMINATION**39.1 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 38.5, this Section 39 shall apply in respect of such termination.

39.2 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.

39.3 Continuing Performance

- (a) Subject to any exercise by Contracting Authority of its rights to perform, or to seek, pursuant to this Project Agreement, a third party to perform, the obligations of Project Co, the Parties shall continue to perform their obligations under this Project Agreement (including, if applicable, pursuant to Schedule 23 – Compensation on Termination) notwithstanding the giving of any

Notice of default or Notice of termination, until the termination of this Project Agreement becomes effective in accordance with this Section 39.

39.4 Effect of Notice of Termination

- (a) On the service of a Notice of termination, or termination on the Expiry Date pursuant to Section 38.5:
- (i) if termination is prior to the Substantial Completion Date, in so far as any transfer shall be necessary to fully and effectively transfer such property to Contracting Authority as shall not already have been transferred to Contracting Authority pursuant to Section 45.1, Project Co shall transfer to, and there shall vest in, Contracting Authority, free from all Encumbrances (other than the Encumbrances caused or consented to by Contracting Authority), such part of the Works, the New Metrolinx Infrastructure, and the New Third Party Infrastructure as shall have been constructed and such items of the Plant, infrastructure and equipment as shall have been procured by Project Co, and, if Contracting Authority so elects:
 - (A) all Plant, equipment and materials (other than those referred to in Section 39.4(a)(i)(B)) on or near to the Lands shall remain available to Contracting Authority for the purposes of completing the Works; and
 - (B) all construction Plant and equipment shall remain available to Contracting Authority for the purposes of completing the Works, subject to payment by Contracting Authority of the Construction Contractor's reasonable charges;
 - (ii) if termination is prior to the Substantial Completion Date, Project Co shall deliver to Contracting Authority (to the extent such items have not already been delivered to Contracting Authority) one complete set of all Project Data and Intellectual Property relating to the design, construction and completion of the Works, the New Metrolinx Infrastructure, and the New Third Party Infrastructure;
 - (iii) in so far as title shall not have already passed to Contracting Authority pursuant to Section 45.1 or Section 39.4(a)(i), Project Co shall hand over to, and there shall vest in, Contracting Authority, free from all Encumbrances (other than any Encumbrances caused or consented to by Contracting Authority), the New Metrolinx Infrastructure and the New Third Party Infrastructure together with all other assets and rights capable of being transferred that are necessary for the performance of the Project and the Works and all facilities and equipment, and to the extent that any such assets or rights are not capable of being transferred by Project Co to Contracting Authority, Project Co shall enter into agreements or make other arrangements in order to permit the use of the assets or rights by Contracting Authority in order to enable them, or their designated agents or subcontractors, to continue to perform the activities which would have otherwise been performed by Project Co if this Project Agreement had not been terminated;
 - (iv) if Contracting Authority so elects, Project Co shall ensure that any of the Subcontracts between Project Co and a Subcontractor (including the Design and Construction Contract), any other instrument entered into between any such Subcontractor and Project

Co for securing the performance by such Subcontractor of its obligations in respect of the Works or to protect the interests of Project Co, shall be novated or assigned to Contracting Authority or its nominee, provided that where termination occurs other than as a result of a Project Co Event of Default, the consent of the relevant Subcontractor shall be required, and further provided that any such novation or assignment of the Design and Construction Contract with the Construction Contractor shall be made by Contracting Authority pursuant to, and subject to, the terms of the Construction Contractor's Direct Agreement;

- (v) Project Co shall, or shall ensure that any Project Co Party shall, offer to sell (and if Contracting Authority so elects, execute such sale) to Contracting Authority at a fair value (determined as between a willing vendor and willing purchaser, with any Disputes as to such fair value being resolved in accordance with Schedule 27 – Dispute Resolution Procedure), free from all Encumbrances (other than any Encumbrances caused or consented to by Contracting Authority), all or any part of the stocks of material and other assets, road vehicles, construction equipment, spare parts and other moveable property owned by Project Co or any Project Co Parties and dedicated to or predominantly used in respect of the New Metrolinx Infrastructure, and reasonably required by Contracting Authority in connection with the operation of the New Metrolinx Infrastructure;
- (vi) Project Co shall use commercially reasonable efforts to assign, or otherwise transfer, to Contracting Authority, free from all Encumbrances (other than any Encumbrances caused or consented to by Contracting Authority), the benefit of all manufacturers' warranties, including all documentation in respect thereof, in respect of mechanical and electrical Plant and equipment used or made available by Project Co under this Project Agreement and included in the New Metrolinx Infrastructure and the New Third Party Infrastructure; and
- (vii) Project Co shall deliver to Contracting Authority all information, reports, documents, records and the like referred to in Section 28, including as referred to in Schedule 26 – Record Provisions, except where such are required by Applicable Law to be retained by Project Co or the Project Co Parties (in which case complete copies shall be delivered to Contracting Authority).

39.5 Ownership of Information

- (a) Subject to Section 41, all information obtained by Project Co, including the As Built Drawings, Record Drawings, and other technical drawings and data, supplier agreements and contracts, utilities consumption information, environmental and technical reports, static building information, lease, licence and subletting data and contracts, asset condition data, standard operating procedures, processes and manuals and all other information directly related to the Works accumulated over the course of the Project Term shall be the property of Contracting Authority and upon termination of this Project Agreement shall be provided or returned to Contracting Authority, as applicable, in electronic format acceptable to Contracting Authority, acting reasonably, where it exists in electronic format, and in its original format, when not in electronic format.

39.6 Provision in Subcontracts

- (a) Project Co shall make provision in all Subcontracts to which it is a party (including requiring the relevant Project Co Parties to make such provision and to require other Project Co Parties to make such provision) to ensure that Contracting Authority shall be in a position to exercise its rights, and Project Co shall be in a position to perform its obligations, under this Section 39.

39.7 Transitional Arrangements

- (a) On the termination of this Project Agreement for any reason, for a reasonable period both before and after any such termination, Project Co shall:
- (i) as soon as practicable remove from the Lands all property belonging to Project Co or any Project Co Party that is not acquired by Contracting Authority pursuant to Section 39.4 or otherwise, and, if Project Co has not done so within 60 days after any Notice from Contracting Authority requiring it to do so, Contracting Authority may, without being responsible for any loss, damage, costs or expenses, remove and sell any such property and shall hold any proceeds, less all costs incurred to the credit of Project Co;
 - (ii) forthwith deliver to the Contracting Authority Representative:
 - (A) all keys to, and any pass cards and other devices used to gain access to any part of the New Metrolinx Infrastructure; and
 - (B) to the extent transferable and without prejudice to Contracting Authority's rights pursuant to Section 41, any copyright licences for any computer programs, or licences to use the same, used in connection with the operation of the New Metrolinx Infrastructure; and
 - (iii) as soon as practicable vacate the Lands and shall leave the Lands and the New Metrolinx Infrastructure in a safe, clean and orderly condition.

39.8 Termination upon Aforesaid Transfer

- (a) On completion of Project Co's obligations pursuant to this Section 39, this Project Agreement shall terminate and, except as provided in Section 39.9, all rights and obligations of Contracting Authority and Project Co under this Project Agreement shall cease and be of no further force and effect.

39.9 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, 4.11, 4.12, 4.14, 6, 7, 8, 11.18, 11.19, 11.20, 17.2, 18.1, 18.2(b), 18.3(f), 18.4(d), 18.5(c), 18.6(c), 18.7(c), 22.6, 25.13, 27, 28, 36.5, 37.3, 38.4, 38.5, 39, 40, 41 (with the exception of 41.4(b)), 42, 43, 44.3, 45, 46, 47, 48, 50.3, 51.1, 54.4, 54.8, 54.9,

54.10, 54.11, 54.12 of this Project Agreement, Schedule 7 – Warranty Letter of Credit, Schedule 14 – Outline Commissioning Program and Handover, Schedule 21 – Liquidated Damages and Construction Enforcement Regime, Schedule 23 – Compensation on Termination, Schedule 32 – Financial Model, Sections 1.2 – 1.8 of Schedule 26 – Record Provisions, Schedule 27 – Dispute Resolution Procedure, Sections 2.1 – 2.6 and 3.2-3.9 of Schedule 24 – Intellectual Property, 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 38.5. For clarity, any termination of this Project Agreement shall be without prejudice to, and shall not affect, the Performance Guarantee of Construction Guarantor, which shall survive the termination of this Project Agreement, including termination on the Expiry Date pursuant to Section 38.5, in respect of any and all of such surviving provisions of the Project Agreement.

40. COMPENSATION ON TERMINATION

40.1 Compensation on Termination

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

40.2 Full and Final Settlement

- (a) Except as otherwise provided in Section 40.2(b), any compensation paid pursuant to this Section 40, including pursuant to Schedule 23 – Compensation on Termination in the total amount owing thereunder, shall be in full and final settlement of any claims, demands and proceedings of Project Co and Contracting Authority, and each shall be released from all liability to the other in relation to any breaches or other events leading to such termination of this Project Agreement, and the circumstances leading to such breach or termination, and Project Co and Contracting Authority shall be precluded from exercising all other rights and remedies in respect of any such breach or termination whether in contract, tort, restitution, statute, at common law or otherwise.
- (b) Section 40.2(a) shall be without prejudice to:
- (i) any liability of either Party to the other, including under the indemnities contained in this Project Agreement, that arose prior to the Termination Date (but not from the termination itself or the events leading to such termination) to the extent such liability has not already been set-off pursuant to Section 4.11 or taken into account pursuant to Schedule 23 – Compensation on Termination in determining or agreeing upon the Contracting Authority Default Termination Sum, Non-Default Termination Sum, Project Co Default Termination Sum or any other termination sum, as the case may be; and

- (ii) any liabilities arising under or in respect of any breach by either Party of their obligations under Section 39.9 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.

41. INTELLECTUAL PROPERTY

41.1 Ownership of Intellectual Property

- (a) Subject to Section 41.3(a), the Ownership of Intellectual Property shall be as set out in Schedule 24 – Intellectual Property. Project Co and Contracting Authority shall each comply with the requirements of Schedule 24 – Intellectual Property.

41.2 Licenses to Intellectual Property

- (a) Schedule 24 – Intellectual Property sets out the terms on which Intellectual Property used or supplied in connection with the Project will be licenced.

41.3 Representation and Warranty

- (a) Project Co represents, warrants and covenants to Contracting Authority that:
 - (i) Project Co has and shall have the full and unencumbered right to provide all rights and Licenses granted to Contracting Authority in this Project Agreement and to make all assignments of Intellectual Property as contemplated in this Project Agreement and to otherwise fully comply with the terms and requirements of Schedule 24 – Intellectual Property and its obligations therein;
 - (ii) any Intellectual Property licenses to Contracting Authority pursuant to this Project Agreement does not and shall not infringe, and is not and shall not be misappropriation of, any third party Intellectual Property rights;
 - (iii) as of Commercial Close:
 - (A) Project Co has not received any alleged infringement or misappropriation notices from third parties regarding any such Intellectual Property; and
 - (B) no fact is known to Project Co (including in respect of any actual, pending or threatened disputes, claims, suits, actions or proceedings or any other circumstance or event) that will, or could reasonably, effect, limit or prevent Project Co from fully complying with this Section 41.3(a).

41.4 Jointly Developed Materials

- (a) To the extent any data, documents, drawings, reports, plans, software, formulae, calculations or designs or any other materials or Intellectual Property are developed jointly by,
 - (i) Project Co or any Subcontractor and Contracting Authority to the exclusion of any other party pursuant to this Project Agreement or in relation to the New Metrolinx

Infrastructure, the Metrolinx Lands or Works (the “**Contracting Authority Jointly Developed Materials**”); or

- (ii) Project Co or any Subcontractor and the City of Toronto to the exclusion of any other party in relation to the New Municipal Infrastructure that will be owned by the City of Toronto (the “**Municipal Jointly Developed Materials**”).

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

- (iii) Contracting Authority shall be the sole and exclusive owner of all right, title and interest in and to the Contracting Authority Jointly Developed Materials, any Intellectual Property associated therewith and any and all Modifications thereto and Project Co shall, at the request of Contracting Authority, execute such further agreements and cause the Subcontractors to execute any and all assignments, waivers of moral rights and other documents as may be reasonably required to fulfill the intent of this provision; and
 - (iv) the City of Toronto shall be the sole and exclusive owner of all right, title and interest in and to the Municipal Jointly Developed Materials, any Intellectual Property associated therewith and any and all Modifications thereto and that Project Co shall, at the request of the City of Toronto, execute such further agreements and cause the Subcontractors to execute any and all assignments, waivers of moral rights and other documents as may be reasonably required to fulfill the intent of this provision.
- (b) Contracting Authority hereby grants Project Co a royalty free, non-exclusive and non-transferable licence, with a right to grant sub-licences to each Subcontractor, to use the Contracting Authority Jointly Developed Materials during the Project Term for the sole purposes of Project Co or any Subcontractor performing its obligations under this Project Agreement or its Subcontract, as applicable. For clarity, the licence granted to Project Co in accordance with this Section 41.4(b) shall not extend to any Municipal Jointly Developed Materials.
 - (c) Upon termination of this Project Agreement, all rights and licences whatsoever granted to Project Co in the Jointly Developed Materials shall automatically terminate, and Project Co shall return any and all Jointly Developed Materials in the custody or possession of Project Co to,
 - (i) Contracting Authority, in the case of the Contracting Authority Jointly Developed Materials; and
 - (ii) the City of Toronto, in the case of the Municipal Jointly Developed Materials.
 - (d) In the event of any inconsistency between this Section 41.4 and any provision of Schedule 24 – Intellectual Property, the wording of this Section 41.4 shall prevail.

41.5 Maintenance of Data

- (a) To the extent that any of the data, materials and documents referred to in this Section 41 or Schedule 24 – Intellectual Property are generated by, or maintained on, a computer or similar system, Project Co shall procure for the benefit of Contracting Authority, either at no charge or at the lowest reasonable fee, the grant of a licence or sub-licence for any relevant software to enable

Contracting Authority or its nominee to access and otherwise Use (subject to the payment by Contracting Authority of any relevant fee) such data, materials and documents in accordance with rights granted pursuant to Schedule 24 – Intellectual Property.

- (b) For the purposes of Section 41.5(a), “Use” has the meaning set out in Schedule 24 – Intellectual Property, and includes the Limited Modification Rights.
- (c) Without limiting the obligations of Project Co under Section 41.5(a), Project Co shall ensure the back-up and storage in safe custody of the data, materials and documents referred to in this Section 41 in accordance with Good Industry Practice. Project Co shall submit to the Contracting Authority Representative Project Co’s proposals for the back-up and storage in safe custody of such data, materials and documents and Contracting Authority shall be entitled to object if the same is not in accordance with Good Industry Practice. Project Co shall comply, and shall cause all Project Co Parties to comply, with all procedures to which the Contracting Authority Representative has not objected. Project Co may vary its procedures for such back-up and storage subject to submitting its proposals for change to the Contracting Authority Representative, who shall be entitled to object on the basis set out above. Any Disputes in connection with the provisions of this Section 41.5(c) may be referred for resolution in accordance with Schedule 27 – Dispute Resolution Procedure with reference to Good Industry Practice.

41.6 Contracting Authority Trade-Marks

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

41.7 Confidential Information

- (a) It is expressly acknowledged and agreed that nothing in this Section 41 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.

41.8 Government Use of Documents

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

41.9 Restrictions

- (a) The Parties hereby agree that either Party may use the Project Know-How for any purpose, provided, however, that neither Project Co nor any Subcontractor shall use the Project Know-How to the extent that such Project Know-How incorporates, references or is otherwise based on the Project Data, the Intellectual Property Rights, the Jointly Developed Materials, the Intellectual Property of Contracting Authority, the Intellectual Property of any Contracting Authority Party or any third party provided by Contracting Authority, the Confidential Information of Contracting Authority, or the Confidential Information of any Contracting Authority Party or any third party provided by Contracting Authority, including the Output Specifications unless such use is otherwise permitted pursuant to this Project Agreement in order to enable Project Co and the Project Co Parties to meet Project Co's obligations under this Project Agreement.
- (b) Project Co hereby covenants and agrees that it will not make any commercial use, including use in any other request for proposal or similar procurement process, of the Project Data, the Intellectual Property Rights, the Jointly Developed Materials, the Intellectual Property of Contracting Authority, the Intellectual Property of any Contracting Authority Party or any third party provided by Contracting Authority, the Confidential Information of Contracting Authority, or the Confidential Information of any Contracting Authority Party or any third party provided by Contracting Authority, including the Output Specifications, or any other drawings, reports, documents, plans, formulae, calculations, manuals, or other data that was created specifically for the Project or was based upon the Project Data, the Intellectual Property Rights, the Jointly Developed Materials, the Intellectual Property of Contracting Authority, the Intellectual Property of any Contracting Authority Party provided by Contracting Authority, the Confidential Information of Contracting Authority, or the Confidential Information of any Contracting Authority Party provided by Contracting Authority, including the Output Specifications.
- (c) Nothing in this Section 41.9 shall be deemed to grant to any party (including any Subcontractor or any personnel thereof) any right or license in respect of any other party's or other persons' Intellectual Property.

42. CONFIDENTIALITY**42.1 Disclosure**

- (a) Subject to Sections 42.1(b), 42.1(c) and 42.2, but notwithstanding anything else in this Project Agreement to the contrary, Project Co acknowledges and agrees that Contracting Authority has a right to disclose or publish (including on websites) this Project Agreement, any or all terms hereof, including any or all contractual submissions and other records kept in accordance with this Project Agreement, any information related to the performance of Project Co (or any Project Co Party) or any information derived from this Project Agreement or the information related to the performance of Project Co (or any Project Co Party) as each of IO and Metrolinx, in their sole discretion, may consider appropriate. In exercising their discretion, each of IO and Metrolinx will be guided by the principles set out in Sections 42.1(b) and 42.1(c).
- (b) Contracting Authority will not disclose portions of this Project Agreement, any terms hereof, including any contractual submissions or other records kept in accordance with this Project Agreement, any information related to the performance of Project Co (or any Project Co Party) or

any information derived from this Project Agreement or the information related to the performance of Project Co (or any Project Co Party) which would be exempt from disclosure under section 17(1) of FIPPA.

- (c) Notwithstanding Section 42.1(b), but subject to Section 42.2, where a compelling public interest in the disclosure of the information clearly outweighs the public interest in limiting the disclosure of the information supplied by Project Co (or any Project Co Party), Contracting Authority may disclose such information.
- (d) Notwithstanding anything else in this Project Agreement to the contrary, Project Co acknowledges and agrees that this Project Agreement and any or all terms thereof are subject to the Open Data Directive and that the Ontario ministries and agencies are required to disclose or publish certain data in accordance with the Open Data Directive.

42.2 Redaction

- (a) Prior to disclosing or publishing this Project Agreement, any terms hereof, including any contractual submissions or other records kept in accordance with this Project Agreement, any information related to the performance of Project Co (or any Project Co Party) or any information derived from this Project Agreement or the information related to the performance of Project Co (or any Project Co Party), Contracting Authority shall provide to Project Co a redacted version of this Project Agreement or other documents or information to be disclosed or published, on the basis that the information so redacted constitutes information which should not be disclosed pursuant to Section 42.1(b). The Parties acknowledge and agree that the Guaranteed Price, but not any 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 42.1(b) and, accordingly, would be exempt from disclosure under FIPPA, the dispute may be referred for resolution in accordance with Schedule 27 – Dispute Resolution Procedure, and Contracting Authority shall not disclose any information in dispute until a determination is made. Any such determination shall be made with reference to the text and principles of FIPPA.

42.3 Disclosure to Government

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

42.4 Freedom of Information and Protection of Privacy Acts

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

42.5 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 42 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 or agent of the Lenders and the Lenders' Agent, 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 Works 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 Contracting Authority may use the Confidential Information of Project Co for purposes not specific to the Project, but for other general governmental purposes, such as development of the Province's alternate procurement and financing policies and framework. Contracting Authority will advise Project Co prior to using any Confidential Information of Project Co for non-Project purposes.
- (d) Subject to the foregoing, neither Party shall use, or directly or indirectly cause, authorize or permit any other person to use, any Confidential Information of the other Party except for the purposes of this Project Agreement, as permitted by this Project Agreement or as authorized by the disclosing Party in writing.

- (e) Each Party shall,
- (i) protect all Confidential Information of the disclosing Party with the same degree of care as it uses to prevent the unauthorized use, disclosure, publication, or dissemination of its own confidential information of a similar nature or character, but in no event with less than a reasonable degree of care;
 - (ii) if legally compelled to disclose any Confidential Information,
 - (A) provide the disclosing Party with prompt Notice to that effect to allow the disclosing Party to seek any appropriate remedies and cooperate with the disclosing Party and its legal counsel; and
 - (B) disclose only that portion of the Confidential Information that it is legally required to disclose; and
 - (iii) provide Confidential Information to the disclosing Party upon demand by the disclosing Party.

Section 42.5(e)(iii) shall not apply to Confidential Information in relation to which a Party has been provided a licence pursuant to Schedule 24 – Intellectual Property provided that the use of such Confidential Information is in accordance with Schedule 24 – Intellectual Property.

- (f) Without limiting the generality of this Section 42.5, Project Co shall comply with the document control and security protocol submitted by Project Co in accordance with Schedule 10 – Review Procedure; such protocol shall prescribe limitations on the use, disclosure and storage of the Project Agreement and any other Confidential Information specified by Contracting Authority (the “**Document Control and Security Protocol**”). The Document Control and Security Protocol shall be the first document submitted by Project Co pursuant to Schedule 10 – Review Procedure and, in any event, shall be submitted within five Business Days following Financial Close.

42.6 Exceptions

- (a) Information of a Party (the “**Proprietor**”), other than Government Sensitive Information and other than Personal Information, will not be considered to be Confidential Information in the following circumstances:
- (i) the Proprietor advises the other Party to whom the information has been disclosed (the “**Confidant**”) that the information is not required to be treated as Confidential Information;
 - (ii) the information is as of the 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 Contracting Authority upon a termination of this Project Agreement, pursuant to Section 38 or is otherwise required by Contracting Authority for the purposes of performing (or having performed) the Works, including the design or construction of the New Metrolinx Infrastructure, or any other operations or services the same as, or similar to, the Works; or
- (ix) the information would not be exempt from disclosure under FIPPA.

42.7 Survival of Confidentiality

- (a) The obligations in Section 42.1 to Section 42.6 will cease on the date that is three years after the Termination Date and accordingly shall survive the termination of the Project Agreement.

42.8 Confidentiality of Intellectual Property

- (a) Nothing in this Section 42 shall prevent Contracting Authority from exercising any right granted to Contracting Authority pursuant to Schedule 24 – Intellectual Property. Contracting Authority shall have the right to disclose Confidential Information of Project Co Parties when exercising the rights granted pursuant to Schedule 24 – Intellectual Property in accordance therewith.

43. PERSONAL INFORMATION

43.1 General

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

Personal Information or otherwise permit access to or make Personal Information available to any person except as expressly permitted or instructed by Contracting Authority.

- (c) Project Co shall, and shall require each Project Co Party to, at all times treat Personal Information as strictly confidential and shall comply with all applicable requirements of the Output Specifications and the requirements of Applicable Law, including *FIPPA*, the *Personal Information Protection and Electronic Documents Act* (Canada), and any other Canadian federal or provincial legislation now in force or that may in the future come into force governing the collection, use, disclosure and protection of personal information applicable to Project Co, each Project Co Party or to the Works.
- (d) Project Co shall take all necessary and appropriate action, and shall require each Project Co Party to take all necessary and appropriate action, against any person who fails to comply with this Section 43.1.
- (e) Project Co shall allow Contracting Authority on reasonable Notice to inspect any Personal Information in the custody or possession of Project Co or a Project Co Party and to audit Project Co and each Project Co Party's compliance with this Section 43 including the measures used by Project Co and each Project Co Party to protect Personal Information, and otherwise promptly and properly respond to all reasonable inquiries of Contracting Authority with respect to Project Co or each Project Co Party's handling of Personal Information.
- (f) Project Co shall not subcontract or delegate to any third party any of the Works that involve or may involve the collection, use, storage, processing or any other handling of Personal Information without the express consent of Contracting Authority and without obtaining written contractual commitments of such third party substantially the same as those of this Section 43.

43.2 Protection of Personal Information

- (a) Project Co shall implement and use, and shall require each Project Co Party to implement and use, appropriate technical, organizational and physical security measures to protect Personal Information against loss, theft and unauthorized access, disclosure, copying, use, modification or disposal, and shall otherwise ensure that Project Co, the Project Co Parties, and its and their staff shall protect, secure and keep confidential any Personal Information.
- (b) Project Co shall and shall cause each Project Co Party to restrict access to Personal Information to only those authorized employees and permitted Project Co Parties that require access to such Personal Information to fulfil their job requirements in connection with the Works and that are subject to obligations of confidentiality and Personal Information protection no less stringent than those of this Section 43.
- (c) Upon termination of this Project Agreement or upon request of Contracting Authority, whichever comes first, Project Co shall immediately cease all use of and return to Contracting Authority or, at the direction of Contracting Authority, dispose of, destroy or render permanently anonymous all Personal Information, in each case using appropriate technical, organizational and physical security measures to protect Personal Information against loss, theft and unauthorized access, disclosure, copying, use or modification.

- (d) To the extent that any of the Works involve or may involve destruction or disposal of Personal Information, including any disposal or destruction pursuant to Section 43.2(c), such activities shall include, at a minimum, irreversible destruction, shredding or pulverizing of all documents, records or media containing Personal Information to a size or state that ensures that the document, record or other medium is permanently destroyed and that no information contained therein can be read, reconstructed or deciphered.
- (e) Project Co shall immediately inform Contracting Authority of any actual or suspected loss, theft or accidental or unauthorized access, disclosure, copying, use, modification or destruction of Personal Information by Project Co or any Project Co Party or any other breach of this Section 43.
- (f) Contracting Authority may from time to time require that Project Co and any Project Co Party or member of its or their staff execute and deliver within two Business Days after such request an agreement satisfactory to Contracting Authority, acting reasonably, requiring such person to keep Personal Information confidential.

43.3 Personal Information

- (a) Project Co shall provide, and shall cause each Project Co Party to provide, in a timely manner, all necessary and reasonable information and co-operation to Contracting Authority and to any regulatory or other governmental bodies or authorities with jurisdiction or oversight over Applicable Law governing the collection, use, disclosure and protection of personal information in connection with any investigations, audits or inquiries made by any such bodies or authorities under such legislation.
- (b) To the extent of any conflict or inconsistency between this Section 43 and any other provision of the Project Agreement, this Section 43 shall prevail.
- (c) The obligations in this Section 44.0 shall survive the termination of this Project Agreement.

44. INSURANCE AND PERFORMANCE SECURITY

44.1 General Requirements

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

44.2 No Relief from Liabilities and Obligations

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

44.3 Performance Guarantee of Construction Guarantor

- (a) At all times during the Project Term and, in respect of the provisions described in Section 39.9, following the Project Term, Project Co shall ensure that a valid and binding Performance Guarantee of the Construction Guarantor in favour of Contracting Authority from the

Construction Guarantor (or a party of comparable financial strength, capacity and stability, as determined by Contracting Authority acting in its sole discretion) and in the form of guarantee attached as Schedule 29 – Form of Performance Guarantee of Construction Guarantor, is in place and enforceable by Contracting Authority.

45. TITLE

45.1 Title

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

46. INDEMNITIES

46.1 Project Co Indemnities to Contracting Authority

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

- (vii) Injurious Affection claims made by third parties,
- in the case of Sections 46.1(a)(i) to 46.1(a)(vi), arising, directly or indirectly, out of, or in consequence of, or involving or relating to, the performance or any breach of this Project Agreement by Project Co or any act or omission of Project Co or any Project Co Party, and in the case of Section 46.1(a)(vii), arising, directly or indirectly, out of, or in consequence of, or involving or relating to, any breach of this Project Agreement by Project Co or any Project Co Party, except to the extent caused, or contributed to, by:
- (viii) the breach of this Project Agreement by Contracting Authority; or
- (ix) in respect of Section 46.1(a)(i), any deliberate or negligent act or omission of Contracting Authority or any Province Person; or
- (x) in respect of Sections 46.1(a)(ii), 46.1(a)(iii), 46.1(a)(iv) or 46.1(a)(v), any act or omission of Contracting Authority or any Province Person.
- (b) Project Co shall indemnify and save harmless Contracting Authority and each of their directors, officers, employees, agents and representatives from and against any and all Direct Losses which may be suffered, sustained, incurred or brought against them as a result of, in respect of, or arising out of any breach of a representation or warranty by Project Co herein.
- (c) Project Co shall indemnify and save harmless Contracting Authority and each of their directors, officers, employees, agents and representatives from and against any and all Direct Losses which may be suffered, sustained, incurred or brought against them as a result of, in respect of, arising out of, or involving or relating to any one or more of the following:
- (i) the performance by Project Co of this Project Agreement not in accordance with or in breach of the requirements of any Permits, Licences, Approvals and Agreements, Applicable Law or requirements of Governmental Authorities, or the failure of Project Co to obtain all necessary Project Co Permits, Licences, Approvals and Agreements in accordance with this Project Agreement;
- (ii) any Project Co On-Site Contamination that is Project Co Caused Contamination, any Project Co Off-Site Migrating Contamination or any Worsened Contamination; or
- (iii) the provision of assistance by Contracting Authority to Project Co pursuant to Section 11.15(d),
- except to the extent that such Direct Losses are caused, or contributed to, by the breach of this Project Agreement by Contracting Authority or by any act or omission of Contracting Authority or any Contracting Authority Party.
- (d) Without prejudice to Contracting Authority's rights under Section 36 and any other rights under this Project Agreement, if Contracting Authority exercises its step-in rights under the Construction Contractor's Direct Agreement, Project Co shall indemnify Contracting Authority for all obligations of Project Co assumed by Contracting Authority under the Design and Construction Contract, as the case may be, and for all reasonable costs and expenses incurred by Contracting Authority in relation to the exercise of Contracting Authority's rights.

- (e) Project Co shall indemnify Contracting Authority for damages suffered or incurred on account of (i) any payment not duly made by Project Co pursuant to the terms of this Project Agreement on the due date; (ii) any overpayment to or underpayment by Project Co; or (iii) an amount determined as payable by Project Co to Contracting Authority under Schedule 27 – Dispute Resolution Procedure, by payment of an amount equal to the Payment Compensation Amount calculated from day to day at a rate per annum from the day after the date on which payment was due, the day on which overpayment was made by Contracting Authority, or from the date identified (if any) applicable to an amount determined as payable by Project Co to Contracting Authority under Schedule 27 – Dispute Resolution Procedure, up to and including the date of payment.
- (f) Project Co shall defend, in accordance with the procedures of Section 46.3, and indemnify and save harmless Contracting Authority and the Province Persons, and any Governmental Authority and each of their respective directors, officers, employees, agents and representatives from and against any and all Direct Losses which may be suffered, sustained, incurred or brought against them as a result of, in respect of, or arising out of any one or more of the following:
- (i) any breach of Section 41.3;
 - (ii) any claim, suit, action or proceeding by a person alleging that (x) any Intellectual Property licensed or assigned to and used by Contracting Authority, any Province Person or any Governmental Authority pursuant to this Project Agreement; or (y) any Intellectual Property or other materials used by Project Co or any Project Co Party or any Subcontractor in the performance of the Works and the Project, infringes or misappropriates any Intellectual Property rights of that person, other than where such claim, suit, action or proceeding is directly caused by,
 - (A) the use of such Intellectual Property by Contracting Authority not in accordance with this Project Agreement or the applicable Technical Information; or
 - (B) the use of such Intellectual Property by Contracting Authority in combination with other products, software or equipment not supplied by or on behalf of Project Co or the Subcontractors and not authorized by any of them;
 - (iii) any claim, suit, action or proceeding arising out of the alleged infringement or misappropriation of any rights in or to any Project Data or Intellectual Property Rights or the use thereof by Contracting Authority Party, any Province Persons or any Governmental Authority or due to the use of any materials, machinery or equipment in connection with the Works infringes any rights in or to any Intellectual Property of a third party unless such infringement has arisen out of the use of any Project Data or Intellectual Property Rights by Contracting Authority otherwise than in accordance with the terms of this Project Agreement or the applicable Technical Information; and
 - (iv) any claim, suit, action or proceeding by any Licensor alleging that Project Co or any Project Co Party or any Subcontractor has used any Contracting Authority Supplied Third

Party Intellectual Property in breach of Sections 3.1(a)(ii), 3.1(b), 3.1(c) or 3.1(d) of Schedule 24 – Intellectual Property.

- (g) Without limiting and in addition to the obligations in Section 46.1(f), if, as a result of a claim under Section 46.1(f)(i) or Section 46.1(f)(ii), all or any part of any Intellectual Property licensed or assigned to and used by Contracting Authority pursuant to this Project Agreement; or any Intellectual Property or other materials used by Project Co or any Subcontractor in the performance of the Works and the Project (any or all of the foregoing the “**Infringing Material**”) becomes, or in Project Co’s opinion is likely to be, enjoined from use, Project Co will:
- (i) give Notice to Contracting Authority of the same; and
 - (ii) at its sole option and expense, either:
 - (A) procure for itself and Contracting Authority, to the extent required, the right to continue to use the infringing element or component of the Infringing Material as contemplated in this Project Agreement; or
 - (B) modify the infringing element or component of the Infringing Material so that it is non-infringing without materially affecting the quality, performance and functionality of such infringing element or component, or replace the infringing element or component with a substitute of materially equivalent quality, performance and functionality.

46.2 Contracting Authority Indemnities to Project Co

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

caused, or contributed to, by the breach of this Project Agreement by Project Co or by any act or omission of Project Co or any Project Co Party,

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

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

46.3 Conduct of Claims

- (a) This Section 46.3 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 46, the Beneficiary shall give written Notice to the Indemnifier as soon as reasonably practicable and in any event within 10 Business Days after receipt of the same. Such Notice shall specify with reasonable particularity, to the extent that information is available, the factual basis for the claim and the amount of the claim.
- (c) Subject to Sections 46.3(d), 46.3(e) and 46.3(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 46.3 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 46.3(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 following the Indemnifier's receipt of the Notice from the Beneficiary under Section 46.3(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 46.3(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 46.3(c) applies. For greater certainty, Project Co acknowledges and agrees that where Contracting Authority is the Beneficiary, Contracting Authority may retain or take over such conduct in any matter involving Personal Information or any matter involving public policy. On receipt of such Notice the Indemnifier shall promptly take all steps necessary to transfer the conduct of such claim to the

Beneficiary, and shall provide to the Beneficiary all relevant documentation and all reasonable cooperation, access and assistance for the purposes of considering and resisting such claim. If the Beneficiary gives any Notice pursuant to this Section 46.3(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 46.3 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.

46.4 Mitigation – Indemnity Claims

- (a) For greater certainty, Section 54.4 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.

47. LIMITS ON LIABILITY

47.1 Indirect Losses

- (a) Subject to Section 47.1(b) and without prejudice to the Parties’ rights in respect of payments provided for herein, the indemnities under this Project Agreement shall not apply and there shall be no right to claim damages for breach of this Project Agreement, in tort or on any other basis whatsoever, to the extent that any loss claimed by either Party is:
- (i) for punitive, exemplary or aggravated damages;
 - (ii) for loss of profits, loss of use, loss of production, loss of business or loss of business opportunity;

- (iii) a claim for consequential loss or for indirect loss of any nature suffered or allegedly suffered by either Party; or
- (iv) for damages sustained by Contracting Authority in respect of delay claims arising from delay to a subsequent project that is managed or controlled by Contracting Authority that is caused by Project Co failing to achieve Substantial Completion by the Scheduled Substantial Completion Date,

(collectively, “**Indirect Losses**”).

- (b) With respect to the indemnity in Section 46.1(a)(i) only, the exceptions in Sections 47.1(a)(ii) and 47.1(a)(iii) shall not apply as a result of, or in relation to, Contracting Authority’s loss of use of the New Metrolinx Infrastructure, the New Third Party Infrastructure and/or the Existing Infrastructure or a portion thereof, which for the purposes of Section 46.1(a)(i), shall be Direct Losses.

47.2 No Liability in Tort

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

47.3 Sole Remedy

- (a) Nothing in this Project Agreement shall prevent or restrict the right of Contracting Authority to seek injunctive relief or a decree of specific performance or other discretionary remedies of a court of competent jurisdiction.
- (b) Notwithstanding any other provision of this Project Agreement, and except to the extent recovered under any of the insurances required pursuant to Schedule 25 – Insurance and Performance Security Requirements, neither Party shall be entitled to recover compensation or make a claim under this Project Agreement, or any other agreement in relation to the Project, in respect of any loss that it has incurred (or any failure of the other Party) to the extent that the Party has already been compensated in respect of that loss or failure pursuant to this Project Agreement, or otherwise.
- (c) The following shall apply with respect to the deductions and liquidated damages set out in the Project Agreement:
 - (i) the liquidated damages paid by Project Co pursuant to Section 2.3(c) shall be Contracting Authority’s sole remedy for Project Co’s failure to deliver to Contracting Authority any of the documents referred to in Section 1 of Schedule 2 – Completion Documents by the Financial Close Target Date (other than as a direct result of a breach by Contracting Authority of its obligations under Section 2.3(b)(ii)) if Contracting Authority does not waive such requirement;

- (ii) the liquidated damages paid by Project Co pursuant to Section 3 of Schedule 21 – Liquidated Damages and Construction Enforcement Regime shall be the sole remedy of Contracting Authority and Province Persons for Specified Costs that may be claimed by Contracting Authority and Province Persons as a result of Project Co failing to achieve the requirements for the Substantial Completion Certificate and a Substantial Completion Certificate not being issued on or before the Substantial Completion LD Commencement Date, but shall not be Contracting Authority’s sole remedy with respect to amounts that are not Specified Costs in connection with Project Co failing to achieve the requirements for the Substantial Completion Certificate and a Substantial Completion Certificate not being issued on or before the Substantial Completion LD Commencement Date; and
- (iii) the amounts deducted from the Substantial Completion Payment pursuant to Section 4 of Schedule 21 – Liquidated Damages and Construction Enforcement Regime shall not be Contracting Authority’s sole remedy in respect of Project Co’s failure to perform its obligations in accordance with the Project Agreement.

47.4 Maximum Liability

- (a) Subject to Section 47.4(b), the maximum aggregate liability of each Party in respect of all claims under Section 46 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 46.1(a)(i) shall not exceed [REDACTED]. This limit shall be index linked and shall be exclusive of any insurance or performance security proceeds received or which will be received pursuant to 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 47.4 shall restrict, limit, prejudice or in any other way impair the rights and/or remedies of the Parties under any other provision of this Project Agreement.
- (d) For clarity, nothing in this Section 47.4 shall restrict or limit, or establish any maximum liability, in respect of any amount payable, by Project Co to Contracting Authority, pursuant to the Construction Enforcement Regime set out in Section 3 of Schedule 21 - Liquidated Damages and Construction Enforcement Regime.

48. DISPUTE RESOLUTION PROCEDURE

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

49. ASSIGNMENT, SUBCONTRACTING AND CHANGES IN CONTROL**49.1 Project Co Assignment**

- (a) Project Co shall not sell, assign, transfer, charge, mortgage, encumber, dispose of or otherwise alienate all or any part of any interest, whether legal or beneficial, in this Project Agreement or any Ancillary Document without the prior written consent of Contracting Authority, which consent may be withheld in the sole discretion of Contracting Authority, provided however that no assignment, transfer, charge, disposition or other alienation shall be permitted to a person where that person or its Affiliate is a Restricted Person or a person whose standing or activities may compromise (i) Contracting Authority's reputation or integrity, or (ii) the nature of the public transit system in any one or more of the Municipalities or the Province of Ontario, so as to affect public confidence in the public transit system in any one or more of the Municipalities or the Province of Ontario or the Project.
- (b) Section 49.1(a) shall not apply to the grant of any security for any loan made to Project Co under the Lending Agreements provided that any grantee of such security shall enter into the Lenders' Direct Agreement in relation to the exercise of its rights, if Contracting Authority so requires.

49.2 Contracting Authority Assignment

- (a) Contracting Authority may assign, transfer, dispose of or otherwise alienate any interest in this Project Agreement or any agreement in connection with this Project Agreement to which Project Co and Contracting Authority are parties:
- (i) to the Province;
 - (ii) as may be required to comply with Applicable Law;
 - (iii) to any minister of the Province;
 - (iv) to an agency of the Province having the legal capacity, power, authority and ability to become a party to and to perform the obligations of Contracting Authority under this Project Agreement provided that such person confirms in writing to Project Co that it will perform all of Contracting Authority's obligations hereunder and under the other Project Documents to which Contracting Authority is a party in respect of the period from and after the assignment; and
 - (v) in circumstances other than those described in Sections 49.2(a)(i) to 49.2(a)(iv) with the prior written consent of Project Co; provided that the person to whom any such assignment, transfer, disposition or other alienation is made has the capacity to perform, and confirms in writing to Project Co that it will perform all the obligations of Contracting Authority hereunder and under any agreement in connection with this Project Agreement to which Project Co and Contracting Authority are parties in respect of the period from and after the assignment.
- (b) Contracting Authority shall not be released of any of its obligations under this Project Agreement except upon an assignment, transfer, disposition or other alienation of their interest in this Project Agreement in accordance with this Section 49.2.

49.3 Subcontracting

- (a) Project Co shall not subcontract any interest in this Project Agreement or the Design and Construction Contract, and shall not permit the Construction Contractor to subcontract any interest in the Design and Construction Contract, to a Restricted Person, or any Affiliate thereof, or a person whose standing or activities may compromise (i) Contracting Authority's reputation or integrity, or (ii) the nature of the public transit system in any one or more of the Municipalities or the Province of Ontario so as to affect public confidence in the public transit system in one or more of the Municipalities or the Province of Ontario or the Project.
- (b) Project Co shall not terminate, agree to the termination of or replace the Construction Contractor unless Project Co has complied with Sections 8.2(a), 49.3(c) and 49.3(d) or received the prior written consent of Contracting Authority.
- (c) Subject to Section 49.3(d), if the Design and Construction Contract shall at any time lapse, terminate or otherwise cease to be in full force and effect, whether by reason of expiry, default or otherwise, with the effect that the Construction Contractor shall cease to act in relation to the Project, Project Co shall forthwith appoint a replacement, subject to Contracting Authority's prior written consent, acting reasonably, as to the suitability of the replacement.
- (d) It is a condition of replacement of the Construction Contractor, and Project Co shall require, that any replacement enter into a contract upon the same or substantially similar terms as the person so replaced and into a direct agreement on the same terms as the Construction Contractor's Direct Agreement entered into by the person so replaced, unless any material variations are approved by Contracting Authority, acting reasonably.

49.4 Changes in Ownership and Control

- (a) No Restricted Person or a person whose standing or activities are inconsistent with the Province's reputation or integrity shall be permitted to have at any time or acquire, Direct or Indirect Power or Control over any member of the Project Co Group in relation to the decisions, management, actions or policies of Project Co or in relation to the operation, management and ownership of the Project.
- (b) No Change in Ownership of Project Co, or of any Control Party, shall be permitted:
 - (i) where the person acquiring the ownership interest is a Restricted Person or a person whose standing or activities may compromise (A) Contracting Authority's reputation or integrity, or (B) the nature of the public transit system in any one or more of the Municipalities or the Province of Ontario so as to affect public confidence in the public transit system in one or more of the Municipalities or the Province of Ontario or the Project; or
 - (ii) if such Change in Ownership would have a material adverse effect on the performance of the Works or the Governmental Activities.
- (c) In the event that a person having Direct or Indirect Power or Control over any member of the Project Co Group in relation to the decisions, management, actions or policies of Project Co or in

relation to the operation, management and ownership of the Project becomes a Restricted Person, Contracting Authority may:

- (i) in the case of an individual who becomes a Restricted Person, require that such Restricted Person be divested of his or her Direct or Indirect Power or Control; or
- (ii) in any other circumstance, require a Change in Ownership so that the Restricted Person shall be divested of its Direct or Indirect Power or Control,

in each case, on such terms as are satisfactory to Contracting Authority's, in its discretion.

- (d) Project Co shall provide Notice to Contracting Authority of any Change in Ownership of Project Co or of any Control Party, as the case may be, that is not a Change in Control within five Business Days after such Change in Ownership, and such Notice shall include a statement identifying all persons with an ownership interest in Project Co or the relevant Control Party, as the case may be, and their respective holdings of such ownership interests, in each case prior to and following such Change in Ownership.
- (e) Subject to Sections 49.4(a), 49.4(b), 49.4(c) and 49.4(d), no Change in Control of Project Co, or of any Control Party, shall be permitted without the prior written consent of Contracting Authority.
- (f) Project Co shall provide Notice to Contracting Authority of any proposed Change in Control of Project Co or of any Control Party, as the case may be, not less than 20 Business Days prior to such proposed Change in Control, and such Notice shall include:
 - (i) a statement identifying all persons with an ownership interest in Project Co or the relevant Control Party, as the case may be, and their respective holdings of such ownership interests in each case prior to and following any such proposed Change in Control; and
 - (ii) as applicable, the legal name, registered address, directors and officers of, and nature of the business and activities carried on by, the person who would acquire control over Project Co or the relevant Control Party pursuant to such Change in Control.

Following the delivery to Contracting Authority of the Notice referred to in this Section 49.4(f), Project Co shall provide Contracting Authority with such other information pertaining to the proposed Change in Control as Contracting Authority may reasonably request.

- (g) Upon request by Project Co and delivery of the information required by Contracting Authority, Contracting Authority shall advise Project Co whether the person described in such particulars is a Restricted Person or a person whose standing or activities may compromise (i) Contracting Authority's reputation or integrity, or (ii) the nature of the public transit system in any one or more of the Municipalities or the Province of Ontario so as to affect public confidence in the public transit system in one or more of the Municipalities or the Province of Ontario or the Project.
- (h) Notwithstanding the definition of "Control Parties" set out Schedule 1 – Definitions and Interpretation, this Section 49.4 shall not apply to a Change in Ownership or Change in Control of

persons whose equity securities or units evidencing ownership or any other ownership interests are listed on a recognized stock exchange

- (i) Section 49.4(d) shall not apply to a Change in Ownership of a Control Party that arises from a change in the shareholdings of such Control Party or an Affiliate of such Control Party (the “**Relevant Entity**”) owned by an employee of such Relevant Entity, unless such changes individually or in the aggregate determined since the date of this Project Agreement, would result in a Change in Control of Project Co, in which case Section 49.4(f) shall apply.

49.5 Contracting Authority’s Due Diligence

- (a) Project Co shall promptly reimburse Contracting Authority for Contracting Authority’s reasonable due diligence costs (including fees of professional advisors) in connection with any consent required of Contracting Authority pursuant to, or Contracting Authority’s determination of Project Co’s compliance with, Sections 49.1, 49.3 or 49.4, whether or not such consent is granted.

50. PROHIBITED ACTS

50.1 Definition

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

provided that this Section 50.1(a)(i) shall not apply to Project Co or any Project Co Party (or anyone employed by or acting on their behalf) providing consideration to Contracting Authority or any public body in the ordinary course, or as reasonably necessary, to fulfill or comply with the obligations and liabilities of Project Co under this Project Agreement or any other agreement with Contracting Authority or any public body in connection with the Project;

- (ii) entering into this Project Agreement or any other agreement with Contracting Authority or any public body in connection with the Project if a commission or a fee has been paid or has been agreed to be paid by Project Co, or on its behalf or to its knowledge, Contracting Authority or any public body (or anyone employed by or acting on their behalf), or to any family member of such person, unless, before the relevant agreement is entered into, particulars of any such commission or fee have been disclosed in writing to

Contracting Authority, provided that this Section 50.1(a)(ii) shall not apply to a fee or commission paid by Project Co or any Project Co Party (or anyone employed by or acting on their behalf) to Contracting Authority or any public body pursuant to an agreement where such fee or commission is paid in the ordinary course, or as reasonably necessary, to fulfill or comply with the obligations and liabilities of Project Co under this Project Agreement or any other agreement with Contracting Authority or any public body in connection with the Project without contravening the intent of this Section 50;

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

50.2 Remedies

- (a) If Project Co or any Project Co Party (or anyone employed by or acting on their behalf) commits any Prohibited Act, then Contracting Authority shall be entitled to act in accordance with the following:
 - (i) if the Prohibited Act is committed by Project Co or by an employee acting under the direction of a director or officer of Project Co, then Contracting Authority may give written Notice to Project Co and Section 36 shall apply;
 - (ii) if the Prohibited Act is committed by an employee of Project Co acting independently of a direction of a director or officer of Project Co, then Contracting Authority may give written Notice to Project Co and Section 36 shall apply, unless, within 30 days after receipt of such Notice, Project Co terminates the employee's employment and ensures that the relevant part of the Works shall be performed by another person;
 - (iii) if a Prohibited Act is committed by a Project Co Party or by an employee of that Project Co Party not acting independently of a direction of a director or officer of that Project Co Party, then Contracting Authority may give written Notice to Project Co and Section 36 shall apply, unless, within 30 days after receipt of such Notice, Project Co terminates the relevant Subcontract and ensures that the relevant part of the Works shall be performed by another person, where relevant, in accordance with Section 49.3;
 - (iv) if the Prohibited Act is committed by an employee of a Project Co Party acting independently of a direction of a director or officer of that Project Co Party, then Contracting Authority may give Notice to Project Co and Section 36 shall apply, unless, within 30 days after receipt of such Notice, Project Co causes the termination of the employee's employment and ensures that the relevant part of the Works shall be performed by another person; and
 - (v) if the Prohibited Act is committed on behalf of Project Co or a Project Co Party by a person not specified in Sections 50.2(a)(i) to 50.2(a)(iv), then Contracting Authority may give Notice to Project Co and Section 36 shall apply, unless, within 30 days after receipt

of such Notice, Project Co causes the termination of such person's employment or the appointment of their employer and, if necessary, ensures that the relevant part of the Works shall be performed by another person.

- (b) Any Notice of termination under this Section 50.2 shall specify:
- (i) the nature of the Prohibited Act;
 - (ii) the identity of the person whom Contracting Authority believes has committed the Prohibited Act; and
 - (iii) the date of termination in accordance with the applicable provisions of this Project Agreement.
- (c) Without prejudice to its other rights or remedies under this Section 50.2, Contracting Authority shall be entitled to recover from Project Co any Direct Loss sustained in consequence of any breach of this Section 50.

50.3 Permitted Payments

- (a) Nothing contained in this Section 50 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.

50.4 Notification

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

50.5 Replacement of Project Co Party

- (a) Where Project Co is required to replace any Project Co Party pursuant to this Section 50, 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.

51. NOTICES

51.1 Notices to Parties

- (a) All notices, requests, demands, instructions, certificates, consents and other communications (each being a "Notice") required or permitted under this Project Agreement shall be in writing (whether or not "written notice" or "notice in writing" is specifically required by the applicable provision of this Project Agreement) and served by sending the same by registered mail, by hand (in each case with a copy by electronic submission to the Contracting Authority Representative), or by electronic submission as follows:

If to Project Co: [REDACTED]

If to IO: [REDACTED]

If to Metrolinx [REDACTED]

51.2 Notices to Representatives

- (a) In addition to the Notice requirements set out in Section 51.1, where any Notice is to be provided or submitted to the Contracting Authority Representative or the Project Co Representative it shall be provided or submitted by sending the same by registered mail, by hand (in each case with a copy by electronic submission to the Contracting Authority Representative), or by electronic submission as follows:

If to Project Co Representative: [REDACTED]

[REDACTED]

If to the Contracting Authority
Representative:

51.3 Electronic Submission

- (a) Where any Notice is provided or submitted to a Party via electronic submission, an original of the Notice sent via electronic submission shall promptly be sent by regular mail or registered mail. For greater certainty, a Notice given via electronic submission shall not be invalid by reason only of a Party's failure to comply with this Section 51.3.

51.4 Change of Contact Information

- (a) Either Party to this Project Agreement may, from time to time, change any of its contact information set forth in Sections 51.1 or 51.2 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.

51.5 Deemed Receipt of Notices

- (a) Subject to Sections 51.5(b), 51.5(c) and 51.5(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 electronic submission shall be deemed to have been received on the day it is transmitted by electronic submission.
- (b) If the Party giving the Notice knows or ought reasonably to know of difficulties with the postal system which might affect negatively the delivery of mail, any such Notice shall not be mailed but shall be made or given by personal delivery or by electronic submission in accordance with this Section 51.
- (c) If any Notice delivered by hand or transmitted by electronic submission is so delivered or transmitted, as the case may be, either on a day that is not a Business Day or on a Business Day after 4:00 p.m. (recipient's local time), then such Notice shall be deemed to have been received by such recipient on the next Business Day.
- (d) A Notice given by electronic submission shall be deemed to have been received by the recipient on the day it is transmitted only if an electronic submission report (maintained by the sender) indicates that the transmission of such Notice was successful.

51.6 Service on Contracting Authority

- (a) Where any Notice is required to be served on Contracting Authority, the obligation to serve such Notice shall be fulfilled by serving it on Contracting Authority in accordance with the provisions of this Section 51.

52. EMERGENCY MATTERS

52.1 Emergency

- (a) From Financial Close until the completion of the Works, upon the occurrence of an Emergency, Project Co shall comply with the Contractor Site Specific Safety Manual.
- (b) If, in respect of any Emergency, Contracting Authority notifies Project Co that it requires compliance with any additional or overriding procedures as may be determined by Contracting Authority or any other statutory body, then Project Co shall, subject to Schedule 22 – Variation Procedure (if compliance with such procedures constitutes a Variation), comply with such procedures (whether such procedures are specific to the particular Emergency or of general application and on the basis that such procedures shall take precedence to the extent that they overlap with the procedures mentioned in Section 52.1(a)).

53. CONTRACTING AUTHORITY'S DESIGNATE**53.1 Right to Designate**

- (a) At any time and from time to time, the Crown may designate any ministry, branch, agency, division, department or office of the Government of Ontario to carry out administrative responsibility for the rights and obligations of Contracting Authority under this Project Agreement (including review of all documentation submitted by Project Co, a Project Co Representative or a Project Co Party to Contracting Authority for review, approval, comment, evaluation or otherwise as described in this Project Agreement, engagement in discussions, consultations and meetings with Project Co, submission of Notices and documentation to Contracting Authority, issuances of Notices, documentation, Variation Confirmations and related matters) and Project Co may deal exclusively with the designated person in respect of all such matters and is entitled to rely on the actions, directions, requests, Notices, consents, approvals, waivers, and comments relating to the review of documentation and other administrative matters and decisions determined by such designated person from time to time, until the Crown has notified Project Co in writing that such designated person is no longer the person designated by the Crown hereunder and such Notice shall have effect on the later of the date of delivery of such Notice and the date specified in the written Notice. The Crown shall advise Project Co in writing of any designation hereunder. The rights and obligations of the Parties to this Project Agreement shall be in no way affected by reason of any such designation. Project Co acknowledges the right of the Crown to delegate administrative responsibilities hereunder as set forth in this Section 53.1.

54. GENERAL**54.1 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.

54.2 Waiver

- (a) No waiver made or given by a Party under or in connection with this Project Agreement shall be binding or effective unless the waiver is in writing, signed by an authorized representative of the Party giving such waiver, and delivered by such Party to the other Parties. No waiver made with respect to any right, power or remedy in one instance will be deemed to be a waiver with respect to any other instance involving the exercise of such right, power, or remedy or with respect to any other right, power, or remedy. No further waiver in writing is required in order to give effect to the waivers provided for in accordance with the terms of Sections 25.4(k) and 25.12(g).
- (b) Failure by either Party to exercise any of its rights, powers or remedies hereunder or its delay to do so shall not constitute a waiver of those rights, powers or remedies. The single or partial exercise of a right, power or remedy shall not prevent its subsequent exercise or the exercise of any other right, power or remedy.

54.3 Relationship Between the Parties

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

54.4 General Duty to Mitigate

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

54.5 Actual Knowledge

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

54.6 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.

54.7 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 54.7 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.

54.8 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.

54.9 Enurement

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

54.10 Governing Law and Jurisdiction

- (a) This Project Agreement, and each of the documents contemplated by or delivered under or in connection with this Project Agreement, shall be governed by and construed in accordance with the laws of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract, without regard to conflict of laws principles.

- (b) Subject to Schedule 27 – Dispute Resolution Procedure, both Parties hereby irrevocably attorn to the exclusive jurisdiction of the courts of the Province of Ontario and all courts competent to hear appeals therefrom.
- (c) Nothing in this Project Agreement affects the rights, protections and immunities of the Crown under the *Proceedings Against the Crown Act* (Ontario).

54.11 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.

54.12 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.

54.13 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.

54.14 Language of Agreement

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

54.15 Proof of Authority

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

54.16 Counterparts

- (a) This Project Agreement may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all of the Parties shall constitute a full, original and binding agreement for all purposes. Delivery of an executed counterpart by sending a copy by

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

54.17 Province Persons and Contracting Authority Parties as Third Party Beneficiaries

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

54.18 Time is of the Essence

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

54.19 Copyright Notice

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

[SIGNATURE PAGES IMMEDIATELY FOLLOW]

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

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

Per:

[REDACTED]

I have authority to bind the corporation.

METROLINX

Per:

[REDACTED]

Per:

[REDACTED]

We have authority to bind the corporation.

STRABAG SCARBOROUGH PROJECT INC.

Per:

[REDACTED]

Per:

[REDACTED]

We have authority to bind the corporation.

SCHEDULE 1

DEFINITIONS AND INTERPRETATION

1. **Definitions.** In the Project Agreement, unless the context otherwise requires:
 - 1.1 “**20m Tunneling Incentive Event**” has the meaning given in Schedule 35 – Incentive Payments.
 - 1.2 “**Account Trustee**” has the meaning given in Schedule 30 - Insurance Trust Agreement.
 - 1.3 “**Additional Contractor**” means any independent contractor (not being, for the avoidance of doubt, any of the Third Party Contractors or Project Co) or Contracting Authority’s own forces, engaged by Contracting Authority to carry out the Additional Works.
 - 1.4 “**Additional Lands**” has the meaning given in Section 16.7(d) of the Project Agreement.
 - 1.5 “**Additional Lands Request**” has the meaning given in Section 16.7(a) of the Project Agreement.
 - 1.6 “**Additional Noise and Vibration Sensitive Receptor Performance Requirements**” has the meaning given in Schedule 17 – Environmental Obligations.
 - 1.7 “**Additional Works**” means those works or services, (i) in relation to any of the New Metrolinx Infrastructure or in relation to any New Third Party Infrastructure; or (ii) being carried out on the Site or Existing Metrolinx Infrastructure, which are not Works and which are to be carried out by an Additional Contractor, including works or services to be performed either before or after Substantial Completion.
 - 1.8 “**Adjacent Developer**” means a developer of any Adjacent Development.
 - 1.9 “**Adjacent Developments**” means any development works or like activity carried out during the Project Term by or on behalf of any third party adjacent to the Lands, New Metrolinx Infrastructure or New Third Party Infrastructure and which otherwise affects or may potentially affect any part of the Works, the Lands or the New Metrolinx Infrastructure or New Third Party Infrastructure.
 - 1.10 “**Adjudication**” has the meaning given in Schedule 27 – Dispute Resolution Procedure.
 - 1.11 “**Adjudication Dispute**” has the meaning given in Schedule 27 – Dispute Resolution Procedure.
 - 1.12 “**Adjudicator**” has the meaning given in Schedule 27 – Dispute Resolution Procedure.
 - 1.13 “**ADRIC Rules**” has the meaning given in Schedule 27 – Dispute Resolution Procedure.
 - 1.14 “**Affiliate**” means an “**affiliate**” as that term is used in the *Business Corporations Act* (Ontario) and any successor legislation thereto, and, in the case of Project Co, shall include each of the unitholders, shareholders, partners or owners of Project Co, as applicable, and any person or entity controlling, controlled by or under common control with Project Co where “control” of any person or entity shall mean the ownership, directly or indirectly, of securities of such person or entity having the power to elect a majority of directors or similar authority or to otherwise control the decisions made on behalf of such person or entity.

- 1.15 “**Air Quality Management Plan**” has the meaning given in Schedule 17 – Environmental Obligations.
- 1.16 “**Ancillary Documents**” means the Design and Construction Contract and the Bonds.
- 1.17 “**Annual Environmental Compliance Monitoring Report**” has the meaning given in Schedule 17 – Environmental Obligations.
- 1.18 “**Anticipated COVID-19 Impact End Date**” means [REDACTED].
- 1.19 “**Anticipated Final Completion Date**” has the meaning given in Section 25.11(a) of the Project Agreement.
- 1.20 “**Anticipated Milestone Payment Completion Date**” has the meaning given in Section 25A.1(a) of the Project Agreement.
- 1.21 “**Anticipated Substantial Completion Date**” has the meaning given in Section 25.7(a) of the Project Agreement.
- 1.22 “**Applicable Law**” means:
- (a) any statute or proclamation or any delegated or subordinate legislation including regulations and by-laws;
 - (b) any Authority Requirement; and
 - (c) any judgment of a relevant court of law, board, arbitrator or administrative agency which is a binding precedent in the Province of Ontario,
- in each case, in force in the Province of Ontario, or otherwise binding on Project Co, any Project Co Party, Contracting Authority, any Contracting Authority Party or any Province Person.
- 1.23 “**Appointed Representative**” has the meaning given in Schedule 4 – Lenders’ Direct Agreement.
- 1.24 “**Appointed Representative Notice**” has the meaning given in Schedule 4 – Lenders’ Direct Agreement.
- 1.25 “**Appointment or Challenge Dispute**” has the meaning given in Schedule 27 – Dispute Resolution Procedure.
- 1.26 “**Apprenticeship and Workforce Development Plan**” has the meaning given in Section 11.25(a) of the Project Agreement.
- 1.27 “**Arbitration Act, 1991**” has the meaning given in Schedule 27 – Dispute Resolution Procedure.
- 1.28 “**Arborist Report – Metrolinx Lands**” has the meaning given in Schedule 17 – Environmental Obligations.
- 1.29 “**Arborist Report – Third Party Lands**” has the meaning given in Schedule 17 – Environmental Obligations.

- 1.30 “**Archaeological Reports**” means the following reports: [REDACTED].
- 1.31 “**Archaeological Risk Management Plan**” has the meaning given in Schedule 17 – Environmental Obligations.
- 1.32 “**Archaeological Risk Management Plan Update**” has the meaning given in Schedule 17 – Environmental Obligations.
- 1.33 “**As Built Drawings**” means drawings prepared by Project Co in a format and with content and details that Contracting Authority, acting reasonably, considers appropriate.
- 1.34 “**Associated Liabilities**” has the meaning given in Section 4.20(b) of the Project Agreement.
- 1.35 “**Associated Temporary Works**” has the meaning given in Schedule 14 – Outline Commissioning Program and Handover.
- 1.36 “**Authority Requirements**” means any order, direction, directive, request for information, policy, administrative interpretation, guideline or rule of or by any Governmental Authority and includes, for clarity, any direction or instruction from Transport Canada arising from any contractual arrangement.
- 1.37 “**Background Information**” means any and all drawings, reports (including the Environmental Reports, the Archaeological Reports, the Geotechnical Reports, the Subsurface Utility Engineering Reports, the Project GBR, except to the extent set out in Schedule 37 – Geotechnical Baseline Report (and any other report given or otherwise referred to in Schedule 15 – Output Specifications), as well as studies, plans, data, documents, or other information, given or made available to Project Co or any Project Co Party by Contracting Authority or any Contracting Authority Party, or which was obtained from or through any other sources prior to the date of the Project Agreement.
- 1.38 “**Bank**” has the meaning given in Schedule 30 – Insurance Trust Agreement.
- 1.39 “**Bankruptcy and Insolvency Act (Canada)**” means the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended from time to time.
- 1.40 “**Baseline Works Schedule**” has the meaning given in Schedule 12 – Works Schedule Requirements.
- 1.41 “**Basis of Works Schedule Report**” has the meaning given in Schedule 12 – Works Schedule Requirements.
- 1.42 “**Beneficiary**” has the meaning given in Section 46.3(a) of the Project Agreement.
- 1.43 “**BIM**” has the meaning given in Schedule 15 – Output Specifications.
- 1.44 “**Bonds**” has the meaning given in Schedule 25 – Insurance and Performance Security Requirements.
- 1.45 “**Bored Tunnel**” has the meaning given in Schedule 15 – Output Specifications.

- 1.46 “**Bored Tunnel Construction Activities**” means the Construction Activities in respect of the Bored Tunnel.
- 1.47 “**Building Code**” means the regulations made under Section 34 of the *Building Code Act*, S.O. 1992, c.23 (Ontario), as amended from time to time.
- 1.48 “**Building Transit Faster Act (2020)**” means the *Building Transit Faster Act, 2020*, S.O. 2020, c. 12, and the regulations enacted thereunder, all as amended from time to time.
- 1.49 “**Business Corporations Act (Ontario)**” means the *Business Corporations Act*, R.S.O. 1990, c. B.16, as amended from time to time.
- 1.50 “**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.
- 1.51 “**Canadian and Industry Standards**” means, at the applicable time, those standards, practices, methods and procedures applicable to Good Industry Practice.
- 1.52 “**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.
- 1.53 “**Capital Expenditure**” means capital expenditure as interpreted in accordance with Canadian GAAP.
- 1.54 “**Cash Allowance Account**” [REDACTED]
- 1.55 “**Cash Allowance Amount**” means the sum of the cash allowances set out for each Cash Allowance Item listed in the definition of Cash Allowance Item below, such sums, respectively, being [REDACTED].
- 1.56 “**Cash Allowance Items**” means: [REDACTED].
- 1.57 “**Category 1 Utility Company**” means any Utility Company performing Category 1 Utility Work, and “**Category 1 Utilities Companies**” shall be construed accordingly.
- 1.58 “**Category 1 Utility Company Tracking System**” has the meaning given in Section 11.10A(a)(ii) of the Project Agreement.
- 1.59 “**Category 1 Utility Work**” means any Utility Work that is the subject of a Final Utility Baseline Document.
- 1.60 “**Category 2 UA Deliverable**” has the meaning given in Section 11.37(a) of the Project Agreement.

-
- 1.61 “**Category 2 UA Deliverable Failure**” has the meaning given in Section 11.37(b) of the Project Agreement.
- 1.62 “**Category 2 UA Deliverable Failure Notice**” has the meaning given in Section 11.37(b) of the Project Agreement.
- 1.63 “**Category 2 Utility Company**” means any Utility Company performing Category 2 Utility Work and “**Category 2 Utilities Companies**” shall be construed accordingly.
- 1.64 “**Category 2 Utility Work**” means any Utility Work that is performed by a Utility Company and that is not the subject of a Final Utility Baseline Document.
- 1.65 “**CDB**” has the meaning given in Schedule 27 – Dispute Resolution Procedure.
- 1.66 “**CDB Chair**” has the meaning given in Schedule 27 – Dispute Resolution Procedure.
- 1.67 “**CDB Member Agreement**” has the meaning given in Schedule 27 – Dispute Resolution Procedure.
- 1.68 “**CDB Member Statement**” has the meaning given in Schedule 27 – Dispute Resolution Procedure.
- 1.69 “**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.
- 1.70 “**Certification Services**” has the meaning given in Schedule 6 – Independent Certifier Agreement.
- 1.71 “**Certification Services Variation**” has the meaning given in Schedule 6 – Independent Certifier Agreement.
- 1.72 “**Certified H&S Inspector**” means an individual who is an employee or contractor of the IHSA and has the necessary credentials recognized by the COR Program for the purpose of such individual performing any inspections as may be required to be performed in accordance with Section 15.1(b) of the Project Agreement.
- 1.73 “**Change in Control**” means, with respect to a person:
- (a) any Change in Ownership, where the effect of such change is to result in control of the decisions made by or on behalf of such person subsequently being with a different entity or entities than prior to such change;
 - (b) any other change in respect of the power to elect a majority of the directors of the person or otherwise control the decisions made on behalf of such person; or
 - (c) any other change of direct or indirect power or authority through any contractual right or other power or interest with or over a person to influence, direct, cause to change or prevent from changing the approval of a decision, direction of the management, actions

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

- 1.74 “**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.
- 1.75 “**Change in Ownership**” means, with respect to a person, any change in ownership, whether beneficial or otherwise, of any of the shares or units of ownership of such person, or in the direct or indirect power to vote or transfer any of the shares or units of ownership of such person.
- 1.76 “**Changed Cost for Utilities**” means an amount equal to the:
- (a) total aggregate of the prices actually paid by Project Co for the Eligible Utilities Costs minus any Ineligible Cost Increase; minus
 - (b) the sum of all Original Eligible Utilities Costs.
- 1.77 “**City of Toronto**” means the City of Toronto and all operating divisions thereof.
- 1.78 “**City of Toronto Act (Ontario)**” means the *City of Toronto Act* (Ontario), 2006, S.O. 2006, C. 11, Sched. A, as amended from time to time.
- 1.79 “**City of Toronto Standards**” means the standards of the City of Toronto as set out in Schedule 15 – Output Specifications.
- 1.80 “**City Road Allowance**” has the meaning given in Schedule 20 – Lands.
- 1.81 “**Commercial Close**” means the date of the Project Agreement.
- 1.82 “**Commissioning Brief**” has the meaning given in Schedule 14 – Outline Commissioning Program and Handover.
- 1.83 “**Commissioning Manuals**” has the meaning given in Schedule 14 – Outline Commissioning Program and Handover.
- 1.84 “**Commissioning Schedule**” has the meaning given in Schedule 14 – Outline Commissioning Program and Handover.
- 1.85 “**Commissioning Submittals**” has the meaning given in Schedule 14 – Outline Commissioning Program and Handover.
- 1.86 “**Commissioning Team**” has the meaning given in Schedule 14 – Outline Commissioning Program and Handover.
- 1.87 “**Commissioning Tests**” means all commissioning tests:
- (a) described in Schedule 14 – Outline Commissioning Program and Handover;

- (b) required by Applicable Law, Canadian and Industry Standards or CSA Standards;
 - (c) recommended by the manufacturer of any part of the New Metrolinx Infrastructure or the New Third Party Infrastructure; and
 - (d) required to be included in the Final Commissioning Program by the Independent Certifier or the Contracting Authority Representative during its development pursuant to Section 25.2 of the Project Agreement.
- 1.88 “**Communications Calendar**” has the meaning given in Schedule 18 – Communication and Public Engagement Protocol.
- 1.89 “**Companies’ Creditors Arrangement Act (Canada)**” means the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended from time to time.
- 1.90 “**Compensation Event**” has the meaning given in Section 33.1(a) of the Project Agreement.
- 1.91 “**Compensation Payment**” means the Contracting Authority Default Termination Sum, the Project Co Default Termination Sum or the Non-Default Termination Sum.
- 1.92 “**Complaints Protocol**” has the meaning given in Schedule 18 – Communication and Public Engagement Protocol
- 1.93 “**Completion Holdback**” has the meaning given in Section 25.8(a) of the Project Agreement.
- 1.94 “**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.
- 1.95 “**Complex Structure Demolition**” means any Demolition where any one or more of the following is applicable:
- (a) significant structural elements, such as girders, columns, shearwalls or slabs, or Complex Structures are being removed, de-stressed, altered or removed;
 - (b) large penetrations are being created through slabs;
 - (c) any Demolition that may cause the collapse of any building or structure (or any portion thereof) and such collapse may directly impact adjacent occupied areas of a building or structure and potentially jeopardize the safety of workers, staff or the general public using such building or structure;
 - (d) the Demolition of any building or structure (or any portion thereof) has the potential to result in any materials collapsing onto or interfering with any pedestrian right-of-way or into an occupied part of any building or structure; and
 - (e) any apparent or inferable risk associated with the Demolition poses a significant risk to workers, the public or adjacent property.

- 1.96 “**Confidant**” has the meaning given in Section 42.6(a)(i) of the Project Agreement.
- 1.97 “**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.
- 1.98 “**Construction Act (Ontario)**” means the *Construction Act*, R.S.O. 1990, c.C.30, and regulations enacted thereunder, all as amended from time to time and subject to the application of the transition provisions in section 87.3 of the *Construction Act (Ontario)*.
- 1.99 “**Construction Activities**” means construction, demolition, rehabilitation, Reinstatement Work, rectification work, Warranty Work and any other aspect of the Works that:
- (a) comprises the alteration, augmenting, upgrading, construction, completion, inspection, calibration, testing or commissioning of any part of the New Metrolinx Infrastructure and the New Third Party Infrastructure;
 - (b) comprises the assessment of any New Metrolinx Infrastructure or New Third Party Infrastructure;
 - (c) may affect the structural integrity of any New Metrolinx Infrastructure or New Third Party Infrastructure, and including any such aspect of the Works carried out as part of any Force Majeure event, Relief Event, Variation, or Innovation Proposal accepted by Contracting Authority; or
 - (d) comprises Construction Clearing and Grubbing.
- 1.100 “**Construction Certificate**” means a certificate with contents described in Attachment 2 to Appendix A of Schedule 10 – Review Procedure.
- 1.101 “**Construction Clearing and Grubbing**” means the stage of the Works in which vegetation and debris is cleared from the Lands (clearing) and a root rake or similar device is employed to remove roots remaining in the soil (grubbing).
- 1.102 “**Construction Contractor**” means [REDACTED].
- 1.103 “**Construction Contractor’s Direct Agreement**” means the direct agreement between Contracting Authority, Project Co, the Construction Contractor and the Construction Guarantor in the form set out in Schedule 5 – Construction Contractor’s Direct Agreement.
- 1.104 “**Construction Defect**” has the meaning given in Section 11.17(a)(i) of the Project Agreement.
- 1.105 “**Construction Document Submittals**” has the meaning given in Section 11.1(d)(ii) of the Project Agreement.
- 1.106 “**Construction Guarantor**” means [REDACTED].
- 1.107 “**Construction Latent Defect**” has the meaning given in Section 11.18(b)(ii) of the Project Agreement.

- 1.108 “**Construction Period Deductions**” has the meaning given in Schedule 21 – Liquidated Damages and Construction Enforcement Regime.
- 1.109 “**Construction Period Quality Failure**” has the meaning given in Schedule 21 - Liquidated Damages and Construction Enforcement Regime.
- 1.110 “**Construction Quality Management Plan**” has the meaning given in Schedule 11 – Quality Management.
- 1.111 “**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.
- 1.112 “**Contamination Management Plan**” has the meaning given in Schedule 17 – Environmental Obligations.
- 1.113 “**Contracting Authority**” means, collectively, (i) IO and (ii) Metrolinx.
- 1.114 “**Contracting Authority Activities**” means all governmental services and activities provided in connection or otherwise associated with the Scarborough Subway Extension, or Contracting Authority’s work with respect to the Province of Ontario’s New Subway Transit Plan.
- 1.115 “**Contracting Authority Contamination**” has the meaning given in Section 18.3(b) of the Project Agreement.
- 1.116 “**Contracting Authority Default Termination Sum**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.117 “**Contracting Authority Design Team**” means any of Contracting Authority, its agents, contractors and subcontractors of any tier and its or their directors, officers and employees, and other persons engaged in respect of design reviews, design evaluation, or design consultation processes with respect to the New Metrolinx Infrastructure or the New Third Party Infrastructure or the Contracting Authority Activities, but excluding Project Co and any Project Co Party.
- 1.118 “**Contracting Authority Event of Default**” has the meaning given in Section 37.1(a) of the Project Agreement.
- 1.119 “**Contracting Authority HR Policy**” means Contracting Authority’s human resources policies and guidelines, as they may be amended from time to time and provided to Project Co in writing.
- 1.120 “**Contracting Authority Items of Interest or Value**” has the meaning given in Section 18.4(c) of the Project Agreement.
- 1.121 “**Contracting Authority Jointly Developed Materials**” has the meaning given in Section 41.4(a)(i) of the Project Agreement.
- 1.122 “**Contracting Authority Major Existing Infrastructure Defect**” has the meaning given in Section 18.5(b) of the Project Agreement.

- 1.123 “**Contracting Authority Party**” means any of Contracting Authority and its respective agents, contractors and subcontractors of any tier and its or their directors, officers and employees, and other persons engaged by any of the foregoing in respect of the Contracting Authority Activities, but excluding Project Co and any Project Co Party, and the “Contracting Authority Parties” shall be construed accordingly.
- 1.124 “**Contracting Authority Permits, Licences, Approvals and Agreements**” means only those Contracting Authority permits, licences, approvals and agreements which are the responsibility of Contracting Authority to obtain as set out in Appendix “A” to this Schedule 1 - Permits, Licences, Approvals and Agreements, but for greater certainty shall not include any permission, consent, approval, certificate, permit, licence, agreement or authorization not set out in Appendix “A” to this Schedule 1 - Permits, Licences, Approvals and Agreements but required by the terms of any such item set out in such Appendix.
- 1.125 “**Contracting Authority Representative**” means the person designated as such by Contracting Authority on or prior to the date of the Project Agreement and any permitted replacement.
- 1.126 “**Contracting Authority Species-at-Risk**” has the meaning given in Section 18.7(b) of the Project Agreement.
- 1.127 “**Contracting Authority Supplied Third Party Intellectual Property**” has the meaning given in Schedule 24 – Intellectual Property.
- 1.128 “**Contracting Authority Taxes**” means taxes, or payments in lieu of taxes, imposed on Contracting Authority and HST and property taxes for which Contracting Authority is responsible pursuant to Section 4.14 of the Project Agreement.
- 1.129 “**Contracting Authority Third Party Beneficiaries**” has the meaning given in Section 54.17(a)(i) of the Project Agreement.
- 1.130 “**Contracting Authority Trade-Marks**” means any and all Trade-Marks used by Contracting Authority in any manner whatsoever.
- 1.131 “**Contracting Authority Utility Infrastructure**” has the meaning given in Section 18.6(b) of the Project Agreement.
- 1.132 “**Contractor Site Specific Safety Manual**” means the document describing the Construction Contractor’s health and safety management program for the Project and the Site commencing no later than the first Business Day following Financial Close until Final Completion, all in accordance with the minimum requirements set out in Schedule 34 – Construction Safety.
- 1.133 “**Control Party**” means: [REDACTED];
- 1.134 “**Copyrights**” means all copyrights (registered or otherwise) and registrations and applications for registration thereof, and all rights therein provided by multinational treaties or conventions.
- 1.135 “**COR Certification**” means, in respect of a person, receipt by such person of its (i) Certificate of Recognition; and (ii) Letter of Good Standing.

- 1.136 “**COR Program**” means the national safety program known as “The Certificate of Recognition (COR™)”, being a safety program that enables persons to assess their health and safety management systems to manage risks, establish controls, and minimize the incidence of injury and illness to their workers, and being nationally trademarked and endorsed by participating members of the Canadian Federation of Construction Safety Associations, or such other national safety program approved by Contracting Authority.
- 1.137 “**COR-Certified Construction Project Co Party**” has the meaning given in Section 11.27(a)(ii) of the Project Agreement.
- 1.138 “**COR-Qualified Construction Project Co Party**” means one of the following:
- (a) where the Construction Contractor is a single legal entity, the Construction Contractor;
 - (b) where the Construction Contractor is a joint venture, each member of the joint venture; or
 - (c) where the Construction Contractor is a partnership, each partner of the partnership,
- provided that each such person has current OHSAS 18001 Accreditation or ISO 45001 Accreditation in good standing.
- 1.139 “**Corrected Works Schedule**” has the meaning given in Schedule 12 – Works Schedule Requirements.
- 1.140 “**Corrective Action**” has the meaning given in Schedule 11 – Quality Management.
- 1.141 “**Cost of the Financing**” means all costs and expenses incurred in connection with the Financing pursuant to the Lending Agreements, including all interest, fees, expense reimbursements, pre-payment and breakage costs and all other costs and expenses, as set out in Schedule 32 – Financial Model.
- 1.142 “**Cost of the Works**” means the cost to Project Co of performing the Works as set out in Schedule 32 – Financial Model and shall include all amounts to be included in the Cost of the Works set out in the Project Agreement.
- 1.143 “**Countdown Notice**” has the meaning given in Section 25.7(a) of the Project Agreement.
- 1.144 “**COVID-19 Change in Law Reference Date**” means the date that is seven days prior to the Technical Submission Deadline.
- 1.145 “**COVID-19 Emergency Public Health Physical Distancing Requirements**” means the requirements under Section 2 of Schedule 1 of O. Reg. 263/20 – Rules for Areas in Stage 2 under the *Reopening Ontario (A Flexible Response to COVID-19) Act, 2020*, S.O. 2020, c.17 in effect as of the COVID-19 Change in Law Reference Date or any substantially similar Applicable Law with respect to COVID-19 that requires compliance with the Chief Medical Officer of Ontario’s instructions on physical distancing of at least two meters.
- 1.146 “**CPI**” means, as at the date of the Project Agreement, CPI XFET and, thereafter, the latest available Consumer Price Index Canada (all items) as published by Statistics Canada from time to time (whether preliminary or final), or failing such publication, such other index as the Parties

may agree, or as may be determined in accordance with Schedule 27 - Dispute Resolution Procedure, most closely resembles such index.

- 1.147 “CPI XFET” means the Consumer Price Index excluding food, energy and the effect of changes in indirect taxes.
- 1.148 “CPI_{In}” is the value of CPI on April 1 of the relevant year, to be determined by reference to the relevant index in the month of February most recently preceding the indexation date.
- 1.149 “CPI_o” is the value of CPI at Financial Close, to be determined by reference to the relevant index in the month immediately preceding Financial Close.
- 1.150 “Critical Non-Conformance” means any Non-Conformance or combination of Major Non-Conformances, that:
- (a) in the reasonable opinion of Contracting Authority, demonstrates that Project Co is performing the Works in a manner that may result in Project Co becoming unable to satisfy the requirements for Substantial Completion;
 - (b) is persistent, ongoing and repeated; or
 - (c) in the reasonable opinion of Contracting Authority, by its continued existence or through the process of rectification, would:
 - (i) result or is reasonably expected to result in material disruption to the public or a materially adverse disruption to vehicular traffic flow or the public transit system in any one or more of the Municipalities;
 - (ii) prejudice or is reasonably expected to materially prejudice the performance of any Governmental Activities;
 - (iii) create or is reasonably expected to create a serious threat to the health, safety or security of any person, including any user of any part of or the whole of the New Metrolinx Infrastructure, New Third Party Infrastructure and/or Existing Infrastructure, volunteers and visitors to the New Metrolinx Infrastructure, New Third Party Infrastructure and/or Existing Infrastructure, and members of the public;
 - (iv) materially increase Contracting Authority’s risk or transfer risk to Contracting Authority or any Contracting Authority Party;
 - (v) materially adversely affect the ability of any Contracting Authority Party or Other Contractor to perform their activities as permitted or contemplated by the Project Agreement;
 - (vi) materially adversely affect or change the critical path of the Project as defined in the Progress Works Schedule, adversely affect Project Co’s ability to achieve Substantial Completion by the Scheduled Substantial Completion Date, require a material resequencing of the Works or cause any delay in achieving Substantial Completion; or

- (vii) potentially compromise the reputation or integrity of Contracting Authority and/or any Contracting Authority Party or the nature of the public transit system in any one or more of the Municipalities or the Province of Ontario so as to affect public confidence in the public transit system in any one or more of the Municipalities or the Province of Ontario or the Project.
- 1.151 “**Crown**” means Her Majesty the Queen in right of Ontario.
- 1.152 “**Crown Agency Act (Ontario)**” means the *Crown Agency Act*, R.S.O. 1990, c. 48, as amended from time to time.
- 1.153 “**CSA Standards**” means, at the applicable time, the Canadian Standards Association standards.
- 1.154 “**Cultural Heritage Reports**” means [REDACTED].
- 1.155 “**Cultural Heritage Risk Management Plan**” has the meaning given in Schedule 17 – Environmental Obligations.
- 1.156 “**Cultural Heritage Risk Management Plan Update**” has the meaning given in Schedule 17 – Environmental Obligations.
- 1.157 “**Date of Commencement**” has the meaning given in Schedule 27 – Dispute Resolution Procedure.
- 1.158 “**Delay Event**” has the meaning given in Section 32.1(a) of the Project Agreement.
- 1.159 “**Demolition**” means the removal of a building or structure, as the case may be, or of any material part of a building or structure.
- 1.160 “**Demolition Default Event**” has the meaning given in Section 11.28(b) of the Project Agreement.
- 1.161 “**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.
- 1.162 “**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.
- 1.163 “**Demolition Requirements**” has the meaning given in Section 11.28(a) of the Project Agreement.
- 1.164 “**Demolition Specifications**” means those specifications relating to any Demolition prepared by Project Co in accordance with Section 11.28(a)(iv)(A) of the Project Agreement.

- 1.165 “**Demolition Supervisor**” has the meaning given in Section 11.28(a)(ii) of the Project Agreement.
- 1.166 “**Design and Construction Certification Procedure**” has the meaning given in Schedule 11 – Quality Management.
- 1.167 “**Design and Construction Contract**” means the design and construction contract between Project Co and the Construction Contractor dated on or about the date of Financial Close.
- 1.168 “**Design Certificate**” means a certificate with contents described in Attachment 1 to Appendix A of Schedule 10 – Review Procedure.
- 1.169 “**Design Compliance Consultant**” means OneT+, a joint venture partnership between Gannett Fleming Canada ULC and IBI Group.
- 1.170 “**Design Data**” means all drawings, reports, documents, plans, software, formulae, calculations, and other data prepared or obtained by Project Co relating to the design, construction, testing or monitoring of the New Metrolinx Infrastructure and the New Third Party Infrastructure, but excluding Intellectual Property Rights of third parties, such as CAD software, that is used only in the process of design and construction.
- 1.171 “**Design Development Submittal**” has the meaning given in Section 11.1(d)(i) of the Project Agreement.
- 1.172 “**Design Quality Management Plan**” has the meaning given in Schedule 11 – Quality Management.
- 1.173 “**Design Review Meetings**” has the meaning given in Section 11.3(a) of the Project Agreement.
- 1.174 “**Design Team**” means Arup Canada Inc., a corporation validly existing under the laws of the Province of Ontario, engaged by Project Co to design the New Metrolinx Infrastructure and the New Third Party Infrastructure and any substitute design team engaged by Project Co as may be permitted by the Project Agreement.
- 1.175 “**Designated Substances and Hazardous Materials Management Plan**” has the meaning given in Schedule 17 – Environmental Obligations.
- 1.176 “**Development Approvals**” means development permits, building permits, zoning approvals and any other planning or development permit, consent or applicable Permits, Licences, Approvals and Agreements, required from time to time for construction of the New Metrolinx Infrastructure and the New Third Party Infrastructure.
- 1.177 “**Differing Geotechnical Site Condition**” has the meaning given in Section 18.2(a) of the Project Agreement.
- 1.178 “**Direct Cost**” has the meaning given in Schedule 22 – Variation Procedure.
- 1.179 “**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.

1.180 “**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] 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] 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.

1.181 “**Discriminatory Change in Law**” means any Change in Law which applies expressly to:

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

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

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

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

- 1.183 “**Dispute Resolution Procedure**” means the procedure set out in Schedule 27 – Dispute Resolution Procedure.
- 1.184 “**Document Control and Security Protocol**” has the meaning given in Section 42.5(f) of the Project Agreement.
- 1.185 “**Documents Relating to Indigenous Communities**” has the meaning given in Schedule 17 – Environmental Obligations.
- 1.186 “**Early Contractor Activities**” has the meaning given in the Request for Proposals.
- 1.187 “**Early Works Agreement**” has the meaning given in the Request for Proposals.
- 1.188 “**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.
- 1.189 “**Eligible Utilities Costs**” means the total aggregate of the prices charged to Project Co by the Category 1 Utility Companies in respect of the Works described in the Final Utility Baseline Documents.
- 1.190 “**Embargo Period**” means the dates when Utility Companies do not permit works to be undertaken.
- 1.191 “**Emergency**” means any situation, event, occurrence, multiple occurrences or circumstances:
- (a) that:
 - (i) constitutes or may constitute a hazard to or jeopardizes or may jeopardize or pose a threat to health and safety of any persons (including Province Persons) or any part of or the whole of the New Metrolinx Infrastructure, the New Third Party Infrastructure or the Existing Infrastructure;
 - (ii) causes or may cause damage or harm to property, buildings and/or equipment;
 - (iii) constitutes a hostage situation or state of emergency declared as such by the Contracting Authority Representative or Contracting Authority (acting reasonably);
 - (iv) materially interferes with or prejudices or may materially interfere with or prejudice the safe operation of the New Metrolinx Infrastructure or New Third Party Infrastructure, any part of the Lands, the conduct of Works, or the conduct of Governmental Activities; or
 - (v) constitutes a period of transition to or from war,
- and which, in the opinion of Contracting Authority, requires immediate action to prevent and/or mitigate the occurrence (or risk of the occurrence) of the foregoing; or

- (b) which gives rise to an emergency, as determined by any statutory body including (notwithstanding the generality of the foregoing) an Emergency Service Provider.
- 1.192 “**Emergency Service Providers**” means any Police Service, firefighting service, ambulance service, armed forces or other authority with emergency service authority pursuant to Applicable Law which may require access to the New Metrolinx Infrastructure or New Third Party Infrastructure from time to time.
- 1.193 “**Encumbrances**” means the Encumbrances listed in Schedule 16 – Encumbrances and any other encumbrances deemed to be Encumbrances as described in and for the purposes set out in Section 17.2(d) of the Project Agreement.
- 1.194 “**Endangered Species Act (Ontario)**” means the *Endangered Species Act, 2007*, S.O. 2007, c. 6, as amended from time to time.
- 1.195 “**Environmental Approvals**” has the meaning given in Schedule 17 – Environmental Obligations.
- 1.196 “**Environmental Assessments**” has the meaning given in Schedule 17 – Environmental Obligations.
- 1.197 “**Environmental Audit Report**” has the meaning given in Schedule 17 – Environmental Obligations.
- 1.198 “**Environmental Law**” has the meaning given in Schedule 17 – Environmental Obligations.
- 1.199 “**Environmental Management System**” or “**EMS**” has the meaning given in Schedule 17 – Environmental Obligations.
- 1.200 “**Environmental Management System Updates**” has the meaning given in Schedule 17 – Environmental Obligations.
- 1.201 “**Environmental Protection Act (Ontario)**” means the *Environmental Protection Act*, R.S.O. 1990, c. E. 19, as amended from time to time.
- 1.202 “**Environmental Quality Management Plan**” has the meaning given in Schedule 11 – Quality Management.
- 1.203 “**Environmental Reports**” means [REDACTED].
- 1.204 “**Environmental Specialists Qualifications Plan**” has the meaning given in Schedule 17 – Environmental Obligations.
- 1.205 “**Erosion and Sediment Control Plan**” has the meaning given in Schedule 17 – Environmental Obligations.
- 1.206 “**Estimate**” has the meaning given in Schedule 22 – Variation Procedure.
- 1.207 “**Excise Tax Act (Canada)**” means the *Excise Tax Act*, R.S.C. 1985, c. E-15, as amended from time to time.

- 1.208 “**Executive Council Act (Ontario)**” means the *Executive Council Act*, R.S.O. 1990, c. E. 25, as amended from time to time.
- 1.209 “**Executive Project Meeting**” has the meaning given in Section 11.32(a) of the Project Agreement.
- 1.210 “**Executive Project Meeting Document**” has the meaning given in Section 11.32(e) of the Project Agreement.
- 1.211 “**Existing COVID-19 Laws Extension**” means the continuation in force of the COVID-19 Emergency Public Health Physical Distancing Requirements beyond the Anticipated COVID-19 Impact End Date.
- 1.212 “**Existing Infrastructure**” means the Existing Metrolinx Infrastructure and the Existing Third Party Infrastructure.
- 1.213 “**Existing Metrolinx Infrastructure**” means existing infrastructure located on the Metrolinx Lands that is owned by Metrolinx, including the bus-only ramp from southbound Renforth Drive to Commerce Boulevard, and associated signage and landscaping.
- 1.214 “**Existing Third Party Infrastructure**” means existing road, highway, transit, hospital, Utility Infrastructure, drainage works, landscaping or any other public realm infrastructure and any other infrastructure situated on the Lands, that is owned by MTO, TTC, any Municipality, any Utility Company, or any other third party.
- 1.215 “**Expiry Date**” means the first anniversary of the Final Completion Date.
- 1.216 “**External Quality Audit**” has the meaning given in Schedule 11 – Quality Management.
- 1.217 “**Final Commissioning Program**” means the program to be jointly developed and agreed by Contracting Authority and Project Co in accordance with Section 25.2 of the Project Agreement.
- 1.218 “**Final Completion**” means the completion of the Works in accordance with the Project Agreement, including completion of all Minor Deficiencies.
- 1.219 “**Final Completion Certificate**” means the certificate to be issued by the Independent Certifier in accordance with Section 25.12 of the Project Agreement.
- 1.220 “**Final Completion Countdown Notice**” has the meaning given in Section 25.11(a) of the Project Agreement.
- 1.221 “**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.
- 1.222 “**Final Completion Notice**” has the meaning given in Section 25.12(b) of the Project Agreement.
- 1.223 “**Final Incident Report**” has the meaning given in Schedule 34 – Construction Safety.
- 1.224 “**Final Utility Baseline Documents**” means, collectively, the final utility baseline documents attached as Appendix C to this Schedule 1.

- 1.225 “**Financial Administration Act (Ontario)**” means the *Financial Administration Act*, R.S.O. 1990, c. F.12, as amended from time to time.
- 1.226 “**Financial Close**” means the first date that funding is available under the Lending Agreements.
- 1.227 “**Financial Close Target Date**” means May 25, 2021, as such date may be extended in accordance with the provisions of the Project Agreement.
- 1.228 “**Financial Model**” means the computer spreadsheet model included in Schedule 32 – Financial Model for the Project incorporating statements of Project Co’s cashflows including all expenditure, revenues, financing and taxation of the Works together with, if applicable, the profit and loss accounts and balance sheets for Project Co throughout the Project Term accompanied by details of all assumptions, calculations and methodology used in their compilation and any other documentation necessary or desirable to operate the model.
- 1.229 “**Financial Obligations**” means the obligation to pay any application fees, third party fees, costs or charges (including all applicable Taxes thereon), the provision of any letters of credit, instruments of guarantee, bonds or security deposits, or any other financial security obligations.
- 1.230 “**Financial Submission Deadline**” means [REDACTED].
- 1.231 “**Financing**” means the financing with the Lenders, that is consistent in all material respects with Schedule 32 - Financial Model and the Project Agreement, to finance the Project.
- 1.232 “**Finishing Holdback**” means the finishing construction lien holdback to be retained pursuant to section 22(2) of the *Construction Act* (Ontario).
- 1.233 “**Finishing Holdback Payment Date**” means the date for payment of the Finishing Holdback pursuant to Schedule 38 – Payment Procedures.
- 1.234 “**FIPPA**” means the *Freedom of Information and Protection of Privacy Act* (Ontario), R.S.O. 1990, c. F.31, as amended from time to time.
- 1.235 “**First Milestone Payment**” means \$[REDACTED].
- 1.236 “**First Milestone Payment Completion Date**” has the meaning given in Section 25A.2(d)(i) of the Project Agreement.
- 1.237 “**Fisheries Act (Canada)**” means the *Fisheries Act*, R.S.C. 1985, c. F-14, as amended from time to time.
- 1.238 “**Force Majeure**” has the meaning given in Section 35.1(a) of the Project Agreement.
- 1.239 “**Form of Utility Agreement**” has the meaning given in Section 11.35(a) of the Project Agreement.
- 1.240 “**Funded Capital Costs**” is equal to the sum of the Cost of the Works and the Cost of the Financing, less the Legislative Holdback amount.

- 1.241 “**Funeral, Burial and Cremations Services Act (Ontario)**” means the *Funeral, Burial and Cremations Services Act*, S.O. 2002, c.33, as amended from time to time.
- 1.242 “**Geotechnical Baseline Statements**” has the meaning given in Schedule 37 – Geotechnical Baseline Report.
- 1.243 “**Geotechnical Instrumentation and Monitoring Plan**” has the meaning given in Schedule 15 – Output Specifications.
- 1.244 “**Geotechnical Reports**” means [REDACTED].
- 1.245 “**Geotechnical Site Condition**” means any Site Condition under the Lands other than any:
- (a) Contamination;
 - (b) Items of Interest or Value;
 - (c) Major Existing Infrastructure;
 - (d) Utility Infrastructure; or
 - (e) Species-at-Risk.
- 1.246 “**Good Industry Practice**” means using standards, practices, methods and procedures to a good commercial and rail safety standard, conforming to Applicable Law and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a qualified, skilled and experienced person engaged in a similar type of undertaking under the same or similar circumstances.
- 1.247 “**Government Entity**” means any one or more of the Province and MOI.
- 1.248 “**Government Sensitive Information**” means any information which is designated as such by Contracting Authority from time to time, or which a reasonable person having regard to the circumstances, would regard as sensitive, including (i) all confidential information that is designated as such by Applicable Law, and (ii) any record, the disclosure of which could be injurious to the interests of Contracting Authority.
- 1.249 “**Governmental Activities**” means the provision of all governmental services and the conduct of all activities provided in connection or otherwise associated with the Lands, New Metrolinx Infrastructure and New Third Party Infrastructure by any Governmental Authority or Emergency Service Provider, and includes the Contracting Authority Activities.
- 1.250 “**Governmental Authority**” means any federal, provincial, territorial, regional, municipal or local governmental authority, quasi-governmental authority, court, government or self-regulatory organization, commission, board, tribunal, organization, or any regulatory, administrative or other agency, or any political or other subdivision, department, or branch of any of the foregoing, having legal jurisdiction in any way over Contracting Authority (including the Management Board of Cabinet), any aspect of the performance of the Project Agreement or the operation of the New Metrolinx Infrastructure or the Governmental Activities, in each case to the extent it has or performs legislative, judicial, regulatory, administrative or other functions within its jurisdiction.

- 1.251 “**Groundwater Management and Dewatering Plan**” has the meaning given in Schedule 17 – Environmental Obligations.
- 1.252 “**Guaranteed Price**” is the amount referred to in Section 3.1(a) of the Project Agreement.
- 1.253 “**Guarantor**” has the meaning given in Schedule 27 – Dispute Resolution Procedure.
- 1.254 “**H&S Certification Default Event**” has the meaning given in Section 11.27(b) of the Project Agreement.
- 1.255 “**H&S Certification Maintenance Plan**” has the meaning given in Section 11.27(b)(vii)(B) of the Project Agreement.
- 1.256 “**H&S Certification Reinstatement Plan**” has the meaning given in Section 11.27(b)(vi)(B) of the Project Agreement.
- 1.257 “**H&S Construction Inspection**” has the meaning given in Section 15.1(b) of the Project Agreement.
- 1.258 “**H&S Construction Inspection Report**” has the meaning given in Section 15.1(d) of the Project Agreement.
- 1.259 “**H&S Construction Re-Inspection**” has the meaning given in Section 15.1(e)(ii) of the Project Agreement.
- 1.260 “**H&S Construction Re-Inspection Report**” has the meaning given in Section 15.1(e)(iii) of the Project Agreement.
- 1.261 “**Handover**” means the successful handover by Project Co of the New Municipal Infrastructure to Contracting Authority or, where Notice of Delegation has been provided by Contracting Authority, to the applicable owner of the New Municipal Infrastructure in accordance with Section 25.14 of the Project Agreement including, for clarity, the receipt of Contracting Authority’s or the applicable owner of the New Municipal Infrastructure (as the case may be) confirmation that Handover has been successfully achieved and the provision of the Notice to Contracting Authority in accordance with Section 25.14(g) of the Project Agreement.
- 1.262 “**Hazardous Substances**” means any contaminant, pollutant, mould, dangerous substance, toxic substance, liquid waste, industrial waste, gaseous waste, hauled liquid waste, hazardous material, or hazardous substance as defined in or identified pursuant to any Applicable Law.
- 1.263 “**Hazardous Waste Soils**” means soils that are on, in or under or that are migrating to or that are migrating from the Metrolinx Lands, and that contain “hazardous waste” as defined in Section 1 – Definitions of Ontario Regulation 347 – General – Waste Management, as amended from time to time.
- 1.264 “**Headwalls**” has the meaning given in Schedule 15 – Output Specifications.
- 1.265 “**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.

- 1.266 “**Hedging Agreement**” means an agreement relating to the hedging of interest rate risk entered into by Project Co and the Hedge Provider(s) pursuant to the Lending Agreements.
- 1.267 “**Highway Traffic Act (Ontario)**” means the *Highway Traffic Act*, R.S.O. 1990, c. H.8, as amended from time to time.
- 1.268 “**HST**” means the value-added tax imposed pursuant to Part IX of the *Excise Tax Act* (Canada), and any successor legislation thereto.
- 1.269 “**IC Substantial Completion Deliverables Confirmation**” has the meaning given in Section 25.4(c)(i) of the Project Agreement.
- 1.270 “**IC Substantial Completion Deliverables Deficiencies List**” has the meaning given in Section 25.4(c)(ii) of the Project Agreement.
- 1.271 “**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.
- 1.272 “**Incentive Payment**” has the meaning given in Schedule 35 – Incentive Payments.
- 1.273 “**Incentive Payment Completion**” has the meaning given in Schedule 35 – Incentive Payments.
- 1.274 “**Incentive Payment Completion Certificate**” has the meaning given in Schedule 35 – Incentive Payments.
- 1.275 “**Incentive Payment Event**” has the meaning given in Schedule 35 – Incentive Payments.
- 1.276 “**Incentive Payment Target Date**” has the meaning given in Schedule 35 – Incentive Payments.
- 1.277 “**Income Tax Act (Canada)**” means the *Income Tax Act*, R.S.C., 1985, c. 1, as amended from time to time.
- 1.278 “**Indemnifiable Taxes**” has the meaning given in Section 4.20(b) of the Project Agreement.
- 1.279 “**Indemnifier**” has the meaning given in Section 46.3(a) of the Project Agreement.
- 1.280 “**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.
- 1.281 “**Independent Certifier Agreement**” means the contract entered into between Project Co, Contracting Authority and the Independent Certifier in substantially the form attached hereto as Schedule 6 – Independent Certifier Agreement.
- 1.282 “**Indigenous Communities**” has the meaning given in Schedule 17 – Environmental Obligations.

- 1.283 “**Indigenous Community Engagement**” has the meaning given in Schedule 17 – Environmental Obligations.
- 1.284 “**Indirect Losses**” has the meaning given in Section 47.1(a) of the Project Agreement.
- 1.285 “**Ineligible Cost Increase**” means any cost increase attributable to,
- (a) Works that Project Co could have self-performed but elected to have the Category 1 Utility Company perform on Project Co’s behalf;
 - (b) Works carried out during an Embargo Period;
 - (c) any failure by Project Co to diligently enforce the applicable Utility Agreement and to diligently monitor a Category 1 Utility Company’s compliance with the applicable Utility Agreement; or
 - (d) a failure by Project Co to carry out its obligations in accordance with the Project Agreement including, for clarity, a failure of Project Co to comply with a Utility Agreement or a failure of Project Co to coordinate the Utility Infrastructure Work,
- 1.286 “**Infringing Material**” has the meaning given in Section 46.1(g) of the Project Agreement.
- 1.287 “**Injurious Affection**” has the meaning given in the *Expropriations Act*, R.S.O. 1990, c. E. 26, as amended from time to time.
- 1.288 “**Innovation Proposal**” has the meaning given in Section 31.2(b) of the Project Agreement.
- 1.289 “**Inspection and Test Plan**” has the meaning given in Schedule 11 – Quality Management.
- 1.290 “**Inspection and Test Sub-Plans**” has the meaning given in Schedule 11 – Quality Management.
- 1.291 “**Institute**” has the meaning given in Schedule 27 – Dispute Resolution Procedure.
- 1.292 “**Insurance**” means the insurance contemplated in Schedule 25 – Insurance and Performance Security Requirements.
- 1.293 “**Insurance Policies**” has the meaning given in Schedule 30 – Insurance Trust Agreement.
- 1.294 “**Insurance Proceeds**” has the meaning given in Schedule 30 – Insurance Trust Agreement.
- 1.295 “**Insurance Trust Account**” has the meaning given in Schedule 30 – Insurance Trust Agreement.
- 1.296 “**Insurance Trust Agreement**” means the insurance trust agreement to be entered into between Contracting Authority, the Lenders’ Agent, Project Co and the Account Trustee in the form set out in Schedule 30 - Insurance Trust Agreement.
- 1.297 “**Intellectual Property**” means all intellectual and industrial property, including: (i) Trade-Marks; (ii) Patents; (iii) Copyrights; (iv) inventions, whether or not patentable, whether or not reduced to practice or whether or not yet made the subject of a pending patent application or applications; (v) ideas and conceptions of potentially patentable subject matter, including any

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

- 1.298 **“Intellectual Property Rights”** means all right, title and interest in, to and under the Intellectual Property in or associated with the Project Data and all Intellectual Property which, or the subject matter of which, is at any time before or after Commercial Close created, brought into existence, acquired, used or intended to be used by Project Co, any Subcontractor or by other third parties (for such third parties' use by or on behalf of or for the benefit of Project Co) for any or all of the purposes of:
- (a) the Works, including the design and construction of the New Metrolinx Infrastructure and the New Third Party Infrastructure (excluding Intellectual Property Rights of third parties, such as CAD software, that is used only in the process of design and construction); or
 - (b) the Project Agreement.
- 1.299 **“Interest Reference Rate”** means the reference benchmark rate of interest identified in the Financial Model and used in the calculation of the Project Debt Interest Cost, and for greater clarity, is the base rate of interest exclusive of any stated or imbedded spread, (including credit, swap or other types of spread) or fees.
- 1.300 **“Internal Quality Audit”** has the meaning given in Schedule 11 – Quality Management.
- 1.301 **“Investment Canada Act”** means the *Investment Canada Act*, R.S.C. 1985, c. 28 (1st Supp.), and regulations enacted thereunder, all as amended from time to time.
- 1.302 **“IO”** or **“Infrastructure Ontario”** means Ontario Infrastructure and Lands Corporation, a Crown agent, continued under the *Ontario Infrastructure and Lands Corporation Act*, 2011.
- 1.303 **“Irrecoverable Tax”** has the meaning given in Section 4.16(b) of the Project Agreement.
- 1.304 **“ISO 45001”** means the international standard that specifies requirements for an occupational health and safety management systems developed by the International Organization of Standardization.

- 1.305 “**ISO 45001 Accreditation**” means, in respect of a person, such person having received certification in respect of its health and safety management systems that such systems comply with the requirements of ISO 45001.
- 1.306 “**Issuing Authority**” means the issuing authorities set out in Appendix B to this Schedule 1.
- 1.307 “**Items of Interest or Value**” has the meaning given in Section 18.4(a) of the Project Agreement.
- 1.308 “**Jointly Developed Materials**” has the meaning given in Section 41.4(a) of the Project Agreement.
- 1.309 “**Junior Debt Amount**” means, at any time, the then outstanding principal amount of debt funded under the terms of the Lending Agreements by the Junior Lenders to Project Co, together with all interest accrued thereon at that time, all to the extent set out in the Financial Model at such time, and to the extent applied for the purposes of the Project and excluding the Junior Debt Makewhole, which has a fixed return without equity participation, step-up rights or rights to share in Project Co’s excess cash flow and a coupon equal to or less than 150% of the coupon payable to the Senior Lenders and a right to a makewhole amount equal to or less than a market makewhole amount. For clarity, amounts that do not meet such criteria will not be included in Junior Debt Amount.
- 1.310 “**Junior Debt Makewhole**” means, at any time, any amount (other than the Junior Debt Amount) then due and payable to the Junior Lenders under the Lending Agreements, including any “makewhole” payments, breakage fees (less any breakage benefits) and all other fees, costs and expenses reasonably and properly incurred which Project Co is obligated to pay to the Junior Lenders pursuant to the Lending Agreements.
- 1.311 “**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.
- 1.312 “**Junior Lenders**” means [Intentionally deleted].
- 1.313 “**Key Individuals**” means those Project Co Parties listed in Schedule 9 – Key Individuals.
- 1.314 “**Knowledge of the Project Manager**” means knowledge that is actually held by the person who was identified as the project manager (or analogous position) for the Project in Project Co’s proposal in response to the Request for Proposals, but does not include any knowledge obtained as a result of the review of Background Information pursuant to Section 7.1 of the Project Agreement, including the Project GBR.
- 1.315 “**Labour and Material Payment Bond**” means, collectively, the Labour and Material Payment Bond and the Multiple Obligee Rider to Labour and Material Payment Bond in the form attached as Appendix C to Schedule 25 – Insurance and Performance Security Requirements.
- 1.316 “**Lands**” has the meaning given in Schedule 20 – Lands.
- 1.317 “**Lane Closure**” has the meaning given in Schedule 21 – Liquidated Damages and Construction Enforcement Regime.

- 1.318 “**Lease Assignment Date**” has the meaning given in Section 4.1.3.2 of Schedule 15 – Output Specifications.
- 1.319 “**Legislative Holdback**” means the basic holdback to be retained pursuant to section 22(1) of the *Construction Act* (Ontario).
- 1.320 “**Legislative Holdback Payment Date**” means the date for payment of the finishing Holdback pursuant to Schedule 38 – Payment Procedures.
- 1.321 “**Lenders**” means any or all of the persons acting arm’s length to Project Co and each Project Co Party who provide the Financing, and for greater clarity, excludes the Hedge Provider(s) or any other hedge providers and their respective permitted successors and assigns and any Affiliate of Project Co or a Project Co Party.
- 1.322 “**Lenders’ Agent**” has the meaning given in Schedule 4 – Lenders’ Direct Agreement.
- 1.323 “**Lenders’ Consultant**” means any consultant appointed from time to time by the Lenders (including the Lenders’ technical advisor). Nothing contained in the Project Documents and no action taken by the Lenders’ Consultant in connection with the Works or the Project Documents shall constitute direction and/or control by Contracting Authority, Project Co or the Lenders.
- 1.324 “**Lenders’ Direct Agreement**” means the direct agreement to be entered into between Contracting Authority, the Lenders’ Agent and Project Co in the form set out in Schedule 4 - Lenders’ Direct Agreement.
- 1.325 “**Lending Agreements**” means any or all of the agreements or instruments to be entered into by Project Co or any of its Affiliates relating to the Financing, including, for greater certainty, the Security Documents and the Hedging Agreements.
- 1.326 “**Letter of Credit Provider**” means the provider of a Standby Letter of Credit, and “**Letter of Credit Provider(s)**” means all providers of the Standby Letter(s) of Credit.
- 1.327 “**Letter of Good Standing**” means the document issued by IHSA to a person confirming that the internal maintenance audit performed by such person regarding its health and safety management systems has been approved by IHSA, and that such person has successfully completed such internal audit pursuant to the terms and conditions of the COR Program.
- 1.328 “**Licensor**” has the meaning given in Schedule 24 – Intellectual Property.
- 1.329 “**Limitations Act, 2002 (Ontario)**” means the *Limitations Act, 2002*, S.O. 2002, c.24, as amended from time to time.
- 1.330 “**Limited Modification Rights**” has the meaning given in Schedule 24 – Intellectual Property.
- 1.331 “**Listed Project Co PLAA**” means those Project Co Permits, Licences, Approvals and Agreements set out in Appendix “B” to this Schedule 1.
- 1.332 “**Listed Project Co PLAA Deadline**” has the meaning given in Section 11.10(a) of the Project Agreement.

- 1.333 “**Listed Project Co PLAA Requirements**” means any requirements, policies, guidelines or rules of the applicable Issuing Authority in respect of the applicable Listed Project Co PLAA that are included in or consistent with Applicable Law.
- 1.334 “**Listed Project Co PLAA Tracking System**” has the meaning given in Section 11.10A(a)(i) of the Project Agreement.
- 1.335 “**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.
- 1.336 “**Longstop Date**” has the meaning given in Section 36.1(a)(ii) of the Project Agreement.
- 1.337 “**Major Existing Infrastructure**” means [REDACTED].
- 1.338 “**Major Existing Infrastructure Defect**” means any deficiency or defect in the Major Existing Infrastructure.
- 1.339 “**Major Non-Conformance**” means any Non-Conformance, or combination of Minor Non-Conformances, that:
- (a) contains significant deficiencies or does not generally conform with the requirements of the Project Agreement; or
 - (b) the continued existence of which is reasonably expected to result in Project Co becoming unable to satisfy the requirements of Substantial Completion.
- 1.340 “**Make Good**”, “**Made Good**”, “**Making Good**” and derivatives thereof, means, as applicable, repairing, restoring, refurbishing, rehabilitating, removing and replacing or performing filling operation on: (a) the Works as required under the Project Agreement; or (b) any existing components disturbed (including Existing Infrastructure) due to the Works, to at least the condition existing at the commencement of the Works, in terms of construction integrity, finishes, alignment with existing adjoining surfaces, compatibility of materials, sound attenuation criteria, exfiltration/infiltration requirements, air/vapour barrier and thermal continuity.
- 1.341 “**MECP**” means the Ontario Ministry of the Environment, Conservation and Parks, and any successor ministry thereto.
- 1.342 “**Member**” has the meaning given in Schedule 27 – Dispute Resolution Procedure.
- 1.343 “**MEI Post-Closing Report**” has the meaning given to Section 7.5(a) of the Project Agreement.
- 1.344 “**MEI Post-Closing Report Deadline**” has the meaning given to Section 7.5(a) of the Project Agreement.
- 1.345 “**MEI Post-Closing Report Variation Deadline**” has the meaning given to Section 7.5(c) of the Project Agreement.
- 1.346 “**MEI Variation**” has the meaning given to Section 7.5(b) of the Project Agreement.

- 1.347 “**Metrolinx**” means Metrolinx, a non-share capital corporation continued under the *Metrolinx Act, 2006*, S.O. 2006, c.16 and a Crown agency in accordance with the *Crown Agency Act*, R.S.O. 1990, c.48 and includes all operating divisions thereof and any successors thereto.
- 1.348 “**Metrolinx Act, 2006 (Ontario)**” means the *Metrolinx Act, 2006*, S.O. 2006, c.16, as amended from time to time.
- 1.349 “**Metrolinx Developer Review Process**” means the process and requirements set out in the Metrolinx Developer’s Guide.
- 1.350 “**Metrolinx Developer’s Guide**” means the *Metrolinx Adjacent Development Guideline for Priority Transit Projects (Scarborough Subway Extension, Ontario Line, Yonge North Subway Extension and Eglinton Crosstown West Extension)*, dated December 2020, as may be amended from time to time, that serves as a guideline to any third party that is seeking approval and permits from Metrolinx for design and construction of development on lands that are within the transit corridor land (as referred to therein), pursuant to the *Building Transit Faster Act (2020)* (Ontario) and applicable regulations.
- 1.351 “**Metrolinx Easement Lands**” has the meaning given in Schedule 20 – Lands.
- 1.352 “**Metrolinx Lands**” has the meaning given in Schedule 20 – Lands.
- 1.353 “**MFIPPA**” means the *Municipal Freedom of Information and Protection of Privacy Act* (Ontario), R.S.O. 1990, c. M.56, as amended from time to time.
- 1.354 “**Milestone Payment**” means the First Milestone Payment, the Second Milestone Payment or Third Milestone Payment, as applicable, and “**Milestone Payments**” means the First Milestone Payment, the Second Milestone Payment and the Third Milestone Payment.
- 1.355 “**Milestone Payment Completion**” means,
- (a) for the First Milestone Payment [REDACTED]
 - (b) for the Second Milestone Payment [REDACTED]
 - (c) for the Third Milestone Payment [REDACTED]
- 1.356 “**Milestone Payment Completion Countdown Notice**” has the meaning given in Section 25A.1(a) of the Project Agreement.
- 1.357 “**Milestone Payment Completion Date**” means the First Milestone Payment Completion Date, the Second Milestone Payment Completion Date or the Third Milestone Payment Completion Date, as applicable, and the term “**Milestone Payment Completion Dates**” means the First Milestone Payment Completion Date, the Second Milestone Payment Completion Date and the Third Milestone Payment Completion Date.
- 1.358 “**Milestone Payment Completion Notice**” has the meaning given in Section 25A.2(b) of the Project Agreement.

- 1.359 “**Milestone Payment Date**” means the date that is two Business Days after the applicable Milestone Payment Completion Date.
- 1.360 “**Minor Deficiencies**” means any defects, deficiencies and items of outstanding work (including Seasonal Minor Deficiencies) arising from or related to the work required to achieve Substantial Completion, and that would not materially impair:
- (a) the public’s or Contracting Authority’s use and enjoyment of the New Metrolinx Infrastructure or any third parties use and enjoyment of their respective New Third Party Infrastructure;
 - (b) the performance of the Governmental Activities; or
 - (c) safety, security, or traffic or track flow on the New Metrolinx Infrastructure or New Third Party Infrastructure in any relevant respect.
- 1.361 “**Minor Deficiencies Completion Date**” has the meaning given in Section 25.10(b) of the Project Agreement.
- 1.362 “**Minor Deficiencies List**” has the meaning given in Section 25.8(a) of the Project Agreement.
- 1.363 “**Minor Non-Conformance**” means any Non-Conformance that:
- (a) generally conforms to the requirements of the Project Agreement, but in which immaterial deficiencies have been found; or
 - (b) the continued existence of which is not reasonably expected to result in Project Co becoming unable to satisfy the requirements for Substantial Completion but may result in a Minor Deficiency.
- 1.364 “**Mislocated Utility Infrastructure**” means [REDACTED].
- 1.365 “**Modification**” has the meaning given in Schedule 24 – Intellectual Property.
- 1.366 “**MOI**” means Her Majesty the Queen in right of Ontario as represented by the Minister of Infrastructure, and includes any successors thereto or persons exercising delegated power under the Minister’s authority.
- 1.367 “**MOL**” means Her Majesty the Queen in right of Ontario as represented by the Minister of Labour, and includes any successors thereto or persons exercising delegated power under the Minister’s authority.
- 1.368 “**Monthly Commissioning Reports**” has the meaning given in Schedule 14 – Outline Commissioning Program and Handover.
- 1.369 “**Monthly Environmental Report**” has the meaning given in Schedule 17 – Environmental Obligations.
- 1.370 “**Monthly Erosion and Sediment Control Monitoring Report**” has the meaning given in Schedule 17 – Environmental Obligations.

- 1.371 “**Monthly Non-Conformance Report**” has the meaning given in Schedule 11 – Quality Management.
- 1.372 “**MTO**” means Her Majesty the Queen in right of Ontario, as represented by the Minister of Transportation, and includes any successors thereto or persons exercising delegate power and such Minister’s authority.
- 1.373 “**MTO Encroachment Permit Deadline**” has the meaning given in Section 11.9(b) of the Project Agreement.
- 1.374 “**MTO Encroachment Permit Requirements**” means any requirements, policies, guidelines or rules of the MTO in respect of the applicable MTO Encroachment Permit that are included in or consistent with Applicable Law.
- 1.375 “**MTO Encroachment Permit Tracking System**” has the meaning given in Section 11.10A(a)(ii) of the Project Agreement.
- 1.376 “**MTO Encroachment Permits**” means the encroachment permits which Project Co is required to obtain from MTO to enable and authorize, among other things, Project Co to perform the Works and access the MTO Lands to perform the Works.
- 1.377 “**MTO Lands**” has the meaning given in Schedule 20 – Lands.
- 1.378 “**Multiple Obligee Rider to Labour and Material Payment Bond**” means the Multiple Obligee Rider amending the Labour and Material Payment Bond to add Contracting Authority and Lenders as additional named Obligees, in the form attached as Exhibit 1 to Appendix C of Schedule 25 – Insurance and Performance Security Requirements.
- 1.379 “**Multiple Obligee Rider to Performance Bond**” means the Multiple Obligee Rider amending the Performance Bond to add Contracting Authority and Lender as additional named Obligees, in the form attached as Exhibit 1 to Appendix B of Schedule 25 – Insurance and Performance Security Requirements.
- 1.380 “**Municipal Jointly Developed Materials**” has the meaning given in Section 41.4(a)(ii) of the Project Agreement.
- 1.381 “**Municipal Standards**” means the City of Toronto Standards.
- 1.382 “**Municipality**” means the City of Toronto.
- 1.383 “**Navigation Protection Act (Canada)**” means the *Navigation Protection Act*, R.S.C., 1985, c. N-22, as amended from time to time.
- 1.384 “**Near Critical Path Activities**” has the meaning given in Schedule 12 – Works Schedule Requirements.
- 1.385 “**New Metrolinx Infrastructure**” means the new, modified, restored or improved infrastructure as described in Schedule 15 – Output Specifications, including such infrastructure relating to or associated with the Bored Tunnel, Shafts, Headwalls, together with all associated data, records,

drawings, plans, reports and systems, all as described in the Project Agreement. New Metrolinx Infrastructure excludes the New Third Party Infrastructure.

- 1.386 “**New Municipal Infrastructure**” means the New Toronto Infrastructure.
- 1.387 “**New Routine Third Party Infrastructure**” means the new, improved or relocated infrastructure for third parties that Project Co may impact in Project Co’s performance of the Works, excluding New Municipal Infrastructure.
- 1.388 “**New Third Party Infrastructure**” means new highway, road, transit, public realm, and utility infrastructure, as described in Schedule 15 – Output Specifications, to be installed, relocated, upgraded, abandoned, reinstated, restored, designed and/or built by Project Co, for third parties,
- (a) in accordance with the Project Agreement;
 - (b) in the case of new infrastructure to be constructed for the City of Toronto, in accordance with the Project Agreement, with reference to the City of Toronto Standards; and
 - (c) in the case of new infrastructure to be constructed for a Utility Company, in accordance with the Project Agreement, with reference to the applicable standards of the relevant Utility Company.

For clarity, New Third Party Infrastructure includes, New Municipal Infrastructure, New Utility Company Infrastructure, and New Routine Third Party Infrastructure.

- 1.389 “**New Toronto Infrastructure**” means the New Third Party Infrastructure to be installed, relocated, upgraded, abandoned, reinstated, restored, designed and/or built by Project Co for the City of Toronto as described in Schedule 15 – Output Specifications, including restoration of roads and roadway structures, road realignment, associated landscaping, streetscaping and Utility Infrastructure, all as described in Schedule 15 – Output Specifications, and excluding, for clarity, the New Routine Third Party Infrastructure.
- 1.390 “**New Utility Company Infrastructure**” means the New Third Party Infrastructure to be installed, relocated, upgraded, abandoned, demolished, reinstated, restored, designed and/or built by Project Co in accordance with the Project Agreement and the specifications of the Utility Companies as of the Technical Submission Deadline.
- 1.391 “**No Comment or Minor Non-Conformance Designation**” has the meaning given in Schedule 12 – Works Schedule Requirements.
- 1.392 “**No Default Payment Compensation Amount**” means, with respect to an amount and a specified period of time, such amount multiplied by (i) such period of time in days divided by the actual number of days in the current year multiplied by (ii) the rate of interest per annum in effect on each such day quoted by [REDACTED] from time to time as its reference rate for Canadian Dollar demand loans made to its commercial customers in Canada and which it refers to as its “prime rate”, as such rate may be changed by it from time to time.
- 1.393 “**Noise and Vibration Management Plan**” has the meaning given in Schedule 17 – Environmental Obligations.

- 1.394 “**Non-Conformance**” has the meaning given in Schedule 11 – Quality Management.
- 1.395 “**Non-Conformance Report**” has the meaning given in Schedule 11 – Quality Management.
- 1.396 “**Non-Conformance Tracking System**” has the meaning given in Schedule 11 – Quality Management.
- 1.397 “**Non-Default Termination Sum**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.398 “**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).
- 1.399 “**Notice**” has the meaning given in Section 51.1(a) of the Project Agreement.
- 1.400 “**Notice of Adjudication**” has the meaning given in Schedule 27 – Dispute Resolution Procedure.
- 1.401 “**Notice of Arbitration**” has the meaning given in Schedule 27 – Dispute Resolution Procedure.
- 1.402 “**Notice of Delegation**” has the meaning given in Section 25.14(b) of the Project Agreement.
- 1.403 “**Notice of Dispute**” has the meaning given in Schedule 27 – Dispute Resolution Procedure.
- 1.404 “**Notice of Project**” means a notice of project filed with the Ministry of Labour in compliance with O. Reg 213/91 under the *Occupational Health and Safety Act* (Ontario).
- 1.405 “**Occupational Health and Safety Act (Ontario)**” means the *Occupational Health and Safety Act*, R.S.O. 1990, C. o.1, as amended from time to time.
- 1.406 “**Off-Site Migrating Contamination**” has the meaning given in Section 18.4(b) of the Project Agreement.
- 1.407 “**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.
- 1.408 “**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.
- 1.409 “**Ontario Heritage Act (Ontario)**” means the *Ontario Heritage Act*, R.S.O. 1990, c. O.18, as amended from time to time.
- 1.410 “**Ontario Infrastructure and Lands Corporation Act, 2011, S.O. 2011**” or “**Ontario Infrastructure and Lands Corporation Act, 2011**” means the Ontario Infrastructure and Lands Corporation Act, 2011, S.O. 2011, c. 9, Sch. 32, as amended from time to time.
- 1.411 “**Ontario Water Resources Act (Ontario)**” means the *Ontario Water Resources Act*, R.S.O. 1990, c. 0.40, as amended from time to time.

- 1.412 “**Open Data Directive**” means the Management Board of Cabinet’s Open Data Directive dated April 29, 2016, as may be amended from time to time.
- 1.413 “**Order**” has the meaning given in Schedule 30 – Insurance Trust Agreement.
- 1.414 “**Original Eligible Utilities Costs**” means in respect of each Category 1 Utility Company, the costs set out in the Final Utility Baseline Documents identified as “Original Eligible Utilities Costs”.
- 1.415 “**Other Contractor**” means an Additional Contractor or a Third Party Contractor.
- 1.416 “**Other Works**” means the Additional Works and the Third Party Works.
- 1.417 “**Outline Commissioning Program**” means all activities and requirements relating to commissioning, including the associated commissioning standards, specifications, procedures, submittals and other obligations as set out in Schedule 14 – Outline Commissioning Program and Handover and in Schedule 15 – Output Specifications.
- 1.418 “**Output Specifications**” means Schedule 15 – Output Specifications.
- 1.419 “**Overhead**” has the meaning given in Schedule 22 – Variation Procedure.
- 1.420 “**Overhead and Profit**” has the meaning given in Schedule 22 – Variation Procedure.
- 1.421 “**Ownership**” has the meaning given in Schedule 24 – Intellectual Property.
- 1.422 “**Pandemic and Epidemic Change in Law**” means any Change in Law that:
- (a) came into effect after the COVID-19 Change in Law Reference Date, including any changes to the COVID-19 Emergency Public Health Physical Distancing Requirements;
 - (b) is directly the result of and is directly related to the occurrence, increase or decrease in severity, or ending of a pandemic (including COVID-19) or epidemic;
 - (c) directly affects (i) the performance of the Works, or (ii) the cost to Project Co of performing the Works; and
 - (d) is not a Works Change in Law or a Relevant Change in Law.

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

- (e) include:
 - (i) any new, amendment or other modification to or repeal or replacement of any Applicable Law that satisfies the foregoing requirements of Sections 1.421(a), 1.421(b), 1.421(c) and 1.421(d); and
 - (ii) any Existing COVID-19 Laws Extension from and after the Anticipated COVID-19 Impact End Date; and

- (f) apply only to a Change in Law in respect of Applicable Laws in the Province of Ontario and the laws of Canada applicable therein that satisfies such requirements.
- 1.423 “**Pandemic and Epidemic Change in Law Compensation**” has the meaning given in Section 30.4(a) of the Project Agreement.
- 1.424 “**Pandemic and Epidemic Response and Mitigation Plan**” has the meaning given in Section 11.34(a) of the Project Agreement.
- 1.425 “**Pandemic and Epidemic Supply Chain Delay**” means a delay in the performance of the Works directly arising from a delay in the delivery of material or supplies in support of the Construction Activities, to the extent such delay in delivery:
- (a) directly results from the occurrence of:
- (i) a pandemic or epidemic other than the COVID-19 pandemic; or
- (ii) a material increase in the spread of COVID-19 after the COVID-19 Change in Law Reference Date,
- which directly and adversely affects the delivery of such materials or supplies by a Supplier or Subcontractor; and
- (b) prevents, delays or otherwise interferes with the performance of the Construction Activities.
- 1.426 “**Party**” means either Contracting Authority or Project Co, and “**Parties**” means collectively Contracting Authority and Project Co, but, for greater certainty, such definitions do not include MOI.
- 1.427 “**Party Executive**” has the meaning given in Schedule 27 – Dispute Resolution Procedure.
- 1.428 “**Party Representative**” has the meaning given in Schedule 27 – Dispute Resolution Procedure.
- 1.429 “**Patents**” includes all national (including the United States and Canada), regional and multinational statutory invention registrations, patents, patent registrations, patent applications, provisional patent applications, industrial designs, industrial models, including all reissues, divisions, continuations, continuations-in-part, extensions and re-examinations, and all rights therein provided by multinational treaties or conventions and all improvements to the inventions disclosed in each such registration, patent or application.
- 1.430 “**Payment Certifier**” means the professional architect of record or the engineer of record for the Project.
- 1.431 “**Payment Compensation Amount**” means, with respect to an amount and a specified period of time, (i) such amount multiplied by (ii) such period of time in days divided by the actual number of days in the current year multiplied by (iii) the rate of interest per annum in effect on each such day equal to [REDACTED]% over the rate of interest per annum quoted by [REDACTED] from time to time as its reference rate for Canadian Dollar demand loans made to its commercial

- customers in Canada and which it refers to as its “prime rate”, as such rate may be changed by it from time to time.
- 1.432 “**Performance Bond**” means any of the Performance Bonds described in Section 17.4 of Schedule 25 – Insurance and Performance Security Requirements.
- 1.433 “**Performance Guarantee of Construction Guarantor**” means the performance guarantee given by the Construction Guarantor in the form set out in Schedule 29 – Form of Performance Guarantee of Construction Guarantor.
- 1.434 “**Performance Security**” has the meaning given in Schedule 25 – Insurance and Performance Security Requirements.
- 1.435 “**Performance Standards Regulation**” means Ontario Regulation 260/08 made under the *Professional Engineers Act* (Ontario).
- 1.436 “**Permits, Licences, Approvals and Agreements**” means the Contracting Authority Permits, Licences, Approvals and Agreements and the Project Co Permits, Licences, Approvals and Agreements.
- 1.437 “**Permitted Borrowing**” means:
- (a) any advance to Project Co under the Lending Agreements;
 - (b) any additional financing approved by Contracting Authority in accordance with Section 1.9 of Schedule 22 – Variation Procedure to the Project Agreement; and
 - (c) any amendment, waiver or exercise of a right under the Lending Agreements made during the Step-in Period that does not increase Contracting Authority’s liabilities under the Project Agreement whether actual or contingent, present or future, known or unknown.
- 1.438 “**Permitted Periods for Closure**” has the meaning given in Schedule 21 – Liquidated Damages and Construction Enforcement Regime.
- 1.439 “**Personal Information**” means all personal information (as the term “personal information” is defined in the *Personal Information Protection and Electronic Documents Act* (Canada)) in the custody or control of Project Co or any Project Co Party other than personal information of the employees of Project Co or the Project Co Parties and other than personal information that is wholly unrelated to the Works and not derived directly or indirectly from Contracting Authority in respect of the Project.
- 1.440 “**Personal Information Protection and Electronic Documents Act (Canada)**” means the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5, as amended from time to time.
- 1.441 “**PLAA Tracking System**” has the meaning given in Section 11.10A(a) of the Project Agreement.

- 1.442 “**Plant**” means all buildings, building services, infrastructure, building fabric, and mechanical and electrical services, which are required to meet the operational needs of Contracting Authority as defined in Schedule 15 – Output Specifications.
- 1.443 “**Police Service**” means the Royal Canadian Mounted Police, the Ontario Provincial Police, the Toronto Police Service and any other law enforcement agency with jurisdiction pursuant to Applicable Law, as applicable.
- 1.444 “**Post-CC Utility Agreement Amendment**” means any amendment or modification to the Form of Utility Agreement (or to the form of Utility Agreement otherwise agreed between Project Co and the subject Utility Company) unilaterally initiated by the subject Utility Company (other than minor or administrative revisions or revisions to complete any schedules to such Form of Utility Agreement) related to the specific work to be performed under such agreement, such amendment or modification not having been caused by or contributed to by Project Co or a Project Co Party.
- 1.445 “**Post-CC Utility Agreement Amendment Notice**” has the meaning given in Section 11.35(d)(i) of the Project Agreement
- 1.446 “**Pre-Cast Tunnel Liner**” has the meaning given in Schedule 15 – Output Specifications.
- 1.447 “**Prequalification Submission**” means Project Co’s response to the request for qualifications issued in respect of the Project on [REDACTED].
- 1.448 “**Prequalified Subcontractor**” means any Subcontractor that was identified in the list of subcontractors submitted as part of Project Co’s Prequalification Submission, as amended pursuant to the process set out in the Request for Proposals.
- 1.449 “**Preventative Action**” has the meaning given in Schedule 11 – Quality Management.
- 1.450 “**Proceeding at Risk**” means that Project Co is proceeding with the Works in a manner determined by the Independent Certifier to constitute a valid Proceeding at Risk Matter in the Independent Certifier’s opinion, based on the Independent Certifier’s analysis of Critical Non-Conformance criteria, its review and analysis of Contracting Authority’s reasoning set out in the Proceeding at Risk Notice, Project Co’s response provided pursuant to Section 14.6(c) of the Project Agreement, and the additional information disclosed pursuant to the process set out in Section 14.6 of the Project Agreement.
- 1.451 “**Proceeding at Risk Matter**” has the meaning given in Section 14.6(a) of the Project Agreement.
- 1.452 “**Proceeding at Risk Non-Conformance**” means any Non-Conformance or combination of Non-Conformances that:
- (a) in the reasonable opinion of Contracting Authority, demonstrates that Project Co is performing the Works in a manner that may result in Project Co becoming unable to satisfy the requirements for Substantial Completion;
 - (b) is persistent, ongoing and repeated; or

- (c) in the reasonable opinion of Contracting Authority, by its continued existence or through the process of rectification, would:
- (i) result or is reasonably expected to result in material disruption to the public or a materially adverse disruption to vehicular traffic flow or the public transit system in any one or more of the Municipalities;
 - (ii) prejudice or is reasonably expected to materially prejudice the performance of any Governmental Activities;
 - (iii) create or is reasonably expected to create a serious threat to the health, safety or security of any person, including any user of any part of or the whole of the New Metrolinx Infrastructure, New Third Party Infrastructure and/or Existing Infrastructure, volunteers and visitors to the New Metrolinx Infrastructure, New Third Party Infrastructure and/or Existing Infrastructure, and members of the public;
 - (iv) materially increase Contracting Authority’s risk or transfer risk to Contracting Authority or any Contracting Authority Party;
 - (v) materially adversely affect the ability of any Contracting Authority Party or Other Contractor to perform their activities as permitted or contemplated by the Project Agreement;
 - (vi) materially adversely affect or change the critical path of the Project as defined in the Progress Works Schedule, adversely affect Project Co’s ability to achieve Substantial Completion by the Scheduled Substantial Completion Date, require a material resequencing of the Works or cause any delay in achieving Substantial Completion; or
 - (vii) potentially compromise the reputation or integrity of Contracting Authority and/or any Contracting Authority Party or the nature of the public transit system in any one or more of the Municipalities or the Province of Ontario so as to affect public confidence in the public transit system in any one or more of the Municipalities or the Province of Ontario or the Project.
- 1.453 “**Proceeding at Risk Notice**” has the meaning given in Section 14.6(a) of the Project Agreement.
- 1.454 “**Proceedings Against the Crown Act (Ontario)**” means the *Proceedings Against the Crown Act*, R.S.O. 1990, c. P.27, as amended from time to time.
- 1.455 “**Procured TBM**” has the meaning given in Section 11.33(a) of the Project Agreement.
- 1.456 “**Product**” means or “**Products**” mean material, machinery, equipment and fixtures forming the Works but does not include equipment or machinery used to prepare, fabricate, convey or erect the Works, which is referred to as construction machinery and equipment.
- 1.457 “**Professional Engineer**” means a professional engineer licensed by Professional Engineers Ontario to practice in the Province of Ontario.

- 1.458 “**Progress Works Schedule**” has the meaning given in Schedule 12 – Works Schedule Requirements.
- 1.459 “**Prohibited Act**” has the meaning given in Section 50.1(a) of the Project Agreement.
- 1.460 “**Project**” has the meaning given in the recitals to the Project Agreement.
- 1.461 “**Project Agreement**” has the meaning given in the recitals to the Project Agreement.
- 1.462 “**Project Agreement Arbitration**” has the meaning given in Schedule 27 – Dispute Resolution Procedure.
- 1.463 “**Project Co**” has the meaning given in the introductory paragraph of the Project Agreement.
- 1.464 “**Project Co Amount**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.465 “**Project Co Caused Contamination**” has the meaning given in Section 18.3(a)(iv) of the Project Agreement.
- 1.466 “**Project Co Caused Major Existing Infrastructure Defect**” has the meaning given in Section 18.5(a)(iv) of the Project Agreement.
- 1.467 “**Project Co Commissioning**” means the commissioning activities to be carried out by Project Co prior to the issuance of the Substantial Completion Certificate (in the case of New Metrolinx Infrastructure and New Third Party Infrastructure), in accordance with the Final Commissioning Program.
- 1.468 “**Project Co Commissioning Authority**” has the meaning given in Schedule 14 – Outline Commissioning Program and Handover.
- 1.469 “**Project Co Commissioning Tests**” means all Commissioning Tests required to be performed by Project Co pursuant to the Final Commissioning Program.
- 1.470 “**Project Co Communications Plan**” has the meaning given in Schedule 18 – Communication and Public Engagement Protocol.
- 1.471 “**Project Co Communications Protocol**” has the meaning given in Schedule 18 – Communication and Public Engagement Protocol.
- 1.472 “**Project Co Construction Event of Default**” means a Project Co Event of Default relating to a failure or breach by Project Co to perform, observe or comply with any covenants, agreements, obligations or liabilities with respect to the Works, excluding a default by the Construction Guarantor under the Performance Guarantee of Construction Guarantor.
- 1.473 “**Project Co Contamination**” has the meaning given in Section 18.3(a) of the Project Agreement.
- 1.474 “**Project Co Default Termination Sum**” has the meaning given in Schedule 23 – Compensation on Termination.

- 1.475 “**Project Co Deviation Report**” has the meaning given in Schedule 17 – Environmental Obligations.
- 1.476 “**Project Co Event of Default**” has the meaning given in Section 36.1(a) of the Project Agreement.
- 1.477 “**Project Co Group**” means Project Co together with any person or group of persons, who, either individually or collectively, have Direct or Indirect Power or Control of Project Co.
- 1.478 “**Project Co Items of Interest or Value**” has the meaning given in Section 18.4(b) of the Project Agreement.
- 1.479 “**Project Co Known Contamination**” has the meaning given in Section 18.3(a) of the Project Agreement.
- 1.480 “**Project Co Land Inspections**” has the meaning given in Section 16.10(a) of the Project Agreement.
- 1.481 “**Project Co Major Existing Infrastructure Defect**” has the meaning given in Section 18.5(a) of the Project Agreement.
- 1.482 “**Project Co Off-Site Migrating Contamination**” has the meaning given in Section 18.3(c) of the Project Agreement.
- 1.483 “**Project Co On-Site Contamination**” has the meaning given in Section 18.3(b) of the Project Agreement.
- 1.484 “**Project Co Party**” means:
- (a) the Construction Contractor;
 - (b) any person engaged by Project Co and/or the Construction Contractor from time to time as may be permitted by the Project Agreement to procure or manage the provision of the Works (or any of them); and
 - (c) in respect of each of the above, their subcontractors of any tier, agents, employees, officers and directors,
- and “**Project Co Parties**” shall be construed accordingly.
- 1.485 “**Project Co Permits, Licences, Approvals and Agreements**” means all permissions, consents, approvals, certificates, permits, licences, agreements and authorizations required to perform the Works in accordance with the Project Agreement and as required by Applicable Law, and including those permissions, consents, approvals, certificates, permits, licences, agreements and authorizations which are the responsibility of Project Co to obtain as set out in Appendix “A” to this Schedule 1 – Permits, Licences, Approvals and Agreements or which is the responsibility of Project Co to perform or fulfill as set out in Appendix “A” to this Schedule 1 – Permits, Licences, Approvals and Agreements and the Output Specifications and all necessary consents, approvals, certificates, permits, licences, agreements and authorizations from and with any third parties (including, to the extent applicable, all Development Approvals and Utility Agreements, the

Encroachment Permits, and the approval of the Fire Marshal of Ontario), needed to perform the Works in accordance with the Project Agreement and as required by Applicable Law, but other than the Contracting Authority Permits, Licences, Approvals and Agreements.

- 1.486 “**Project Co Proposal Extracts**” means the documents attached as Schedule 13 – Project Co Proposal Extracts.
- 1.487 “**Project Co Representative**” means the person designated as such by Project Co on or prior to Commercial Close and any permitted replacement.
- 1.488 “**Project Co Species-at-Risk**” has the meaning given in Section 18.7(a) of the Project Agreement.
- 1.489 “**Project Co Utility Infrastructure**” has the meaning given in Section 18.6(a) of the Project Agreement.
- 1.490 “**Project Co Variation Notice**” has the meaning given in Schedule 22 – Variation Procedure.
- 1.491 “**Project Data**” has the meaning given in Schedule 24 – Intellectual Property.
- 1.492 “**Project Debt Interest Cost**” means the budgeted amount of aggregate interest charges in respect of the Senior Debt Amount used to calculate the Cost of the Financing portion of the Guaranteed Price.
- 1.493 “**Project Documents**” means the Ancillary Documents and the Lending Agreements.
- 1.494 “**Project GBR**” has the meaning given in Schedule 37 – Geotechnical Baseline Report.
- 1.495 “**Project Know-How**” means all ideas, concepts, alternatives, methodologies, processes, recommendations and suggestions developed by or through Project Co or any Project Co Party and revealed to or discovered by Contracting Authority, whether before or after Commercial Close, which may be connected in any way to:
- (a) the Works, including the design and construction of the New Metrolinx Infrastructure and the New Third Party Infrastructure; or
 - (b) the Project Agreement.
- 1.496 “**Project Office**” has the meaning given in Section 4.1.3.2 of Schedule 15 – Output Specifications.
- 1.497 “**Project Office Lease**” has the meaning given in Section 4.1.3.2 of Schedule 15 – Output Specifications.
- 1.498 “**Project Schedules Quality Management Plan**” has the meaning given in Schedule 11 – Quality Management.
- 1.499 “**Project Term**” means the period commencing on the date of the Project Agreement and expiring at midnight on the Termination Date.

- 1.500 “**Project Website and Social Media Calendar**” has the meaning given in Schedule 18 – Communication and Public Engagement Protocol.
- 1.501 “**Project Works Schedule**” has the meaning given in Schedule 12 – Works Schedule Requirements.
- 1.502 “**Project Zone of Influence**” has the meaning given in Schedule 15 – Output Specifications.
- 1.503 “**Proper Invoice**” has the meaning given in Schedule 38 – Payment Procedures.
- 1.504 “**Proposal Fee**” has the meaning given in the Request for Proposals.
- 1.505 “**Proposal Part**” means a part of Project Co’s proposal submitted in response to the RFP, including any revisions to such part of the submission that were agreed upon by Contracting Authority and Project Co as part of the RFP process.
- 1.506 “**Proposed Works Schedule**” has the meaning given in Schedule 12 – Works Schedule Requirements.
- 1.507 “**Proprietor**” has the meaning given in Section 42.6(a) of the Project Agreement.
- 1.508 “**Protest Action**” means any civil disobedience, protest action, riot, civil commotion or demonstration, including any action taken or threatened to be taken by any person or persons protesting or demonstrating against the carrying out of any part of the Works, or against the construction or operation of rail transit systems in general, occurring after Financial Close, but excluding any labour dispute or any other strike, lockout or industrial relations dispute or job action by, of or against workers carrying out any part of the Works.
- 1.509 “**Protesters**” has the meaning given in Section 11.15(a) of the Project Agreement.
- 1.510 “**Province**” means Her Majesty the Queen in right of Ontario.
- 1.511 “**Province Person Third Party Beneficiaries**” has the meaning given in Section 54.17(a)(i) of the Project Agreement.
- 1.512 “**Province Persons**” means Contracting Authority Parties, and, while attending in their official capacity at the Lands, New Metrolinx Infrastructure or New Third Party Infrastructure, the following:
- (a) any person to which authority is designated pursuant to Section 53.1 of the Project Agreement and any agents and employees of any such person; or
 - (b) contractors of Contracting Authority or of any person to which authority is delegated pursuant to Section 53.1 of the Project Agreement and subcontractors of any tier and its or their directors, officers and employees,
- but excluding Project Co and any Project Co Party.
- 1.513 “**Public Interest Disputes**” has the meaning given in Schedule 27 – Dispute Resolution Procedure.

- 1.514 “**Quality Audit**” has the meaning given in Schedule 11 – Quality Management.
- 1.515 “**Quality Audit Program**” has the meaning given in Schedule 11 – Quality Management.
- 1.516 “**Quality Director**” has the meaning given in Schedule 11 – Quality Management.
- 1.517 “**Quality Documentation**” has the meaning given in Schedule 11 – Quality Management.
- 1.518 “**Quality Management System**” has the meaning given in Schedule 11 – Quality Management.
- 1.519 “**Quality Manuals**” has the meaning given in Schedule 11 – Quality Management.
- 1.520 “**Quality Plans**” means the Quality Manual, the Construction Quality Management Plan, the Design Quality Management Plan, the Environmental Quality Management Plan, the Traffic Quality Management Plan, the Project Schedules Quality Management Plan and the Quality Audit Plan.
- 1.521 “**Rail Transit Specific Change in Law**” means any Change in Law which principally affects or principally relates only to the design or construction of rail transit systems.
- 1.522 “**Record Drawings**” has the meaning given by the Professional Engineers of Ontario as those drawings prepared and sealed by the reviewing engineer after verifying in detail the actual conditions of the completed project.
- 1.523 “**Recoverable Tax**” has the meaning given in Section 4.16(c) of the Project Agreement.
- 1.524 “**Recovery Amount**” has the meaning given in Section 46.3(g) of the Project Agreement.
- 1.525 “**Recovery Works Schedule**” has the meaning given in Schedule 12 – Works Schedule Requirements.
- 1.526 “**Recovery Works Schedule Report**” has the meaning given in Schedule 12 – Works Schedule Requirements.
- 1.527 “**Refinancing**” has the meaning given in Schedule 28 – Refinancing.
- 1.528 “**Reimbursement Event**” has the meaning given in Section 27.5(a) of the Project Agreement.
- 1.529 “**Reinstatement Plan**” has the meaning given in Section 11.11(f) of the Project Agreement.
- 1.530 “**Reinstatement Work**” has the meaning given in Section 11.11(b) of the Project Agreement.
- 1.531 “**Relevant Change in Law**” means a Discriminatory Change in Law or a Rail Transit Specific Change in Law.
- 1.532 “**Relevant Conviction**” means a charge or conviction, at any time within the previous 6 years, of any offense: (i) of moral turpitude in Canada or elsewhere; (ii) for which records exist under the *Criminal Records Act*; or (iii) otherwise designated as a Relevant Conviction by Contracting Authority from time to time, and that conviction remains in effect at that time and is one for which a pardon has not been granted.

- 1.533 “**Relevant Entity**” has the meaning given in Section 49.4(i) of the Project Agreement.
- 1.534 “**Relief Event**” has the meaning given in Section 34.1(a) of the Project Agreement.
- 1.535 “**Reply**” has the meaning given in Schedule 27 – Dispute Resolution Procedure.
- 1.536 “**Representative Noise and Vibration Sensitive Receptor**” has the meaning given in Schedule 17 – Environmental Obligations.
- 1.537 “**Request for Payment Approval**” has the meaning given in Section 11.36 of the Project Agreement.
- 1.538 “**Request for Proposals**” or “**RFP**” means the request for proposals issued in respect of the Project on August 20, 2020, as amended from time to time.
- 1.539 “**Required Amount**” has the meaning given in Section 11.20(a) of the Project Agreement.
- 1.540 “**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) (i) is subject to a final order (including being subject to conditions or undertakings prescribed by the order) issued under Part IV.1 of the *Investment Canada Act* (Investments Injurious to National Security) that would prevent such person from undertaking the Project in whole or in part in a manner which Contracting Authority considers unacceptable in its sole discretion or (ii) is currently, or could become, subject to a review of an investment by a non-Canadian under Part IV.1 of the *Investment Canada Act* (Investments Injurious to National Security) that could result in an order described in (i) being issued (as determined by Contracting Authority in its sole discretion);
 - (d) in the case of an individual, (i) he or she has been convicted of any indictable offence less than five years prior to the date at which the consideration of whether such individual is a “Restricted Person” is made hereunder, whether or not such person received a custodial sentence; or (ii) he or she has been sentenced to a custodial sentence, other than a suspended sentence, for any regulatory offence other than under the *Highway Traffic Act* (Ontario) or corresponding legislation in any other jurisdiction less than five years prior to the date at which the consideration of whether such individual is a “Restricted Person” is made hereunder;
 - (e) in the case of a person other than an individual, (i) it or any of the members of its (or its general partner’s) board of directors or its senior executive managers has been convicted of any indictable offence less than five years prior to the date at which the consideration of whether such person is a “Restricted Person” is made hereunder, whether or not such person received a custodial sentence; or (ii) any of the members of its (or its general

partner's) board of directors or its senior executive managers has been sentenced to a custodial sentence, other than a suspended sentence, for any regulatory offence other than under the *Highway Traffic Act* (Ontario) or corresponding legislation in any other jurisdiction less than five years prior to the date at which the consideration of whether such person is a "Restricted Person" is made hereunder;

- (f) has as its primary business the acquisition of distressed assets or investments in companies or organizations which are or are believed to be insolvent or in a financial standstill situation or potentially insolvent;
 - (g) is subject to a material claim of Contracting Authority under any proceedings (including regulatory proceedings) which have been concluded or are pending at the time at which the consideration of whether such person is a "Restricted Person" is made hereunder, and which (in respect of any such pending claim, if it were to be successful) would, in Contracting Authority's view, in either case, be reasonably likely materially to affect the ability of Project Co to perform its obligations under the Project Agreement; or
 - (h) has a material interest in the production of tobacco products.
- 1.541 "**Review Procedure**" means the procedure set out in Schedule 10 – Review Procedure.
- 1.542 "**Review Procedure Activities Register**" has the meaning given in Schedule 12 – Works Schedule Requirements.
- 1.543 "**Rules of Civil Procedure**" has the meaning given in Schedule 27 – Dispute Resolution Procedure.
- 1.544 "**Safety Improvement Plan**" has the meaning given in Schedule 34 – Construction Safety.
- 1.545 "**Safety Work Plan**" has the meaning given in Schedule 34 – Construction Safety.
- 1.546 "**Schedule**" means a schedule to the Project Agreement.
- 1.547 "**Scheduled Final Completion Date**" means [REDACTED].
- 1.548 "**Scheduled First Milestone Payment Completion Date**" means [REDACTED].
- 1.549 "**Scheduled Incentive Event Completion Date**" has the meaning given in Schedule 35 – Incentive Payments.
- 1.550 "**Scheduled Milestone Payment Completion Date**" means either the Scheduled First Milestone Payment Completion Date, the Scheduled Second Milestone Payment Completion Date or the Scheduled Third Milestone Payment Completion Date, as applicable, and the term "**Scheduled Milestone Payment Completion Dates**" means the Scheduled First Milestone Payment Completion Date, the Scheduled Second Milestone Payment Completion Date and the Scheduled Third Milestone Payment Completion Date.
- 1.551 "**Scheduled Second Milestone Payment Completion Date**" means [REDACTED].

- 1.552 “**Scheduled Substantial Completion Date**” means [REDACTED], as such date may be amended pursuant to Section 32 of the Project Agreement.
- 1.553 “**Scheduled Third Milestone Payment Completion Date**” means [REDACTED].
- 1.554 “**Seasonal Minor Deficiencies**” has the meaning given in Section 25.8(b) of the Project Agreement.
- 1.555 “**Seasonal Works Holdback**” has the meaning given in Section 25.10(b)(i) of the Project Agreement.
- 1.556 “**Second Milestone Payment**” means [REDACTED].
- 1.557 “**Second Milestone Payment Completion Date**” has the meaning given in Section 25A.2(e)(i) of the Project Agreement.
- 1.558 “**Security**” has the meaning given in Schedule 4 – Lenders’ Direct Agreement.
- 1.559 “**Security Documents**” has the meaning given in Schedule 4 – Lenders’ Direct Agreement.
- 1.560 “**Senior Debt Amount**” means, at any time, the then outstanding principal amount of debt funded under the terms of the Lending Agreements by the Senior Lenders to Project Co, together with all interest accrued thereon at that time, all to the extent set out in the Financial Model at such time, provided that at any time where any portion of the interest payable to the Senior Lenders is subject to the Hedging Agreement(s), accrued interest in respect of such portion of the interest payable to the Senior Lenders shall be calculated based on the fixed rate payable by Project Co under the Hedging Agreement(s) without regard to whether such fixed rate is payable directly to a Senior Lender or to the Hedge Provider(s) under the Hedging Agreement(s) and all references to interest payable to the Senior Lenders under the Project Agreement shall be construed accordingly. For greater certainty, the Senior Debt Amount is only to the extent applied for the purposes of the Project and excludes the Senior Debt Makewhole.
- 1.561 “**Senior Debt Makewhole**” means, (i) at any time, any amount (other than the Senior Debt Amount) then due and payable to the Senior Lenders under the Lending Agreements with respect to the Senior Debt Amount, including any “makewhole” payments, breakage costs (less any breakage benefits) and all other fees, costs and expenses reasonably and properly incurred which Project Co is obligated to then pay to the Senior Lenders pursuant to the Lending Agreements with respect to the Senior Debt Amount; and (ii) any swap breakage costs (less breakage benefits), if any, then due and payable to the Hedge Provider(s) under the Hedging Agreement(s) entered into with respect to the Senior Debt Amount.
- 1.562 “**Senior Debt Service Amount**” means, for any period, the principal, interest, and commitment fees payable by Project Co or any Project Co Party to the Senior Lenders in the normal course under the Lending Agreements, provided that at any time where any portion of the interest payable to the Senior Lenders is subject to a Hedging Agreement between Project Co and a Hedge Provider, interest payable on account of such portion of interest payable to the Senior Lenders shall be calculated based on the fixed rate payable by Project Co under such Hedging Agreement without regard to whether such fixed rate is payable directly to a Senior Lender or to

the Hedge Provider under the relevant Hedging Agreement and all references to interest payable to the Senior Lenders under this Project Agreement shall be construed accordingly.

- 1.563 “**Senior Lenders**” means [REDACTED] and each of their permitted successors and assigns, and for greater clarity, excludes (i) the Hedge Provider(s) or any other hedge providers and their respective permitted successors and assigns; (ii) Junior Lenders; and (iii) any Affiliate of Project Co or a Project Co Party.
- 1.564 “**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.
- 1.565 “**Severe Market Disruption**” means any occurrence of exceptional circumstances in financial markets in Europe, the United States of America and/or Canada which:
- (a) results in the suspension or cessation of all or substantially all lending activity in national or relevant international capital or interbank markets; and
 - (b) adversely affects access by Project Co to such markets.
- 1.566 “**Shafts**” has the meaning given in Schedule 15 – Output Specifications.
- 1.567 “**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.
- 1.568 “**Site**” means, at any time and from time to time, that portion of the Lands,
- (a) on which Project Co or any Project Co Party is engaged in any construction or Demolition activities or is otherwise engaged in completing the Works;
 - (b) on which any of the Works have been commenced but not completed in their entirety;
 - (c) that are hoarded, cordoned, or otherwise fenced off by Project Co, and any Lands immediately surrounding such hoarding, cordons or fencing; or
 - (d) within the active construction footprint of the Works.
- 1.569 “**Site Condition Contingency Fund**” has the meaning given in Section 18.8(a) of the Project Agreement.
- 1.570 “**Site Condition Event**” has the meaning given in Section 18.8(a) of the Project Agreement.
- 1.571 “**Site Condition Gainshare Amount (Substantial Completion)**” has the meaning given in Section 18.8(d)(i) of the Project Agreement.

- 1.572 “**Site Condition Gainshare Amount (Termination)**” has the meaning given in Section 18.8(e)(iii) of the Project Agreement.
- 1.573 “**Site Conditions**” means the condition of the Lands, including the physical, geophysical, climatic, ecological, environmental, geotechnical and archaeological conditions.
- 1.574 “**Site Investigation Plan**” has the meaning given in Section 16.7(b)(iii) of the Project Agreement.
- 1.575 “**Site Investigation Reports**” has the meaning given in Section 16.7(b)(iii) of the Project Agreement.
- 1.576 “**Soil and Excavated Material Management Plan**” has the meaning given in Schedule 17 – Environmental Obligations.
- 1.577 “**Species-at-Risk**” means any member of a species, subspecies, variety or genetically or geographically distinct population of animal, plant or other organism that is listed in the Species at Risk in Ontario List maintained pursuant to the ESA and any analogous federal list under the *Species at Risk Act* (Canada), and any other species that has been classified as being threatened or endangered under Applicable Law.
- 1.578 “**Species at Risk Handover Report**” has the meaning given in Schedule 17 – Environmental Obligations.
- 1.579 “**Specified Costs**” has the meaning given in Schedule 21 – Liquidated Damages and Construction Enforcement Regime.
- 1.580 “**Spill Prevention and Response Plan**” has the meaning given in Schedule 17 – Environmental Obligations.
- 1.581 “**Stakeholders**” means individuals and organizations with an interest in the Project, including those listed in Schedule 15 – Output Specifications, but excluding Contracting Authority.
- 1.582 “**Standards & Guidelines for Conservation of Provincial Heritage Properties**” means the Standards & Guidelines for Conservation of Provincial Heritage Properties issued under the *Ontario Heritage Act* (Ontario) on April 28, 2010, as amended from time to time.
- 1.583 “**Standby Letter(s) of Credit**” means the letter(s) of credit delivered in accordance with Section 9.1(2) of the Request for Proposals.
- 1.584 “**Start-Up Meeting**” has the meaning given in Section 11.2(a) of the Project Agreement.
- 1.585 “**Statement of Case**” has the meaning given in Schedule 27 – Dispute Resolution Procedure.
- 1.586 “**Step-in Period**” has the meaning given in Schedule 4 – Lenders’ Direct Agreement.
- 1.587 “**Subcontract**” or “**Subcontracts**” means the contracts entered into by or between Project Co and any Subcontractor or between any Subcontractor at any tier, including the Construction Contractor, and any other Subcontractor at any tier in relation to any aspect of the Works.

- 1.588 “**Subcontractor**” means any subcontractor of Project Co engaged by or through Project Co to perform any of the Works, including the Construction Contractor, any Supplier or consultant, and any subcontractor of any other subcontractor at any tier.
- 1.589 “**Subcontractor’s Direct Agreement**” means the agreement to be entered into among Contracting Authority, Project Co, the Construction Contractor and certain Subcontractors determined in accordance with the terms of the Project Agreement in the form set out in Schedule 3 – Subcontractor’s Direct Agreement.
- 1.590 “**Substantial Completion**” means the point at which (i) the New Metrolinx Infrastructure and the New Third Party Infrastructure, have been completed in accordance with the Project Agreement; (ii) the Payment Certifier appointed pursuant to Section 17.3(g) of the Project Agreement has certified the substantial performance of the Design and Construction Contract and the related certificate of substantial performance has been published, each in accordance with the *Construction Act* (Ontario); and (iii) all requirements for Substantial Completion described in the Final Commissioning Program, other than in respect of Minor Deficiencies, have been satisfied in respect of the New Metrolinx Infrastructure and the New Third Party Infrastructure as a whole.
- 1.591 “**Substantial Completion 10-Day Notice**” has the meaning given in Section 25.4(a) of the Project Agreement.
- 1.592 “**Substantial Completion Certificate**” means the certificate to be issued by the Independent Certifier in accordance with Section 25.4(e) of the Project Agreement.
- 1.593 “**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.
- 1.594 “**Substantial Completion Deliverables**” has the meaning given in Section 25.7(d) of the Project Agreement.
- 1.595 “**Substantial Completion Deliverables List**” has the meaning given in Section 25.7(d) of the Project Agreement.
- 1.596 “**Substantial Completion LD Commencement Date**” has the meaning given in Schedule 21 – Liquidated Damages and Construction Enforcement Regime.
- 1.597 “**Substantial Completion Notice**” has the meaning given in Section 25.4(b) of the Project Agreement.
- 1.598 “**Substantial Completion Payment**” means the amount determined by subtracting from the amount of the Guaranteed Price, as adjusted in accordance with the terms of the Project Agreement as at the end of the last day of the agreed monthly payment period ending immediately prior to the Substantial Completion Payment Date, the following amounts (without duplication):
- (a) the Milestone Payments paid or payable by Contracting Authority up to the end of the last day of the agreed payment period ending immediately prior to the Substantial Completion Payment Date;
 - (b) the Completion Holdback as at the Substantial Completion Payment Date; and

- (c) any Legislative Holdback required to be maintained by Contracting Authority as at the Substantial Completion Payment Date.
- 1.599 “**Substantial Completion Payment Date**” means the date that is two Business Days after the Substantial Completion Date.
- 1.600 “**Subsurface Utility Engineering (SUE) Reports**” [REDACTED].
- 1.601 “**Supplier**” means a person who supplies to Project Co, or to any Subcontractor, any equipment, materials, supplies or services as part of, or for, the Works.
- 1.602 “**Support of Excavation**” or “**SOE**” has the meaning given in Schedule 15 – Output Specifications.
- 1.603 “**Surety**” means the person issuing the Bonds.
- 1.604 “**Tax**” or “**Taxes**” means any and all taxes, levies, imposts, duties, fees, withholdings, assessments, deductions or charges whatsoever, imposed, assessed, levied or collected by any Governmental Authority, together with interest thereon and penalties with respect thereto, and includes all HST except where stated to the contrary, provided however that “**Taxes**” shall not include the Contracting Authority Taxes.
- 1.605 “**TBM Completion Incentive Event**” has the meaning given in Schedule 35 – Incentive Payments.
- 1.606 “**TBM Marine Event**” has the meaning given in Section 11.33(a) of the Project Agreement.
- 1.607 “**Technical Information**” has the meaning given in Schedule 24 – Intellectual Property.
- 1.608 “**Technical Member**” has the meaning given in Schedule 27 – Dispute Resolution Procedure.
- 1.609 “**Technical Reports**” means the Environmental Reports, the Geotechnical Reports and the Archaeological Reports.
- 1.610 “**Technical Submission Deadline**” means [REDACTED].
- 1.611 “**Template Third Party Agreement**” has the meaning given in Section 10.3(e) of the Project Agreement.
- 1.612 “**Termination Date**” means the earlier of the Expiry Date and such other date, if any, on which termination of the Project Agreement takes effect in accordance with its terms.
- 1.613 “**Third Milestone Payment**” means \$[REDACTED].
- 1.614 “**Third Milestone Payment Completion Date**” has the meaning given in Section 25A.2(e)(i) of the Project Agreement.
- 1.615 “**Third Party Agreement**” has the meaning given in Section 10.3(e) of the Project Agreement.

- 1.616 “**Third Party Arbitration**” has the meaning given in Schedule 27 – Dispute Resolution Procedure.
- 1.617 “**Third Party Contractors**” means any person (not being, for the avoidance of doubt, Project Co or any Project Co Party or Additional Contractors) that carries out any Third Party Works.
- 1.618 “**Third Party Facilities**” means transit shelters, telephone facilities, infrastructure and other property of Utility Companies and other public facilities and associated equipment, Plant, materials and apparatus installed and operated or to be installed and operated on the Lands by any transit authority, communications provider, Utility Company or other third party (not including, for the avoidance of doubt, Project Co or any Project Co Party).
- 1.619 “**Third Party Litigation**” has the meaning given in Schedule 27 – Dispute Resolution Procedure.
- 1.620 “**Third Party Works**” means any work performed by a Third Party Contractor on the Lands, including works in relation to,
- (a) an Encumbrance;
 - (b) Existing Third Party Infrastructure;
 - (c) Third Party Facilities; and
 - (d) Utility Work and work pursuant to a Utility Agreement or an encroachment permit or other permitting authority of any Governmental Authority under Applicable Law.
- 1.621 “**Three Week Look-Ahead Schedule**” has the meaning given in Schedule 12 – Works Schedule Requirements.
- 1.622 “**Trade-Marks**” means all trademarks, service marks, trade dress, logos, distinguishing guises and indicia, trade names, corporate names, business names, domain names, whether or not registered, including all common law rights, and registrations, applications for registration and renewals thereof, including, but not limited to, all marks registered in the Canadian Intellectual Property Office and the trademark offices of other nations throughout the world, and all rights therein provided by multinational treaties or conventions.
- 1.623 “**Traffic and Transit Management Plan**” means the plans prepared by Project Co to manage traffic on and around the Lands in accordance with Schedule 15 – Output Specifications.
- 1.624 “**Traffic Quality Management Plan**” has the meaning given in Schedule 11 – Quality Management.
- 1.625 “**Transit System**” means any operating transit system that Project Co may encounter during the performance of its obligations under this Project Agreement.
- 1.626 “**Tree Tracker**” has the meaning given in Schedule 17 – Environmental Obligations.
- 1.627 “**Trespassers**” has the meaning given in Section 11.15(a) of the Project Agreement.

- 1.628 “**Tunnel Boring Machine**” or “**TBM**” has the meaning set out in Schedule 15 – Output Specifications.
- 1.629 “**Utilities**” means energy/power supplies, communications, data transmission and waste recovery, including electricity, natural gas/fuel oil, water, sanitary waste and storm water.
- 1.630 “**Utility Agreement**” means any agreement entered into by Project Co with a Utility Company in connection with the design removal, construction, installation, repair, preservation, relocation or maintenance of Utility Infrastructure in, on, under, over or adjacent to the Lands, and includes any site or other permits issued thereunder or pursuant thereto, all as amended, supplemented or replaced from time to time.
- 1.631 “**Utility Company**” means the owner or operator of any Utility Infrastructure or any company or companies designated by Project Co to provide Utilities.
- 1.632 “**Utility Infrastructure**” means privately, publicly or cooperatively owned lines, facilities or systems for transmitting or distributing electricity, lighting, data, communications, gas, oil and petroleum products, water, storm water or sewage, wireless, or other similar commodity or substance which serve the public directly or indirectly, including underground, surface and overhead facilities as well as facilities which use common poles, ducts or conduits on a shared basis, and all related infrastructure.
- 1.633 “**Utility Work**” means temporary and permanent installation, protection, removal, relocation, upgrading, reinstatement, restoration, downsizing, designing, and/or building works relating to Utility Infrastructure carried out in connection with or as part of the Works, including design, construction, installation, commissioning, protection, removal and relocation of poles, pole lines, conduits, gas pipes, oil pipes, sewers and tile lines, and related and ancillary works.
- 1.634 “**Variation**” has the meaning given in Schedule 22 – Variation Procedure.
- 1.635 “**Variation Confirmation**” has the meaning given in Schedule 22 – Variation Procedure.
- 1.636 “**Variation Directive**” has the meaning given in Schedule 22 – Variation Procedure.
- 1.637 “**Variation Enquiry**” has the meaning given in Schedule 22 – Variation Procedure.
- 1.638 “**Variation Procedure**” means the procedure set out in Schedule 22 – Variation Procedure.
- 1.639 “**Warranty Cash Amount**” has the meaning given in Section 4.3(e) of the Project Agreement.
- 1.640 “**Warranty Letter of Credit**” has the meaning given in Section 11.20(a) of the Project Agreement.
- 1.641 “**Warranty Period**” means,
- (a) with respect to all New Metrolinx Infrastructure Works, a period beginning on the Substantial Completion Date and expiring on the date that is, (i) two years following the Substantial Completion Date or (ii) such longer period as is set out in Schedule 15 – Output Specifications; and

- (b) with respect to all New Municipal Infrastructure Works, a period beginning on the Substantial Completion Date and expiring on the date that is, (i) two years following the Substantial Completion Date or (ii) such longer period as is set out in Schedule 15 – Output Specifications.
- 1.642 “**Warranty Security Return Date**” means the date that is five Business Days following the date that is two years following the Substantial Completion Date.
- 1.643 “**Warranty Work**” has the meaning given in Section 11.19(a) of the Project Agreement.
- 1.644 “**Witness and Hold Point**” has the meaning given in Schedule 11 – Quality Management.
- 1.645 “**Workplace Safety and Insurance Act (Ontario)**” means the *Workplace Safety and Insurance Act*, S.O. 1997, c.16, Schedule A, as amended from time to time.
- 1.646 “**Works**” means the design, construction, installation, testing, commissioning and completion of the New Metrolinx Infrastructure and the New Third Party Infrastructure, and the rectification of any Minor Deficiencies, Warranty Work, all other work under the Permits, Licences, Approvals and Agreements, and all work which is implied by the Project Agreement and that is necessary for the stability or safe and proper design, construction, installation, testing, commissioning and completion of the New Metrolinx Infrastructure and the New Third Party Infrastructure, except for all work which is expressly described in Appendix “A” to this Schedule 1 – Permits, Licences, Approvals and Agreements as being the responsibility of Contracting Authority and including, for clarity, the Early Contractor Activities.
- 1.647 “**Works Activity**” has the meaning given in Schedule 12 – Works Schedule Requirements.
- 1.648 “**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 New Metrolinx Infrastructure or the New Third Party Infrastructure which is similar in nature to the Works but is not Works or capital replacement work which Project Co would otherwise be required to perform in order to comply with its obligations under the Project Agreement; and
 - (d) was not reasonably foreseeable at Commercial Close by an experienced contractor carrying out activities and/or performing design and/or other operations similar to those to be carried out and/or performed by any Project Co Party in relation to the Project.
- 1.649 “**Works Committee**” has the meaning given in Section 14.1(a) of the Project Agreement.
- 1.650 “**Works Report**” has the meaning given in Section 13.6(a) of the Project Agreement.
- 1.651 “**Works Schedule Report**” has the meaning given in Schedule 12 – Works Schedule Requirements.

- 1.652 “**Works Submittals**” has the meaning given in Section 1.1 of Schedule 10 - Review Procedure.
- 1.653 “**Worsened Contamination**” means any Worsened Project Co Contamination and any Worsened Contracting Authority Contamination.
- 1.654 “**Worsened Contracting Authority Contamination**” means the Worsening of any Contracting Authority Contamination which was caused:
- (i) directly or indirectly by Project Co or a Project Co Party other than as a result of the Bored Tunnel Construction Activities; or
 - (ii) by a failure of Project Co or any Project Co Party to comply with its obligations under the Project Agreement; and
- (b) in respect of which Project Co did not comply with its obligations pursuant to Section 18.3(h) and 18.3(i) of the Project Agreement,
- but only to the extent of the Worsening.
- 1.655 “**Worsened Project Co Contamination**” means the Worsening of any Project Co Contamination which was caused by:
- (a) directly or indirectly by Project Co or a Project Co Party other than as a result of the Bored Tunnel Construction Activities; or
 - (b) by a failure of Project Co or any Project Co Party to comply with its obligations under the Project Agreement,
- but only to the extent of the Worsening.
- 1.656 “**Worsens**” means any act or omission of Project Co or any Project Co Party which, other than as required by Applicable Law, Good Industry Practice, or the terms of the Project Agreement (including Schedule 15 – Outputs Specifications and Schedule 17 – Environmental Obligations, excavates, disturbs, exposes, spills, releases or otherwise affects (directly or indirectly) any Contamination with the effect of aggravating, exacerbating, migrating, diverting or otherwise increasing the area, volume, impact or costs of dealing with such Contamination, and “**Worsened**” and “**Worsening**” shall have the corresponding meanings wherever used in Section 18.3 of the Project Agreement.
- 1.657 “**WSIB**” means the Ontario Workplace Safety and Insurance Board that is responsible for administering the *Workplace Safety and Insurance Act* (Ontario).
2. **Interpretation.** The Project Agreement shall be interpreted according to the following provisions, unless the context requires a different meaning:
- 2.1 The tables of contents, headings, marginal notes and references to them in the Project Agreement are for convenience of reference only, shall not constitute a part of the Project Agreement, and shall not be taken into consideration in the interpretation of, or affect the meaning of, the Project Agreement.

- 2.2 Except where the context requires otherwise (irrespective of whether some, but not all, references in a Schedule specifically refer to that Schedule or to other portions of the Project Agreement) references to specific Sections, Articles, Clauses, Paragraphs, Subparagraphs, Schedules, and other divisions of the Project Agreement are references to such Sections, Articles, Clauses, Paragraphs, or Subparagraphs of, Schedules to, or divisions of the Project Agreement and the terms “Section”, “Article” and “Clause” are used interchangeably and are synonymous.
- 2.3 Except where the context requires otherwise, references to specific Sections, Articles, Clauses, Paragraphs, Subparagraphs, Schedules, and other divisions of the Project Agreement followed by a number are references to the whole of the Section, Article, Clause, Paragraph, Subparagraphs, Schedule or other division of the Project Agreement as applicable, bearing that number, including all subsidiary provisions containing that same number as a prefix.
- 2.4 Except where the context requires otherwise, references in the Output Specifications to specific Parts, Sections, Articles, Clauses, Paragraphs, Subparagraphs, Schedules, and other divisions of the Output Specifications shall be construed such that each such reference on a page of the Output Specifications will be read to be preceded by and to include the prefix Section number or other reference at the top of the applicable page, and all cross-references to any Section in 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 Person and Project Co and further having regard to:
- (a) acts contemplated by the Output Specifications; or
 - (b) acts otherwise provided for in the Project Agreement.
- 2.18 The words in the Project Agreement shall bear their natural meaning.
- 2.19 Each of Project Co's and Contracting Authority's respective obligations shall be construed as separate obligations owed to the other.
- 2.20 References containing terms such as:
- (a) "hereof", "herein", "hereto", "hereinafter", and other terms of like import are not limited in applicability to the specific provision within which such references are set forth but instead refer to the Project Agreement taken as a whole; and
 - (b) "includes" and "including", whether or not used with the words "without limitation" or "but not limited to", shall not be deemed limited by the specific enumeration of items but shall, in all cases, be deemed to be without limitation and construed and interpreted to mean "includes without limitation" and "including without limitation".

- 2.21 In construing the Project Agreement, the rule known as the *ejusdem generis* rule shall not apply nor shall any similar rule or approach apply to the construction of the Project Agreement and, accordingly, general words introduced or followed by the word “other” or “including” or “such as” or “in particular” shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words.
- 2.22 Where the Project Agreement states that an obligation shall be performed “no later than” or “within” or “by” a stipulated date or event which is a prescribed number of days after a stipulated date or event, the latest time for performance shall be 5:00 p.m. on the last day for performance of the obligation concerned, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- 2.23 Where the Project Agreement states that an obligation shall be performed “no later than” or “by” a prescribed number of days before a stipulated date or event or “by” a date which is a prescribed number of days before a stipulated date or event, the latest time for performance shall be 5:00 p.m. on the last day for performance of the obligation concerned, or if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- 2.24 Where the Project Agreement states that an obligation shall be performed “on” a stipulated date, the latest time for performance shall be 5:00 p.m. on that day, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- 2.25 Any reference to time of day or date means the local time or date in Toronto, Ontario. Any reference to a stipulated “day” which is not specifically referred to as a “Business Day” shall be deemed to be a calendar day measured from midnight to midnight.
- 2.26 Unless otherwise indicated, time periods will be strictly construed.
- 2.27 Whenever the terms “will” or “shall” are used in the Project Agreement in relation to Project Co or Contracting Authority they shall be construed and interpreted as synonymous and to read “Project Co shall” or “Contracting Authority shall” as the case may be.
- 2.28 Any reference to currency is to Canadian currency and any amount advanced, paid or calculated is to be advanced, paid or calculated in Canadian currency.
- 2.29 Unless otherwise identified in the Project Agreement, all units of measurement in any documents submitted by Project Co to Contracting Authority shall be in accordance with the SI system of units.
- 2.30 Terms not defined herein and used in the Project Agreement which have a technical meaning commonly understood by the transit system construction industry will be construed as having that meaning unless the context otherwise requires.
- 2.31 Save where expressly stated otherwise, references to amounts or sums expressed to be “indexed” or “index linked” are references to amounts or sums which require adjustment to reflect the effects of inflation. Such adjustment shall be calculated in accordance with the following formula:

$$\text{CPI}_n$$

Adjusted amount or sum = Amount or sum x 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 in respect of the Lands, including the Existing Infrastructure, carried out by Project Co or by any Project Co Party during the Request for Proposals process or other due diligence; and by taking into consideration reasonable, normal course and industry standard investigations, inspections or other due diligence; in each case in accordance with Good Industry Practice.

APPENDIX A

PERMITS, LICENCES, APPROVALS AND AGREEMENTS

See attached.

APPENDIX B

LISTED PROJECT CO PLAAS

See attached.

APPENDIX C

FINAL UTILITY BASELINE DOCUMENTS

None.

APPENDIX A TO SCHEDULE 1 - PERMITS, LICENCES, APPROVALS AND AGREEMENTS

[REDACTED]

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

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

- 1.1 the Project Agreement;
- 1.2 the Lenders' Direct Agreement;
- 1.3 the Independent Certifier Agreement;
- 1.4 the CDB Member Statement for the Technical Member put forward by Project Co, the CDB Member Statement for the CDB Chair, and each of the CDB Member Agreements for the CDB;
- 1.5 the Insurance Trust Agreement;
- 1.6 a Notice of appointment of the Project Co Representative;
- 1.7 the Lending Agreements;
- 1.8 the Design and Construction Contract;
- 1.9 the Performance Guarantee of Construction Guarantor for the Construction Guarantor;
- 1.10 the Construction Contractor's Direct Agreement;
- 1.11 a certificate of insurance and draft policies of insurance for the insurances required to be taken out by Project Co in accordance with the Project Agreement;
- 1.12 the Financial Model in electronic form;
- 1.13 the Proposed Works Schedule, in accordance with the requirements set out in Schedule 12 – Works Schedule Requirements;
- 1.14 a digital copy of each of the Bonds, in sealed form, as required in accordance with the Project Agreement or as Contracting Authority may direct in accordance with the Insurance Trust Agreement;
- 1.15 the undertaking and acknowledgment in the form attached as Appendix A to this Schedule 2;
- 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 the Construction Contractor substantially in the form attached as Appendix B to this Schedule 2;
- 1.18 a certificate of an officer of the Construction Guarantor substantially in the form attached as Appendix B to this Schedule 2;
- 1.19 the opinion from counsel to Project Co, the Construction Contractor, the Construction Guarantor, and such other Project Co Parties as Contracting Authority may reasonably require substantially in the form attached as Appendix C to this Schedule 2 and otherwise acceptable to Contracting Authority and its counsel;
- 1.20 evidence that the COR-Certified Construction Project Co Party has its COR Certification in good standing (or to the extent that the COR-Qualified Construction Project Co Party does not have its COR Certification by Financial Close, evidence that the COR-Qualified Construction Project Co Party has its current OHSAS 18001 Accreditation or ISO 45001 Accreditation in good standing and has made an application to IHSA for its COR Certification);
- 1.21 in respect of the Construction Contractor (and where the Construction Contractor is a partnership or joint venture, in respect of each partner of the partnership or member of the joint venture, as applicable), a WSIB clearance certificate, or if a WSIB clearance certificate is not available, equivalent documentation from another jurisdiction, current to the date of Commercial Close;
- 1.22 in respect of the Construction Contractor (and where the Construction Contractor is a partnership or joint venture, in respect of each partner of the partnership or member of the joint venture, as applicable), a listing of any construction accidents incurred that have caused Lost Time Injuries (“LTIs”, as defined by the WSIB) or, if a LTI listing is not available, equivalent documentation from another jurisdiction, current to the date of Commercial Close;
- 1.23 in respect of the Construction Contractor (and where the Construction Contractor is a partnership or joint venture, in respect of each partner of the partnership or member of the joint venture, as applicable), a Workplace Injury Summary Report (WISR) or, if a WISR is not available, equivalent documentation from another jurisdiction, current to the date of Commercial Close;
- 1.24 written confirmation that the list of Key Individuals with respect to the Works submitted by Project Co as part of its proposal in the RFP process, is unchanged;
- 1.25 certificate of an officer of Project Co certifying the corporate structure of Project Co;
- 1.26 certificate of an officer of Project Co certifying that Financial Close has occurred, in the form of Appendix 4 to the Escrow Closing Procedures Agreement; and
- 1.27 such other documents as the Parties may agree, each acting reasonably.

2. DOCUMENTS TO BE DELIVERED BY CONTRACTING AUTHORITY

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

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

3. POST FINANCIAL CLOSE PROJECT CO DELIVERABLES

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

- 3.1 within five Business Days following Financial Close, (a) one printed copy of the Financial Model, and (b) two electronic copies of the Financial Model, each on a USB key; and
- 3.2 within 15 Business Days following Financial Close, two USB keys, each containing electronic copies of all the documents described in Section 1 and Section 2 of this Schedule 2.

APPENDIX A

FORM OF UNDERTAKING AND ACKNOWLEDGEMENT

TO: Ontario Infrastructure and Lands Corporation, a Crown agent, continued under the *Ontario Infrastructure and Lands Corporation Act, 2011*

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, (“Contracting Authority”)

AND TO: The Minister of Infrastructure (the “Minister”)

RE: Project agreement (as amended, supplemented or modified from time to time, the “Project Agreement”) dated the [•] day of [•], 20[•] between Contracting Authority and (“Project Co”)

1. The undersigned acknowledges that:
 - (a) The Project will proceed as a public-private partnership project under the MOI’s *ReNew Ontario* infrastructure investment plan, and complies with the principles which guide the financing and procurement of public infrastructure projects in Ontario.
 - (b) The five fundamental principles which guide the financing and procurement of public infrastructure projects in Ontario:
 - (i) The public interest is paramount;
 - (ii) Value for money must be demonstrable;
 - (iii) Appropriate public control/ownership must be preserved
 - (iv) Accountability must be maintained; and
 - (v) All processes must be fair, transparent and efficient.
 - (c) Consistent with the principle of appropriate public ownership/control, public ownership of assets will be preserved in the public sector.
2. Capitalized terms used but not defined herein have the respective meanings ascribed thereto in the Project Agreement.

[SIGNATURE PAGE IMMEDIATELY FOLLOWS]

DATED this _____ day of _____, 20[●].

[PROJECT CO]

By: _____
Name:
Title:

By: _____
Name:
Title:

I/We have authority to bind the corporation.

APPENDIX B

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

Certificate of an Officer of

[•]

(the "Corporation")

- TO:** Ontario Infrastructure and Lands Corporation, a Crown agent, continued under the *Ontario Infrastructure and Lands Corporation Act, 2011*
- 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, ("Contracting Authority")
- AND TO:** The Minister of Infrastructure (the "Minister")

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

1. Constatting Documents
 - (a) The Corporation is a subsisting corporation duly incorporated under the laws of the [Province of Ontario].
 - (b) Attached hereto as **Schedule "A"** are true and complete copies of the articles, together with all amendments thereto, of the Corporation (the "**Articles**"). The Articles are in full force and effect on the date hereof and no other articles have been issued and no proceeding has been taken or is contemplated to the date hereof to authorize the Corporation to amend, surrender or cancel the Articles.
 - (c) Attached hereto as **Schedule "B"** are true and complete copies of the by-laws of the Corporation (the "**By-laws**") enacted on or before the date hereof. The By-laws have been in full force and effect from and after the date thereof as set out therein and are in full force and effect, unamended as of the date hereof. No proceeding has been taken to the date hereof to authorize the Corporation to amend the By-laws and neither the directors nor the shareholders of the Corporation have passed, confirmed or consented to any resolutions amending or varying the By-laws.
 - (d) Attached hereto as **Schedule "C"** is a true and complete copy of a unanimous shareholders' agreement between the shareholders of the Corporation and the Corporation (the "**Unanimous Shareholders' Agreement**") executed on or before the

date hereof. The Unanimous Shareholders' Agreement has been in full force and effect from and after the date thereof as set out therein and is in full force and effect, unamended as of the date hereof.

- (e) The minute books and corporate records of the Corporation made available to [•] are the original minute books and corporate records of the Corporation and contain all minutes of meetings, resolutions and proceedings of the shareholders and directors of the Corporation to the date hereof and there have been no meetings, resolutions or proceedings authorized or passed by the shareholders or directors of the Corporation to the date hereof not reflected in such minute books and corporate records. Such minute books and corporate records are true, complete and correct in all material respects and there are no changes, additions or alterations necessary to be made thereto to make such minute books and corporate records true, complete and correct in all material respects.
- (f) At the date hereof, no winding-up, liquidation, dissolution, insolvency, bankruptcy, amalgamation, arrangement, reorganization or continuation proceedings in respect of the Corporation have been commenced or are being contemplated by the Corporation, and the Corporation has no knowledge of any such proceedings having been commenced or contemplated in respect of the Corporation by any other party.
- (g) At the date hereof, the Corporation is up-to-date in the filing of all returns and other documents required to be filed by it by governmental authorities, including under corporate, securities and tax legislation, and no notice of any proceedings to cancel its certificate of incorporation or otherwise to terminate its existence has been received by the Corporation.
- (h) Pursuant to the Unanimous Shareholders' Agreement, the powers of the directors of the Corporation to manage the business and affairs of the Corporation, whether such powers arise from the *Business Corporations Act* (Ontario) (the "Act"), the Articles or the By-laws of the Corporation, or otherwise, are restricted to the fullest extent permitted by law, and, in accordance with the Act and the Unanimous Shareholders' Agreement, the shareholders of the Corporation have and enjoy and may exercise and perform all the rights, powers, and duties of the directors of the Corporation to manage the business and affairs of the Corporation.
- (i) There are no provisions in the Articles, By-laws, Unanimous Shareholders' Agreement or in any other agreement binding on the Corporation which:
 - (i) restrict or limit the powers of the Corporation to enter into:
 - (1) a certain project agreement with Contracting Authority made as of [•], 20[•] (as the same may be amended, supplemented, restated or otherwise modified from time to time, the "Project Agreement") pursuant to which the Corporation will design, build and finance the New Metrolinx Infrastructure and the New Third Party Infrastructure;
 - (2) a lenders' direct agreement between the Corporation, Contracting Authority and the Lenders' Agent;

- (3) a design and construction contract between the Corporation and [●] (the “**Construction Contractor**”);
- (4) an insurance trust agreement between the Corporation, Contracting Authority, the Lenders’ Agent and the Account Trustee; and
- (5) *[Note to Proponents: List other documents delivered at Financial Close.]*,

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

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

2. Resolutions

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

writ, injunction, or decree of any Governmental Authority or arbitral body that could result in any such material adverse effect or impairment.

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

3. No Breach or Default

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

4. Specimen Signatures

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

NAME	POSITION	SIGNATURE
[•]		
[•]		
[•]		
[•]		

5. Capital

Listed below are all of the issued and outstanding shares in the capital of the Corporation and the registered owner of such shares:

ISSUED SHARES

REGISTERED OWNER

Attached hereto as Schedule “E” are true copies of all certificates in respect of such issued and outstanding shares. The Corporation has issued no securities, including securities convertible or exchangeable into shares and/or securities in respect of debt, other than such issued and outstanding shares as are listed above.

DATED this ____ day of _____, 20[●].

Name:
Title:

APPENDIX C

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

[INSERT DATE]

Ontario Infrastructure and Lands Corporation Metrolinx
1 Dundas Street West, 20th Floor [●]
Toronto, Ontario
M5G 1Z3

[●] LLP
[●]

Dear Sirs/Mesdames:

Re: Advance Tunnel for the Scarborough Subway Extension Project

We have acted as counsel to [●] (“**Project Co**”), [●] (the “**Construction Contractor**”) and [●] (the “**Construction Guarantor**”) in connection with the public-private partnership transaction whereby Project Co has agreed to enter into a design, build and finance agreement for the Advance Tunnel for the Scarborough Subway Extension Project.

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

This opinion is being delivered to Ontario Infrastructure and Lands Corporation, a Crown agent continued under the *Ontario Infrastructure and Lands Corporation Act, 2011* and Metrolinx, a non-share capital corporation continued under the *Metrolinx Act, 2006*, S.O. 2006, c. 16 and a Crown agency in accordance with the *Crown Agency Act*, R.S.O. 1990, c. 48 (collectively, the “**Contracting Authority**”) and its counsel pursuant to Section 1.18 of Schedule 2 to the project agreement made as of [●], 20[●] between Contracting Authority and Project Co (as the same may be amended, supplemented, restated or otherwise modified from time to time, the “**Project Agreement**”).

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

In our capacity as counsel to Project Co, the Construction Contractor and the Construction Guarantor, 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 [●], 20[●]):

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

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

The Project Agreement and the Implementation Documents are hereinafter collectively referred to as the “**Documents**”, and each is individually referred to as a “**Document**”.

[Note to Proponents: Additional documents to be added depending on consortium structure and/or the financing package.]

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

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

Searches and Reliance

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

We have also made such investigations and examined originals or copies, certified or otherwise identified to our satisfaction, of such certificates of public officials and of such other certificates, documents and records as we have considered necessary or relevant for purposes of the opinions expressed below, including the Officer's Certificates.

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

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

Assumptions

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

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

Opinions

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

Incorporation and Existence

1. Project Co is a 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 Construction Guarantor is a corporation incorporated under the laws of **[the Province of Ontario]** and has not been dissolved.

Corporate Power and Capacity

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

Corporate Authorization

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

Execution and Delivery

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

12. The Construction Guarantor has duly executed and delivered each of the Documents to which it is a party.

Enforceability

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

No Breach or Default

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

Regulatory Approvals

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

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

Qualifications

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

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

arbitration award on a question of law, or set aside an arbitration award or declare it invalid, in each case on certain prescribed grounds.

10. Any requirement in any of the Documents that interest be paid at a higher rate after than before default may not be enforceable.
11. The effectiveness of provisions which purport to relieve a person from a liability or duty otherwise owed may be limited by law, and provisions requiring indemnification or reimbursement may not be enforced by a Court, to the extent that they relate to the failure of such person to perform such duty or liability.
12. No opinion is expressed as to the enforceability of any provision contained in any Document which purports to sever from the Document any provision therein which is prohibited or unenforceable under applicable law without affecting the enforceability or validity of the remainder of the document.
13. No opinion is expressed regarding any waiver of service of process, presentment, demand, protest or notice of dishonour which may be contained in any of the Documents.
14. Any award of costs is in the discretion of a Court of competent jurisdiction.
15. The enforceability of rights of indemnity set out in the Documents may be limited under applicable law to the extent that they directly or indirectly relate to liabilities imposed by law on Contracting Authority for which it would be contrary to public policy to require Project Co to indemnify Contracting Authority or to the extent that they constitute the indirect enforcement of a foreign revenue or penal law.
16. We express no opinion as to the enforceability by any person who is not a party to the Documents of any provision therein that purports to bind or affect or confer a benefit on such person.

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

Yours very truly,

[INSERT NAME OF LAW FIRM]

APPENDIX D-1

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

TO: [PROJECT CO] (“Project Co”)

AND TO: [COUNSEL TO PROJECT CO]

AND TO: [LENDERS’ AGENT] (the “Lenders’ Agent”)

AND TO: [LENDERS’ COUNSEL]

RE: Project agreement (as amended, supplemented or modified from time to time, the “Project Agreement”) dated the [Insert Date] between the Corporation, a Crown agent continued under the *Ontario Infrastructure and Lands Corporation Act, 2011*; Metrolinx, a non-share capital corporation continued under the *Metrolinx Act, 2006*, S.O. 2006, c. 16 and a Crown agency in accordance with the *Crown Agency Act, R.S.O. 1990, c. 48* and [•] (“Project Co”)

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

1. Attached hereto as **Schedule “A”** is a true and complete copy of (i) the resolutions of the directors of the Corporation regarding the execution of public works projects undertaken by the Corporation and certain other matters set forth therein; and (ii) an excerpt of the resolutions of the directors of the Corporation relating to delegation of signing authority (collectively, the “**Execution Resolutions**”), which have been duly and validly passed in accordance with applicable law. The Execution Resolutions are the only resolutions of the Corporation pertaining to the subject matter thereof and the same are in full force and effect, unamended as of the date hereof.
2. Attached hereto as Schedule “B” is a true and complete copy of the resolutions of the directors of the Corporation approving the selection of Project Co as the successful bidder for the Advance Tunnel for the Scarborough Subway Extension Project (the “**Project Resolutions**”). The Project Resolutions are the only resolutions of the Corporation pertaining to the subject matter thereof and the same is in full force and effect, unamended as of the date hereof.
3. To the knowledge of the undersigned, after due inquiry as of the date hereof, the Minister of Infrastructure (the “**Minister**”) has not given a direction pursuant to subsection 4(3) of the *Ontario Infrastructure and Lands Corporation Act, 2011*, S.O. 2011, c. 9, Schedule 32, as amended (the “**Act**”) that limits the scope of the objects of the Corporation as they are set out in subsection 4(1) of the Act.

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

Name	Position	Signature
[•]		
[•]		
[•]		
[•]		

DATED this ____ day of _____, 20[•].

Name: [•]
Title: Secretary

APPENDIX D-2

FORM OF CERTIFICATE OF AN OFFICER OF METROLINX (the “Corporation”)

TO: [PROJECT CO] (“Project Co”)

AND TO: [COUNSEL TO PROJECT CO]

AND TO: [LENDERS’ AGENT] (the “Lenders’ Agent”)

AND TO: [LENDERS’ COUNSEL]

RE: Project agreement (as amended, supplemented or modified from time to time, the “Project Agreement”) dated the [Insert Date] between the Corporation, a Crown agent continued under the *Ontario Infrastructure and Lands Corporation Act, 2011*; Metrolinx, a non-share capital corporation continued under the *Metrolinx Act, 2006*, S.O. 2006, c. 16 and a Crown agency in accordance with the *Crown Agency Act*, R.S.O. 1990, c. 48 and [•] (“Project Co”)

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

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

Dated this _____ day of _____, 20[•].

Name:

Title:

APPENDIX E

FORM OF DECLARATION OF MANAGEMENT

ONTARIO INFRASTRUCTURE AND LANDS CORPORATION

(the “Corporation”)

DECLARATION OF MANAGEMENT

WHEREAS the Corporation, a Crown agent, continued under the *Ontario Infrastructure and Lands Corporation Act, 2011*; Metrolinx, a non-share capital corporation continued under the *Metrolinx Act, 2006*, S.O. 2006, c. 16 and a Crown agency in accordance with the *Crown Agency Act*, R.S.O. 1990, c. 48; and [•] propose to enter into a Project Agreement relating to the Advance Tunnel for the Scarborough Subway Extension Project (the “**Project**”);

AND WHEREAS the Corporation will from time to time enter into agreements for the design, construction and/or facilities management of the Project assigned to the Corporation by the Minister of Infrastructure and as well as ancillary agreements, instruments, certificates and other documents required to give effect to, or contemplated to be delivered in accordance with the 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 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 Project from the Corporation.

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

DATED this _____ day of _____, 20[●].

Name: [●]
Title: Secretary

MT MTDPCS 20634248v12

SCHEDULE 3

SUBCONTRACTOR’S DIRECT AGREEMENT

THIS AGREEMENT is made as of the ___ day of _____, 2021

BETWEEN:

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

– AND –

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

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

– AND –

STRABAG SCARBOROUGH PROJECT INC., [REDACTED]

(“**Project Co**”)

– AND –

[REDACTED]

(the “**Construction Contractor**”)

– AND –

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

(the “**Subcontractor**”)

WHEREAS:

- A. Contracting Authority and Project Co have entered into the Project Agreement, which requires Project Co to enter into, and to cause the Construction Contractor and the Subcontractor to enter into, this Subcontractor’s Direct Agreement with Contracting Authority.
- B. Project Co and the Construction Contractor have entered into the Design and Construction Contract, which requires the Construction Contractor to enter into, and cause the Subcontractor to enter into, this Subcontractor’s Direct Agreement with Contracting Authority.
- C. IO, as Crown agent and Metrolinx, as Crown agency, intend to enter into this Subcontractor’s Direct Agreement in accordance with Applicable Law, and to be liable, on a joint and several basis,

for all of the obligations of Contracting Authority pursuant to this Subcontractor's Direct Agreement, save and except as provided for in this Subcontractor'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 Schedule 3, unless the context indicates a contrary intention, terms which are defined in the Project Agreement (and not otherwise defined in this Schedule 3) shall have meanings given to them in the Project Agreement and the following terms shall have the following meanings:

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

2. INTERPRETATION

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

- (a) The headings in this Subcontractor's Direct Agreement are for convenience of reference only, shall not constitute a part of this Subcontractor's Direct Agreement, and shall not be taken into consideration in the interpretation of, or affect the meaning of, this Subcontractor's Direct Agreement.
- (b) Unless the context otherwise requires, references to specific Sections, Clauses, Paragraphs, Subparagraphs, and other divisions are references to such Sections, Clauses, Paragraphs, Subparagraphs, or divisions of this Subcontractor's Direct Agreement and the terms “Section” and “Clause” are used interchangeably and are synonymous.
- (c) Words importing persons or parties are to be broadly interpreted and include an individual, corporation, limited liability company, joint stock company, firm, partnership, joint venture, trust, unincorporated organization, Governmental Authority, unincorporated body of persons or association and any other entity having legal capacity, and the heirs, beneficiaries, executors, administrators or other legal representatives of a person in such capacity.

-
- (d) Unless the context otherwise requires, wherever used herein the plural includes the singular, the singular includes the plural, and each of the masculine, feminine and neuter genders include all other genders.
- (e) References to any standard, principle, agreement or document include (subject to all relevant approvals and any other provisions of this Subcontractor’s Direct Agreement concerning amendments) a reference to that standard, principle, agreement or document as amended, supplemented, restated, substituted, replaced, novated or assigned.
- (f) The words in this Subcontractor’s Direct Agreement shall bear their natural meaning.
- (g) References containing terms such as:
- (i) “hereof”, “herein”, “hereto”, “hereinafter”, and other terms of like import are not limited in applicability to the specific provision within which such references are set forth but instead refer to this Subcontractor’s Direct Agreement taken as a whole; and
 - (ii) “includes” and “including”, whether or not used with the words “without limitation” or “but not limited to”, shall not be deemed limited by the specific enumeration of items but shall, in all cases, be deemed to be without limitation and construed and interpreted to mean “includes without limitation” and “including without limitation”.
- (h) In construing this Subcontractor’s Direct Agreement, the rule known as the *ejusdem generis rule* shall not apply nor shall any similar rule or approach to the construction of this Subcontractor’s Direct Agreement and, accordingly, general words introduced or followed by the word “other” or “including” or “in particular” shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words.
- (i) Where this Subcontractor’s Direct Agreement states that an obligation shall be performed “no later than” or “within” or “by” a stipulated date or event which is a prescribed number of days after a stipulated date or event, the latest time for performance shall be 5:00 p.m. on the last day for performance of the obligation concerned, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- (j) Where this Subcontractor’s Direct Agreement states that an obligation shall be performed “on” a stipulated date, the latest time for performance shall be 5:00 p.m. on that day, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- (k) Any reference to time of day or date means the local time or date in Toronto, Ontario.
- (l) Unless otherwise indicated, time periods will be strictly construed.
- (m) Whenever the terms “will” or “shall” are used in this Subcontractor’s Direct Agreement they shall be construed and interpreted as synonymous and to read “shall”.

3. CONFLICT IN DOCUMENTS

- (a) In the event of ambiguities, conflicts or inconsistencies between or among this Subcontractor's Direct Agreement, the Construction Contractor's Direct Agreement, the Project Agreement and the Design and Construction Contract, this Subcontractor's Direct Agreement shall prevail.
- (b) In the event of ambiguities, conflicts or inconsistencies between or among this Subcontractor's Direct Agreement and the Lenders' Direct Agreement, the Lenders' Direct Agreement shall prevail.

4. AGREEMENTS

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

5. NO TERMINATION BY SUBCONTRACTOR WITHOUT DEFAULT NOTICE

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

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

6. NOVATION OF THE SUBCONTRACT

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

(iii) due to the insolvency of the Construction Contractor,

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

(b) Contracting Authority may at any time if:

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

deliver a notice (a "**Novation Notice**") electing to novate the Subcontract either to Contracting Authority or a third party designated by Contracting Authority in the Novation Notice (the "**Substitute**"), provided that Contracting Authority can demonstrate to the Subcontractor, acting reasonably, that the Substitute shall have sufficient financial resources, or shall be supported by a satisfactory guarantee, to carry out the obligations of the Substitute under the Subcontract.

(c) Subject to Section 6(d), upon receipt by the Subcontractor of a Novation Notice:

- (i) the Construction Contractor and the Subcontractor will be deemed to be released from their existing and future obligations under the Subcontract to each other (except with respect to any and all indemnities from the Construction Contractor or the Subcontractor to the other in respect of the period prior to the receipt of the Novation Notice), and Contracting Authority or the Substitute, as applicable, and the Subcontractor will be deemed to assume those same existing and future obligations towards each other (except in respect of the aforesaid indemnities);
- (ii) the existing and future rights of the Construction Contractor against the Subcontractor under the Subcontract and vice versa will be deemed to be cancelled (except with respect to any and all indemnities from the Construction Contractor or the Subcontractor to the other in respect of the period prior to the receipt of the Novation Notice), and Contracting Authority or the Substitute, as applicable, and the Subcontractor will be deemed to acquire those same existing and future rights against each other (except in respect of the aforesaid indemnities), subject to any applicable credit from the Subcontractor to Contracting Authority if Contracting Authority pays for the Subcontractor's reasonable costs of continued performance pursuant to Section 5;
- (iii) any guarantee, bond or covenant in favour of the Construction Contractor from any third party in respect of any term, provision, condition, obligation, undertaking or agreement on the part of the Subcontractor to be performed, observed or carried out by the Subcontractor as contained in, referred to, or inferred from the

Subcontract shall be assigned, novated or granted, as required by Contracting Authority or the Substitute, as applicable, each acting reasonably, to Contracting Authority or the Substitute, as applicable, and the Subcontractor shall cause such assignment, novation or grant on substantially the same terms and conditions as the original guarantee, bond or covenant, provided, however, that where Construction Contractor shall continue to hold, or shall continue to be entitled to or have rights under, such guarantee, bond or covenant as security for any obligations of the Subcontractor, the assignment, novation or grant of the guarantee, bond or covenant to the extent of any such obligations to Construction Contractor shall be conditional on the satisfaction of those obligations to Construction Contractor; and

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

- (g) The Subcontractor acknowledges that if Contracting Authority novates the Subcontract to itself pursuant to Section 6(b), Contracting Authority shall have the right to further novate the Subcontract to a Substitute in accordance with and otherwise on, and subject to, the terms and conditions of this Subcontractor's Direct Agreement.

7. SUBCONTRACTOR LIABILITY

- (a) The liability of the Subcontractor hereunder shall not be modified, released, diminished or in any way affected by:
- (i) any independent inspection, investigation or enquiry into any matter which may be made or carried out by or for Contracting Authority, or by any failure or omission to carry out any such inspection, investigation or enquiry; or
 - (ii) the appointment by Contracting Authority of any other person to review the progress of or otherwise report to Contracting Authority in respect of the Project, or by any action or omission of such person whether or not such action or omission might give rise to any independent liability of such person to Contracting Authority,

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

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

8. PROJECT CO AND CONSTRUCTION CONTRACTOR AS PARTY

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

9. ASSIGNMENT

- (a) Project Co shall not, without the prior written consent of Contracting Authority, assign, transfer, charge, subcontract, subparticipate or otherwise dispose of any interest in this Subcontractor's Direct Agreement except to the extent entitled to do so under the Project Agreement.
- (b) Contracting Authority may assign or otherwise dispose of the benefit of the whole or part of this Subcontractor's Direct Agreement to any person to whom Contracting Authority may assign or otherwise dispose of its interest in the Project Agreement pursuant to Section 49.2 of the Project Agreement but only in conjunction therewith, and shall provide written

Notice to Project Co, the Construction Contractor and the Subcontractor of such assignment or disposition.

- (c) The Construction Contractor shall not, without the prior written consent of Contracting Authority and Project Co, assign, transfer, charge, subcontract, subparticipate or otherwise dispose of any interest in this Subcontractor's Direct Agreement except as may be permitted under the Design and Construction Contract.
- (d) The Subcontractor shall not, without the prior written consent of Contracting Authority and Project Co, assign, transfer, charge, subcontract, subparticipate or otherwise dispose of any interest in this Subcontractor's Direct Agreement except as may be permitted under the Subcontract.

10. NOTICES

- (a) All notices, requests, demands, instructions, certificates, consents and other communications required or permitted under this Subcontractor's Direct Agreement shall be in writing (whether or not "written notice" or "notice in writing" is specifically required by the applicable provision of this Subcontractor's Direct Agreement) and served by sending the same by registered mail, by hand (in each case with a copy by electronic submission to the Contracting Authority Representative), or by electronic submission as follows:

[REDACTED]

- (b) Where any notice is provided or submitted to a Party via electronic submission, an original of the notice sent via electronic submission shall promptly be sent by regular mail or registered mail. For greater certainty, a notice given via electronic submission shall not be invalid by reason only of a Party's failure to comply with this Section 10(b).
- (c) Any Party to this Subcontractor's Direct Agreement may, from time to time, change any of its contact information set forth in Section 10(a) by prior notice to the other Parties, and such change shall be effective on the Business Day that next follows the recipient Party's receipt of such notice unless a later effective date is given in such notice.
- (d) Subject to Sections 10(e), 10(f) and 10(g):
 - (i) a notice given by registered mail shall be deemed to have been received on the third Business Day after mailing;
 - (ii) a notice given by hand delivery shall be deemed to have been received on the day it is delivered; and
 - (iii) a notice given by electronic submission shall be deemed to have been received on the day it is transmitted by electronic submission.
- (e) If the Party giving the notice knows or ought reasonably to know of difficulties with the postal system which might affect negatively the delivery of mail, any such notice shall not

be mailed but shall be made or given by personal delivery or by electronic submission in accordance with this Section 10.

- (f) If any notice delivered by hand or transmitted by electronic submission is so delivered or transmitted, as the case may be, either on a day that is not a Business Day or on a Business Day after 4:00 p.m. (recipient's local time), then such notice shall be deemed to have been received by such recipient on the next Business Day.
- (g) A notice given by electronic submission shall be deemed to have been received by the recipient on the day it is transmitted only if an electronic submission report (maintained by the sender) indicates that the transmission of such notice was successful.

11. AMENDMENTS

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

12. WAIVER

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

13. RELATIONSHIP BETWEEN THE PARTIES

The Parties are independent contractors. This Subcontractor's Direct Agreement is not intended to and does not create or establish between the Parties any relationship as partners, joint venturers, employer and employee, master and servant, or, except as provided in this Subcontractor's Direct Agreement, of principal and agent.

14. JOINT AND SEVERAL

IO, as Crown agent and Metrolinx, as Crown agency, shall be liable, on a joint and several basis, for all of the obligations of Contracting Authority under this Subcontractor's Direct Agreement and for each covenant of the other under this Subcontractor's Direct Agreement.

15. CONTRACTING AUTHORITY DESIGNATE

At any time and from time to time, the Crown may designate any ministry, branch, agency, division, department or office of the Government of Ontario to carry out administrative responsibility for the rights and obligations of Contracting Authority under this Subcontractors' Direct Agreement and Project Co, the Construction Contractor and the Subcontractor may deal exclusively with the designated person in respect of all such matters and is entitled to rely on the actions, directions, requests, notices, consents, approvals, waivers, comments relating to the review of documentation and other administrative matters and decisions determined by such designated person from time to time, until the Crown has notified Project Co, the Construction Contractor and the Subcontractor in writing that such designated person is no longer the person designated by the Crown hereunder and such notice shall have effect on the later of the date of delivery of such notice and the date specified in the written notice. The Crown shall advise Project Co, the Construction Contractor and the Subcontractor in writing of any designation hereunder. The rights and obligations of the parties to this Subcontractors' Direct Agreement shall be in no way affected by reason of any such designation. Project Co, the Construction Contractor and the Subcontractor acknowledge the right of the Crown to delegate administrative responsibilities hereunder as set forth in this Section 15.

16. ENTIRE AGREEMENT

Except where provided otherwise in this Subcontractor's Direct Agreement, this Subcontractor's Direct Agreement constitutes the entire agreement between the Parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings, whether oral, written, express or implied, concerning the subject matter of this Subcontractor's Direct Agreement.

17. SEVERABILITY

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

18. ENUREMENT

This Subcontractor's Direct Agreement shall enure to the benefit of, and be binding on, each of the Parties and their respective successors and permitted transferees and assigns.

19. GOVERNING LAW AND JURISDICTION

- (a) This Subcontractor's Direct Agreement shall be governed by and construed in accordance with the laws of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract, without regard to conflict of laws principles.
- (b) The Parties agree that the courts of the Province of Ontario and all courts competent to hear appeals therefrom shall have exclusive jurisdiction to hear and settle any action, suit,

proceeding or dispute in connection with this Subcontractor's Direct Agreement and hereby irrevocably attorn to the exclusive jurisdiction of such courts.

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

20. FURTHER ASSURANCE

Each Party shall do all things, from time to time, and execute all further documents necessary to give full effect to this Subcontractor's Direct Agreement.

21. LANGUAGE OF AGREEMENT

Each Party acknowledges having requested and being satisfied that this Subcontractor's Direct Agreement and related documents be drawn in English. Chacune des parties reconnaît avoir demandé que ce document et ses annexes soient rédigés en anglais et s'en déclare satisfaite.

22. COUNTERPARTS

This Subcontractor's Direct Agreement may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all of the Parties shall constitute a full, original and binding agreement for all purposes. Delivery of an executed counterpart by sending a copy by electronic mail or other electronic transmission shall be as effective as the manual delivery of an executed counterpart.

23. COPYRIGHT NOTICE

The Parties acknowledge that Queen's Printer for Ontario is the exclusive owner of copyright in the Project Agreement and this Subcontractors' Direct Agreement.

[SIGNATURE PAGES IMMEDIATELY FOLLOW]

IN WITNESS WHEREOF the Parties have executed this Subcontractor’s Direct Agreement as of the date first above written.

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

Per:

[REDACTED]

I have authority to bind the corporation.

METROLINX

Per:

[REDACTED]

Per:

[REDACTED]

We have authority to bind the corporation.

STRABAG SCARBOROUGH PROJECT INC.

Per:

[REDACTED]

Per:

[REDACTED]

We have authority to bind the corporation.

[REDACTED]

Per: _____
[REDACTED]

Per: _____
[REDACTED]

I have authority to bind the corporation.

[SUBCONTRACTOR]

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have authority to bind the corporation.

MT MTDOCS 41633370v2

SCHEDULE 4

LENDERS' DIRECT AGREEMENT

THIS AGREEMENT is made as of the ____ day of _____, 2021

BETWEEN:

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

- AND -

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

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

- AND -

[REDACTED] acting as agent for and on behalf of the Lenders

(the “**Lenders' Agent**”)

- AND -

STRABAG SCARBOROUGH PROJECT INC., [REDACTED]

(“**Project Co**”)

WHEREAS:

- A. The Province of Ontario’s New Subway Transit Plan for the Greater Toronto and Hamilton Area includes a number of priority projects, including the Scarborough Subway Extension, a 7.8 kilometre extension of the City of Toronto’s ‘Bloor-Danforth’ subway line from the existing terminal at Kennedy Station to the intersection of Sheppard Avenue and McCowan Road.
- B. In connection with the Scarborough Subway Extension, Contracting Authority wishes to procure the design, construction and financing of an advance tunnel for the underground portion of the alignment between Kennedy Station and the intersection of Sheppard Avenue and McCowan Road and for other associated structures required for the Scarborough Subway Extension.
- C. Project Co will carry out the Works, which Works include the design, construction, and financing of the New Metrolinx Infrastructure and the New Third Party Infrastructure (the “**Project**”).

- D. Contracting Authority and Project Co have entered into the Project Agreement, which sets out the terms and conditions upon which Project Co shall perform the Works.
- E. Under the Lending Agreements, financing is to be provided to Project Co by the Lenders to finance the Works, conditional on, among other things, Project Co granting the Security to the Lenders' Agent.
- F. The Lenders' Agent has agreed to enter into this lenders' direct agreement (the "**Lenders' Direct Agreement**") with Contracting Authority in relation to the Security, the exercise of its rights under the Security Documents and the remedying of breaches by Project Co under the Project Agreement.
- G. With a view to ensuring that Contracting Authority is able to properly and effectively discharge its duties, functions and responsibilities under Applicable Law, Project Co, the Lenders' Agent and the Lenders commit to working collaboratively, responsibly and cooperatively with Contracting Authority throughout the Project Term.
- H. IO, as Crown agent and Metrolinx, as Crown agency, intend to enter into this Lenders' Direct Agreement in accordance with Applicable Law, and to be liable, on a joint and several basis, for all of the obligations of Contracting Authority pursuant to this Lenders' Direct Agreement, save and except as provided for in this Lenders' Direct Agreement.

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

1. DEFINITIONS

In this Schedule 4, unless the context indicates a contrary intention, terms which are defined in the Project Agreement (and not otherwise defined in this Schedule 4) shall have meanings given to them in the Project Agreement and the following terms shall have the following meanings:

- (a) "**Appointed Representative**" means any of the following to the extent so identified in an Appointed Representative Notice:
- (i) the Lenders' Agent, any Lender or any of their Affiliates;
 - (ii) a receiver or receiver and manager of Project Co appointed under the Security Documents;
 - (iii) a trustee in bankruptcy or court-appointed receiver of Project Co;
 - (iv) an administrator of Project Co;
 - (v) a person directly or indirectly owned or controlled by the Lenders' Agent and/or any of the Lenders; or
 - (vi) any other person approved by Contracting Authority (such approval not to be unreasonably withheld or delayed).

- (b) “**Appointed Representative Notice**” has the meaning given in Section 8(b).
- (c) “**Contracting Authority Project Documents**” means the Project Agreement and all other documents to which both Contracting Authority and Project Co are parties pursuant to or in connection with the Project Agreement.
- (d) “**Default Notice**” has the meaning given in Section 7(b)(i).
- (e) “**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.
- (f) “**Enforcement Event**” means an event of default as defined in the Lending Agreements, or any other event which permits an Enforcement Action.
- (g) “**Exercise Date**” has the meaning given in Section 12(b).
- (h) “**Indebtedness Notice**” has the meaning given in Section 7(b)(ii).
- (i) “**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.
- (j) “**Lenders’ Agent**” means [REDACTED], acting as agent for and on behalf of the Lenders.
- (k) “**Lenders’ Construction Contractor Direct Agreement**” means the direct agreement among the Lenders’ Agent, the Construction Contractor and Project Co.
- (l) “**Lenders’ Direct Agreement**” means this lenders’ direct agreement.
- (m) “**Notice Period**” means the period starting on the date of delivery of a Default Notice and ending 90 days later.
- (n) “**Novation Date**” has the meaning given in Section 10(a).
- (o) “**Novation Notice**” has the meaning given in Section 10(a).
- (p) “**Party**” means Contracting Authority, Project Co or the Lenders’ Agent, and “**Parties**” means collectively, Contracting Authority, Project Co and the Lenders’ Agent.
- (q) “**Security**” means the Performance Security, the Insurance and any other security interests granted to the Lenders’ Agent pursuant to the Security Documents.
- (r) “**Security Documents**” means all security granted by Project Co to the Lenders (or any trustee or agent thereof, including the Lenders’ Agent) pursuant to or in connection with the Lending Agreements, including but not limited to [REDACTED].

- (s) “**Step-In Date**” means the date on which Contracting Authority receives a Step-In Notice from the Lenders’ Agent.
- (t) “**Step-In Notice**” means the notice given by the Lenders’ Agent to Contracting Authority pursuant to Section 8(a) stating that the Lenders’ Agent is exercising its step-in rights under this Lenders’ Direct Agreement.
- (u) “**Step-In Period**” means the period from the Step-In Date up to and including the earlier of:
- (i) the Step-Out Date;
 - (ii) the Termination Date (provided that Contracting Authority has complied with its obligations in Section 7 of this Lenders’ Direct Agreement);
 - (iii) the date that a transfer of Project Co’s rights and obligations under the Contracting Authority Project Documents to a Suitable Substitute pursuant to Section 10 becomes effective; and
 - (iv) if the Step-In Date occurs prior to the Substantial Completion Date, the earlier of:
 - (A) the date falling [REDACTED] after the Longstop Date; or
 - (B) the date falling two years after the Step-In Date.
- (v) “**Step-Out Date**” means the date falling 30 days after the date on which Contracting Authority receives a Step-Out Notice.
- (w) “**Step-Out Notice**” has the meaning given in Section 9(a).
- (x) “**Subsequent Indebtedness Notice**” has the meaning given in Section 7(c).
- (y) “**Suitable Substitute**” means a person, approved in writing by Contracting Authority in accordance with Sections 10(b) and 10(c), which:
- (i) has the legal capacity, power and authority to become a party to and perform the obligations of Project Co under the Contracting Authority Project Documents; and
 - (ii) employs individuals having the appropriate qualifications, experience and technical competence, and having the resources available to it (including committed financial resources and subcontracts) that are sufficient to enable it to perform the obligations of Project Co under the Contracting Authority Project Documents.

2. INTERPRETATION

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

-
- (a) The headings in this Lenders’ Direct Agreement are for convenience of reference only, shall not constitute a part of this Lenders’ Direct Agreement, and shall not be taken into consideration in the interpretation of, or affect the meaning of, this Lenders’ Direct Agreement.
- (b) Unless the context otherwise requires, references to specific Sections, Clauses, Paragraphs, Subparagraphs, and other divisions are references to such Sections, Clauses, Paragraphs, Subparagraphs, or divisions of this Lenders’ Direct Agreement and the terms “Section” and “Clause” are used interchangeably and are synonymous.
- (c) Words importing persons or parties are to be broadly interpreted and include an individual, corporation, limited liability company, joint stock company, firm, partnership, joint venture, trust, unincorporated organization, Governmental Authority, unincorporated body of persons or association and any other entity having legal capacity, and the heirs, beneficiaries, executors, administrators or other legal representatives of a person in such capacity.
- (d) Unless the context otherwise requires, wherever used herein the plural includes the singular, the singular includes the plural, and each of the masculine, feminine and neuter genders include all other genders.
- (e) References to any standard, principle, agreement or document include (subject to all relevant approvals and any other provisions of this Lenders’ Direct Agreement concerning amendments) a reference to that standard, principle, agreement or document as amended, supplemented, restated, substituted, replaced, novated or assigned.
- (f) The words in this Lenders’ Direct Agreement shall bear their natural meaning.
- (g) References containing terms such as:
- (i) “hereof”, “herein”, “hereto”, “hereinafter”, and other terms of like import are not limited in applicability to the specific provision within which such references are set forth but instead refer to this Lenders’ Direct Agreement taken as a whole; and
 - (ii) “includes” and “including”, whether or not used with the words “without limitation” or “but not limited to”, shall not be deemed limited by the specific enumeration of items but shall, in all cases, be deemed to be without limitation and construed and interpreted to mean “includes without limitation” and “including without limitation”.
- (h) In construing this Lenders’ Direct Agreement, the rule known as the *ejusdem generis rule* shall not apply nor shall any similar rule or approach to the construction of this Lenders’ Direct Agreement and, accordingly, general words introduced or followed by the word “other” or “including” or “in particular” shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words.

- (i) Where this Lenders' Direct Agreement states that an obligation shall be performed "no later than" or "within" or "by" a stipulated date or event which is a prescribed number of days after a stipulated date or event, the latest time for performance shall be 5:00 p.m. on the last day for performance of the obligation concerned, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- (j) Where this Lenders' Direct Agreement states that an obligation shall be performed "on" a stipulated date, the latest time for performance shall be 5:00 p.m. on that day, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- (k) Any reference to time of day or date means the local time or date in Toronto, Ontario.
- (l) Unless otherwise indicated, time periods will be strictly construed.
- (m) Whenever the terms "will" or "shall" are used in this Lenders' Direct Agreement they shall be construed and interpreted as synonymous and to read "shall".

3. CONFLICT OF DOCUMENTS

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

4. TERM

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

5. AGREEMENTS AND SECURITY

- (a) Project Co and the Lenders' Agent shall not amend or modify the Lending Agreements, or any of them, except where Project Co is permitted to do so pursuant to Section 8.3 of the Project Agreement.

- (b) Project Co shall not, prior to the Substantial Completion Date, exercise any rights of voluntary prepayment, voluntary redemption, or other voluntary repayment of loan, as applicable, under the Lending Agreements, other than in connection with a Milestone Payment, without the prior written consent of Contracting Authority, acting in its sole discretion. In exercising its sole discretion to grant consent, Contracting Authority shall be entitled to request and consider, and Project Co shall be required to provide within 10 Business Days following a request by Contracting Authority, amongst other things and not limited to, the following:
- (i) written certification by an officer of Project Co of the remaining Project Costs (as defined in the Lending Agreements) accrued and unpaid or expected to be incurred to achieve Substantial Completion and to fund any Project Accounts (as defined in the Lending Agreements) then not funded and required to be funded at or prior to the then anticipated prepayment and/or redemption (as approved by the Lenders' Technical Advisor (as defined in the Lending Agreements)) by the Substantial Completion Date;
 - (ii) written certification by an officer of Project Co that no Cost to Complete Deficiency (as defined in the Lending Agreements) would reasonably be expected to arise as a consequence of such prepayment and/or redemption, including any related cancellation of unutilized commitments, if applicable, under the Lending Agreements;
 - (iii) written confirmation from the Lenders' technical advisor, addressed to Contracting Authority, that the Project Co's calculation in Section 5(b)(i) and Project Co's certification in Section 5(b)(ii) is, in the opinion of the Lenders' technical advisor, correct;
 - (iv) written confirmation from the Lenders' technical advisor, addressed to Contracting Authority, that no incremental delay in achieving the Substantial Completion Date (beyond the Scheduled Substantial Completion Date) would reasonably be expected as a consequence of such prepayment and/or redemption and related cancellation of unutilized commitments, if applicable, under the Lending Agreements; and
 - (v) written confirmation from the Lenders' technical advisor, addressed to Contracting Authority, that the Substantial Completion Date is likely to occur on or prior to the then Scheduled Substantial Completion Date.
- (c) Project Co acknowledges and consents to the arrangements set out in this Lenders' Direct Agreement, and agrees not to do or omit to do anything that may prevent any other Party from enforcing its rights under this Lenders' Direct Agreement.
- (d) The Lenders' Agent acknowledges having received a copy of the Project Agreement.
- (e) Contracting Authority acknowledges having received copies of the Lending Agreements, and confirms that they are in form and substance satisfactory to Contracting Authority as at the date of Financial Close.

- (f) Contracting Authority acknowledges notice of and consents to the Security, and confirms that it has not received notice of any other security interest granted over Project Co's rights under any of the Contracting Authority Project Documents.
- (g) Project Co and the Lenders' Agent hereby authorize and instruct Contracting Authority (and Contracting Authority agrees) to pay all sums payable to Project Co in respect of each Milestone Payment and the Substantial Completion Payment under the Project Agreement to [REDACTED], and Project Co and Contracting Authority agree that upon the occurrence of an Enforcement Event, if so directed in writing by the Lenders' Agent upon giving reasonable notice, Contracting Authority shall pay any sum which they are obliged to pay to Project Co under the Project Agreement to a bank account specified by the Lenders' Agent.
- (h) Prior to the irrevocable payment in full of all amounts owing to the Lenders under the Lending Agreements, Contracting Authority shall not take any action to wind-up, liquidate, dissolve or appoint a receiver or receiver and manager of Project Co or to institute or sanction a voluntary arrangement or any other bankruptcy or insolvency proceedings in relation to Project Co.
- (i) The Lenders' Agent shall appoint the Lenders' Consultant who shall be responsible to advise the Lenders' Agent and the Lenders with respect to the amount of any Legislative Holdback to be maintained in accordance with the Project Agreement. Project Co agrees that it shall, in respect of all payments under the Project Agreement, comply with Part IV of the *Construction Act* (Ontario). The Lenders' Agent shall cause the Lenders' Consultant to provide Contracting Authority with a copy of any written assessment or report prepared by the Lenders' Consultant in relation to the status or progress of the Works under the Design and Construction Contract, including but not limited to, any certificate of payment, concurrently with its delivery to the Lenders' Agent. The Lenders' Agent acknowledges and agrees that this Section 5(i) shall constitute sufficient authority for the Lenders' Consultant to provide, without delay, a copy of any and all of its written assessments and reports to Contracting Authority.

6. ENFORCEMENT OF SECURITY BY LENDERS' AGENT

- (a) The Lenders' Agent shall promptly notify Contracting Authority of any Enforcement Event, any Enforcement Action, any notice from the Lenders to Project Co to accelerate the maturity of any amounts owing by Project Co to the Lenders under the Lending Agreements or any notice from the Lenders to Project Co to demand repayment of any amounts owing by Project Co to the Lenders under the Lending Agreements.
- (b) The Lenders' Agent may assign, transfer or otherwise dispose of any right, title or interest it may have in, or rights or obligations it may have pursuant to, the Security Documents to a successor agent in accordance with the terms of the Lending Agreements except where:
 - (i) such assignment, transfer or other disposition would constitute a Refinancing and the provisions of Schedule 28 - Refinancing to the Project Agreement have not been complied with in connection therewith; or

- (ii) the person to whom such assignment, transfer or other disposition is to be made, or an Affiliate of such person, is a Restricted Person or a person whose standing or activities may compromise (i) Contracting Authority's reputation or integrity, or (ii) the nature of the public transit system in any one or more of the Municipalities or the Province of Ontario so as to affect public confidence in the public transit system in one or more of the Municipalities or the Province of Ontario or the Project.
- (c) Any Lender may assign, transfer or otherwise dispose of any right, title or interest it may have in, or rights or obligations it may have pursuant to, the Lending Agreements in accordance with the terms of the Lending Agreements.

7. TERMINATION OF PROJECT AGREEMENT BY CONTRACTING AUTHORITY

- (a) Subject only to the rights expressly afforded to the Lenders' Agent pursuant to, and the restrictions set forth in, this Section 7, Contracting Authority may, at any time, serve Notice terminating the Project Agreement if it is entitled to do so under the terms of the Project Agreement.
- (b) At any time other than during the Step-In Period (with the restriction on termination during the Step-In Period set out in Section 7(d)), Contracting Authority shall not exercise any right it may have to terminate or serve Notice terminating the Project Agreement for a Project Co Event of Default unless:
 - (i) Contracting Authority promptly delivers written notice (a "**Default Notice**") to the Lenders' Agent setting out the Project Co Event of Default in reasonable detail;
 - (ii) not later than 30 days after the date of a Default Notice, Contracting Authority delivers written notice (an "**Indebtedness Notice**") to the Lenders' Agent setting out:
 - (A) all amounts owed by Project Co to Contracting Authority and any other existing liabilities and unperformed obligations of Project Co to Contracting Authority of which Contracting Authority is aware (having made reasonable enquiry), in each case, as of the date on which Contracting Authority sent the Default Notice; and
 - (B) all amounts which will become owing by Project Co to Contracting Authority and any other liabilities and obligations of Project Co to Contracting Authority of which Contracting Authority is aware (having made reasonable enquiry), in each case, on or before the end of the Notice Period; and
 - (iii) the Notice Period has expired and the Lenders' Agent has not delivered a Step-In Notice.
- (c) At any time after Contracting Authority sends an Indebtedness Notice but before Contracting Authority receives a Step-In Notice, if Contracting Authority discovers

amounts that have become owing by Project Co to Contracting Authority or any other liabilities or obligations of Project Co to Contracting Authority that have come due but which were not included in the Indebtedness Notice, Contracting Authority shall deliver written notice (a “**Subsequent Indebtedness Notice**”) to the Lenders’ Agent setting out those amounts, liabilities or obligations.

- (d) During the Step-In Period, Contracting Authority shall not terminate the Project Agreement on grounds:
- (i) that the Lenders’ Agent has served a Step-In Notice or enforced any Security Document; or
 - (ii) arising prior to the Step-In Date of which Contracting Authority was aware (having made due inquiry) and whether or not continuing at the Step-In Date unless:
 - (A) the grounds arose prior to the Substantial Completion Date, and the Substantial Completion Date does not occur on or before the date falling 120 days after the Longstop Date; or
 - (B) the grounds (whenever they first arose) did not give rise to any right to terminate the Project Agreement until after the Step-In Date; or
 - (iii) arising solely in relation to Project Co.
- (e) Contracting Authority shall be entitled to terminate the Project Agreement by written Notice to Project Co and the Appointed Representative:
- (i) if any amount referred to in Section 7(b)(ii)(A) has not been paid to Contracting Authority on or before the Step-In Date;
 - (ii) if any amount referred to in Section 7(b)(ii)(B) has not been paid on or before the last day of the Notice Period;
 - (iii) if amounts included in a Subsequent Indebtedness Notice have not been paid on or before the 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.

8. STEP-IN RIGHTS

- (a) Subject to Section 8(b) and without prejudice to rights of the Lenders’ Agent to enforce the Security, the Lenders’ Agent may give Contracting Authority a Step-In Notice at any time:
- (i) during which a Project Co Event of Default is subsisting (whether or not a Default Notice has been served);

- (ii) during the Notice Period; or
 - (iii) during which an Enforcement Event is subsisting.
- (b) At least five Business Days before the Lenders' Agent delivers a Step-In Notice, the Lenders' Agent shall deliver written notice (an "**Appointed Representative Notice**") to Contracting Authority of:
- (i) its intention to deliver a Step-In Notice; and
 - (ii) the identity of its proposed Appointed Representative.
- (c) Upon issuance of a Step-In Notice, the Appointed Representative shall assume, jointly with Project Co, all of Project Co's rights under the Contracting Authority Project Documents.
- (d) During the Step-In Period, Contracting Authority shall deal with the Appointed Representative instead of Project Co in connection with all matters related to the Contracting Authority Project Documents. Project Co agrees to be bound by all such dealings between Contracting Authority and the Appointed Representative to the same extent as if they had been between Contracting Authority and Project Co.

9. STEP-OUT RIGHTS

- (a) The Appointed Representative may, at any time during the Step-In Period, deliver written notice (a "**Step-Out Notice**") to Contracting Authority to terminate the Step-In Period on the Step-Out Date.
- (b) On expiry of the Step-In Period:
- (i) the rights and obligations of the Appointed Representative in relation to Contracting Authority under the Contracting Authority Project Documents arising prior to the expiry of the Step-In Period will be assumed by Project Co to the exclusion of the Appointed Representative;
 - (ii) Contracting Authority will no longer deal with the Appointed Representative and will deal with Project Co in connection with all matters related to the Contracting Authority Project Documents; and
 - (iii) the Appointed Representative and Contracting Authority shall be and hereby are released from all obligations and liabilities to one another under the Contracting Authority Project Documents.
- (c) There will not be more than one Step-In Period in respect of any one Default Notice.

10. NOVATION TO SUITABLE SUBSTITUTE

- (a) Subject to Section 10(b), at any time:

- (i) after an Enforcement Event has occurred;
- (ii) during the Notice Period; or
- (iii) during the Step-In Period,

the Lenders' Agent may deliver to Contracting Authority and any Appointed Representative written notice (a "**Novation Notice**") that it wishes to transfer Project Co's rights and obligations under the Contracting Authority Project Documents to a proposed transferee, together with all information reasonably necessary for Contracting Authority to decide whether the proposed transferee is a Suitable Substitute. The Novation Notice shall specify a Business Day not less than 30 days from the date on which Contracting Authority receives the Novation Notice ("**Novation Date**") for the transfer of Project Co's rights and obligations under the Contracting Authority Project Documents to the proposed transferee in accordance with the provisions of Section 10(e).

- (b) Contracting Authority shall promptly notify the Lenders' Agent of any additional information it requires in order to assess whether the proposed transferee is a Suitable Substitute. Contracting Authority shall notify the Lenders' Agent, in writing, as to whether the person to whom the Lenders' Agent proposes to transfer Project Co's rights and liabilities under the Contracting Authority Project Documents is approved by Contracting Authority as a Suitable Substitute, on or before the date falling 30 days after the later of the date of receipt by Contracting Authority of the Novation Notice and the date of receipt of any additional information requested by Contracting Authority. For greater certainty, if Contracting Authority fails to respond within such period, Contracting Authority shall be deemed not to have approved the proposed transferee.
- (c) Contracting Authority shall not unreasonably withhold or delay its approval of a proposed transferee as a Suitable Substitute, but it shall, without limitation, be reasonable for Contracting Authority to withhold its approval if:
 - (i) there are unremedied breaches under the Project Agreement which are capable of being remedied by the Appointed Representative or the Suitable Substitute and there is no rectification plan acceptable to Contracting Authority, acting reasonably, in respect of such breaches;
 - (ii) the proposed transferee is a Restricted Person or other person who is not permitted to be a Project Co Party pursuant to the Project Agreement; or
 - (iii) the proposed security interests to be granted by the Suitable Substitute to the Lender Representative are materially different from the Security, materially adversely affect the ability of the Suitable Substitute to perform under the Contracting Authority Project Documents or have the effect of increasing any liability of Contracting Authority, whether actual or potential.
- (d) If Contracting Authority withholds its approval of a proposed transferee as a Suitable Substitute in accordance with Section 10(c), the Lenders' Agent may give one or more subsequent Novation Notices pursuant to the provisions of Section 10(a) containing

changed particulars relating to the same proposed transferee or particulars relating to another proposed transferee which the Lenders' Agent has good cause to believe will be acceptable to Contracting Authority, acting reasonably, provided that only one Novation Notice may be outstanding at any one time.

- (e) On the Novation Date:
- (i) Project Co and Contracting Authority will be released from their obligations under the Contracting Authority Project Documents to each other, and the Suitable Substitute and Contracting Authority will assume those same obligations towards each other;
 - (ii) each of the rights of Project Co against Contracting Authority under the Contracting Authority Project Documents and the rights of Contracting Authority against Project Co under the Contracting Authority Project Documents will be cancelled, and the Suitable Substitute and Contracting Authority will acquire those same rights against each other;
 - (iii) the Parties will enter into, and the Lenders' Agent shall cause the Suitable Substitute and the Lender Representative to enter into, all such agreements or other documents as are reasonably necessary to give effect to the foregoing, including:
 - (A) an agreement between Contracting Authority and the Suitable Substitute, on substantially the same terms as the Project Agreement; and
 - (B) an agreement among Contracting Authority, the Suitable Substitute and the Lender Representative on substantially the same terms as this Lenders' Direct Agreement;
 - (iv) any subsisting ground for termination by Contracting Authority of the Project Agreement will be deemed to have no effect and any subsisting Default Notice will be automatically revoked.

11. TRANSFERS

Contracting Authority shall, at Project Co's cost and expense, take whatever action the Lenders' Agent, the Appointed Representative or a Suitable Substitute may reasonably require for perfecting any assumption or transfer of or release pursuant to Sections 8, 9 or 10, including the execution of any transfer or assignment, and the giving of any notice, order or direction and the making of any registration which, in each case, the Lenders' Agent, the Appointed Representative or the Suitable Substitute reasonably requires.

12. CONSTRUCTION CONTRACTOR'S DIRECT AGREEMENT

- (a) Notwithstanding any provision in the Construction Contractor's Direct Agreement, Contracting Authority hereby undertakes that it will not exercise any rights they may have under or arising out of any of the Construction Contractor's Direct Agreement, except as provided in Sections 12(b) to 12(f) inclusive.

- (b) Following termination of the Project Agreement (other than as a result of a novation pursuant to this Lenders' Direct Agreement) in accordance with this Lenders' Direct Agreement, Contracting Authority shall from such date (the "**Exercise Date**") be entitled to exercise its rights under the Construction Contractor's Direct Agreement to step in to and/or novate the Design and Construction Contract in accordance with the Construction Contractor's Direct Agreement.
- (c) Following the Exercise Date, Contracting Authority shall not do anything to prejudice the rights which are not transferred to them pursuant to the Construction Contractor's Direct Agreement.
- (d) Where all amounts which may be or become owing by Project Co to the Lenders under the Lending Agreements have been irrevocably paid in full, the Lenders' Agent shall promptly release and discharge all Security in respect of the Design and Construction Contract assumed or novated by Contracting Authority pursuant to the Construction Contractor's Direct Agreement.
- (e) Notwithstanding the terms of the Construction Contractor's Direct Agreement and any other provisions of this Section 12, the Construction Contractor (and any guarantor thereof) shall remain responsible, and be liable, to Project Co in respect of all costs, claims, damages, losses and liabilities which shall have arisen out of or in connection with the Design and Construction Contract in respect of the period prior to the Exercise Date.
- (f) Without prejudice to Sections 12(a) to 12(e) inclusive, Contracting Authority shall not, prior to the date on which this Lenders' Direct Agreement terminates:
- (i) claim, recover, retain or receive (or seek to claim, recover, retain or receive) any amount under the Construction Contractor's Direct Agreement (and/or the Design and Construction Contract) from the Construction Contractor;
 - (ii) take any action to wind-up, liquidate, dissolve or appoint a receiver or receiver and manager of the Construction Contractor or to institute or sanction a voluntary arrangement or any other bankruptcy or insolvency proceedings in relation to the Construction Contractor; or
 - (iii) compete with the rights of the Lenders' Agent on a winding-up or other insolvency or bankruptcy of the Construction Contractor, nor claim to be subrogated to any rights of the Lenders' Agent or any Lender.

Contracting Authority agrees and undertakes that if it receives any amount in contravention of the provisions of this Section 12(f), it will immediately turn the same over to the Lenders' Agent for the account of the Lenders' Agent and the Lenders and, pending such payment, hold the same in trust for the Lenders' Agent and the Lenders.

13. SUBCONTRACTOR'S DIRECT AGREEMENT

Notwithstanding any provision in a Subcontractor's Direct Agreement, Contracting Authority hereby undertakes that it will not exercise any rights it may have under or arising out of any Subcontractor's Direct Agreement unless:

- (a) the Project Agreement and the Design and Construction Contract have been terminated;
- (b) Contracting Authority is entitled to terminate the Project Agreement pursuant to the terms thereof and of this Lender's Direct Agreement; or
- (c) Contracting Authority is entitled to exercise its rights under the Construction Contractor's Direct Agreement pursuant to Section 12(b).

14. PERFORMANCE GUARANTEE OF CONSTRUCTION GUARANTOR

Notwithstanding any provision in the Performance Guarantee of Construction Guarantor given by the Construction Guarantor, Contracting Authority hereby undertakes that it will not exercise any rights it may have under or arising out of the Performance Guarantee of Construction Guarantor unless:

- (a) the Project Agreement has been terminated; or
- (b) Contracting Authority is entitled to terminate the Project Agreement pursuant to the terms thereof and of this Lenders' Direct Agreement.

15. NOTICE OF PROJECT CO DELAY OR PROCEEDING AT RISK

The Parties acknowledge that Contracting Authority may, in its sole discretion, give notice to the Lenders' Agent that Project Co is Proceeding at Risk, together with a copy of the Proceeding at Risk Notice delivered pursuant to Section 14.6 of the Project Agreement.

16. ASSIGNMENT

- (a) No Party to this Lenders' Direct Agreement may assign, transfer or otherwise dispose of any part of its rights or obligations under this Lenders' Direct Agreement save as provided in this Section 16.
- (b) Project Co may assign, transfer or otherwise dispose of the benefit of this Lenders' Direct Agreement to any person to whom Project Co assigns, transfers or otherwise disposes of its interest in the Project Agreement pursuant to Section 49.1 of the Project Agreement and the provisions of the Lending Agreements, and shall provide written Notice to Contracting Authority and the Lenders' Agent of such assignment, transfer or other disposition. Such assignee, as a condition precedent to any such assignment, transfer or other disposition, shall assume the obligations and acquire the rights of Project Co under this Lenders' Direct Agreement pursuant to an assumption agreement with, and in form and substance satisfactory to, Contracting Authority and the Lenders' Agent, each acting reasonably. Contracting Authority and the Lenders' Agent shall, at Project Co's cost and expense, do all things and execute all further documents as may be necessary in connection therewith.

- (c) Contracting Authority may assign, transfer or otherwise dispose of the benefit of the whole or part of this Lenders' Direct Agreement to any person to whom Contracting Authority assigns, transfers or otherwise disposes of its interest in the Project Agreement pursuant to Section 49.2 of the Project Agreement, and shall provide written Notice to Project Co and the Lenders' Agent of such assignment, transfer or other disposition.
- (d) The Lenders' Agent may only assign, transfer or otherwise dispose of any interest in this Lenders' Direct Agreement as permitted by the Lending Agreements, and shall provide written notice to Project Co and Contracting Authority of such assignment, transfer or other disposition; provided that, notwithstanding any provision to the contrary in the Lending Agreements, the Lenders' Agent may not assign, transfer or otherwise dispose of any interest in this Lenders' Direct Agreement to a Restricted Person. The Lenders' Agent, as a condition precedent to any such assignment, transfer or other disposition, shall cause the assignee to enter into a new agreement with Project Co and Contracting Authority on substantially the same terms as this Lenders' Direct Agreement and Project Co and Contracting Authority shall enter into such new agreement with the assignee. Project Co and Contracting Authority shall, at the Lenders' Agent's cost and expense, do all things and execute all further documents as may be necessary in connection therewith.

17. NOTICES

- (a) All notices, requests, demands, instructions, certificates, consents and other communications required or permitted under this Lenders' Direct Agreement shall be in writing (whether or not "written 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, by hand (in each case with a copy by electronic submission to the Contracting Authority Representative), or by electronic submission as follows:

If to Contracting Authority:

[REDACTED]

If to the Lenders' Agent:

[REDACTED]

If to Project Co:

[REDACTED]

- (b) Where any notice is provided or submitted to a Party via electronic submission, an original of the notice sent via electronic submission shall promptly be sent by regular mail or registered mail. For greater certainty, a notice given via electronic submission shall not be invalid by reason only of a Party's failure to comply with this Section 17(b).
- (c) Any Party to this Lenders' Direct Agreement may, from time to time, change any of its contact information set forth in Section 17(a) by prior notice to the other Parties, and such

change shall be effective on the Business Day that next follows the recipient Party's receipt of such notice unless a later effective date is given in such notice.

- (d) Subject to Sections 17(e), 17(f) and 17(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 electronic submission shall be deemed to have been received on the day it is transmitted by electronic submission.
- (e) If the Party giving the notice knows or ought reasonably to know of difficulties with the postal system which might affect negatively the delivery of mail, any such notice shall not be mailed but shall be made or given by personal delivery or by electronic submission in accordance with this Section 17.
- (f) If any notice delivered by hand or transmitted by electronic submission is so delivered or transmitted, as the case may be, either on a day that is not a Business Day or on a Business Day after 4:00 p.m. (recipient's local time), then such notice shall be deemed to have been received by such recipient on the next Business Day.
- (g) A notice given by electronic submission shall be deemed to have been received by the recipient on the day it is transmitted only if an electronic submission report (maintained by the sender) indicates that the transmission of such notice was successful.

18. CONTRACTING AUTHORITY DESIGNATE

At any time and from time to time, the Crown may designate any ministry, branch, agency, division, department or office of the Government of Ontario to carry out administrative responsibility for the rights and obligations of Contracting Authority under this Lenders' Direct Agreement and Project Co and the Lenders' Agent may deal exclusively with the designated person in respect of all such matters and is entitled to rely on the actions, directions, requests, notices, consents, approvals, waivers, comments relating to the review of documentation and other administrative matters and decisions determined by such designated person from time to time, until the Crown has notified Project Co and the Lenders' Agent in writing that such designated person is no longer the person designated by the Crown hereunder and such notice shall have effect on the later of the date of delivery of such notice and the date specified in the 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 18.

19. AMENDMENTS

This Lenders' Direct Agreement may not be varied, amended or supplemented except by an agreement in writing signed by duly authorized representatives of the Parties and stating on its face that it

is intended to be an amendment, restatement or other modification, as the case may be, to this Lenders' Direct Agreement.

20. WAIVER

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

21. RELATIONSHIP BETWEEN THE PARTIES

The Parties are independent contractors. This Lenders' Direct Agreement is not intended to and does not create or establish between the Parties any relationship as partners, joint venturers, employer and employee, master and servant, or, except as provided in this Lenders' Direct Agreement, of principal and agent.

22. ENTIRE AGREEMENT

Except where provided otherwise in this Lenders' Direct Agreement, this Lenders' Direct Agreement constitutes the entire agreement between the Parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings, whether oral, written, express or implied, concerning the subject matter of this Lenders' Direct Agreement.

23. SEVERABILITY

Each provision of this Lenders' Direct Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Lenders' Direct Agreement is declared invalid, unenforceable or illegal by the courts of a competent jurisdiction, such provision may be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Lenders' Direct Agreement. If any 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.

24. ENUREMENT

This Lenders' Direct Agreement shall enure to the benefit of, and be binding on, each of the Parties and their respective successors and permitted transferees and assigns.

25. GOVERNING LAW AND JURISDICTION

- (a) This Lenders' Direct Agreement shall be governed by and construed in accordance with the laws of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract, without regard to conflict of laws principles.
- (b) The Parties agree that the courts of the Province of Ontario and all courts competent to hear appeals therefrom shall have exclusive jurisdiction to hear and settle any action, suit, proceeding or dispute in connection with this Lenders' Direct Agreement and hereby irrevocably attorn to the exclusive jurisdiction of such courts.
- (c) Nothing in this Lenders' Direct Agreement affects the rights, protections and immunities of the Crown under the *Proceedings Against the Crown Act* (Ontario).

26. DISPUTE RESOLUTION PROCEDURE

The Parties agree that the dispute resolution procedure provided for in Schedule 27 – Dispute Resolution Procedure to the Project Agreement shall not apply to any dispute under this Lenders' Direct Agreement.

27. FURTHER ASSURANCE

Each Party shall do all things, from time to time, and execute all further documents necessary to give full effect to this Lenders' Direct Agreement.

28. LANGUAGE OF AGREEMENT

Each Party acknowledges having requested and being satisfied that this Lenders' Direct Agreement and related documents be drawn in English. Chacune des parties reconnaît avoir demandé que ce document et ses annexes soient rédigés en anglais et s'en déclare satisfaite.

29. COUNTERPARTS

This Lenders' Direct Agreement may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all of the Parties shall constitute a full, original and binding agreement for all purposes. Delivery of an executed counterpart by sending a copy by electronic mail or other electronic transmission shall be as effective as the manual delivery of an executed counterpart.

30. JOINT AND SEVERAL

IO, as Crown agent and Metrolinx, as Crown agency, shall be liable, on a joint and several basis, for all of the obligations of Contracting Authority under this Lenders' Direct Agreement and for each covenant of the other under this Lenders' Direct Agreement.

31. CONFIDENTIALITY

The Lenders' Agent agrees to comply with the obligations imposed on Project Co by the provisions of Section 42 of the Project Agreement, *mutatis mutandis*, provided that the Lenders' Agent

will be permitted to disclose to any relevant regulatory authority only such Confidential Information (as defined in the Project Agreement) as is necessary for the Lenders' Agent to comply with Applicable Law.

32. COPYRIGHT NOTICE

The Parties acknowledge that Queen's Printer for Ontario is the exclusive owner of copyright in the Project Agreement and this Lenders' Direct Agreement.

[SIGNATURE PAGES IMMEDIATELY FOLLOW]

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

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

Per:

[REDACTED]

I have authority to bind the corporation.

METROLINX

Per:

[REDACTED]

Per:

[REDACTED]

We have authority to bind the corporation.

[REDACTED]

Per: _____
[REDACTED]

I have authority to bind the corporation.

STRABAG SCARBOROUGH PROJECT INC.

Per:

[REDACTED]

Per:

[REDACTED]

We have authority to bind the corporation.

MT MTDOCS 41426353v2

SCHEDULE 5

CONSTRUCTION CONTRACTOR’S DIRECT AGREEMENT

THIS AGREEMENT is made as of the ____ day of _____, 2021

BETWEEN:

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

- AND -

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

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

- AND -

STRABAG SCARBOROUGH PROJECT INC., [REDACTED]

(“**Project Co**”)

- AND -

[REDACTED]

(the “**Construction Contractor**”)

- AND -

[REDACTED]

(the “**Construction Guarantor**”)

WHEREAS:

- A. Contracting Authority and Project Co have entered into the Project Agreement, which requires Project Co to enter into, and to cause the Construction Contractor and the Construction Guarantor to enter into, this Construction Contractor’s Direct Agreement with Contracting Authority.
- B. Project Co and the Construction Contractor have entered into the Design and Construction Contract, which requires the Construction Contractor and the Construction Guarantor to enter into this Construction Contractor’s Direct Agreement with Contracting Authority.
- C. IO, as Crown agent and Metrolinx, as Crown agency, intend to enter into this Construction Contractor’s Direct Agreement in accordance with Applicable Law, and to be liable, on a joint and several basis, for all of the obligations of Contracting Authority pursuant to this Construction

Contractor's Direct Agreement, save and except as provided for in this Construction Contractor's Direct Agreement.

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

1. DEFINITIONS

In this Schedule 5, unless the context indicates a contrary intention, terms which are defined in the Project Agreement (and not otherwise defined in this in this Schedule 5) shall have meanings given to them in the Project Agreement and the following terms shall have the following meanings:

- (a) “**Default Notice**” has the meaning given in Section 5(a).
- (b) “**Party**” means Contracting Authority, the Construction Contractor, the Construction Guarantor or Project Co, and “**Parties**” means, collectively, Contracting Authority, the Construction Contractor, the Construction Guarantor and Project Co.
- (c) “**Step-In Notice**” has the meaning given in Section 6(a).
- (d) “**Substitute**” has the meaning given in Section 6(a).

2. INTERPRETATION

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

- (a) The headings in this Construction Contractor's Direct Agreement are for convenience of reference only, shall not constitute a part of this Construction Contractor's Direct Agreement, and shall not be taken into consideration in the interpretation of, or affect the meaning of, this Construction Contractor's Direct Agreement.
- (b) Unless the context otherwise requires, references to specific Sections, Clauses, Paragraphs, Subparagraphs, and other divisions are references to such Sections, Clauses, Paragraphs, Subparagraphs, or divisions of this Construction Contractor's Direct Agreement and the terms “Section” and “Clause” are used interchangeably and are synonymous.
- (c) Words importing persons or parties are to be broadly interpreted and include an individual, corporation, limited liability company, joint stock company, firm, partnership, joint venture, trust, unincorporated organization, Governmental Authority, unincorporated body of persons or association and any other entity having legal capacity, and the heirs, beneficiaries, executors, administrators or other legal representatives of a person in such capacity.

-
- (d) Unless the context otherwise requires, wherever used herein the plural includes the singular, the singular includes the plural, and each of the masculine, feminine and neuter genders include all other genders.
- (e) References to any standard, principle, agreement or document include (subject to all relevant approvals and any other provisions of this Construction Contractor’s Direct Agreement concerning amendments) a reference to that standard, principle, agreement or document as amended, supplemented, restated, substituted, replaced, novated or assigned.
- (f) The words in this Construction Contractor’s Direct Agreement shall bear their natural meaning.
- (g) References containing terms such as:
- (i) “hereof”, “herein”, “hereto”, “hereinafter”, and other terms of like import are not limited in applicability to the specific provision within which such references are set forth but instead refer to this Construction Contractor’s Direct Agreement taken as a whole; and
 - (ii) “includes” and “including”, whether or not used with the words “without limitation” or “but not limited to”, shall not be deemed limited by the specific enumeration of items but shall, in all cases, be deemed to be without limitation and construed and interpreted to mean “includes without limitation” and “including without limitation”.
- (h) In construing this Construction Contractor’s Direct Agreement, the rule known as the *ejusdem generis rule* shall not apply nor shall any similar rule or approach to the construction of this Construction Contractor’s Direct Agreement and, accordingly, general words introduced or followed by the word “other” or “including” or “in particular” shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words.
- (i) Where this Construction Contractor’s Direct Agreement states that an obligation shall be performed “no later than” or “within” or “by” a stipulated date or event which is a prescribed number of days after a stipulated date or event, the latest time for performance shall be 5:00 p.m. on the last day for performance of the obligation concerned, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- (j) Where this Construction Contractor’s Direct Agreement states that an obligation shall be performed “on” a stipulated date, the latest time for performance shall be 5:00 p.m. on that day, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- (k) Any reference to time of day or date means the local time or date in Toronto, Ontario.
- (l) Unless otherwise indicated, time periods will be strictly construed.

- (m) Whenever the terms “will” or “shall” are used in this Construction Contractor’s Direct Agreement they shall be construed and interpreted as synonymous and to read “shall”.

3. CONFLICT IN DOCUMENTS

- (a) In the event of ambiguities, conflicts or inconsistencies between or among this Construction Contractor’s Direct Agreement, the Project Agreement and the Design and Construction Contract, this Construction Contractor’s Direct Agreement shall prevail.
- (b) In the event of ambiguities, conflicts or inconsistencies between or among this Construction Contractor’s Direct Agreement and the Lenders’ Direct Agreement, the Lenders’ Direct Agreement shall prevail.

4. AGREEMENTS

- (a) Project Co and the Construction Contractor shall not amend, modify, or depart from the terms of the Design and Construction Contract without the prior written consent of Contracting Authority, acting reasonably, which consent shall not be withheld or delayed where such amendment, modification or departure does not materially and adversely affect the ability of Project Co to perform its obligations under this Construction Contractor’s Direct Agreement and does not have the effect of increasing any liability of Contracting Authority, whether actual or potential. Project Co and the Construction Contractor shall provide to Contracting Authority a written copy of all such amendments, modifications or departures. The Parties acknowledge and agree that this Section 4(a) shall not apply to Variations provided for under the Project Agreement.
- (b) Each of the Parties acknowledges having received a copy of the Project Agreement and the Design and Construction Contract.
- (c) If the Construction Contractor gives Project Co any notice of any default(s) under the Design and Construction Contract that may give the Construction Contractor a right to terminate the Design and Construction Contract or to treat it as having been repudiated by Project Co or to discontinue the Construction Contractor’s performance thereunder, then the Construction Contractor shall concurrently provide Contracting Authority with a copy of such notice and set out in reasonable detail the default(s).

5. NO TERMINATION BY CONSTRUCTION CONTRACTOR WITHOUT DEFAULT NOTICE

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

- (a) the Construction Contractor first delivers a written notice (a “**Default Notice**”) to Contracting Authority setting out in reasonable detail the default(s) on which the Construction Contractor intends to rely in terminating the Design and Construction Contract or to treat it as having been repudiated by Project Co or to discontinue the Construction Contractor’s performance thereunder; and

- (b) within a period of five Business Days of Contracting Authority receiving the Default Notice:
- (i) the default(s) on which the Construction Contractor intends to rely in terminating the Design and Construction Contract or to treat it as having been repudiated by Project Co or to discontinue the Construction Contractor's performance thereunder have not been remedied; and
 - (ii) the Construction Contractor has not received a Step-In Notice from Contracting Authority,

provided that if, within such period of five Business Days, Contracting Authority agrees to pay the Construction Contractor's reasonable costs of continued performance, such period of five Business Days shall be extended to 45 days.

6. STEP-IN RIGHTS

- (a) Contracting Authority may at any time:
- (i) within five Business Days or, if such period has been extended in accordance with Section 5, 45 days of Contracting Authority receiving a Default Notice; or
 - (ii) if Contracting Authority has not received a Default Notice and if Contracting Authority's right to terminate the Project Agreement has arisen and is continuing,
- deliver a notice (a "**Step-In Notice**") electing to replace Project Co under the Design and Construction Contract either with Contracting Authority or a third party designated by Contracting Authority in the Step-In Notice (the "**Substitute**"), provided that Contracting Authority can demonstrate to the Construction Contractor, acting reasonably, that the Substitute shall have sufficient financial resources, or shall be supported by a satisfactory guarantee, to carry out the obligations of the Substitute under the Design and Construction Contract.
- (b) Subject to Section 6(d), upon receipt by the Construction Contractor of a Step-In Notice:
- (i) Project Co and the Construction Contractor will be deemed to be released from their existing and future obligations under the Design and Construction Contract to each other (except with respect to any and all indemnities from Project Co or the Construction Contractor to the other in respect of the period prior to the receipt of the Step-In Notice), and Contracting Authority or the Substitute, as applicable, and the Construction Contractor will be deemed to assume those same existing and future obligations towards each other (except in respect of the aforesaid indemnities);
 - (ii) the existing and future rights of Project Co against the Construction Contractor under the Design and Construction Contract and vice versa will be deemed to be cancelled (except with respect to any and all indemnities from Project Co or the Construction Contractor to the other in respect of the period prior to the receipt of

the Step-In Notice), and Contracting Authority or the Substitute, as applicable, and the Construction Contractor will be deemed to acquire those same existing and future rights against each other (except in respect of the aforesaid indemnities), subject to any applicable credit from the Construction Contractor to Contracting Authority if Contracting Authority pays for the Construction Contractor's reasonable costs of continued performance pursuant to Section 5;

- (iii) any guarantee, bond, covenant, letter of credit or similar performance security in favour of Project Co from any third party in respect of any term, provision, condition, obligation, undertaking or agreement on the part of the Construction Contractor to be performed, observed or carried out by the Construction Contractor as contained in, referred to, or inferred from the Design and Construction Contract shall be assigned, novated or granted, as required by Contracting Authority or the Substitute, as applicable, each acting reasonably, to Contracting Authority or the Substitute, as applicable, and the Construction Contractor shall cause such assignment, novation or grant on substantially the same terms and conditions as the original guarantee, bond, covenant, letter of credit or similar performance security, provided however that where Project Co shall continue to hold, or shall continue to be entitled to or have rights under, such guarantee, bond, covenant, letter of credit or similar performance security, as security for any obligations of the Construction Contractor, the assignment, novation or grant of the guarantee, bond or covenant, letter of credit or similar performance security to the extent of any such obligations to Project Co shall be conditional on the satisfaction of those obligations to Project Co; and
 - (iv) at Contracting Authority's request, the Construction Contractor shall enter into, and shall cause the Construction Guarantor and any other guarantor, covenantor or surety under any guarantee, bond or covenant referred to in Section 6(b)(iii) to enter into, and Contracting Authority shall or shall cause the Substitute to enter into, as applicable, all such agreements or other documents as reasonably necessary to give effect to the foregoing, including an agreement between Contracting Authority or the Substitute, as applicable, and the Construction Contractor, acceptable to Contracting Authority and the Construction Contractor, each acting reasonably, on substantially the same terms as the Design and Construction Contract.
- (c) Subject to Section 6(d), Project Co shall, at its own cost, cooperate fully with Contracting Authority and the Substitute in order to achieve a smooth transfer of the Design and Construction Contract to Contracting Authority or the Substitute, as applicable, and to avoid or mitigate in so far as reasonably practicable any inconvenience, including the administration of the Design and Construction Contract, ongoing supervisory activities and scheduling.
 - (d) The rights granted by Sections 6(b) and 6(c) shall be of no force or effect if, at any time the Construction Contractor receives a Step-In Notice, the Construction Contractor has already received notice in writing from another entity entitled to the benefit of step-in rights relating to the Design and Construction Contract that it is or has validly exercised those step-in rights. If the Construction Contractor receives any such notice on the same

day as a Step-In Notice, the Step-In Notice shall be effective, except where the other notice is given by the Lenders, in which case such other notice and not the Step-In Notice shall be effective.

- (e) If Contracting Authority gives a Step-In Notice within the time provided hereunder at any time after the Construction Contractor has terminated the Design and Construction Contract or treated it as having been repudiated by Project Co or discontinued the Construction Contractor's performance thereunder in accordance with the terms of this Construction Contractor's Direct Agreement, the Construction Contractor agrees that the Design and Construction Contract shall be reinstated and deemed to have continued despite any termination or treatment as having been repudiated, and Contracting Authority shall pay the Construction Contractor's reasonable costs for re-commencing the obligations it has under the Design and Construction Contract and the Construction Contractor shall be entitled to reasonable compensation and/or relief for re-commencing such obligations, having regard to the additional costs and delays incurred as a result of having terminated the Design and Construction Contract or having treated it as being repudiated by Project Co or having discontinued its performance thereunder.

7. CONSTRUCTION CONTRACTOR LIABILITY

- (a) The liability of the Construction Contractor hereunder shall not be modified, released, diminished or in any way affected by:
- (i) any independent inspection, investigation or enquiry into any matter which may be made or carried out by or for Contracting Authority, or by any failure or omission to carry out any such inspection, investigation or enquiry; or
- (ii) the appointment by Contracting Authority of any other person to review the progress of or otherwise report to Contracting Authority in respect of the Project, or by any action or omission of such person whether or not such action or omission might give rise to any independent liability of such person to Contracting Authority,

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

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

8. PROJECT CO AS PARTY

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

9. CONSTRUCTION GUARANTOR AS PARTY

The Construction Guarantor agrees with Contracting Authority that it has entered into a guarantee or covenant referred to in Section 6(b)(iii) and hereby consents to the assignment, novation or grant (including any conditional assignment, novation or grant) as provided herein immediately upon receipt by the Construction Contractor of a Step-In Notice and without the requirement of any further action on the part of Contracting Authority, and agrees that 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 is entering into this Construction Contractor's Direct Agreement solely for the purposes of this Section 9.

10. ASSIGNMENT

- (a) Project Co shall not, without the prior written consent of Contracting Authority, assign, transfer, charge, subcontract, subparticipate or otherwise dispose of any interest in this Construction Contractor's Direct Agreement except to the extent entitled to do so under the Project Agreement.
- (b) Contracting Authority may assign or otherwise dispose of the benefit of the whole or part of this Construction Contractor's Direct Agreement to any person to whom Contracting Authority may assign or otherwise dispose of its interest in the Project Agreement pursuant to Section 49.2 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 and the Construction Guarantor shall not, without the prior written consent of Contracting Authority and Project Co, assign, transfer, charge, subcontract, subparticipate or otherwise dispose of any interest in this Construction Contractor's Direct Agreement except as may be permitted under the Design and Construction Contract.

11. NOTICES

- (a) All notices, requests, demands, instructions, certificates, consents and other communications required or permitted under this Construction Contractor's Direct Agreement shall be in writing (whether or not "written notice" or "notice in writing" is specifically required by the applicable provision of this Construction Contractor's Direct Agreement) and served by sending the same by registered mail, by hand (in each case with a copy by electronic submission to the Contracting Authority Representative), or by electronic submission as follows:

[REDACTED]

- (b) Where any notice is provided or submitted to a Party via electronic submission, an original of the notice sent via electronic submission shall promptly be sent by regular mail or registered mail. For greater certainty, a notice given via electronic submission shall not be invalid by reason only of a Party's failure to comply with this Section 11(b).

- (c) Any Party to this Construction Contractor's Direct Agreement may, from time to time, change any of its contact information set forth in Section 11(a) by prior notice to the other Parties, and such change shall be effective on the Business Day that next follows the recipient Party's receipt of such notice unless a later effective date is given in such notice.
- (d) Subject to Sections 11(e), 11(f) and 11(g):
 - (i) a notice given by registered mail shall be deemed to have been received on the third Business Day after mailing;
 - (ii) a notice given by hand delivery shall be deemed to have been received on the day it is delivered; and
 - (iii) a notice given by electronic submission shall be deemed to have been received on the day it is transmitted by electronic submission.
- (e) If the Party giving the notice knows or ought reasonably to know of difficulties with the postal system which might affect negatively the delivery of mail, any such notice shall not be mailed but shall be made or given by personal delivery or by electronic submission in accordance with this Section 11.
- (f) If any notice delivered by hand or transmitted by electronic submission is so delivered or transmitted, as the case may be, either on a day that is not a Business Day or on a Business Day after 4:00 p.m. (recipient's local time), then such notice shall be deemed to have been received by such recipient on the next Business Day.
- (g) A notice given by electronic submission shall be deemed to have been received by the recipient on the day it is transmitted only if an electronic submission report (maintained by the sender) indicates that the transmission of such notice was successful.

12. AMENDMENTS

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

13. WAIVER

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

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

14. RELATIONSHIP BETWEEN THE PARTIES

The Parties are independent contractors. This Construction Contractor's Direct Agreement is not intended to and does not create or establish between the Parties any relationship as partners, joint venturers, employer and employee, master and servant, or, except as provided in this Construction Contractor's Direct Agreement, of principal and agent.

15. ENTIRE AGREEMENT

Except where provided otherwise in this Construction Contractor's Direct Agreement, this Construction Contractor's Direct Agreement constitutes the entire agreement between the Parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings, whether oral, written, express or implied, concerning the subject matter of this Construction Contractor's Direct Agreement.

16. SEVERABILITY

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

17. ENUREMENT

This Construction Contractor's Direct Agreement shall enure to the benefit of, and be binding on, each of the Parties and their respective successors and permitted transferees and assigns.

18. GOVERNING LAW AND JURISDICTION

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

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

19. CONTRACTING AUTHORITY DESIGNATE

- (a) At any time and from time to time, the Crown may designate any ministry, branch, agency, division, department or office of the Government of Ontario to carry out administrative responsibility for the rights and obligations of Contracting Authority under this 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 the Crown hereunder and such notice shall have effect on the later of the date of delivery of such notice and the date specified in the written notice. The Crown shall advise Project Co, the Construction Contractor and the Construction 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 déclare satisfaite.

22. COUNTERPARTS

This Construction Contractor's Direct Agreement may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all of the Parties shall constitute a full, original and binding agreement for all purposes. Delivery of an executed counterpart by sending a copy by electronic mail or other electronic transmission shall be as effective as the manual delivery of an executed counterpart.

23. JOINT AND SEVERAL

IO, as Crown agent and Metrolinx, as Crown agency, shall be liable, on a joint and several basis, for all of the obligations of Contracting Authority under this Construction Contractor's Direct Agreement and for each covenant of the other under this Construction Contractor's Direct Agreement.

24. COPYRIGHT NOTICE

The Parties acknowledge that Queen’s Printer for Ontario is the exclusive owner of copyright in the Project Agreement and this Construction Contractor’s Direct Agreement.

[SIGNATURE PAGES IMMEDIATELY FOLLOW]

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

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

Per:

[REDACTED]

I have authority to bind the corporation.

METROLINX

Per:

[REDACTED]

Per:

[REDACTED]

We have authority to bind the corporation.

STRABAG SCARBOROUGH PROJECT INC.

Per:

[REDACTED]

Per:

[REDACTED]

We have authority to bind the corporation.

[REDACTED]

Per: _____
[REDACTED]

Per: _____
[REDACTED]

We have authority to bind the corporation

[REDACTED]

Per: _____
[REDACTED]

Per: _____
[REDACTED]

We have authority to bind the corporation

MT MTDOCS 41633372v2

SCHEDULE 6

INDEPENDENT CERTIFIER AGREEMENT

THIS AGREEMENT is made as of the _____ day of _____, 2021

BETWEEN:

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

AND:

METROLINX, a non-share capital corporation continued under the *Metrolinx Act, 2006*
(Ontario) and a Crown agency in accordance with the *Crown Agency Act* (Ontario)

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

AND:

STRABAG SCARBOROUGH PROJECT INC., [REDACTED]

(“**Project Co**”)

AND:

[REDACTED]

(the “**Independent Certifier**”)

WHEREAS:

- A. Contracting Authority and Project Co (collectively, the “**PA Parties**” and each, a “**PA Party**”) have entered into the Project Agreement.
- B. Pursuant to the terms of the Project Agreement, the PA Parties wish to appoint the Independent Certifier, and the Independent Certifier wishes to accept such appointment, to perform certain services in connection with the Project Agreement.
- C. The PA Parties and the Independent Certifier wish to enter into this Independent Certifier Agreement in order to record the terms by which the Independent Certifier shall perform such services.
- D. IO, as Crown agent and Metrolinx, as Crown agency, intend to enter into this Independent Certifier Agreement in accordance with Applicable Law, and to be liable, on a joint and several basis, for all of the obligations of Contracting Authority pursuant to this Independent Certifier Agreement, save and except as provided for in this Independent Certifier Agreement.

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

1. DEFINITIONS

1.1 Definitions

- (a) In this Independent Certifier Agreement, including the recitals and appendices, unless the context indicates a contrary intention, terms which are defined in the Project Agreement (and not otherwise defined in this Independent Certifier Agreement) shall have meanings given to them in the Project Agreement and the following terms shall have the following meanings:
- (i) **“Adjudication Fee”** means the fee payable by Contracting Authority and Project Co to the Independent Certifier for the Independent Certifier conducting Adjudications as such fees are specified and made payable in accordance with Appendix B to this Independent Certifier Agreement.
 - (ii) **“Certification Services”** means:
 - (A) all of the functions and obligations described in the Project Agreement as being the responsibility of the Independent Certifier;
 - (B) all of the functions and obligations conferred on the Independent Certifier under this Independent Certifier Agreement, including the functions described in Appendix A to this Independent Certifier Agreement; and
 - (C) all other functions or tasks which the Independent Certifier must do to comply with its obligations under this Independent Certifier Agreement.
 - (iii) **“Certification Services Variation”** is any change to the Certification Services.
 - (iv) **“Contract Material”** means all material:
 - (A) provided to the Independent Certifier or created or required to be created by either PA Party; and
 - (B) provided by or created or required to be created by the Independent Certifier as part of, or for the purpose of, performing the Certification Services,including documents, equipment, reports, technical information, plans, charts, drawings, calculations, tables, schedules and data (stored and recorded by any means).
 - (v) **“Fee”** means the fees payable by Contracting Authority and Project Co to the Independent Certifier for the Certification Services, as such fees are specified and made payable in accordance with Appendix B to this Independent Certifier Agreement.

- (vi) “**Hourly Rate**” means the rate charged by each Independent Certifier Team Member per hour as listed in Appendix B to this Independent Certifier Agreement for Certification Services identified in item (x) of Appendix A to this Independent Certifier Agreement, including any services required to provide additional work
- (vii) “**Installed Equipment**” has the meaning given in Appendix A to this Schedule 6.
- (viii) “**Monthly Report**” has the meaning given in Appendix A to this Schedule 6.
- (ix) “**PA Parties**” means both Contracting Authority and Project Co, and “**PA Party**” means either Contracting Authority or Project Co, as the context requires.
- (x) “**Quarterly Report**” has the meaning given in Appendix A to this Schedule 6.
- (xi) “**Total Fixed Fee**” means the Fee for all Certification Services other than those identified in item (x) of Appendix A to this Independent Certifier Agreement, which shall not exceed the amount specified in Appendix B to this Independent Certifier Agreement.

2. INTERPRETATION

2.1 Interpretation

- (a) In this Independent Certifier Agreement, unless the context indicates a contrary intention:
 - (i) words denoting the singular number include the plural and vice versa;
 - (ii) words denoting individuals include corporations and vice versa;
 - (iii) headings are for convenience only and do not affect interpretation;
 - (iv) references to Clauses, Sections or Parts are references to Clauses, Sections or Parts of this Independent Certifier Agreement;
 - (v) references to this Independent Certifier Agreement or any contract, agreement or instrument are deemed to include references to this Independent Certifier Agreement or such other contract, agreement or instrument as amended, novated, supplemented, varied or replaced from time to time;
 - (vi) references to any party to this Independent Certifier Agreement includes its successors or permitted assigns;
 - (vii) words denoting any gender include all genders;
 - (viii) references to any legislation or to any section or provision of any legislation include any statutory modification or re-enactment of any statutory provision substituted for legislation, section or provision, and ordinances, by laws, regulations and other statutory instruments issued under that legislation, section or provision;
 - (ix) a reference to “\$” is to Canadian currency;

- (x) the terms “including” and “include” mean “including” or “include” (as applicable) without limitation;
- (xi) if a word or phrase is defined, then other parts of speech and grammatical forms of that word or phrase have a corresponding meaning; and
- (xii) unless otherwise indicated, all time periods will be strictly construed.

2.2 Obligations and Exercise of Rights by PA Parties

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

3. ROLE OF THE INDEPENDENT CERTIFIER

3.1 Engagement

- (a) The PA Parties hereby appoint the Independent Certifier, and the Independent Certifier hereby accepts such appointment, to carry out the Certification Services in accordance with this Independent Certifier Agreement. The Independent Certifier shall perform the Certification Services in accordance with this Independent Certifier Agreement.
- (b) Nothing in this Independent Certifier Agreement will be interpreted as giving the Independent Certifier any responsibility for performance of the design or construction, or for the certifications of the professionals of record.
- (c) Neither PA Party shall, without the prior written consent of the other PA Party, enter into any separate agreement with the Independent Certifier in connection with the Project, and Project Co shall ensure that no Project Co Party enters into any separate agreement with the Independent Certifier in connection with the Project.
- (d) The Independent Certifier shall make such observations and evaluations of any Works pursuant to a Variation in order to certify any monthly progress payment to Project Co of the value of work performed, provided the Independent Certifier shall be entitled to a “Certification Services Variation Order” pursuant to Sections 9.4 and 9.5 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 or on the New Metrolinx Infrastructure, the New Third Party Infrastructure and the Lands including restrictions on any such access or protocols that are required; and
 - (v) it has satisfied itself as to the correctness and sufficiency of its proposal for the Certification Services and that the Fee covers the cost of complying with all of the obligations under this Independent Certifier Agreement and of all matters and things necessary for the due and proper performance and completion of the Certification Services.

3.7 Co-ordination and Information by Independent Certifier

- (a) The Independent Certifier must:
 - (i) fully cooperate with the PA Parties and their consultants and advisors;
 - (ii) carefully co-ordinate the Certification Services with the work and services performed by the PA Parties;
 - (iii) 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;
 - (iv) include both PA Parties in all discussions, meetings or any other communications regarding the Project; and
 - (v) provide copies to the PA Parties of all reports, communications, certificates and other documentation that it provides to either PA Party.

3.8 Conflict of Interest

- (a) The Independent Certifier warrants that:
- (i) at the date of this Independent Certifier Agreement, no conflict of interest exists or is likely to arise in the performance of its obligations under this Independent Certifier Agreement, and the Independent Certifier further warrants that it has not been retained as 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 any such person to be involved in any other project on behalf of the Independent Certifier if, in the reasonable opinion of the PA Parties, such involvement would have a material adverse effect on the performance of the Certification Services.
- (b) Any replacement of the individuals listed in Appendix C is subject to the PA Parties' prior written approval.
- (c) The Independent Certifier shall ensure that its personnel providing the Certification Services in respect of the Works shall:
- (i) possess a current professional designation of not less than membership in Professional Engineers Ontario (PEO), the Ontario Association of Certified Engineering Technicians and Technologists or such similar professional or consulting designation recognized in North America for mechanical, electrical, civil, structural, transportation, geotechnical, environmental, utilities and industrial leads;
 - (ii) possess a current professional designation of not less than Professional Quantity Surveyors (PQS) for the Cost Estimator and any individuals who will prepare and evaluate construction and development information for the cost control and Works measurements for payment;
 - (iii) have demonstrated competence in the planning, design, construction and commissioning of comparable and complex facilities and in having completed or monitored the planning, design, construction and commissioning of facilities and infrastructure comparable to the those included in the Project;

- (iv) have an understanding of the appropriate standards, guidelines and policies related to planning, design, construction and commissioning of facilities and infrastructure comparable to the those included in the Project;
 - (v) have an understanding of the commissioning process, the reports and any documentation to be provided pursuant to this Independent Certifier Agreement and the Project Agreement, including not only the start-up procedures but the pre-commissioning and post-commissioning activities; and
 - (vi) have the relevant qualifications for their specified area of expertise and membership to the relevant professional bodies which licences them to give their opinions and carry out the relevant works as detailed within this agreement.
- (d) The Independent Certifier shall furnish Contracting Authority with evidence satisfactory to Contracting Authority of any such personnel's compliance with the foregoing requirements within a reasonable time prior to the proposed commencement of the Certification Services in respect of the Works.
- (e) The Independent Certifier shall engage the personnel listed in Appendix C in all day-to-day activities relevant to their area of expertise for the Certification Services.

3.10 Minimize Interference

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

4. ROLE OF THE PA PARTIES

4.1 Assistance

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

4.2 Instructions in Writing

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

4.3 Information and Services

- (a) The PA Parties shall make available to the Independent Certifier, as soon as practicable from time to time, all information, documents and particulars necessary for the Independent Certifier to carry out the Certification Services, including such information, documents and particulars required in order for the Independent Certifier to determine whether Milestone Payment Completion, 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 Contracting Authority Representative, as the case may be, of the details of the information, documents or particulars demonstrating the need and the reasons why they are required; and
 - (ii) Project Co or Contracting Authority, as the case may be, must arrange the provision of the required information, documents or particulars.

4.5 Right to Enter and Inspect

- (a) Upon giving reasonable notice to the Project Co Representative, the Independent Certifier (and any person authorized by it) may enter and inspect the Metrolinx Lands, the New Metrolinx Infrastructure, the New Third Party Infrastructure, the Existing Infrastructure or the Works at any reasonable time in connection with the exercise or proposed exercise of rights under this Independent Certifier Agreement, subject to:
- (i) observance of the reasonable rules of Project Co as to safety and security for the Metrolinx Lands, the New Metrolinx Infrastructure, the New Third Party Infrastructure, the Existing Infrastructure and the Works;
 - (ii) not causing unreasonable delay to the carrying out of the Works by reason of its presence on the Metrolinx Lands, the New Metrolinx Infrastructure, the New Third Party Infrastructure, the Existing Infrastructure or the Works; and
 - (iii) not causing any damage to the Metrolinx Lands, the New Metrolinx Infrastructure, the New Third Party Infrastructure, the Existing Infrastructure or the Works.

4.6 PA Parties Not Relieved

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

4.7 PA Parties not Liable

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

5. CERTIFICATION QUALITY PLAN

5.1 Certification Quality Plan

- (a) The Independent Certifier must:
- (i) develop and implement a certification quality plan identifying the processes and outcomes of the Certification Services, including but not limited to timelines, deliverables and input required from the PA Parties, that complies with all requirements of the Independent Certifier's quality assurance accreditation, and is otherwise satisfactory to each of the Contracting Authority Representative and the Project Co Representative;
 - (ii) within 30 days after the date of this Independent Certifier Agreement, provide a draft of such certification quality plan to each of the Contracting Authority Representative and the Project Co Representative;
 - (iii) within 60 days after the date of this Independent Certifier Agreement, provide the final certification quality plan to each of the Contracting Authority Representative and the Project Co Representative;
 - (iv) if satisfactory to each of the Contracting Authority Representative and the Project Co Representative, implement such certification quality plan; and
 - (v) if not satisfactory to each of the Contracting Authority Representative and the Project Co Representative, within seven days after receiving notice thereof from either PA Party to that effect, revise and resubmit the certification quality plan to each of the Contracting Authority Representative and the Project Co Representative, and implement it if satisfactory to each of the Contracting Authority Representative and the Project Co Representative.

5.2 Certification Quality Plan not to Relieve Independent Certifier

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

6. SUSPENSION

6.1 Notice

- (a) The Certification Services (or any part) may be suspended at any time by the PA Parties:

- (i) if the Independent Certifier fails to comply with its obligations under this Independent Certifier Agreement, immediately by the PA Parties giving joint notice in writing to the Independent Certifier; or
- (ii) in any other case, by the PA Parties giving seven days' joint notice in writing to the Independent Certifier.

6.2 Costs of Suspension

- (a) The Independent Certifier will:
 - (i) subject to the Independent Certifier complying with Section 9, be entitled to recover the extra costs incurred by the Independent Certifier by reason of a suspension directed under Section 6.1(a)(ii) valued as a Certification Services Variation under Section 9; and
 - (ii) have no entitlement to be paid any costs, expenses, losses or damages arising from a suspension under Section 6.1(a)(i).

6.3 Recommencement

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

7. INSURANCE AND LIABILITY

7.1 Independent Certifier's Professional Indemnity Insurance

- (a) The Independent Certifier must have in place at all times during the term of this Independent Certifier Agreement:
 - (i) professional liability insurance:
 - (A) in the amount of [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 five Business Days prior to

the expiry date of any such insurance policy, the Independent Certifier must provide evidence of the renewal of any such insurance policy satisfactory to the PA Parties, acting reasonably.

7.2 Workers' Compensation Insurance

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

8. PAYMENT FOR SERVICES

8.1 Payment of Fee and Adjudication Fee

- (a) In consideration of the Independent Certifier performing the Certification Services in accordance with this Independent Certifier Agreement, each PA Party shall pay one half of the Fee to the Independent Certifier in accordance with the invoicing process specified in Section D of Appendix B to this Schedule 6.
- (b) In consideration of a representative of the Independent Certifier conducting Adjudications pursuant to Schedule 27 – Dispute Resolution Procedure if requested by the Parties, and subject to an alternative determination regarding payment of costs being made by the Adjudicator, each PA Party shall pay one half of the Adjudication Fee for each adjudication conducted based on the rates set out in Appendix B to this Schedule 6.
- (c) The obligation of each PA Party to pay to the Independent Certifier one half of the Fee, or one half of the Adjudication Fee (or other portion of the Adjudication Fee as determined by the Adjudicator) is a several obligation, and neither PA Party shall have any liability in respect of the non payment by the other PA Party of any fees or costs payable by such other PA Party under this Independent Certifier Agreement.
- (d) The Fee and Adjudication Fee include all taxes (except for HST), overhead and profit, all labour and materials, insurance costs, travel, hospitality, and incidental expenses (except for food expenses which are to be excluded), and all other overhead including any fees or other charges required by law to perform the Certification Services and conduct the Adjudication, subject to Appendix B to this Schedule 6.
- (e) The PA Parties acknowledge and agree that if any approved amount due and payable by the PA Parties to the Independent Certifier in excess of [REDACTED] is outstanding for more than 60 days, the Independent Certifier shall not have any obligation to make any certification under the Project Agreement.

9. CERTIFICATION SERVICES VARIATIONS

9.1 Notice of Certification Services Variation

- (a) If the Independent Certifier believes, other than a “Certification Services Variation Order” under Section 9.4(c), that any direction by the PA Parties constitutes or involves a Certification Services Variation it must:

- (i) within seven days after receiving the direction and before commencing work on the subject matter of the direction, give notice to the PA Parties that it considers the direction constitutes or involves a Certification Services Variation; and
 - (ii) within 21 days after giving the notice under Section 9.1(a)(i), submit a written claim to each of the Contracting Authority Representative and the Project Co Representative which includes detailed particulars of the claim, the amount of the claim and how it was calculated.
- (b) Regardless of whether the Independent Certifier considers that such a direction constitutes or involves a Certification Services Variation, the Independent Certifier must continue to perform the Certification Services in accordance with this Independent Certifier Agreement and all directions, including any direction in respect of which notice has been given under this Section 9.1.

9.2 No Adjustment

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

9.3 External Services

- (a) In the event that external personnel or consultants are required for expert opinion with respect to a Certification Services Variation, then, with the prior written approval of the PA Parties, any additional fees relating to such external personnel or consultants will be payable by the PA Parties at the agreed upon amount.

9.4 Certification Services Variation Procedure

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

9.5 Cost of Certification Services Variation

- (a) Subject to Section 9.2, the Fee will be adjusted for all Certification Services Variations or suspensions under Section 6.1(a)(ii) carried out by the Independent Certifier by:
- (i) the amount (if any) stated in the “Certification Services Variation Order” in accordance with Section 9.4(c);
 - (ii) if Section 9.5(a)(i) is not applicable, an amount determined pursuant to the fee schedule in Appendix B; or
 - (iii) where such rates or prices are not applicable, a reasonable amount to be agreed between the PA Parties and the Independent Certifier or, failing agreement, determined by the Contracting Authority Representative and the Project Co Representative jointly.
- (b) Any reductions in the Fee shall be calculated on the same basis as any increases.

10. TERM AND TERMINATION**10.1 Term**

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

10.2 Notice of Breach

- (a) If the Independent Certifier commits a breach of this Independent Certifier Agreement, the PA Parties may give written notice to the Independent Certifier:
- (i) specifying the breach; and
 - (ii) directing its rectification in the period specified in the notice being a period not less than seven 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, 10.7, 10.8, 11, 12.7, 12.8, and this Section 10.9 or under any other provision which is expressed to survive termination or which is required to give effect to such termination or the consequences of such termination.

11. INDEMNITY

11.1 PA Parties to Save Independent Certifier Harmless

- (a) The PA Parties hereby indemnify and save the Independent Certifier completely harmless from any actions, causes of action, suits, debts, costs, damages, expenses, claims and demands whatsoever, at law or in equity, arising directly or indirectly in whole or in part out of any action taken by the Independent Certifier within the scope of its duties or authority hereunder.
- (b) 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) Subject to Section 11.2(b), the Independent Certifier hereby indemnifies and saves the PA Parties, and their affiliated entities, subsidiaries and their respective directors, officers, employees, agents, permitted successors and assigns, completely harmless from any actions, causes of action, suits,

debts, costs, damages, expenses, claims and demands whatsoever, at law or in equity, arising directly or indirectly in whole or in part out of any breach of this Independent Certifier Agreement, or any part or parts hereof, by the Independent Certifier, its employees, servants, agents or persons for whom it is in law responsible, or any negligent or unlawful act or omission or willful misconduct of the Independent Certifier, its employees, servants or persons for whom it is in law responsible.

- (b) No action or other proceeding shall be commenced by any PA Party against the Independent Certifier or the Independent Certifier's representative acting as an Adjudicator pursuant to Schedule 27 – Dispute Resolution Procedure as requested, for any act done, or any alleged neglect or default in the execution or intended execution of the Adjudicator's duties or powers in connection with such adjudication unless the act or omission is shown to have been in bad faith.
- (c) The indemnity provided under this Section 11.2 to a PA Party shall not extend:
 - (i) to any negligent or unlawful act or omission or willful misconduct of such PA Party, its employees, servants or persons for whom it is in law responsible (in respect of which such PA Parties shall indemnify the Independent Certifier, as referred to in Section 11.1); or
 - (ii) to any debt, cost, expense, claim or demand for which insurance proceeds are recoverable by such PA Party.
- (d) This indemnity shall survive the termination of this Independent Certifier Agreement.

11.3 Conduct of Claims

- (a) Claims made by a third person against a party having, or claiming to have, the benefit of an indemnity pursuant to this Independent Certifier Agreement shall be conducted in accordance with the conduct of claims procedure described in Appendix D – Conduct of Claims to this Independent Certifier Agreement.

12. GENERAL

12.1 Entire Agreement

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

12.2 Negation of Employment

- (a) The Independent Certifier, its officers, directors, members, employees, servants and agents and any other persons engaged by the Independent Certifier in the performance of the Certification Services will not by virtue of this Independent Certifier Agreement or the performance of the Certification Services become in the service or employment of the PA Parties for any purpose.

- (b) The Independent Certifier will be responsible for all matters requisite as employer or otherwise in relation to such officers, directors, members, employees, servants and agents and other persons who are engaged by the Independent Certifier.

12.3 Waiver

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

12.4 Notices

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

If to Contracting Authority: [REDACTED]

If to Project Co: [REDACTED]

If to Independent Certifier: [REDACTED]

- (b) Where any notice is provided or submitted to a party via electronic submission, an original of the notice sent via electronic submission shall promptly be sent by regular mail or registered mail. For greater certainty, a notice given via electronic submission shall not be invalid by reason only of a party’s failure to comply with this Section 12.4(b).
- (c) Any party to this Independent Certifier Agreement may, from time to time, change any of its contact information set forth in Section 12.4(a) by prior notice to the other parties, and such change shall be effective on the Business Day that next follows the recipient party’s receipt of such notice unless a later effective date is given in such notice.
- (d) Subject to Sections 12.4(e), 12.4(f) and 12.4(g):
- (i) a notice given by registered mail shall be deemed to have been received on the third Business Day after mailing;

- (ii) a notice given by hand delivery shall be deemed to have been received on the day it is delivered; and
 - (iii) a notice given by electronic submission shall be deemed to have been received on the day it is transmitted by electronic submission.
- (e) If the party giving the notice knows or ought reasonably to know of difficulties with the postal system which might affect negatively the delivery of mail, any such notice shall not be mailed but shall be made or given by personal delivery or by electronic submission in accordance with this Section 12.4.
- (f) If any notice delivered by hand or transmitted by electronic submission is so delivered or transmitted, as the case may be, either on a day that is not a Business Day or on a Business Day after 4:00 p.m. (recipient's local time), then such notice shall be deemed to have been received by such recipient on the next Business Day.
- (g) A notice given by electronic submission shall be deemed to have been received by the recipient on the day it is transmitted only if an electronic submission report (maintained by the sender) indicates that the transmission of such notice was successful.

12.5 Transfer and Assignment

- (a) The Independent Certifier:
- (i) must not assign, transfer, mortgage, charge or encumber any right or obligation under this Independent Certifier Agreement without the prior written consent of the PA Parties, which each PA Party may give or withhold in its absolute discretion; and
 - (ii) agrees that any assignment, transfer, mortgage, charge or encumbrance will not operate to release or discharge the Independent Certifier from any obligation or liability under this Independent Certifier Agreement.
- (b) For the purposes of this Section 12.5, an assignment will be deemed to have occurred where there is a Change in Control of the Independent Certifier after the date of this Independent Certifier Agreement.
- (c) Each of the PA Parties may assign, transfer, mortgage, charge or encumber any right or obligation under this Independent Certifier Agreement in accordance with the terms of the Project Agreement.

12.6 Governing Laws and Jurisdictions

- (a) This Independent Certifier Agreement shall be governed by and construed in accordance with the laws of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract, without regard to conflict of laws principles.
- (b) The PA Parties and the Independent Certifier agree that the courts of the Province of Ontario and all courts competent to hear appeals therefrom shall have exclusive jurisdiction to hear and settle

any action, suit, proceeding or dispute in connection with this Independent Certifier Agreement and hereby irrevocably attorn to the exclusive jurisdiction of such courts.

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

12.7 Contracting Authority Designate

- (a) At any time and from time to time, the Crown may designate any ministry, branch, agency, division, department or office of the Government of Ontario to carry out administrative responsibility for the rights and obligations of Contracting Authority under this Independent Certifier Agreement and Project Co and the Independent Certifier may deal exclusively with the designated person in respect of all such matters and is entitled to rely on the actions, directions, requests, notices, consents, approvals, waivers, comments relating to the review of documentation and other administrative matters and decisions determined by such designated person from time to time, until the Crown has notified Project Co and the Independent Certifier in writing that such designated person is no longer the person designated by the Crown hereunder and such notice shall have effect on the later of the date of delivery of such notice and the date specified in the written notice. The Crown shall advise Project Co and the Independent Certifier in writing of any designation hereunder. The rights and obligations of the parties to this Independent Certifier Agreement shall be in no way affected by reason of any such designation. Project Co and the Independent Certifier acknowledge the right of the Crown to delegate administrative responsibilities hereunder as set forth in this Section 12.7.

12.8 Confidentiality

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

12.9 Contract Material

- (a) The PA Parties and the Independent Certifier agree that the Independent Certifier does not and will not have any rights, including any Intellectual Property, in any Contract Material provided to the Independent Certifier or created or required to be created by either PA Party.

- (b) As between the PA Parties and the Independent Certifier, all title and ownership, including all Intellectual Property, in and to the Contract Material created or required to be created by the Independent Certifier as part of, or for the purposes of performing the Certification Services, is hereby assigned jointly to the PA Parties on creation, or where such title, ownership and Intellectual Property cannot be assigned before creation of the Contract Material, it will be assigned to the PA Parties on creation. In addition, to the extent that copyright may subsist in such Contract Material so created by the Independent Certifier, the Independent Certifier hereby waives all past, present and future moral rights therein and the Independent Certifier shall ensure that any agent or employee of Independent Certifier shall have waived all such moral rights. The PA Parties acknowledge and agree that as between the PA Parties, title, ownership and other rights to the foregoing shall be governed by the Project Agreement.
- (c) The Independent Certifier will do all such things and execute all such documents as reasonably requested by either of the PA Parties in order to confirm or perfect the assignment of Intellectual Property in the Contract Material referred to in Section 12.9(b).

12.10 Amendment

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

12.11 Severability

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

12.12 Enurement

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

12.13 Counterparts

- (a) This Independent Certifier Agreement may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all of the Parties shall constitute a full, original and binding agreement for all purposes. Delivery of an executed counterpart by sending a copy by electronic mail or other electronic transmission shall be as effective as the manual delivery of an executed counterpart.

12.14 Joint and Several

- (a) IO, as Crown agent and Metrolinx, as Crown agency, shall be liable, on a joint and several basis, for all of the obligations of Contracting Authority under this Independent Certifier Agreement and for each covenant of the other under this Independent Certifier Agreement.

12.15 Copyright Notice

- (a) The parties acknowledge that the Queen’s Printer for Ontario is the exclusive owner of the copyright in the Project Agreement and this Independent Certifier Agreement.

[SIGNATURE PAGES IMMEDIATELY FOLLOW]

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

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

Per:

[REDACTED]

I have authority to bind the corporation.

METROLINX

Per:

[REDACTED]

Per:

[REDACTED]

We have authority to bind the corporation.

STRABAG SCARBOROUGH PROJECT INC.

Per:

[REDACTED]

Per:

[REDACTED]

We have authority to bind the corporation.

[REDACTED]

Per: _____
[REDACTED]

Per: _____
[REDACTED]

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:

- (a) Develop and implement a certification quality plan identifying the processes and outcomes of the Certification Services including timelines, deliverables and a description of the input required from the PA Parties to carry out the Certification Services.
- (b) Receive, monitor and review all relevant Project documentation including drawings, plans, reports, certifications, schedules, letters, notices and test results as necessary for the Independent Certifier to be informed as to the progress of the Works (including, for certainty, the reports described in Sections 12, 13 and 14 of Schedule 12 – Works Schedule Requirements). The Independent Certifier personnel listed in Appendix C shall be up to date with all Project documentation relevant to their area of expertise.
- (c) Review information relating to Construction Period Quality Failures, Delay Events and the events described in Section 32.2 of the Project Agreement, and Compensation Events.
- (d) Review information relating to Variation Enquiries, Project Co Variation Notices, Variations, Estimates, claims for extension of time and compensation and consultation with the relevant party.
- (e) Issue a certificate for payment of (i) the Legislative Holdback pursuant to Section 4.5(c) of the Project Agreement, and (ii) the Finishing Holdback pursuant to Section 4.6(c) of the Project Agreement.
- (f) Identify any risks that may impede the issuance of the Milestone Payment Completion notice (pursuant to Section 25A.2(e)(i) of the Project Agreement), the Substantial Completion Certificate or the Final Completion Certificate and inform the PA Parties thereof.
- (g) In accordance with Section 11.17 of the Project Agreement, perform all responsibilities of the Independent Certifier in connection with Construction Defects.
- (h) Review the draft Works Submittals related to commissioning, the draft Final Commissioning Program and the detailed test, test methodology and expected test results proposed by Project Co, including any review comments from Contracting Authority, and provide a report on the effectiveness of the Final Commissioning Program, to identify any errors or omissions and to report any risks.
- (i) Monitor, and report on, the implementation of the commissioning plan (as indicatively described in Schedule 14 – Outline Commissioning Program and Handover) and other tests, including re-tests, to be performed as set out in the Outline Commissioning Program or as otherwise required for Project Co to achieve Milestone Payment Completion, Substantial Completion and Final Completion.

-
- (j) Witness the implementation of a sample of the Commissioning Tests and a sample of the other testing and commissioning procedures at random times, locations and frequencies, in each case to the extent required for the Independent Certifier to verify that the requirements of Milestone Payment Completion, Substantial Completion and Final Completion have been met.
- (k) In accordance with Section 25.14(j)(ii) of the Project Agreement, make a determination with respect to unresolved Project Co Commissioning or Handover issues.
- (l) Prior to any certification, consider the views and comments of Project Co and Contracting Authority (including its consultants and advisors), as applicable, in relation to the satisfaction of the conditions for certification.
- (m) Employing the relevant personnel, conduct regular inspections of the Works and attend Site progress meetings at a minimum on a monthly basis or more regularly as deemed necessary for the Independent Certifier to be satisfied that the Works are proceeding in accordance with the requirements of the Project Agreement. Report on the observations, findings and potential risks to certification as a result of the regular inspections as part of the Monthly Report.
- (n) Upon receipt of notice from Project Co requesting the issuance of a Milestone Payment Completion notice pursuant to Section 25A.2(e)(i) of the Project Agreement, Substantial Completion Certificate or Final Completion Certificate, as applicable, (i) with respect to the Substantial Completion Certificate, perform the activities set out in Section 25.4(c) of the Project Agreement, and (ii) with respect to each of the Milestone Payment Completion Notices, the Substantial Completion Certificate and the Final Completion Certificate, consider such request and, within the time period set out in the Project Agreement and in accordance with the Project Agreement, either:
- (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 (p) of this Appendix A until the issuance of the applicable certificate.
- (p) In accordance with Sections 25.8-25.10 and 25.11 of the Project Agreement, perform all responsibilities of the Independent Certifier in connection with the Minor Deficiencies and the Minor Deficiencies regimes, including, for clarity, ensuring that
- (i) for each Minor Deficiency (other than Seasonal Minor Deficiencies), the Independent Certifier shall specify a time for completion and rectification that is no later than six months following the Substantial Completion Date; and
 - (ii) for each Seasonal Minor Deficiency, the Independent Certifier shall specify a time for completion and rectification that is no later than six months following the Minor Deficiencies Completion Date.

-
- (q) Review and monitor the installation of all equipment, fixtures, information technology, communication equipment, telephone equipment and anything similar to the foregoing (collectively, the “**Installed Equipment**”) into the New Metrolinx Infrastructure or the New Third Party Infrastructure by Contracting Authority or any agent or contractor of Contracting Authority either before or after Substantial Completion and provide a report to Contracting Authority and Project Co identifying any damage to the New Metrolinx Infrastructure or the New Third Party Infrastructure which has been caused as a result of the installation of such Installed Equipment into the New Metrolinx Infrastructure or the New Third Party Infrastructure by Contracting Authority, their contractors and/or agents.
- (r) 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.
- (s) 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.
- (t) Provide periodic reports to the PA Parties, copying IO, as follows:
- (i) a progress report within 15 Business Days after each month’s end or as otherwise agreed by the PA Parties (“**Monthly Report**”) which includes the following:
 - (A) summary of activities carried out by the Independent Certifier, making specific reference to each of the Independent Certifier’s obligations;
 - (B) the status of any risks that may impede the issuance of the Milestone Payment Completion notice pursuant to Section 25A.2(d)(i) of the Project Agreement, the Substantial Completion Certificate or the Final Completion Certificate;
 - (C) an opinion on Non-Conformances, if any, and whether or not such Non-Conformances are of the extent and nature that would normally be expected on projects of this kind;
 - (D) progress on all aspects of the Works; and
 - (E) commencing no less than 180 days prior to the Scheduled Substantial Completion Date, the Monthly Report shall contain specific reference to and listing of the work that needs to be done before the Substantial Completion Certificate or Final Completion Certificate can be issued; and
 - (ii) accompanying the Monthly Reports delivered for the months of May, August, November and February, a quarterly report (the “**Quarterly Report**”) for the quarters ending March 31st, June 30th, September 30th and December 31st respectively, in substantially the form as that in Appendix E and that contains the following information certified in accordance with the standard of care set out in Section 3.3 of the Independent Certifier Agreement:

-
- (A) the extent (expressed as a percentage) of completion of the Works as of the last day of the applicable quarter;
 - (B) the value of the Works completed as of the last day of the applicable quarter;
 - (C) the forecasted extent (expressed as a percentage) of completion of the Works as of the last day of the applicable quarter and for the next four quarters; and
 - (D) the forecasted value of the Works anticipated to be completed as of the last day of the applicable quarter and for the next four quarters.
- (u) Participate in meetings with the PA Parties as required for the Independent Certifier to perform Certification Services.
 - (v) Acknowledge receipt of all Design Certificates and Construction Certificates delivered by Project Co in accordance with Schedule 10 – Review Procedure.
 - (w) Provide any determinations contemplated in Schedule 21 – Liquidated Damages and Construction Enforcement Regime.
 - (x) Provide advice on other matters that may arise that both PA Parties may jointly require.
 - (y) Prepare the Substantial Completion Deliverables List pursuant to Section 25.7(d) of the Project Agreement and, if applicable, amend such list pursuant to Section 25.7(e) of the Project Agreement.
 - (z) Perform the responsibilities assigned to the Independent Certifier as set out in Schedule 35 – Incentive Payments to the Project Agreement within the timeframes set out therein.

APPENDIX B**INDEPENDENT CERTIFIER FEE****A. Disbursements and Expenses**

The Total Fixed Fee and Hourly rates set out in Sections B and C, respectively, of this Appendix B to the Independent Certifier Agreement, shall be all inclusive and include all labour and materials, insurance costs, travel, hospitality and incidental expenses (except for food expenses which are to be excluded), disbursements (examples: duplicating, delivery and communications) and all other overhead including any fees or other charges required by law.

The Independent Certifier shall not otherwise be reimbursed for any hospitality, food, travel or incidental expenses incurred.

If the Independent Certifier as Adjudicator obtains the assistance of a person in an Adjudication in accordance with the *Construction Act*, the Independent Certifier as Adjudicator may fix the remuneration of the person in accordance with section 13.12(3) of the *Construction Act* and such remuneration shall be invoiced together with the Adjudicator Fee and shall be payable by the Adjudicator or the Parties in accordance with the *Construction Act*. In fixing the remuneration of such person, the Adjudicator shall comply with, and shall ensure that any person assisting the Adjudicator complies with, any applicable disbursement and reimbursement policies of Contracting Authority and Project Co.

B. Total Fixed Fee for all Certification Services (other than Certification Services identified in item (x) of Appendix A to this Independent Certifier Agreement) (“Total Fixed Fee”)

The Total Fixed Fee for all Certification Services (other than the Certification Services identified in item (x) of Appendix A to this Independent Certifier Agreement) shall not exceed, in aggregate, the total fixed fee of [REDACTED] Canadian Dollars, excluding HST.

C. Hourly Rates for (i) Certification Services Identified for item (x) of Appendix A to this Independent Certifier Agreement for each Independent Certifier team member and (ii) for Adjudication Performed by Independent Certifier personnel pursuant to Schedule 27 – Dispute Resolution Procedure.

The Hourly Rates are for Certification Services identified in item (x) of Appendix A to this Independent Certifier Agreement and for all certification services, labour and materials required to provide additional work, as well as for Adjudication performed by Independent Certifier personnel, if requested.

The provision of Certification Services identified in item (x) of Appendix A of this Independent Certifier Agreement must be pre-approved by Contracting Authority and Project Co, in their sole and absolute discretion and in writing. If Contracting Authority and Project Co, in their sole and absolute discretion, decide to proceed with such Certification Services, Adjudications performed by Independent Certifier personnel, or other additional work, the Independent Certifier will be reimbursed at the following hourly rates, excluding HST:

[REDACTED]	[REDACTED]
------------	------------

D. Invoicing

The Fee for the Certification Services and the Adjudication Fee shall be payable monthly in arrears, subject to the PA Parties' receipt of invoices from the Independent Certifier reflecting the performance of the Certification Services and/or the conduct of any Adjudications, as applicable, which is in form and substance satisfactory to the PA Parties, and subject to applicable requirements of the Construction Act with respect to the payment of the Adjudication Fee.

APPENDIX C

INDEPENDENT CERTIFIER PERSONNEL

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

Name	Position
[REDACTED]	[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 following receipt of the same. Such notice shall specify with reasonable particularity, to the extent that information is available, the factual basis for the claim and the amount of the claim.
- (2) Subject to Sections (3), (4) and (5) of this Appendix D, on the giving of such notice by the Beneficiary, where it appears that the Beneficiary is or may be entitled to indemnification from an Indemnifier in respect of all, but not part only, of the liability arising out of the claim, such Indemnifier shall (subject to providing the Beneficiary with a secured indemnity to the Beneficiary’s reasonable satisfaction against all costs and expenses that the Beneficiary may incur by reason of such action) be entitled to dispute the claim in the name of the Beneficiary at the Indemnifier’s own expense and take conduct of any defence, dispute, compromise, or appeal of the claim and of any incidental negotiations. The Beneficiary shall give such Indemnifier all reasonable cooperation, access and assistance for the purposes of considering and resisting such claim. The Beneficiary shall have the right to employ separate counsel in respect of such claim and the reasonable fees and expenses of such counsel shall be to the account of the Indemnifier only where representation of both the Indemnifier and the Beneficiary by common counsel would be inappropriate due to any actual or potential conflicting interests between the Indemnifier and the Beneficiary. If and to the extent that both Contracting Authority and Project Co are given notice in respect of the same claim, they shall cooperate in the conduct of the claim and give each other such reasonable access and assistance as may be necessary or desirable for purposes of considering, resisting and defending such claim.
- (3) With respect to any claim conducted by an Indemnifier:
 - (i) the Indemnifier shall keep the Beneficiary fully informed and consult with it about material elements of the conduct of the claim;
 - (ii) the Indemnifier shall not bring the name or reputation of the Beneficiary into disrepute;
 - (iii) the Indemnifier shall not pay, compromise or settle such claims without the prior consent of the Beneficiary, such consent not to be unreasonably withheld or delayed;
 - (iv) the Indemnifier shall not admit liability or fault to any third party without the prior consent of the Beneficiary, such consent not to be unreasonably withheld or delayed; and

- (v) the Indemnifier shall use commercially reasonable efforts to have the Beneficiary named as a beneficiary under any release given by the persons bringing the claim to which Section (3) of this Appendix D relates.
- (4) The Beneficiary shall be free to pay or settle any such claim on such terms as it thinks fit and without prejudice to its rights and remedies under this Independent Certifier Agreement if:
- (i) none of the Indemnifiers is entitled to take conduct of the claim in accordance with Section (2) of this Appendix D;
 - (ii) none of the Indemnifiers notifies the Beneficiary of its intention to take conduct of the relevant claim as soon as reasonably practicable and in any event within 10 Business Days following the notice from the Beneficiary under Section (1) of this Appendix D or each of the Indemnifiers notifies the Beneficiary that it does not intend to take conduct of the claim; or
 - (iii) none of the Indemnifiers complies in any material respect with Section (3) of this Appendix D.
- (5) The Beneficiary shall be free at any time to give notice to the applicable Indemnifier that the Beneficiary is retaining or taking over, as the case may be, the conduct of any defence, dispute, compromise or appeal of any claim, or of any incidental negotiations, to which Section (2) of this Appendix D applies. For greater certainty, the Independent Certifier acknowledges and agrees that where Contracting Authority is the Beneficiary, Contracting Authority may retain or take over such conduct in any matter involving Personal Information or any matter involving public policy. On receipt of such notice the applicable Indemnifier shall promptly take all steps necessary to transfer the conduct of such claim to the Beneficiary, and shall provide to the Beneficiary all relevant documentation and all reasonable cooperation, access and assistance for the purposes of considering and resisting such claim. If the Beneficiary gives any notice pursuant to Section (5) of this Appendix D, then the applicable Indemnifier shall be released from any liabilities arising under the applicable indemnity hereunder in respect of the applicable claim.
- (6) If an Indemnifier pays to the Beneficiary an amount in respect of an indemnity and the Beneficiary subsequently recovers, whether by payment, discount, credit, saving, relief or other benefit or otherwise, a sum or anything else of value (the “**Recovery Amount**”) which is directly referable to the fact, matter, event or circumstances giving rise to the claim under the indemnity, the Beneficiary shall forthwith repay to that Indemnifier whichever is the lesser of:
- (i) an amount equal to the Recovery Amount less any out-of-pocket costs and expenses properly incurred by the Beneficiary in recovering the same; and
 - (ii) the amount paid to the Beneficiary by such Indemnifier in respect of the claim under the relevant indemnity,

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

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

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

APPENDIX E

FORM OF QUARTERLY REPORT

[ON THE INDEPENDENT CERTIFIER’S LETTERHEAD]

[date]

Metrolinx
[REDACTED]

and to:

STRABAG Scarborough Project Inc.
[REDACTED]

with a copy to:

Ontario Infrastructure and Lands Corporation
[REDACTED]

Dear [●] and [●]:

This report, for the quarter ending [●], is delivered to you pursuant to Section (v)(ii) of Appendix A – Certification Services to the Independent Certifier Agreement between Ontario Infrastructure and Lands Corporation, Metrolinx and Project Co, and is dated [●] (the “IC Agreement”). Terms not otherwise defined herein have the meaning ascribed to them in the IC Agreement.

All values stated herein are based on the Cost of the Works and are exclusive of HST. This report has taken into account the following information: **[insert particulars of sources of information (e.g., works reports, Site visits) used to prepare the report]**.

Based on our analysis of the foregoing, we confirm the following to the best of our professional knowledge and judgment:

- As of the date hereof, the value of the Works is \$[●] and the Works are [●]% complete.
- At the end of this quarter, the estimated value of the Works will be \$[●] and the Works are forecasted to be % complete.

We estimate that the value of the Works and the extent of their completion will be as follows for the next four quarters (not including the present quarter):

	[quarter end date]	[quarter end date]	[quarter end date]	[quarter end date]
\$				

%				
---	--	--	--	--

We have prepared this report for the specific use of Ontario Infrastructure and Lands Corporation, Metrolinx and **[Project Co]**. This letter is not intended for general circulation, publication or reproduction for any other person or purpose without express written permission to each specific instance.

Yours truly,

**[Name and Signature of Independent
Certifier]**

MT MTDPCS 20634256v12

SCHEDULE 7
WARRANTY LETTER OF CREDIT

[REDACTED]

MT MTDPCS 20634257v9

SCHEDULE 8

PROJECT CO PARTIES

PART 1: PROJECT AGREEMENT SECTION 11.24(b) - LIST OF PROJECT CO PARTIES

[REDACTED]

PART 2: PROJECT AGREEMENT SECTION 11.24(e) - SUBCONTRACTOR'S DIRECT AGREEMENTS

[REDACTED]

SCHEDULE 9

KEY INDIVIDUALS

Project Co may propose multiple Key Individuals if multiple Key Individuals are allowed, as set out in this Schedule 9. If multiple Key Individuals are allowed, Project Co shall identify the lead individual for that position. The lead for a position shall be responsible for all functions listed for that position. The functions listed below for each Key Individual position are not intended to be an exhaustive list of the functions expected to be performed by that Key Individual.

[REDACTED]

MT MTDPCS 20634265v10

SCHEDULE 10**REVIEW PROCEDURE****1. WORKS SUBMITTALS**

- 1.1 The provisions of this Schedule 10 shall apply to the Design Development Submittals, the Construction Document Submittals, the Design Data and any and all items, documents and anything else required or specified by the Project Agreement, including all Works Submittals listed in Appendices A, B and C to this Schedule 10, in respect of the Works to be submitted to, reviewed or otherwise processed by Contracting Authority in accordance with the Review Procedure prior to Substantial Completion, or after Substantial Completion in respect of the completion of Minor Deficiencies, and in respect of the rectification of any Works, the New Metrolinx Infrastructure, and the New Third Party Infrastructure, including any and all subsequent revisions, amendments and changes thereto (individually, “**Works Submittal**” or collectively “**Works Submittals**” as applicable in this Schedule 10).
- 1.2 For clarity, the provisions of this Schedule 10, including any deadlines for submission or review set out herein, shall not apply to any processing or review of any Permit, Licence, Approval, or Agreement.
- 1.3 Subject to Section 1.2, if MTO, TTC or the City of Toronto fails to meet the timelines set out in this Schedule 10 with respect to its review of any Works Submittals, such failure shall be deemed to be a failure by Contracting Authority to comply with the timelines set out in this Schedule 10.

2. SCHEDULE FOR WORKS SUBMITTALS

- 2.1 The Baseline Works Schedule shall allow:
- (a) for each Works Submittal relating to New Metrolinx Infrastructure as set out in Schedule 15 – Output Specifications and Appendix A to this Schedule 10, a period of 15 Business Days (or such longer period as may be agreed between Contracting Authority and Project Co) from the date of receipt for Contracting Authority’s review of and response to such Works Submittals;
 - (b) for each Works Submittal for the MTO-Reviewed Infrastructure as set out in Schedule 15 – Output Specifications and Appendix B to this Schedule 10, a period of 15 Business Days (beginning after 5 Business Days of MTO’s review and determination of Works Submittals completeness), plus an additional 5 Business Days (or such longer period as may be agreed between Contracting Authority and Project Co) for Contracting Authority’s review of and response (in concert with MTO) to each Works Submittal for MTO-Reviewed Infrastructure; and
 - (c) for each Works Submittal relating to the New Toronto Infrastructure set out in Schedule 15 – Output Specifications and Appendix A to this Schedule 10, a period of 20 Business Days (beginning after 5 Business Days of City of Toronto’s review and determination of Works Submittals completeness), plus an additional 5 Business Days (or such longer period as may be agreed between Contracting Authority and Project Co) for Contracting

Authority's review of and response (in concert with the City of Toronto) to each Works Submittal for New Toronto Infrastructure;

- (d) for each Works Submittals set out in Section 3.1(a) of Appendix C of this Schedule 10 and Schedule 15 – Output Specifications, a period of 15 Business Days (beginning after 5 Business Days of TTC's review and determination of Works Submittals completeness), plus an additional 5 Business Days (or such longer period as may be agreed between Contracting Authority and Project Co) for Contracting Authority's review of and response (in concert with TTC) to each Works Submittal for TTC-Reviewed Infrastructure; and
- (e) for each Works Submittals set out in Section 3.1(b) of Appendix C of this Schedule 10 and Schedule 15 – Output Specifications, a period of 30 Business Days (beginning after 5 Business Days of TTC's review and determination of Works Submittals completeness), plus an additional 5 Business Days (or such longer period as may be agreed between Contracting Authority and Project Co) for Contracting Authority's review of and response (in concert with TTC) to each Works Submittal for TTC SRT Facilities.

2.2 If, at any time,

- (a) Project Co submits an unusually large number or volume of Works Submittals not contemplated by the Baseline Works Schedule; or
- (b) a Works Submittal was, or Works Submittals were, received for review later than indicated in the Baseline Works Schedule, such that the Contracting Authority Representative cannot review the Works Submittal or Works Submittals within the time permitted in the Baseline Works Schedule,

then the Contracting Authority Representative shall, within 5 Business Days following receipt of such Works Submittal or Works Submittals, provide Project Co with a reasonable estimate of the time necessary for processing such Works Submittal or Works Submittals.

3. GENERAL REQUIREMENTS FOR WORKS SUBMITTALS

- 3.1 Unless otherwise specified in this Schedule 10 or by the Contracting Authority Representative, Project Co shall issue three printed copies of all Works Submittals to Contracting Authority together with an electronic copy in the format set out in Appendix A to this Schedule 10, Appendix B to this Schedule 10 or Appendix C to this Schedule 10, as applicable, or as prescribed by Contracting Authority acting reasonably, including an electronic copy in native file format if requested by the Contracting Authority Representative and one printed copy of each Works Submittal to the Independent Certifier.
- 3.2 All Works Submittals shall be in English.
- 3.3 All Works Submittals required by the Project Agreement or by Applicable Law to be signed or sealed by persons with professional designations (including, where applicable, by registered professional engineers, professional geo-scientists or architects) shall be so signed and sealed.
- 3.4 All Works Submittals shall:

-
- (a) include copies of all documents to be reviewed; and
 - (b) clearly identify the purpose of the Works Submittal, Project Co's proposed course of action relating to the Works Submittal and the Works that are the subject of the Works Submittal.
- 3.5 All Works Submittals shall, where applicable, refer to and be in accordance with:
- (a) the relevant provisions of the Output Specifications, any other applicable Schedule to the Project Agreement and to any Design Data that has previously been subject to review;
 - (b) the relevant provisions of Appendix B to this Schedule 10 for the process and approvals protocols (including design submission milestones) for items submitted to the MTO or the City of Toronto; and
 - (c) the relevant provisions of Appendix C to this Schedule 10 for the process and approvals protocols (including design submission milestones) for items submitted to TTC.
- 3.6 Each Works Submittal shall be clearly identified as a Works Submittal and shall be delivered with appropriate covering documentation, submitted in both soft copy and hard copy which shall include a list of all attached Works Submittals and, for each Works Submittal:
- (a) identification of whether the Works Submittal contains New Metrolinx Infrastructure, or New Third Party Infrastructure;
 - (b) identification of whether the Works Submittal has been submitted pursuant to Appendix A to this Schedule 10, Appendix B to this Schedule 10 or Appendix C to this Schedule 10;
 - (c) the document number(s) or drawing number(s);
 - (d) revision numbers;
 - (e) document or drawing title(s);
 - (f) name of entity that prepared the Works Submittal;
 - (g) name and signature of the Key Individual(s) responsible for content of the Works Submittal;
 - (h) the Works Submittal history, including reviewer and checker initials, date and delivery information, log number of all previous submissions of that Works Submittal, Project Agreement provisions, comments from reviewers from the previous Works Submittal, all outstanding comments, and responses to addressing those comments, all submitted in a format determined by Contracting Authority; and
 - (i) identification of any previous Works Submittal superseded by the current Works Submittal.

-
- 3.7 To facilitate Contracting Authority distribution of Works Submittals to MTO, TTC and the City of Toronto, all Works Submittals that are to be reviewed by MTO, TTC and the City of Toronto, including any required hard copies, shall be separated accordingly and submitted individually to the Contracting Authority.
- 3.8 Each Works Submittal shall be organized and shall have indexes and sectional dividers. Each Work Submittal shall contain pertinent correspondence, shall be arranged by subject matter in chronological order, and shall include the final calculations, reports and backup information. All Works Submittals shall include copies of all final approvals, design reports, correspondence and calculations, in both electronic and hard copy.
- 3.9 All Works Submittals shall include sufficient information to demonstrate that Project Co has met its obligations with respect to the Output Specifications.
- 3.10 If a Proposal Part corresponds to a Works Submittal, then Project Co shall ensure that its initial submission of such Works Submittal in accordance with this Schedule 10 is substantially the same content and level of detail as the corresponding Proposal Part. For clarity, this requirement shall not,
- (a) lessen, reduce or otherwise modify or amend Contracting Authority’s rights under the Project Agreement to review each Works Submittal in accordance with this Schedule 10; or
 - (b) constitute acceptance or comment by Contracting Authority of any Proposal Part or any Works Submittal in accordance with this Schedule 10.

4. COMMENTS

- 4.1 The Contracting Authority Representative shall review and respond to each Works Submittal in accordance with the time periods specified in Section 2.1. The Contracting Authority Representative shall return Works Submittals to Project Co with a copy to the Independent Certifier and assign one of the following four comments:
- (a) “NO COMMENT”;
 - (b) “MINOR NON-CONFORMANCE”;
 - (c) “MAJOR NON-CONFORMANCE”;
 - (d) “CRITICAL NON-CONFORMANCE”.
- 4.2 The comment “NO COMMENT” will be assigned to each Works Submittal that, in the opinion of the Contracting Authority Representative, generally conforms to the requirements of the Project Agreement. Project Co shall comply with and implement such Works Submittal.
- 4.3 For each Works Submittal that requires review by third parties including, for clarity, review by MTO, the Contracting Authority Representative may not issue a “NO COMMENT” or a “MINOR NON-CONFORMANCE” comment if the applicable third party has not issued a similar comment to such Works Submittal.

- 4.4 The comment “MINOR NON-CONFORMANCE” will be assigned to each Works Submittal that, in the opinion of the Contracting Authority Representative, contains any Minor Non-Conformance but does not contain any Major Non-Conformance or Critical Non-Conformance. Project Co shall correct such Works Submittal and shall comply with and implement such Works Submittal after correction, including in accordance with the comments. If the Contracting Authority Representative assigns to a Works Submittal the additional comment “RE-SUBMIT”, Project Co shall correct and re-submit such Works Submittal to the Contracting Authority Representative,
- (a) no later than 10 Business Days after the comment has been provided to Project Co;
 - (b) within the time period set out in Schedule 12 – Works Schedule Requirements in the case of a resubmission of a Progress Works Schedule; or
 - (c) within such longer time period as determined by the Contracting Authority Representative, acting reasonably and as set out in writing.

If at any time it is discovered that Project Co has not corrected the deficiencies on Works Submittals stamped “MINOR NON-CONFORMANCE”, then Project Co will be required to modify the Works Submittals and the Works, including the New Metrolinx Infrastructure or New Third Party Infrastructure if applicable, as required to ensure that the Works comply with the Output Specifications, any other applicable Schedule to the Project Agreement, and the Project Co Proposal Extracts and Project Co may be required, at the Contracting Authority Representative’s discretion, to resubmit the relevant Works Submittals. In such circumstances the Contracting Authority Representative shall act promptly in considering whether such deficiencies have been corrected. No extension of time will be given or additional compensation paid in respect of any such modification or re-submittal.

- 4.5 The comment “MAJOR NON-CONFORMANCE” will be assigned to each Works Submittal that, in the opinion of the Contracting Authority Representative, contains any Major Non-Conformance, but does not contain any Critical Non-Conformance. The comment “CRITICAL NON-CONFORMANCE” will be assigned to each Works Submittal that, in the opinion of the Contracting Authority Representative, contains any Critical Non-Conformance. Project Co shall correct and re-submit such Works Submittal,
- (a) no later than 10 Business Days after the comment “MAJOR NON-CONFORMANCE” or “CRITICAL NON-CONFORMANCE” has been provided to Project Co;
 - (b) within the time period set out in Schedule 12 – Works Schedule Requirements in the case of a resubmission of a Progress Works Schedule; or
 - (c) within such longer time period, as determined by the Contracting Authority Representative, acting reasonably and as set out in writing.

The Contracting Authority Representative will then review such re-submitted Works Submittal and assign a comment to the corrected Works Submittal. The Works Submittal shall be corrected, revised and resubmitted as often as may be required to obtain a comment that permits Project Co to proceed. No extension of time will be given or additional compensation paid in respect of any such modification or re-submittal. In addition to the above, a Works Submittal with a

“CRITICAL NON-CONFORMANCE” comment will be a Proceeding at Risk Matter in accordance with Section 14.6(a)(ii) of the Project Agreement.

- 4.6 Where the Contracting Authority Representative issues the comment “MINOR NON-CONFORMANCE”, “MAJOR NON-CONFORMANCE” or “CRITICAL NON-CONFORMANCE”, the Contracting Authority Representative shall provide reasons for the comment, referencing the particulars of the Section(s) of the Project Agreement that the Works Submittal fails to satisfy, and, if requested by the Project Co Representative, the Contracting Authority Representative shall meet with the Project Co Representative to discuss the reasons for the comment.
- 4.7 If, at any time after assigning any comment to a Works Submittal, the Contracting Authority Representative or Project Co discovers any significant deficiencies or any failure to conform to the requirements of the Project Agreement, the Contracting Authority Representative may revise the comment assigned to any Works Submittal. If the Parties agree or if it is determined in accordance with Section 5 that the revised comment is correct, Project Co shall make all such corrections to the Works Submittals and the Works. No extension of time will be given or additional compensation paid in respect of any such modification or re-submittal.
- 4.8 For the purpose of facilitating and expediting the review and correction of Works Submittals, the Contracting Authority Representative and the Project Co Representative shall meet as may be mutually agreed to discuss and review any outstanding Works Submittals and any comments thereon.
- 4.9 Where a Works Submittal is voluminous, the Contracting Authority Representative at his or her discretion may elect to issue the appropriate comment only to the cover page or first sheet of the Works Submittal, if any, and return to Project Co the cover page or first page together with individual pages or sheets on which comments are made, together with an explanation of the status of all pages not returned to Project Co. Any pages returned without such an explanation as to their status shall be deemed to be “NO COMMENT” by Contracting Authority.
- 4.10 In lieu of returning a Works Submittal, the Contracting Authority Representative may, by letter, notify Project Co of the comment assigned to the Works Submittal and if such comment is “MINOR NON-CONFORMANCE”, “MAJOR NON-CONFORMANCE” or “CRITICAL NON-CONFORMANCE”, the letter shall contain comments in sufficient detail for Project Co to identify the correction sought.

5. DISPUTES

- 5.1 If Project Co disputes any act of Contracting Authority or the Contracting Authority Representative in respect of a Works Submittal under this Schedule 10, Project Co shall promptly notify the Contracting Authority Representative and the Independent Certifier of the details of such Dispute and shall submit the reasons why Project Co believes a different comment should be assigned, together with appropriate supporting documentation. The Contracting Authority Representative shall review the Works Submittal, the reasons and supporting documentation and within 5 Business Days after receipt thereof shall either confirm the original comment or notify Project Co of a revised comment. If the Contracting Authority Representative confirms the original comment, Project Co may refer the matter for determination in accordance with Schedule 27 - Dispute Resolution Procedure.

5.2 Notwithstanding the provisions of Section 5.1, the Contracting Authority Representative may direct that Project Co revise the Works Submittals in accordance with the comments of the Contracting Authority Representative and proceed to perform and complete the Works on the basis of such revised Works Submittals. For clarity, Project Co may refer such direction for resolution as a Dispute in accordance with Schedule 27 – Dispute Resolution Procedure.

6. EFFECT OF REVIEW

6.1 Any review and comment by Contracting Authority or the Contracting Authority Representative of any Works Submittals are for general conformity to the obligations and requirements of the Project Agreement, and any such review and comment shall not relieve Project Co of the risk and responsibility for the Works and for meeting all of Project Co's obligations under and requirements of the Project Agreement, and shall not create any new or additional obligations or liabilities for Contracting Authority. Without limiting the generality of the foregoing any and all errors or omissions in Works Submittals or of any review and comment shall not exclude or limit Project Co's obligations or liabilities in respect of the Works under the Project Agreement or exclude or limit Contracting Authority's rights in respect of the Works under the Project Agreement.

7. WORKS SUBMITTAL EXPLANATION

7.1 At any time, the Contracting Authority Representative may, acting reasonably, require Project Co or any Project Co Parties, including Project Co's consultants and any other relevant personnel, at no additional cost to Contracting Authority, to explain to the Contracting Authority Representative and Contracting Authority's advisors the intent of Project Co's Works Submittals, including in relation to any design and any associated documentation and as to its satisfaction of Schedule 15 - Output Specifications or any other Schedule to the Project Agreement, as applicable. Project Co shall provide the explanation to the Contracting Authority Representative within 5 Business Days (or such longer period as the Parties may agree) from the date of receipt of the request from the Contracting Authority Representative.

8. REVISIONS

8.1 Project Co shall ensure that Works Submittals keep the same, unique reference number throughout the review process, and that subsequent revisions of the same Works Submittal are identified by a sequential revision number. Correspondence related to such Works Submittal shall reference the reference number and revision number.

8.2 Re-submittals shall clearly show all revisions from the previous Works Submittal. For printed copies, bound documents, including reports and manuals, shall contain a preface that clearly states how revisions are marked and the previous revision number against which the revisions have been marked. Project Co shall use a consistent format for mark-ups of documents (for example, deletions struck out and additions underscored). Project Co shall clearly mark revised portions of drawings (with appropriate means to visually distinguish between the parts of the drawing that are revised and the parts that are not revised) and shall include the revision number and description of the revision on the drawing.

- 8.3 Re-submittals shall include all required revised documents, all documents submitted in the previous Works Submittal that do not require revisions and all responses to comments provided by Contracting Authority associated with the Works Submittal.
- 8.4 Project Co shall ensure that all revisions on print media be initialled by hand by the individual designer, design checker and, where applicable, by the drafter and the drafting checker and identify the persons who initialled the Works Submittal. Electronic versions of the Works Submittal shall identify the persons who initialled the revisions to the printed version of the Works Submittal. All such revisions must be able to be integrated into the Record Drawings.
- 8.5 Project Co shall keep all Design Data current, including a current set of the most recently issued submittal documents available on Site in the construction trailer for use by Contracting Authority and the Contracting Authority Representative. If any Design Data is revised as part of a Works Submittal, all other Design Data relying on or based on that Design Data shall also be revised accordingly. All such revised Design Data shall also be submitted with the Works Submittal to which it relates.
- 8.6 Works Submittals that are replacements in kind shall keep the original submittal number with the next sequential revision number.

9. AUDIT OF WORKS SUBMITTAL IMPLEMENTATION

- 9.1 Without limiting any other right under the Project Agreement, the Contracting Authority Representative shall have the right to audit all Works Submittals, including comparing all Works Submittals to previous Works Submittals.
- 9.2 If during an audit or at any other time it is discovered by Contracting Authority or Project Co (or resolved pursuant to Section 9.3) that any Works Submittals were not correctly implemented, Project Co shall at its sole cost immediately take all necessary steps to correct and modify the applicable Works Submittals and the Works to which they relate and shall advise the Contracting Authority Representative of all such corrections and modifications.
- 9.3 Any Dispute concerning the implementation of a Works Submittal, subject to Section 5.1, shall be referred for resolution in accordance with Schedule 27 – Dispute Resolution Procedure.

10. VARIATIONS

- 10.1 No alteration or modification to the design, quality and quantity of the Works arising from the development of detailed design or from the co-ordination of the design in connection with any Works Submittal shall be construed or regarded as a Variation.
- 10.2 If, having received comments from the Contracting Authority Representative on any Works Submittal, Project Co considers that compliance with those comments would amount to a Variation, Project Co shall, within 10 Business Days following receipt of and before complying with the comments, provide written Notice to Contracting Authority of the same and, if it is agreed by the Parties that a Variation would arise if the comments were complied with, Contracting Authority may, at their election,

- (a) issue a Variation Enquiry (and it shall be dealt with in accordance with Schedule 22 - Variation Procedure); or
- (b) amend their comment on the Works Submittal.

If the Parties do not agree that a Variation would arise if the comments were complied with, either Party may proceed to resolve the matter in accordance with Section 5.2, including for clarity, the exercise by Contracting Authority of its rights under Section 5.2. Subject to the foregoing sentence, any failure by Project Co to notify Contracting Authority in accordance with this Section 10.2 that Project Co considers that compliance with any comments of the Contracting Authority Representative would amount to a Variation shall constitute an irrevocable acceptance by Project Co that any compliance with the Contracting Authority Representative's comments shall be without cost to Contracting Authority and without any extension of time.

11. COMPLIANCE WITH MTO AND TTC SUBMITTAL REQUIREMENTS

11.1 The following clarifications are provided regarding Appendix A, Appendix B and Appendix C to this Schedule 10:

- (a) Project Co shall comply with the submittal requirements, processes and other obligations specified in Appendix A, Appendix B and Appendix C to this Schedule 10;
- (b) Project Co shall address all matters relating to MTO in Appendix B to this Schedule 10 and limit/avoid inclusion of any such MTO material in Appendix A to this Schedule 10 to avoid duplication or conflicting information; and
- (c) Project Co shall address all matters relating to TTC in Appendix C to this Schedule 10 and limit/avoid inclusion of any such TTC material in Appendix A to this Schedule 10 to avoid duplication or conflicting information.

12. GENERAL

12.1 Any capitalized terms used in the appendices to this Schedule 10, that are not defined in this Schedule 10 or in Schedule 1 – Definitions and Interpretation, shall have the meanings given to them in Schedule 15 – Output Specifications or Schedule 17 – Environmental Obligations.

APPENDIX A

[REDACTED]

SCHEDULE 11

QUALITY MANAGEMENT

1. DEFINITIONS	3
1.1 Definitions.....	3
2. QUALITY MANAGEMENT SYSTEM	6
2.1 Quality Management System	6
2.2 Project Co’s Responsibilities	6
2.3 Design and Construction Certification Procedure.....	7
2.4 Quality Management System Requirements	7
2.5 Compliance of Quality Management System	8
2.6 Documentation Deliverables.....	9
2.7 Continuous Improvement in Quality Management System	11
3. QUALITY PERSONNEL	11
3.1 General.....	11
3.2 Quality Director	11
3.3 Quality Managers.....	13
3.4 Quality Control Manager	14
3.5 Quality Control Staff.....	15
4. TESTING	15
4.1 Testing Requirements	15
4.2 Accreditation Standards	15
4.3 Inspection and Testing by Third Parties	16
4.4 [Intentionally Deleted]	17
4.5 Remedial Work	17
5. QUALITY AUDITS AND MONITORING	17
5.1 Quality Audit Program.....	17
5.2 Project Co’s Quality Audits	18
5.3 Contracting Authority’s Quality Audits.....	19
5.4 Contracting Authority’s Monitoring	20
5.5 Deficient Quality Audits	20
5.6 Costs of Audits.....	20
5.7 Independent Quality Audits	21
5.8 Traffic and Transit Management Auditing	21
6. QUALITY DOCUMENTATION	22

6.1	Principles.....	22
6.2	ISO Reference Documents.....	22
6.3	Quality Documentation Requirements.....	22
6.4	Submission of Quality Documentation.....	23
6.5	Project Co’s Obligation to Update.....	23
6.6	Changes to Quality Documentation.....	23
6.7	Amendment of Quality Documentation.....	24
6.8	Quality Records.....	24
6.9	Quality Management System Reports.....	24
6.10	Additional Information.....	25
7.	NON-CONFORMANCES.....	25
7.1	Non-Conformance Reporting Process.....	25
7.2	Non-Conformance Report Tracking System.....	27
7.3	Non-Conformance Measures.....	28
7.4	Non-Conformance Records.....	28

APPENDICES

Appendix A	Quality Manual
Appendix B	Design Quality Management Plan
Appendix C	Construction Quality Management Plan
Appendix D	Environmental Quality Management Plan
Appendix E	Traffic Quality Management Plan
Appendix E-1	Audit of Temporary Traffic Management - Sample Site Report
Appendix F	Project Schedules Quality Management Plan

SCHEDULE 11

QUALITY MANAGEMENT

1. DEFINITIONS

1.1 Definitions

In this Schedule 11 – Quality Management, unless the context indicates a contrary intention, terms which are defined in the Project Agreement (and not otherwise defined in this Schedule 11 – Quality Management) shall have meanings given to them in the Project Agreement and the following terms shall have the following meanings:

- (a) **“Appropriate Persons”** has the meaning given in Section 2.3(c).
- (b) **“Construction Administration and Inspection Task Manual”** or **“CAIT Manual”** means the Construction Administration and Inspection Task Manual published by the Ontario Ministry of Transportation, May 2014 edition, including any supplements, revisions, updates or restatements thereof.
- (c) **“Construction Certificate”** means a certificate in the form described in Attachment 2 to Appendix A of Schedule 10 – Review Procedure.
- (d) **“Construction Quality Management Plan”** or **“CQMP”** means the plan for the quality management of the Works prepared by Project Co in accordance with Appendix C to this Schedule 11.
- (e) **“Construction Quality Manager”** means the construction quality manager described in Section 3.3(d).
- (f) **“Corrective Action”** means an action to eliminate the cause of an existing Non-Conformance, defect or other undesirable situation to prevent its recurrence.
- (g) **“Design and Construction Certification Procedure”** has the meaning given in Section 2.3(a).
- (h) **“Design Certificate”** means a certificate in the form described in Attachment 1 to Appendix A of Schedule 10 – Review Procedure.
- (i) **“Design Quality Management Plan”** or **“DQMP”** means the plan for the quality management of the design of the Project prepared by Project Co in accordance with Appendix B to this Schedule 11.
- (j) **“Design Quality Manager”** has the meaning given in Section 3.3(c).
- (k) **“Environmental Approvals”** has the meaning given in Schedule 17 – Environmental Obligations.
- (l) **“Environmental Management System”** has the meaning given in Schedule 17 – Environmental Obligations.

-
- (m) **“Environmental Quality Management Plan”** or **“EQMP”** means the plan for environmental management prepared by Project Co in accordance with Appendix D to this Schedule 11.
- (n) **“Environmental Quality Manager”** has the meaning given in Section 3.3(f).
- (o) **“External Quality Audit”** means either or both:
- (i) a second party Quality Audit conducted by parties having an interest in Project Co or the relevant Project Co Party, such as parties with commercial contracts with Project Co or a relevant Project Co Party or customers/clients of Project Co or a relevant Project Co Party; and
 - (ii) a third party Quality Audit conducted by an external independent organization such as a certification or registration body.
- (p) **“Independent Quality Audit”** means a third party audit of the Quality Management System conducted by an independent quality auditor certified by an accredited auditors’ registration body such as International Register of Certified Auditors, Registrar Accreditation Board, National Quality Institute, or other equivalent body.
- (q) **“Inspection and Test Plan”** or **“ITP”** means the plan prepared in accordance with Section C.1(j) of Appendix C to this Schedule 11.
- (r) **“Inspection and Test Sub-Plans”** means the sub-plans prepared in accordance with Section C.1(j) of Appendix C to this Schedule 11.
- (s) **“Internal Quality Audit”** means a first party Quality Audit of Project Co’s or a Project Co Party’s own processes conducted by or on behalf of the relevant organization.
- (t) **“ISO 9001:2015 Lead Auditor”** means a quality auditor who has successfully completed an ISO 19011 accredited course for lead auditors.
- (u) **“ISO 9001:2015 Standard”** means the ISO 9001:2015 standard, as amended, updated or replaced from time to time.
- (v) **“ISO 9001 Lead Auditor Course”** means an accredited ISO 9001:2015 course for lead auditors who meet the training portion of the requirements for current certification of individual quality system auditors with the International Register of Certified Auditors or similar certifying bodies such as CQI, Exemplar Global or other equivalent body.
- (w) **“ISO/IEC”** means the International Organization for Standardization / International Electrotechnical Commission.
- (x) **“ISO/IEC 17025 Standard”** means the ISO/IEC 17025 standard, as amended, updated or replaced from time to time.
- (y) **“ITP Two-Week Look-Ahead”** has the meaning given in Section C.1(j)(vi) of Appendix C to this Schedule 11.

- (z) “**Monthly Non-Conformance Report**” has the meaning given in Section 7.2(c).
- (aa) “**Non-Conformance**” means any failure by Project Co to perform any of its obligations under the Project Agreement in respect of any aspect of the Works and which failure is not rectified by Project Co within the applicable time period, if any, stipulated in the Project Agreement.
- (bb) “**Non-Conformance Report**” means a document issued by either Contracting Authority or Project Co pursuant to Section 7.1 detailing the description of an identified Non-Conformance, the remedial action taken or proposed to be taken to eliminate the Non-Conformance, and the date by which the remedial action was completed or proposed to be completed.
- (cc) “**Non-Conformance Tracking System**” means a system to track Non-Conformance Reports issued by Contracting Authority or Project Co as set out in Section 7.2.
- (dd) “**Preventive Action**” means an action to eliminate the cause of a potential Non-Conformance or other undesirable situation in order to prevent its occurrence.
- (ee) “**Project Schedules Quality Management Plan**” or “**PSQMP**” means the plan for project schedules quality management prepared by Project Co in accordance with Appendix F to this Schedule 11
- (ff) “**Project Schedules Quality Manager**” has the meaning given in Section 3.3(f).
- (gg) “**Quality Audit**” means a systematic, independent and documented process for obtaining audit evidence and evaluating it objectively to determine the extent to which audit criteria are fulfilled.
- (hh) “**Quality Audit Program**” means Project Co’s audit program defining the Internal Quality Audits, External Quality Audits and Independent Quality Audits that Project Co shall perform or cause to be performed on its own processes and the processes of Project Co Parties.
- (ii) “**Quality Control Manager**” means an individual quality control manager responsible for each of the quality control requirements as set out in the CQMP as described in Section 3.4.
- (jj) “**Quality Director**” means the quality director described in Section 3.2.
- (kk) “**Quality Documentation**” has the meaning given in Section 6.3.
- (ll) “**Quality Management Plans**” includes the DQMP, CQMP, EQMP, TQMP and PSQMP, and any other quality management plan required for the purposes of undertaking any material and substantial aspect of the Works.
- (mm) “**Quality Management System**” has the meaning given in Section 2.1(a).
- (nn) “**Quality Managers**” means collectively the Design Quality Manager, the Construction Quality Manager, the Environmental Quality Manager, the Project Schedules Quality Manager and the Traffic Quality Manager.
- (oo) “**Quality Manual**” means Project Co’s quality manual meeting the requirements set out in Appendix A to this Schedule 11.

- (pp) “**Quality Objectives**” means the objectives related to quality that are measurable and consistent with the Quality Policy and which are to be formally expressed and recorded in the Quality Manual in accordance with this Schedule 11 – Quality Management, provided that, alternatively, each Quality Management Plan may have its own Quality Objectives which are directly related to the applicable Quality Policy expressed or recorded in the Quality Manual.
- (qq) “**Quality Policy**” means the overall intentions and direction of Project Co related to quality applicable to Project Co and all Project Co Parties involved in performing the Works which are to be formally expressed and recorded in the Quality Manual in accordance with this Schedule 11, provided that, alternatively, each Quality Manual may have its own Quality Policy which is directly related to applicable Quality Objectives expressed or recorded in the Quality Manual.
- (rr) “**Quality Records**” has the meaning given in Section 6.8.
- (ss) “**Site Condition Rating Checklist**” has the meaning given in Section 5.8(a).
- (tt) “**Surveillance Quality Audits**” means Quality Audits conducted by or on behalf of Contracting Authority as contemplated in Section 5.3.
- (uu) “**Traffic Quality Management Plan**” or “**TQMP**” means the plan for traffic management during construction prepared by Project Co in accordance with Appendix E – Traffic Quality Management Plan to this Schedule 11.
- (vv) “**Traffic Quality Manager**” has the meaning given in Section 3.3(g).
- (ww) “**Witness and Hold Point**” means (a) a point of time in the construction process when it would be unreasonably onerous or impossible, to confirm conformance to, or compliance with, the Output Specifications with respect to either materials or workmanship once work proceeds past this point and (b) any other witness point or hold point that is required by Project Co.

2. QUALITY MANAGEMENT SYSTEM

2.1 Quality Management System

- (a) Project Co shall develop and implement a quality management system in accordance with the requirements of this Schedule 11 (the “**Quality Management System**”) for the Works. The Quality Management System shall include, at a minimum, processes for quality assurance and quality control, testing, auditing, equipment commissioning and performance measurement for all Works, including design, construction, materials, warranties on systems, workmanship and services. Project Co acknowledges and agrees that Project Co is solely responsible for the quality of the Works, including warranties on systems, design, construction and other services and that a comprehensive Quality Management System is critical for the proper and timely completion of the Works.

2.2 Project Co’s Responsibilities

- (a) Project Co is responsible for all quality assurance and quality control activities set out in this Schedule 11 that are required to manage its own processes as well as those of the Project Co Parties throughout the Project Term. Project Co shall ensure that all aspects of the Project are the

subject of a Quality Management System that complies with the provisions of this Schedule 11, and shall comply with and cause all Project Co Parties to comply with the requirements of such Quality Management System. For greater certainty and without limiting Project Co's ability to contractually assign responsibilities and obligations to Project Co Parties in accordance with the Project Agreement, Project Co shall not be relieved of any of Project Co's responsibilities or obligations set out in this Schedule 11 by the assignment of such responsibilities or obligations to Project Co Parties.

2.3 Design and Construction Certification Procedure

- (a) Project Co shall implement and enforce the procedure set out in this Section 2.3 (the “**Design and Construction Certification Procedure**”), throughout the Project Term.
- (b) The Design and Construction Certification Procedure shall apply to all Design Data prepared or adopted in connection with the Works.
- (c) Project Co shall ensure that all certification procedures referred to in the Design and Construction Certification Procedure are complied with by the appropriate persons referred to therein, including the Design Team, and any independent team or engineer within the Design Team, as the case may be (together, the “**Appropriate Persons**”), and that all Appropriate Persons are at all relevant times duly authorized and qualified to carry out such procedures and to sign the relevant certificates. Any failure by any Appropriate Person to fulfil the obligations required of them under the Design and Construction Certification Procedure shall be a breach of Project Co's obligations under the Project Agreement.
- (d) Project Co shall submit all Design Certificates, Construction Certificates, Permits, Licences, Approvals and Agreements and other regulatory process documents from Governmental Authorities, together with the supporting documentation, to the Contracting Authority Representative for review, acting reasonably, in accordance with Schedule 10 – Review Procedure. The submitted Design Certificates and Construction Certificates shall have original signatures, seals and registration numbers, and shall be in such form as to allow the Contracting Authority Representative to perform its review function in respect of such Design Certificate or Construction Certificate without delay.
- (e) Project Co shall submit Construction Certificates to the Contracting Authority Representative for review, acting reasonably, in accordance with Schedule 10 – Review Procedure, for each of:
 - (i) substantially completed components; and
 - (ii) entirely completed components.

2.4 Quality Management System Requirements

- (a) The Quality Management System shall be applicable to all Project Co Parties, including each Subcontractor.
- (b) The Quality Management System shall, at a minimum, include the Quality Documentation described in Section 6, including:

-
- (i) Inspection and Test Plans for all components of the Works including materials and workmanship (for clarity, including on and off Site facilities producing materials for the Project);
 - (ii) processes for:
 - (A) assessing training requirements;
 - (B) providing all staff with Quality Management System requirements of the Project Agreement;
 - (C) updating training applicable to all Project Co Parties, including Subcontractors; and
 - (D) Non-Conformance Reporting as per Section 7;
 - (iii) methods to ensure compliance with the Quality Management System by each Project Co Party;
 - (iv) techniques for integration between all of the Works, including materials, workmanship, warranties and deficient work rehabilitation services;
 - (v) testing and commissioning;
 - (vi) documentation and verification procedures; and
 - (vii) defined roles and responsibilities for all members of the Quality Management System team.
- (c) The Quality Management System shall comply with:
- (i) the requirements and principles of the ISO 9001:2015 Standard and any other applicable standards specified in this Schedule 11;
 - (ii) Good Industry Practice; and
 - (iii) all other requirements set out in this Schedule 11 and the Project Agreement.

2.5 Compliance of Quality Management System

- (a) Specific Requirements
 - (i) The Quality Management System must be fully compliant with ISO 9001:2015 Standard no later than 180 days following Financial Close. For clarity, the submission deadlines for the Quality Manual and all Quality Management Plans are set out in Table 2.6.1
 - (ii) Compliance shall be subject to review and must be approved by Contracting Authority, which compliance shall be maintained by Project Co throughout the Project Term.

- (iii) The scope of compliance for the Quality Management System should be clearly defined to address the Works including access management and environmental considerations in respect of the Project.
- (iv) Project Co shall update its Quality Management System and all Quality Documentation as required to ensure that the Quality Management System and all Quality Documentation are, and at all times remain, in full compliance with the ISO 9001:2015 Standard and the requirements of this Schedule 11. All Quality Documentation shall be made available to Contracting Authority upon request.

2.6 Documentation Deliverables

(a) Deliverables

- (i) Without limiting the generality of Section 2.4, Project Co shall provide to Contracting Authority, by the dates shown in Table 2.6.1, each of the following:

Table 2.6.1 – Schedule of Plans and Reports

Deliverable Name	Schedule 11 Specification Reference	Submission Deadline	Submitted under the Review Procedure
Quality Manual	Appendix A	Submitted no later than 30 Business Days following Financial Close	Yes
Design Quality Management Plan	Appendix B	Submitted no later than 30 Business Days following Financial Close	Yes
Construction Quality Management Plan	Appendix C	Submitted no later than 30 Business Days following Financial Close	Yes
Environmental Quality Management Plan	Appendix D	Submitted no later than 20 Business Days following Financial Close	Yes
Traffic Quality Management Plan	Appendix E	Submitted no later than 20 Business Days following Financial Close	Yes
Project Schedules Quality Management Plan	Appendix F	Submitted no later than 30 Business Days following Financial Close	Yes
Quality Audit Program	Section 5.1	Submitted no later than 30 Business Days following Financial Close	Yes

Deliverable Name	Schedule 11 Specification Reference	Submission Deadline	Submitted under the Review Procedure
Monthly Quality Management System reports	Section 6.9	No later than the 15 th of each month (in respect of previous month)	Yes
Quality Audit reports	Section 5.2	Submitted no later than 14 Business Days following audit completion	Yes
Corrective Action plan	Section 5.3	Submitted no later than 20 Business Days following the closing meeting	Yes

- (ii) Where specified in Table 2.6.1, Project Co shall submit all deliverables of the Quality Management System to Contracting Authority for review in accordance with Schedule 10 – Review Procedure.
- (b) Specific Requirements
- (i) Project Co shall prepare and submit a Quality Management Plans for the Design Team and Construction Contractor, in each case in respect of the activities covered by that party's contract with Project Co and meeting the requirements of the Quality Manual, and Project Co shall cause all other contractors engaged by Project Co for the purposes of undertaking any material or substantial aspect of the Works to comply with the Quality Manual.
- (c) Timing of Implementation
- (i) The Quality Manual and all Quality Management Plans must be fully implemented as indicated in Table 2.6.1 and the Quality Management System must be fully compliant with ISO 9001:2015 Standard no later than 180 days following Financial Close. Project Co shall not commence or permit the commencement of any aspect of the Works before those parts of the Quality Documentation that concern such aspect of the Works have been submitted to and reviewed by Contracting Authority in accordance with this Schedule 11 unless otherwise agreed upon in advance between Project Co and Contracting Authority.
- (d) Compliance with Quality Management System
- (i) Project Co shall ensure that:
- (A) Project Co complies with the Quality Management System in accordance with the Quality Manual;
- (B) the Design Team complies with the Design Quality Management Plan in connection with its design activities;

- (C) the Construction Contractor complies with the Design Quality Management Plan, the Construction Quality Management Plan, the Environmental Quality Management Plan, the Traffic Quality Management Plan and the Project Schedules Quality Management Plan in connection with all activities under the Construction Contract;
- (D) any other contractor engaged by Project Co either complies with Project Co's relevant Quality Management Plan prepared and implemented pursuant to specific requirements of this Schedule 11 in connection with the activities covered by that party's contract with Project Co or provides evidence of the contractor's own quality system and the required quality assurance interfaces to Project Co; and
- (E) Project Co shall ensure that any Project Co Party who performs any portion of the Works shall comply with the Quality Management System as it relates to that portion of the Works.

2.7 Continuous Improvement in Quality Management System

- (a) Project Co shall implement a program and shall have mechanisms in place, such as management reviews and Quality Audit Programs, to allow all identified opportunities for improvement of the effectiveness of the Quality Management System to be recorded, tracked and implemented or closed out.
- (b) Project Co shall ensure that all Project Co Parties are aware of the importance of continuous improvement and are actively engaged in the implementation of the Quality Management System in connection with the performance of the Works.

3. QUALITY PERSONNEL

3.1 General

- (a) Project Co shall provide separate personnel with the required qualifications in a full time role in support of the Quality Management System as set out in this Section 3.

3.2 Quality Director

- (a) Appointment and General Responsibilities
 - (i) At all times during the Project Term, Project Co shall employ, or otherwise engage by sub-contract, a Quality Director who shall,
 - (A) irrespective of such person's other responsibilities, have defined authority for ensuring the establishment and maintenance of the Quality Management System and auditing and reporting on the status of, and compliance with the Quality Management System, including the requirements set out in Section 3.2(a);
 - (B) be a certified ISO 9001: 2015 Lead Auditor or have experience in a similar quality management representative role for a transit project of a similar scope to

this Project and have successfully completed an ISO 9001:2015 Lead Auditor Course;

- (C) be independent of the Design Team and the Construction Contractor's production and supervision staff; and
 - (D) have full access to all Quality Documentation described in the Quality Management System held with Project Co Parties;
- (ii) The identity of the Quality Director (and any replacement thereof) and his/her job specification and responsibilities shall be subject to the approval of Contracting Authority, and the Quality Director shall be a Key Individual; and
 - (iii) The Quality Director shall have a minimum of 15 years' experience in the quality management field of rail and transit, transportation and infrastructure projects, and shall have a minimum of 5 years' experience in a senior managerial capacity.
- (b) Specific Responsibilities
- (i) Without limiting the generality of the foregoing, the job specification and responsibilities of the Quality Director shall include the following:
 - (A) developing, implementing and maintaining, and ensuring the effective operation of, the Quality Management System;
 - (B) initiating management reviews, not less frequently than annually, and taking other actions necessary to ensure the effective operation and continuous improvement of the Quality Management System;
 - (C) preparing Quality Audit Program and scheduling and coordinating Internal Quality Audits and External Quality Audits of key processes with the relevant Project Co Parties;
 - (D) scheduling and coordinating Independent Quality Audits with the independent quality auditor in accordance with this Schedule 11;
 - (E) ensuring that all Quality Audits required under Section 5.2 and under the Quality Documentation are conducted, and reporting the findings of such audits to Contracting Authority;
 - (F) having the authority to immediately stop any work or activity which is not being performed or carried out in accordance with the Quality Documentation applicable thereto;
 - (G) liaising with Contracting Authority and acting as the primary representative for Project Co on all matters relating to quality management;

- (H) coordinating all activities that demonstrate to Project Co and Contracting Authority that the Quality Management System meets the requirements of this Schedule 11;
 - (I) preparing and submitting to Contracting Authority monthly Quality Management System reports;
 - (J) ensuring that relevant Quality Records are retained in accordance with the Quality Management System and the requirements of Schedule 26 – Record Provisions;
 - (K) developing and implementing a program for Corrective Action and Preventive Action for Non-Conformances;
 - (L) approve and sign off on the action taken in close out of Non-Conformance Reports; and
 - (M) carrying out any other matters which, in accordance with the Project Agreement, are the responsibility of the Quality Director.
- (c) Project Co shall not assign the responsibilities and obligations of the Quality Director to any other Project Co Party without the prior written consent of Contracting Authority.

3.3 Quality Managers

- (a) Project Co shall appoint Quality Managers who shall be responsible for the Quality Management Plans developed by Project Co including the, DQMP, CQMP, EQMP, TQMP and PSQMP.
- (b) The Quality Managers shall be certified as quality professionals from certifying bodies and shall have, as a minimum, successfully completed an ISO 9001:2015 Lead Auditor Course.
- (c) The Quality Manager for the DQMP (the “**Design Quality Manager**”) shall be responsible to ensure that reviews, checking and verification are undertaken for all designs, and be a Professional Engineer with a minimum of 10 years of experience overseeing design , including 5 years of transit experience.
- (d) The Quality Manager for the CQMP (the “**Construction Quality Manager**”) shall have a minimum of 10 years experience in the quality management field of rail and transit, transportation or infrastructure projects, with at least two years of direct experience in tunneling, and shall be supported by staff with expertise in tunnel and light rail construction.
- (e) The Quality Manager for the EQMP (the “**Environmental Quality Manager**”) shall be an environmental professional with a minimum of 10 years of experience in environmental management and/or planning.
- (f) The Quality Manager for the PSQMP (the “**Project Schedules Quality Manager**”) shall be a scheduling professional with a minimum of 10 years of experience in scheduling and project planning.

- (g) The Quality Manager for the TQMP (the “**Traffic Quality Manager**”) shall be a traffic management professional with a minimum of 10 years of experience in traffic management for roads and transit.
- (h) All Quality Managers shall be independent of the Design Team and the Construction Contractor’s production and supervision staff, and shall report directly to the Quality Director.
- (i) Project Co shall ensure that distinct, qualified individual(s) are appointed to each of the following roles:
 - (i) Design Quality Manager;
 - (ii) Construction Quality Manager;
 - (iii) Environmental Quality Manager;
 - (iv) Project Schedules Quality Manager; and
 - (v) Traffic Quality Manager.

Other than as set out in Section 3.3(j), Project Co shall ensure that no single individual occupies more than one of these roles, unless Project Co has obtained the prior written consent of Contracting Authority.

- (j) Project Co shall be permitted to assign a single individual as the Environmental Quality Manager and the Traffic Quality Manager, provided that such individual meets the requirements set out in Sections 3.3(e) and 3.3(g).

3.4 Quality Control Manager

- (a) Project Co shall appoint a Quality Control Manager who shall be responsible for quality control requirements as set out in the CQMP.
- (b) The Quality Control Manager shall be certified as a quality professional from a certifying body and shall have, as a minimum, successfully completed an ISO 9001:2015 Lead Auditor Course.
- (c) The Quality Control Manager shall be responsible for the preparation, review and implementation of the Inspection and Test Plans.
- (d) The responsibilities of the Quality Control Manager shall include supervision of quality inspection staff and ensuring that individuals have the required qualifications and experience to undertake the quality control requirements as set out in the CQMP.
- (e) The Quality Control Manager shall have 10 years of experience as a quality manager or quality control manager specifically with experience in transportation infrastructure projects that included work of a similar scope, nature and complexity to the Works.
- (f) The Quality Control Manager shall have prior experience with or knowledge of the CAIT Manual Requirements, Ontario Provincial Standards Specifications and MTO standards.

- (g) The Quality Control Manager shall be independent of the Construction Contractor’s production and supervision staff and shall report directly to the Construction Quality Manager.

3.5 Quality Control Staff

- (a) Project Co’s quality control staff shall be responsible for the inspection and testing requirements as set out in the CQMP, and shall be trained to fully understand the CQMP, have access to quality documents, Quality Records, and issued for construction drawings. Failure of quality control staff to show knowledge of the requirements and work shall be considered a Non-Conformance.
- (b) Project Co’s quality control staff responsible for quality control inspection and testing shall have the qualifications demonstrated by certificates of training and a minimum five years of experience on transit construction projects.
- (c) The quality control staff shall be independent of the Construction Contractor’s production and supervision staff and shall report directly to the Quality Control Manager.

4. TESTING

4.1 Testing Requirements

- (a) Where Project Co is required by the Project Agreement or any Quality Documentation to carry out any calibration, sample, mock-up, test or trial, such calibration, sample, mock-up, test or trial shall be carried out in accordance with the provisions of this Section 4 and the provisions of the relevant Quality Documentation.
- (b) Project Co shall ensure that all materials meet and comply with the Province of Ontario’s occupational health and safety regulations.
- (c) Prior to the commencement of Works and during full Project Term, Project Co shall maintain a list of Safety Data Sheets (SDS) of all hazardous materials proposed for use and shall be addressed and constantly updated and referenced in accordance with Project Co’s Construction Quality Management Plan.

4.2 Accreditation Standards

- (a) All on and off Site calibrations, samples, mock-ups, tests and trials shall be carried out by laboratories that are duly accredited for the carrying out of such calibrations, samples, mock-ups, tests and trials.
- (b) Laboratory accreditation shall be in accordance with ISO/IEC 17025, as amended, updated or replaced from time to time, provided that, for specific activities, Contracting Authority may accept other industry-recognized accreditation in lieu of ISO/IEC 17025, including:
- (i) for concrete and concrete materials: CSA A283-00, “Qualification Code for Concrete Testing Laboratories”, to the appropriate category for the tests being done;
 - (ii) for structural steel and welding: CSA W178.1-02, “Certification of Welding Inspection Organizations”, to the level appropriate for the inspection being carried out;

- (iii) for aggregates, bituminous paving mixtures: “Canadian Council of Independent Laboratories”, as appropriate to the work being carried out;
 - (iv) for protective coatings: “National Association of Corrosion Engineers”, as appropriate to the work being carried out; and
 - (v) for systems testing: “Underwriters Laboratories of Canada”.
- (c) Where a material, component or assembly is required to be fire rated, the fire rating shall be as determined or listed by one of the following testing authorities acceptable to Governmental Authorities:
- (i) Underwriters’ Laboratories of Canada (ULC);
 - (ii) Underwriters’ Laboratories Inc. (UL - USA);
 - (iii) Factory Mutual Laboratories (FM - USA);
 - (iv) The National Research Council of Canada (NRC);
 - (v) The National Board of Fire Underwriters (NBFU - USA); or
 - (vi) Warnock Hersey / Intertek Testing Services (WH / WHI).
- (d) Project Co may request the approval of Contracting Authority to use other industry-recognized accreditations, if such other accreditation is applicable to the Works for which it is proposed and meets the intent of ISO/IEC 17025.
- (e) Project Co shall ensure that the valid calibration certificates for measuring and testing equipment shall be available and present during testing.
- (f) Project Co shall establish and maintain a log for all measuring and testing equipment records, including the description, identification number, and date of calibration of the calibrated equipment.

4.3 Inspection and Testing by Third Parties

- (a) Within the Quality Management Plan, Project Co Parties shall include as a minimum, testing and inspection of the following elements of the Works by qualified third party inspection and testing companies:
- (i) structural inspection and testing, including,
 - (A) strip and spread footing;
 - (B) cast in place concrete reinforcement;
 - (C) prestressed/post tensioned concrete;

- (D) structural steel; and
- (E) steel deck;
- (ii) civil testing, including testing of,
 - (A) earth work and subgrade;
 - (B) manholes, pipes, conduits;
 - (C) waterproofing for underground structures;
 - (D) re-bar, concrete and precast manufacture; and
 - (E) utilities-trenching, installation and sub base; and
- (iii) electrical testing, including,
 - (A) testing and commissioning of lighting systems.

4.4 [Intentionally Deleted]

4.5 Remedial Work

- (a) Project Co shall be responsible, at its own cost, for any remedial work required as a result of any failure to pass any calibration, test, trial, mock-up review, sample or material or Site inspection in accordance with the Project Agreement or any Quality Documentation or as a result of any laboratory not being duly accredited as required by Section 4.2.

5. QUALITY AUDITS AND MONITORING

5.1 Quality Audit Program

- (a) Specific Requirements
 - (i) Project Co shall provide a Quality Audit Program to Contracting Authority no later than 15 days following Financial Close. The Quality Audit Program shall:
 - (A) describe the audit procedure and process that will be followed from start to finish to conduct effective Internal Quality Audits and External Quality Audits;
 - (B) detail the Internal Quality Audits and the External Quality Audits that will be conducted by Project Co on its own processes and those of Project Co Parties, and the planned dates of such Quality Audits; and
 - (C) detail the Independent Quality Audits that will be conducted by the independent quality auditor on Project Co and Project Co Parties, and the planned dates of such Independent Quality Audits.

- (ii) Project Co shall provide an updated Quality Audit Program at three month intervals following submission of the initial Quality Audit Program.

5.2 Project Co's Quality Audits

(a) General

- (i) Project Co shall conduct Internal Quality Audits and External Quality Audits of its own processes and those of Project Co Parties in accordance with the requirements of this Schedule 11, and the Quality Documentation, including the Quality Audit Program. These audits shall be conducted at least quarterly or as agreed upon with Contracting Authority. The audits shall be conducted independently for all elements of the Works. The purpose of Project Co's quality auditing process is to confirm that all activities comprising the Works, including workmanship, material, warranties and rehabilitation, if required, are in compliance with the Quality Manual and Quality Management Plans, to identify all Non-Conformances and necessary Corrective Actions and Preventive Actions and to facilitate continuous improvement.
- (ii) Project Co shall notify Contracting Authority of all audits described in Section 5.2(a)(i) and the Independent Quality Audits and Contracting Authority may choose to be present during such audits as witness.
- (iii) The Quality Director shall schedule Internal Quality Audits, and External Quality Audits at least quarterly or as agreed upon with Contracting Authority.
- (iv) The Quality Director shall schedule Independent Quality Audits at least annually or as agreed upon with Contracting Authority.
- (v) No later than 14 Business Days of completion of any Quality Audit, Project Co shall document, or cause to be documented, the results of such Quality Audit in an audit report and make such report available to Contracting Authority.

(b) Specific Requirements

- (i) The Quality Director shall schedule Internal Quality Audits, External Quality Audits and Independent Quality Audits to ensure that all key processes are reviewed at least quarterly or as agreed upon with Contracting Authority.
- (ii) Where necessary, follow-up audits shall be scheduled to ensure that identified Corrective Actions and Preventive Actions are carried out in a timely fashion.
- (iii) Internal Quality Audits, External Quality Audits and Independent Quality Audits shall be scheduled taking into account the status and importance of the processes being audited as well as the results of previous audits.

5.3 Contracting Authority's Quality Audits

(a) General

- (i) Contracting Authority shall, following the submission of the Quality Documentation in accordance with this Schedule 11, review the Quality Documentation to identify the critical activities and processes described in the Quality Manual and Quality Management Plans on which Contracting Authority's auditing efforts and resources should be directed. Contracting Authority shall determine the frequency of auditing through regular and ongoing review of Project Co's performance and management systems. Procedures and activities relating to the Works, including workmanship, warranty, and remediation service that show poor performance or increased risk of Non-Conformances may have the frequency of auditing increased. Without limiting Project Co's obligations under the Project Agreement, Project Co shall provide, and shall ensure Project Co Parties provide, Contracting Authority's auditors with all documentation, records, access, facilities and assistance requested in connection with Contracting Authority's Quality Audit activities.
- (ii) Project Co shall provide Contracting Authority electronic access to all Inspection and Test Plans, including supporting quality documentation, on a real time basis in order for Contracting Authority to undertake Quality Audits.
- (iii) Project Co shall prepare a Corrective Action plan and, if appropriate, a Preventive Action plan and submit it to Contracting Authority no later than 20 Business Days of the closing meeting.

(b) Specific Requirements

- (i) Contracting Authority reserves the right to conduct follow up reviews as is reasonable, but with Notice of not less than one Business Day to Project Co to determine if Project Co's Corrective Action plan or Preventive Action plan has been implemented and completed.

(c) Types of Quality Audits

- (i) The following two types of Quality Audits may be conducted by, or on behalf of, Contracting Authority in its discretion:
 - (A) Surveillance Quality Audits – scheduled or unscheduled field audits conducted on a random basis or on specific areas of interest throughout the Project Term. The objective of these surveillance audits is to monitor Project Co's activities involving the Works, including but not limited to workmanship, performance measures and general quality of materials. Contracting Authority shall, during the performance of Surveillance Quality Audits, record any observations and inform Project Co of any deficiencies that require further evaluation. Any noted deficiencies shall be resolved to the satisfaction of Contracting Authority through evidence of Project Co's deficiency evaluation findings or the Non-Conformance process set forth in Section 7; and

(B) Quality Management System Audits – scheduled audits conducted at specific times to assess the performance of and compliance with the Quality Management System. Contracting Authority’s lead auditor shall contact the Quality Director and confirm the scope and schedule of the audit, and schedule for associated audit meetings. At the audit opening meeting with Project Co, Contracting Authority’s lead auditor shall review the audit scope and objectives. Contracting Authority’s auditors shall conduct audit interviews, and document any observations on prepared checklists. At the end of the audit interviews, Contracting Authority’s lead auditor shall evaluate the observations and identify observed procedural or performance Non-Conformances that require Corrective Action. At the audit closing meeting, occurring as soon as reasonably possible after completion of the audit, Contracting Authority’s lead auditor shall discuss the observations and inform Project Co of any observed Non-Conformances and audit recommendations.

(ii) Contracting Authority’s Quality Audits may include scheduled and unscheduled External Quality Audits.

5.4 Contracting Authority’s Monitoring

(a) In addition to carrying out any scheduled and unscheduled External Quality Audits of the Quality Management System (including audits relating to compliance with all Quality Documentation as provided in Section 5.3, Contracting Authority may, at its discretion, monitor and verify the operation of the Quality Management System by, *inter alia*, carrying out spot checks and independent inspections and tests of any Works or material including any Works, rehabilitation services, or material that fail any test or are suspected by Contracting Authority of not complying with the requirements of the Project Agreement.

5.5 Deficient Quality Audits

(a) If:

(i) Contracting Authority reasonably believes that Project Co is failing to conduct Quality Audits of its Quality Management System as required by the Project Agreement in any material respect or if such Quality Audits are not conducted in compliance with the ISO 9001:2015 Standard by personnel competent to conduct such Quality Audits; or

(ii) any auditing, monitoring or spot check of the Quality Management Systems reveals material deficiencies in the Quality Management System or the implementation thereof,

Contracting Authority may carry out increased levels of External Quality Audits (whether in number, duration or detail) of all or any aspect of the Quality Management System until such time as Contracting Authority is reasonably satisfied that none of the circumstances described in this Section 5.5(a) continue to exist.

5.6 Costs of Audits

(a) If Contracting Authority carries out any audit pursuant to Section 5.3, Section 5.4 or Section 5.5, and the results of such audit shows any Non-Conformance that materially interferes with the

delivery of the Works or rehabilitation services in accordance with the Output Specifications, Quality Manual and Quality Management Plans, then without limiting any other rights and remedies of Contracting Authority, Project Co shall compensate Contracting Authority for all costs incurred in carrying out such audit (including the relevant administrative expenses of Contracting Authority, including an appropriate sum in respect of general staff costs and overheads). All other audits carried out by Contracting Authority pursuant to Section 5.3, Section 5.4 or Section 5.5 shall be at Contracting Authority's cost.

5.7 Independent Quality Audits

- (a) In addition to the Internal Audits and External Audits, Project Co shall cause the Independent Quality Audits to be undertaken during the Works. These Independent Quality Audits shall be conducted by a certified auditor who is qualified to audit the full scope of the Quality Management System, as acceptable to Contracting Authority and Project Co. Each Independent Quality Audit shall, at a minimum, ensure that all input requirements, as required by the Project Agreement, are included in the Quality Management System and adhered to in the performance of the Works.
- (b) A minimum of one full Independent Quality Audit on each of the individual Quality Plans within the Quality Management System shall be completed no later than one year following Financial Close.
- (c) Project Co shall cause the Independent Quality Audit report to be submitted to Contracting Authority concurrent to when such report is submitted to Project Co, and shall address all Quality Audit findings identified from the Independent Quality Audit with corrective measures implemented no later than 20 Business Days of receiving the Independent Quality Audit report, or such other longer time as agreed by the Contracting Authority Representative in its sole discretion.

5.8 Traffic and Transit Management Auditing

- (a) For the purpose of facilitating the conduct of Internal Quality Audits and External Quality Audits relating to traffic management during the Works, Project Co shall develop and implement a checklist (a “**Site Condition Rating Checklist**”) acceptable to Contracting Authority, for use by each of Project Co and Contracting Authority.
- (b) The Site Condition Rating Checklist is the framework to be used by Project Co for auditing the safety and overall management of traffic against the requirements contained in the Traffic and Transit Management Plan requirements of Schedule 15 – Output Specifications.
- (c) The Site Condition Rating Checklist, at a minimum, shall include the following information categories:
 - (i) Traffic and Transit Management Plan – in relation to Schedule 15 – Output Specifications, including:
 - (A) the approved Site specific plan;
 - (B) storage of materials;

- (C) traffic control devices;
 - (D) roadside barriers;
 - (E) drop-offs; and
 - (F) temporary pavement markings.
- (d) The requirements of this Section 5.8 are in addition to, and do not limit, Project Co's other obligations under this Schedule 11, including Project Co's obligations under Section 7.

6. QUALITY DOCUMENTATION

6.1 Principles

- (a) The minimum requirements and principles which apply to the Quality Documentation are set out in appendices A to F inclusive to this Schedule 11. Project Co's Quality Management System shall also comply with the requirements and principles of the ISO 9001:2015 Standard and this Schedule 11.

6.2 ISO Reference Documents

- (a) Without limiting the requirement of the Quality Management System to comply with the ISO 9001:2015 Standard Project Co's Quality Management System shall also incorporate the requirements of the following reference documents:
- (i) ISO 9001:2015 Quality Management Systems – Requirements;
 - (ii) ISO 9000:2015 Quality Management Systems – Fundamentals and Vocabulary;
 - (iii) ISO 14001:2015 Environmental Management Systems; and
 - (iv) ISO 19011:2018 Guidelines for Auditing Management Systems.

6.3 Quality Documentation Requirements

- (a) The minimum documentation requirements for the Quality Management System are:
- (i) the Quality Manual as required pursuant to Section 2.6;
 - (ii) the Quality Management Plans for all aspects of the Works as required pursuant to Section 2.6, including,
 - (A) the Design Quality Management Plan;
 - (B) the Construction Quality Management Plan;
 - (C) the Environmental Quality Management Plan;

- (D) the Traffic Quality Management Plan; and
 - (E) the Project Schedules Quality Management Plan;
 - (iii) that each Quality Management Plan includes quality system procedures and process flow charts documenting who performs the Works, what they do, and what evidence shall be generated that they have performed quality related aspects of the Works correctly; and
 - (iv) the Quality Audit Program, including,
 - (A) the planned Quality Audits;
 - (B) the Quality Audit Program required pursuant to Section 5.1; and
 - (C) the Quality Records required pursuant to Section 6.8,
- (together, the “Quality Documentation”).

6.4 Submission of Quality Documentation

- (a) If any Quality Documentation relies on or incorporates any supporting Quality Documentation then such supporting Quality Documentation or the relevant parts thereof shall be submitted to Contracting Authority at the time that the relevant Quality Documentation or part thereof or change, addition or revision to the Quality Documentation is submitted in accordance with the Schedule 10 – Review Procedure and the contents of such supporting Quality Documentation shall be taken into account in the consideration of the relevant Quality Documentation or part thereof or change, addition or revision to the Quality Documentation in accordance with Schedule 10 – Review Procedure. Contracting Authority may require the amendment of any such supporting Quality Documentation to the extent necessary to enable the relevant Quality Documentation to satisfy the requirements of this Schedule 11.

6.5 Project Co’s Obligation to Update

- (a) Project Co shall be responsible for proactively updating its Quality Management System and all Quality Documentation from time to time, in accordance with the procedures set forth in the Project Agreement, to ensure that the Quality Management System and all Quality Documentation are, and at all times remain, in full compliance with the ISO 9001:2015 Standard and the requirements of the Project Agreement. All testing, inspections, pass and fail conditions must be highlighted, and maintained for records.

6.6 Changes to Quality Documentation

- (a) Project Co shall submit to Contracting Authority in accordance with Schedule 10 – Review Procedure any proposed changes or additions to or revisions of any of the Quality Documentation.
- (b) If Project Co does not propose any change, pursuant to Section 6.6(a), which Contracting Authority determines to be required then Contracting Authority may propose such change and it shall be dealt with as though it had been proposed by Project Co pursuant to Section 6.6(a) and

shall not be treated as a Variation. Any dispute between the Parties in respect of any such change shall be resolved in accordance with the Dispute Resolution Procedure.

6.7 Amendment of Quality Documentation

- (a) If there is no unresolved objection by Contracting Authority under Schedule 10 – Review Procedure to a part of the Quality Documentation pursuant to Section 6.4 or to a change, addition or revision proposed pursuant to Section 6.6(a), then the Quality Documentation shall be amended to incorporate such part, change, addition or revision.

6.8 Quality Records

- (a) Project Co shall establish and maintain complete and accurate quality management records (the “Quality Records”).
- (b) The Quality Records shall provide objective evidence of conformance with all requirements of the Project Agreement, compliance with the ISO 9001:2015 Standard and the effective operation of the Quality Management System.

6.9 Quality Management System Reports

- (a) For each month of the Project Term, Project Co shall prepare, and submit to Contracting Authority by the 15th day after the start of the following month, a Quality Management System report.
- (b) Specific Requirements
- (i) Each monthly Quality Management System report shall address all quality management activities under each of the Quality Management Plans for that month and any outstanding quality issues from prior months.
- (ii) Each monthly Quality Management System report shall, at a minimum, include the following information separately identified for the Quality Manual and for each Quality Management Plan:
- (A) a Non-Conformance Report log summarizing all Non-Conformance Reports opened, closed, or still open from the previous report, in the relevant month and providing the following: “date open”, “date closed”, “status” (open, in-progress, closed), “disposition” (repair, rework, reject) and “description of status” which describes the current status of the Non-Conformance Report and if closed, date of closing and evidence of how it was closed;
- (B) Corrective Action and Preventive Action logs providing details of the Corrective Actions and Preventive Actions performed during the month and their close-out status;
- (C) a summary of any inspection and testing activities conducted during the month and a summary of planned inspection and testing activities for the next month;

- (D) Internal Quality Audits and External Quality Audits performed during the month and a four month look-ahead schedule for planned future Quality Audits;
 - (E) any continual improvement initiatives taken during the month;
 - (F) any other information required to be included in the monthly Quality Management System reports pursuant to any of the appendices to this Schedule 11 or the terms of the relevant Quality Management Plan; and
 - (G) any changes made to the Quality Management System such as process change, procedure update, ISO recertification or the Quality Documentation in compliance with the provisions of the Project Agreement.
- (c) Each monthly Quality Management System report shall include a summary of all progress, environmental quality management activities during each month, including:
- (i) Annual Environmental Compliance Monitoring Reports as required pursuant to Section 3.11 of Schedule 17 – Environmental Obligations;
 - (ii) lists of all environmental Permits, Licences, Approvals and Agreements obtained since the previous reporting period, as well as a description of steps taken to obtain any outstanding required environmental Permits, Licences, Approvals and Agreements and the results thereof; and
 - (iii) steps taken to implement, comply with and satisfy Project Co’s environmental obligations, including compliance with applicable environmental laws and other environmental requirements contained in the Project Agreement.

6.10 Additional Information

- (a) Notwithstanding any other provision of this Schedule 11, Project Co shall provide Contracting Authority with such information as Contracting Authority may request from time to time to demonstrate compliance with this Schedule 11.

7. NON-CONFORMANCES

7.1 Non-Conformance Reporting Process

- (a) The Non-Conformance reporting process, from initial discovery through to closeout of a Non-Conformance, shall follow the process outlined below:
- (i) If Project Co or Contracting Authority discovers a Non-Conformance, they shall initiate a Non-Conformance Report in compliance with the ISO 9001:2015 Standard as follows:
 - (A) Project Co initiated Non-Conformance Reports – Project Co shall provide a Non-Conformance Report identifying the Non-Conformance to Contracting Authority no later than two Business Days after discovery of the Non-Conformance; or

- (B) Contracting Authority initiated Non-Conformance Reports – If at any time Contracting Authority is notified, or otherwise becomes aware, that there is any Non-Conformance relating to the Works, Contracting Authority may issue a Non-Conformance Report, without prejudice to any other right or remedy available to Contracting Authority.
- (ii) A Non-Conformance Report initiated by either Party is issued to the Quality Director, thereby activating the Non-Conformance Report. The date of issue shall be recorded denoting the commencement of the time period for which the Non-Conformance Report has an ‘open’ status.
- (iii) The Non-Conformance Report shall include a classification for each Non-Conformance, which classification shall be Minor Non-Conformance, Major Non-Conformance or Critical Non-Conformance.
- (iv) The Quality Director shall in response to the Non-Conformance Report describe a disposition of the Non-Conformance and a Corrective Action (to prevent recurrence of the Non-Conformance) in compliance with the ISO 9001:2015 Standard. Project Co shall respond to a Non-Conformance described in a Non-Conformance Report using one of the three responses set out in Table 7.1.

Table 7.1

Status of Non-Conformance	Disposition	Corrective Action
Remedial action completed	Project Co shall provide evidence that the Non-Conformance has been remedied and the date by which it was remedied	Project Co shall describe planned improvements to delivery process to prevent recurrence of the Non-Conformance
Remedial action proposed	Project Co shall provide a plan committing to scope and timing of work to remedy the Non-Conformance	Project Co shall describe planned improvements to delivery process to prevent recurrence of the Non-Conformance
No remedial action is proposed	Objection	-

- (b) Project Co shall investigate and respond to all Non-Conformance Reports.
- (c) Project Co may object to the issuance of any Non-Conformance Report by Contracting Authority. If such objection has not been resolved by mutual agreement between Contracting Authority and Project Co no later than five Business Days following delivery by Project Co to Contracting Authority of a Notice of the objection, then either Party may refer the matter to the Dispute Resolution Procedure for determination.

-
- (d) If Project Co fails to object to the issue by Contracting Authority of a Non-Conformance Report no later than five Business Days following Contracting Authority's issuance of a Non-Conformance Report, Project Co is deemed to have accepted that Non-Conformance Report.
- (e) Contracting Authority may object to the content of any Non-Conformance Report initiated by Project Co. If such objection has not been resolved by mutual agreement between Contracting Authority and Project Co no later than five Business Days following delivery by Contracting Authority to Project Co of a Notice of the objection, then either Party may refer the matter to the Dispute Resolution Procedure for determination.
- (f) If Contracting Authority fails to object to the issuance by Project Co of a Non-Conformance Report no later than five Business Days following the issuance by Project Co of a Non-Conformance Report, Contracting Authority is deemed to have not objected to that Non-Conformance Report.
- (g) The Quality Director shall change the status of the Non-Conformance Report to 'in progress' once:
- (i) a disposition and Corrective Action are documented for the Non-Conformance;
 - (ii) five Business Days have passed since the issuance of the Non-Conformance Report; and
 - (iii) neither Party has issued a Notice of objection.
- (h) The Quality Director shall change the status of Non-Conformance Report to 'closed' once:
- (i) the Non-Conformance has been remedied and verified; and
 - (ii) the Corrective Action has been implemented and verified.
- (i) The Quality Director shall confirm in writing to Contracting Authority the date that a Non-Conformance Report has entered the status of 'closed', no later than two Business Days following it entering that status.

7.2 Non-Conformance Report Tracking System

- (a) Project Co shall implement and maintain a Non-Conformance Tracking System to monitor the status of all Non-Conformance Reports initiated by Contracting Authority and Project Co.
- (b) The Non-Conformance Tracking System shall be fully operating, with the following minimum requirements, no later than 90 days from Financial Close, so as to:
- (i) comprise a single repository containing both Project Co and Contracting Authority initiated Non-Conformance Reports;
 - (ii) have the ability to attach supporting material such as photos and documents;
 - (iii) provide live access to the current Non-Conformance Report status to both Project Co and Contracting Authority.

-
- (c) Project Co shall produce and submit to Contracting Authority a summary report each month (the “**Monthly Non-Conformance Report**”) containing the following:
- (i) the number of Non-Conformance Reports entering the following status within the last month: ‘open’, ‘in progress’, and ‘closed’. The numbers must be provided for all Non-Conformance Reports collectively, and separately for Non-Conformance Reports that are classified as Minor Non-Conformances, Major Non-Conformances or Critical Non-Conformances; and
 - (ii) summary statistics and historic trends since Financial Close for the number of Non-Conformance Reports with the following status each month since Financial Close: ‘open’, ‘in progress’ and ‘closed’.

7.3 Non-Conformance Measures

- (a) Project Co shall rectify and close each Non-Conformance before the date set out in the Non-Conformance Report for that Non-Conformance.

7.4 Non-Conformance Records

- (a) In addition to the maintenance of the Non-Conformance Tracking System under Section 7.2, Project Co shall maintain and make available to Contracting Authority upon request, records of:
- (i) each Non-Conformance;
 - (ii) the reference numbers of all Non-Conformance Reports;
 - (iii) a classification of each Non-Conformance, which classification shall be Minor Non-Conformance, Major Non-Conformance or Critical Non-Conformance;
 - (iv) a description of all Non-Conformance Reports;
 - (v) the proposed actions by Project Co to rectify each Non-Conformance;
 - (vi) the date at which each Non-Conformance was identified; and
 - (vii) the date at which a Non-Conformance specified in a Non-Conformance Report was rectified.

APPENDIX A
QUALITY MANUAL**A.1 Quality Manual**

- (a) Project Co shall provide a comprehensive Quality Manual that describes the Quality Management System for all aspects of the Works, and shall comply with the requirements of the ISO 9001:2015 Standard. The Quality Manual shall describe the processes that shall be established, implemented, controlled, and continually improved to achieve the established Quality Objectives.
- (b) The Quality Objectives shall be measurable, consistent with the Quality Policy and linked to meeting the needs and performance expectations of Contracting Authority in respect of the Project. The Quality Management System described in the Quality Manual shall include all the activities required to achieve these Quality Objectives, including design build controls such as scope, cost, schedule and general document control management activities. All of these activities shall be subject to Internal Quality Audits and External Quality Audits.
- (c) The Quality Manual shall describe the Project Co Parties involved in performing the Works and how key management activities (such as design, design development, specifications, design build controls, traffic management, staging, design management, Construction Activities and environmental matters) shall interface with each other. The Quality Manual shall address each element of the Works. The Quality Manual shall also provide the organization chart identifying the authority and responsibilities of all Key Individuals and other key personnel involved with the aforementioned aspects of the Project, applicable to each element of the Works. The Quality Manual shall also show how the various levels of Quality Management System documentation are linked together.
- (d) The Quality Manual shall clearly define the reporting function and authority of Project Co's Quality Director who shall liaise with Contracting Authority and act as the single point representative of Project Co for all matters relating to quality management for each element of the Works.

**APPENDIX B
DESIGN QUALITY MANAGEMENT PLAN**

B.1 Design Quality Management Plan

- (a) Project Co shall implement and comply with a comprehensive Design Quality Management Plan (“**DQMP**”) that describes how it intends to manage the design processes for the Project in compliance with the ISO 9001:2015 Standard, its Quality Manual and the provisions of the Project Agreement. The DQMP is to apply throughout the Project Term.
- (b) The DQMP shall contain an organizational chart identifying Key Individuals and other key personnel responsible for design management of each element of the Works, their relationship with the Quality Director for Project Co’s overall Quality Management System as documented in Project Co’s Quality Manual. It shall also contain a description of the responsibilities, qualifications, and authority of the above personnel and the organizational interfaces between those responsible for design management and other engineering and construction management disciplines.
- (c) For each element of the Works, the DQMP shall, at a minimum, include or reference detailed Quality Management System procedures and process flow charts for the following processes:
- (i) design input and output review;
 - (ii) design verification to ensure that design input requirements have been met;
 - (iii) design validation to ensure that the completed Project is capable of meeting its intended use;
 - (iv) schedule of design review by Contracting Authority;
 - (v) design changes;
 - (vi) quality assessment and procurement of Project Co Parties responsible for design;
 - (vii) scheduling and preparation of construction stage quality control activities inspection, testing, third party testing, and scheduling of inspection and testing of long lead equipment, systems and components;
 - (viii) External Quality Audits of Project Co Parties responsible for design;
 - (ix) Internal Quality Audits;
 - (x) Corrective Actions, Preventive Actions and opportunities for improvement;
 - (xi) document management;
 - (xii) Works Submittal scheduling and Project Works Schedule audits;
 - (xiii) control of revisions to issued for construction documentation during construction; and

- (xiv) control of Quality Records.
- (d) The above procedures and flow charts shall document who does the work, what they do, and what evidence is generated that they have done the work correctly.

APPENDIX C
CONSTRUCTION QUALITY MANAGEMENT PLAN

C.1 Construction Quality Management Plan

- (a) Project Co shall provide a comprehensive Construction Quality Management Plan (“CQMP”) that describes how it intends to manage the Construction Activities in compliance with the ISO 9001:2015 Standard, its Quality Manual and the provisions of the Project Agreement. The CQMP is to apply throughout the Project Term.
- (b) Project Co shall provide a separate CQMP for each element of the Works.
- (c) The CQMP shall contain an organizational chart identifying Key Individuals and other key personnel responsible for construction management and their relationship with the Quality Director for Project Co’s overall Quality Management System as documented in Project Co’s Quality Manual. It shall also contain a description of the responsibilities, qualifications, and authority of the above personnel and the organizational interfaces between those responsible for construction management and other disciplines such as design management, environmental management and traffic management.
- (d) The CQMP shall address the manner in which the construction instrumentation and monitoring requirements described in Schedule 15 – Output Specifications relate to design and construction of the Works, including pre-construction activities, construction staging, existing road service disruption avoidance measures, and post-construction activities.
- (e) The CQMP shall address the manner in which the access and traffic management requirements described in Schedule 15 – Output Specifications relate to design and construction of the Works, including construction staging and existing road service disruption avoidance measures.
- (f) Project Co shall include within the CQMP, environmental management requirements which are described in Schedule 17 – Environmental Obligations.
- (g) The CQMP shall, at a minimum, include or reference detailed quality system procedures and process flow charts for the following processes:
 - (i) construction safety audits;
 - (ii) Project Works Schedule management and audits;
 - (iii) inspection, testing and monitoring;
 - (iv) materials identification and traceability;
 - (v) quality assessment and procurement of Project Co Parties responsible for construction;
 - (vi) satisfying and ensuring compliance with Project Co’s environmental obligations, including compliance with the Environmental Approvals;
 - (vii) obtaining and maintaining applicable Permits, Licences, Approvals and Agreements;

- (viii) External Quality Audits of Project Co Parties responsible for environmental aspects of the Project;
 - (ix) External Quality Audits of Project Co Parties responsible for construction;
 - (x) Internal Quality Audits;
 - (xi) control of nonconforming product;
 - (xii) Corrective Actions, Preventive Actions and opportunities for improvement;
 - (xiii) document management;
 - (xiv) control of “issued for construction” drawing mark ups to reflect the as-built condition including capture of the reasons for any changes from the issued for construction documents and any necessary authorizations; and
 - (xv) control of Quality Records.
- (h) The CQMP shall also include or reference method statements (including all subsequent revisions) detailing all major construction activities. The method statements shall, at a minimum include:
- (i) scope of Work including objectives;
 - (ii) Work breakdown structure and Work schedule reference;
 - (iii) reference standards and Output Specification references;
 - (iv) design references and construction-specific references;
 - (v) Inspection and Test Plan references;
 - (vi) health and safety considerations, including hazard risk assessment and recommended mitigation measures;
 - (vii) tool and equipment requirements;
 - (viii) material and supply requirements;
 - (ix) crew requirements; and
 - (x) planned work sequence and description illustrated my method drawings and sketches.
- (i) The above procedures and flow charts shall document who does the work, what they do, and what evidence is generated that they have performed the work correctly.
- (j) Inspection and Test Plan

-
- (i) Project Co shall provide an over-arching inspection and test plan (the “**Inspection and Test Plan**”) and generic and specific inspection and test sub-plans (the “**Inspection and Test Sub-Plans**”) for all on-Site and off-Site inspection and test activities for Works performed by Project Co and the Project Co Parties.
 - (ii) The CQMP shall include the Inspection and Test Plan and the generic Inspection and Test Sub-Plans.
 - (iii) Project Co shall submit specific Inspection and Test Sub-Plans, each addressing a particular element of the Works and which may require reference to completed design requirements and drawings, separately from the CQMP,
 - (A) nearer to the time that each applicable element of the Works is to be undertaken; and
 - (B) with sufficient time for Contracting Authority to review the Works Submittal pursuant to Schedule 10 – Review Procedure.
 - (iv) The scope of each Inspection and Test Sub-Plan shall be at the level of the smallest element of the Works that is:
 - (A) discrete;
 - (B) in its final position, or can be placed in its final position without modification; and
 - (C) ready for its intended use.
 - (v) Each Inspection and Test Sub-Plan shall include a progressive and step-wise series of inspection and testing activities for each discrete element of the Works, including a progressive and step-wise series of Witness and Hold Points. For clarity, Contracting Authority may attend these Witness and Hold Points in its oversight function, but the Witness and Hold Points are for the sole purpose of Project Co meeting its obligations under the Project Agreement.
 - (vi) At the commencement of each week, Project Co shall issue a two-week look-ahead schedule (the “**ITP Two-Week Look-Ahead**”) of Witness and Hold Points for the following:
 - (A) fabrication or manufacture of elements of the Works at a location that is not on the Lands;
 - (B) the first implementation of any Inspection and Test Sub-Plan at a particular Site or by a particular Subcontractor; and
 - (C) any activities that will occur outside of hours 8:00 a.m. and 5:00 p.m. Monday to Friday and any activities occurring on Saturday, Sundays or statutory holidays.

-
- (vii) Project Co shall alert Contracting Authority to any alterations to the timings in the ITP Two-Week Look-Ahead in a timely manner; for changes to timings that occur with less than 24 hours of Notice, Project Co shall ensure the local Site monitoring staff of Contracting Authority are aware of the change as soon and are provided an opportunity to be present for the Witness and Hold Points.
 - (viii) The Inspection and Test Plan shall, at a minimum, include:
 - (A) a description of the inspection, testing and monitoring activity;
 - (B) frequency of inspections, tests and monitoring;
 - (C) reference to standards, codes, specifications, and acceptance criteria;
 - (D) reports and checklists required;
 - (E) personnel responsible for inspection, testing and monitoring activity;
 - (F) quality assurance review, Witness and Hold Points; and
 - (G) description and frequency of geotechnical instrumentation monitoring and adherence to acceptance criteria.
 - (k) Without limiting the requirements in Schedule 15 – Output Specifications, the Inspection and Test Plan(s) shall, incorporate the CAIT Manual Part B requirements.
 - (l) The personnel identified in the Inspection and Test Plan for implementing the inspection, testing and monitoring activities, as well as the quality assurance review and Witness and Hold Points related to any inspection or test activities shall be demonstrated to be qualified to perform such inspection or review.
 - (m) In addition to the Witness and Hold Points specified in Project Co’s Inspection and Test Plan, Contracting Authority retains the right to specify additional Witness and Hold Points against any inspection or test activity that Contracting Authority requires the opportunity to observe.
 - (n) Contracting Authority, in the course of its Quality Documentation review, shall pay special attention to Project Co’s environmental responsibilities to verify that Project Co has taken full responsibility for all of the environmental requirements as specified in the Project Agreement, including obtaining approvals from relevant Governmental Authorities.

APPENDIX D**ENVIRONMENTAL QUALITY MANAGEMENT PLAN****D.1 Environmental Quality Management Plan**

- (a) Project Co shall provide a comprehensive Environmental Quality Management Plan (“EQMP”) that describes how it intends to manage the environmental components of the Project in compliance with Project Co’s environmental obligations, the requirements of which are described in Schedule 17 – Environmental Obligations, its Quality Manual and the provisions of the Project Agreement. The EQMP is to apply throughout the Project Term.
- (b) The EQMP shall contain reference to Project Co’s environmental obligations as described in Schedule 17 – Environmental Obligations, an organizational chart identifying Key Individuals and other key personnel responsible for environmental management and their relationship with the Quality Director for Project Co’s overall Quality Management System as documented in Project Co’s Quality Manual. It shall also contain a description of the responsibilities, qualifications, and authority of the above personnel and the organizational interfaces between those responsible for environmental management and other disciplines such as management of Project design and construction.
- (c) The EQMP shall include or reference detailed quality system procedures and process flow charts for the following processes:
- (i) satisfying and ensuring compliance with Project Co’s environmental obligations, including compliance with the Environmental Approvals and in particular, the preparation and implementation of an Environmental Management System and specific plans as detailed elsewhere in the Project Agreement;
 - (ii) obtaining and maintaining applicable Permits, Licences, Approvals and Agreements;
 - (iii) environmental monitoring and reporting;
 - (iv) environmental incident reporting and tracking;
 - (v) noise and vibration monitoring;
 - (vi) External Quality Audits of Project Co Parties responsible for environmental aspects of the Project;
 - (vii) Internal Quality Audits;
 - (viii) control of Non-Conformances;
 - (ix) Corrective Actions, Preventive Actions and opportunities for improvement;
 - (x) document management; and
 - (xi) control and retention of Quality Records.

- (d) The above procedures and flow charts shall document who does the work, what they do, and what evidence is generated that they have done the work correctly.
- (e) Contracting Authority, in the course of its Quality Documentation review, shall pay special attention to Project Co's EQMP to verify that Project Co has taken full responsibility for all of the environmental requirements as specified in Schedule 17 – Environmental Obligations and elsewhere in the Project Agreement, including obtaining approvals from relevant Governmental Authorities.

APPENDIX E
TRAFFIC QUALITY MANAGEMENT PLAN

E.1 Traffic Quality Management Plan

- (a) Project Co shall provide a comprehensive Traffic Quality Management Plan (“TQMP”) that describes how it intends to administer the traffic management processes and sub plans described in Schedule 15 – Output Specifications in connection with the Project in accordance with the ISO 9001:2015 Standard, its Quality Manual and the provisions of this Project Agreement. The TQMP is to apply throughout the Project Term.
- (b) All Project Co Parties, including applicable traffic management personnel, shall comply with the Quality Manual, this TQMP, and the processes and procedures that are part of this TQMP.
- (c) The TQMP shall contain an organizational chart, which expands upon the organization chart of the Quality Manual, identifying Key Individuals and other key personnel responsible for traffic management and their relationship with the Quality Director for Project Co’s overall Quality Management System as documented in Project Co’s Quality Manual. It shall also contain a description of the responsibilities, qualifications, and authority of the above personnel and the organizational interfaces between those responsible for traffic management and other disciplines such as design management, construction management, and environmental management. The TQMP shall address the manner in which traffic management relates to the Works. The TQMP shall be coordinated with all other Quality Management Plans such that there is similarity in layout, style, organization charts, processes and flowcharts.
- (d) The TQMP shall at a minimum, include or reference detailed quality system procedures and process flow charts for the following processes:
- (i) major processes outlined in the Traffic and Transit Management Plan described in Schedule 15 – Output Specifications;
 - (ii) Independent and External Quality Audits of Project Co Parties responsible for traffic management;
 - (iii) Internal Quality Audits;
 - (iv) management of Non-Conformances;
 - (v) Corrective Actions and Preventative Actions;
 - (vi) document management; and
 - (vii) control of Quality Records.
- (e) The above procedures and flow charts shall document who does the work, what they do, and what evidence is generated that they have done the work correctly.
- (f) When the above processes are already covered as part of another Quality Management Plan, the process heading still needs to be identified as part of the TQMP; however the details can be

minimized to a reference to the other Quality Management Plan and section or paragraph where the details are provided. The referenced Quality Management Plan and section or paragraph must indicate specific requirements with regards to the above processes as it relates to traffic quality management. Notwithstanding the above, processes that fall within the specific requirements of the Traffic and Transit Management Plan must include detailed quality system procedures and process flow charts under the TQMP.

**APPENDIX E-1
AUDIT OF TEMPORARY TRAFFIC MANAGEMENT – SAMPLE SITE REPORT**

Audit Details

Contractor

Location

Activity

Auditor

Date & Time

Select as applicable and add comment: Y/N = Yes/ No; A/S/N = All/ Some/ None

Advanced Warning Area

Signage (A/S/N).....

Visibility (A/S/N)

Placement (A/S/N).....

Quality (A/S/N).....

Transition Area, Buffer Space, Work Area

Signage (A/S/N).....

Visibility (A/S/N)

Placement (A/S/N).....

Quality (A/S/N).....

Delineation (A/S/N).....

Placement (A/S/N).....

Quality (A/S/N).....

Spaced Correctly (Y/N)

Other issues

Excavations (Y/N)

- Pedestrians from work (Y/N).....
- Pedestrians from traffic (Y/N).....
- Cyclists from work (Y/N).....
- Cyclists from traffic (Y/N).....
- Advance Warning area (A/S/N).....
- Transition area (A/S/N).....
- Buffer Space (A/S/N).....
- Work Area (A/S/N).....
- Warning lights (A/S/N).....
- Vehicles operating with traffic flow (A/S/N).....
- Vehicles parked with traffic flow (A/S/N).....
- Vehicles outside zone (A/S/N).....
- Entering/leaving with traffic flow (A/S/N).....
- Workers safety (A/S/N).....
- Traffic Control Plan (TCP) or TCP Supervisor on Site (Y/N).....

Termination Area

- Sign placement (A/S/N).....
- Sign quality (A/S/N).....

General Observations

.....

.....

.....

.....

APPENDIX F
PROJECT SCHEDULES QUALITY MANAGEMENT PLAN

F.1 Project Schedules Quality Management Plan

- (a) Project Co shall provide a comprehensive Project Schedules Quality Management Plan that describes how it manages Project Works Schedules in connection with the Project in compliance with the ISO 9001:2015 Standard, its Quality Manual and the provisions of the Project Agreement. The PSQMP shall apply throughout the Project Term
- (b) The PSQMP shall contain an organizational chart identifying Key Individuals and other key personnel responsible for Project Works Schedule management and their relationship with the Quality Director for Project Co's overall Quality Management System as documented in Project Co's Quality Manual. It shall also contain a description of the responsibilities, qualifications, and authority of the above personnel and the organizational interfaces between those responsible for project schedule management and other engineering and construction management disciplines
- (c) The PSQMP shall include completeness and correctness criteria, quality policies and procedures relevant to the project schedules for both scheduling deliverables and the scheduling processes, proposed standards, schedule health and reliability checklists and reporting structures.
- (d) The PSQMP shall, at a minimum, include or reference detailed quality system procedures and process flow charts for the following processes:
- (i) Project Co's Work planning procedure;
 - (ii) integration of Project Co Parties' Work planning;
 - (iii) description of how Schedule 12 requirements will be implemented and monitored;
 - (iv) audit process to:
 - (A) audit the Baseline Works Schedule and every updated Project Works Schedule thereafter to confirm conformance with the requirements of the Project Agreement, the results of such audit to be set out in an audit report submitted with the draft of the Baseline Works Schedule, and every updated Project Works Schedule thereafter;
 - (B) audit the Project Works Schedules on a quarterly basis to confirm conformance to the requirements of the Project Agreement, and the accuracy of the progress and as-built information, the results of such audit to be set out in an audit report submitted to Contracting Authority no later than 10 Business Days after such audit has been completed; and
 - (C) ensure that each audit report described in Section F.1(d)(iv)(b) and F.1(d)(iv)(c) is reviewed and signed the by the Scheduler, Quality Director and the Project Co Representative;

- (v) management of Non-Conformances;
 - (vi) Corrective Actions; and
 - (vii) control of Project Works Schedules.
- (e) The above procedures and flow charts shall document who does the work, what they do, and what evidence is generated that they have done the work correctly.
- (f) When the above processes are already covered as part of the Quality Manual or another Quality Documentation, the process heading is still required to be identified as part of the PSQMP, however, the details can be limited to a reference to the other applicable document. Notwithstanding the above, processes that fall within the specific requirements of this plan must include detailed quality system procedures and process flow charts under the PSQMP.

MT MTDOCS 41633379v2

SCHEDULE 12

WORKS SCHEDULE REQUIREMENTS

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

- (a) “**Activity ID**” has the meaning given in Section 1.5(a)(i) of Appendix A.
- (b) “**Baseline Tracking Milestone**” is a schedule milestone required by Contracting Authority, included in the Interim Baseline Works Schedule and the Baseline Works Schedule (and carried through in the Progress Works Schedule) that has a fixed date without any inter-relationship or logic dependency with any other Works Activity or Project Works Schedule.
- (c) “**Baseline Works Schedule**” has the meaning given in Section 9.1(a).
- (d) “**Basis of Works Schedule Report**” has the meaning given in Section 12.1(a).
- (e) “**Close-out Activity**” means any activity of the Works and any associated Milestone Event that immediately precedes Substantial Completion or Final Completion of the Works including:
 - (i) all inspections of the Works by Contracting Authority, third parties, and the Independent Certifier required by the Project Agreement;
 - (ii) identification and rectification of Minor Deficiencies;
 - (iii) finalization and issuance of Record Drawings;
 - (iv) Commissioning Activities; and
 - (v) Handover Activities,and “**Close-out Activities**” means all such activities and associated Milestone Events.
- (f) “**Commissioning Activity**” means any commissioning activity and associated Milestone Event contemplated in the Project Agreement, including each commissioning activity and associated Milestone Event contemplated in Schedule 14 – Outline Commissioning Program and Handover and Schedule 15 – Output Specifications and “**Commissioning Activities**” means all such activities and associated Milestone Events.
- (g) “**Construction Access Management Activity**” means any activity or associated Milestone Event required to implement the Construction Access Management Plan, and “**Construction Access Management Activities**” means all such activities and Milestone Events.
- (h) “**Corrected Works Schedule**” has the meaning given in Section 4(d).

-
- (i) “**Cost Performance Index**” has the meaning as set out in the Project Management Institute’s *Practice Standard for Earned Value Management - Second Edition*.
- (j) “**Data Date**” means a calendar date in the life of a project upon and through which the progress status for the Works is being determined.
- (k) “**Design Activity**” means any activity associated with the design of the Project and “**Design Activities**” means all such activities.
- (l) “**Earned Value**” has the meaning as set out in the Project Management Institute’s *Practice Standard for Earned Value Management - Second Edition*.
- (m) “**Earned Value Metrics**” has the meaning given in Section 13.1(b)(viii)(A).
- (n) “**Fragnet**” means a portion of fragment of a CPM schedule network as set out in the AACE International Recommended Practice 10S-90 entitled “*Cost Engineering Terminology*”.
- (o) “**Handover Activity**” means any activity and associated Milestone Events required to achieve Handover of any New Third Party Infrastructure to the applicable third party, including:
- (i) all inspections of the New Third Party Infrastructure required by the Project Agreement including inspections by Contracting Authority and the relevant third party;
 - (ii) identification and resolution of Construction Defects;
 - (iii) finalization and issuance of the applicable Record Drawings; and
 - (iv) provision of training to the applicable third party staff,
- and “**Handover Activities**” means all such activities and associated Milestone Events.
- (p) “**Interim Baseline Works Schedule**” has the meaning given in Section 8(a).
- (q) “**Level 3**” means the level of detail required for a Project Control Schedule as set out in the AACE International Recommended Practice 37R-06 entitled, “*Schedule Levels of Detail – As Applied in Engineering, Procurement and Construction*”.
- (r) “**Milestone Event**” means, for each of the Works Activities,
- (i) the start and completion of each deliverable and the identification of any external constraints which are associated with the applicable activity;
 - (ii) interfaces with Stakeholders associated with the applicable activity; and
 - (iii) Witness and Hold Points.

- (s) “**Near Critical Path Activities**” has the meaning given in Section 12.1(c)(iv)(B).
- (t) “**No Comment or Minor Non-Conformance Designation**” means a designation, determined by Contracting Authority after review of a Project Works Schedule in accordance with Schedule 10 – Review Procedure, of either,
- (i) “NO COMMENT” on the applicable Project Works Schedule; or
 - (ii) “MINOR NON-CONFORMANCE” on the applicable Project Works Schedule, with no “RE-SUBMIT” requirement, and provided that all non-conformances noted in the review have been corrected.
- (u) “**PLAA Activity**” means for each Permit, Licence, Approval or Agreement, any of the activities or Milestone Events associated with that Permit, Licence, Approval or Agreement, including:
- (i) consultation and/or coordination activities with the applicable Governmental Authority and, if applicable, property owners;
 - (ii) preparation of documentation for the Permit, Licence, Approval or Agreement request, including pre-submission co-ordination and consultation; and
 - (iii) review and approval of the Permit, Licence, Approval or Agreement, including all activities and Milestone Events commencing on the date the initial submission for the Permit, Licence, Approval or Agreement and ending on the anticipated date of decision of the third party with respect to that Permit, Licence, Approval or Agreement, which anticipated date of decision shall, with respect to the MTO Encroachment Permit, be consistent with the MTO Encroachment Permit Deadline and, with respect to a Listed Project Co PLAA, be consistent with the applicable Listed Project Co PLAA Deadline,
- and “**PLAA Activities**” means all such activities and Milestone Events.
- (v) “**Planned Value**” has the meaning as set out in the Project Management Institute’s *Practice Standard for Earned Value Management - Second Edition*.
- (w) “**Procurement Activity**” means any activity or Milestone Event required for the timely purchase, set-up, manufacture, installation and use of long-lead items (for example, prefabricated or preassembled structures or structural elements, elevator and fibre-optic cabling, and other similar long-lead items) as required by the Project Agreement including:
- (i) issuance of purchase order or contract finalization including,
 - (A) coordination of the procurement with the Works;
 - (B) establishment of procurement processes and bundling strategies; and
 - (C) validation of technical requirements of the long-lead item;

- (ii) setup and certification of plant associated with the long-lead item;
- (iii) manufacturing or assembly of the long-lead item;
- (iv) approval of shop drawings;
- (v) factory acceptance testing;
- (vi) receipt of first and last deliveries;
- (vii) installation the long-lead item(s); and
- (viii) commencement and completion of inspection, integration, testing, commissioning, certification, and training,

and “**Procurement Activities**” means all such activities and Milestone Events.

- (x) “**Progress Works Schedule**” means Project Co’s working schedule that is,
 - (i) Traceable to and progressed from the Baseline Works Schedule, or the Revised Baseline Works Schedule, as applicable;
 - (ii) Traceable to and progressed from the Progress Works Schedule of the immediately previous month; and
 - (iii) prepared, maintained, updated, and submitted by Project Co, on a monthly basis, in accordance with this Schedule 12.
- (y) “**Project Control Schedule**” has the meaning given in the AACE International Recommended Practice entitled, “*Schedule Levels of Detail – As Applied in Engineering, Procurement and Construction*”.
- (z) “**Project Works Schedule**” means any of the schedules required pursuant to this Schedule 12, including Proposed Works Schedule, Corrected Works Schedule, Interim Baseline Works Schedule, the Baseline Works Schedule, Progress Works Schedules, the Revised Baseline Works Schedule(s), Works Micro-Schedules or Recovery Works Schedules, and “**Project Works Schedules**” means all such Works schedules.
- (aa) “**Proposed Works Schedule**” means the proposed works schedule submitted by Project Co, as Proponent, in the RFP process that preceded this Project Agreement, as amended and updated prior to Commercial Close.
- (bb) “**Recovery Works Schedule**” has the meaning given in Section 14.1(a).
- (cc) “**Recovery Works Schedule Report**” has the meaning given in Section 14.1(a).
- (dd) “**Review Procedure Activities**” means activities associated with the implementation of Schedule 10 – Review Procedure.

- (ee) “**Review Procedure Activities Register**” means a register that contains all information about a review of a Works Submittal including submission date, Contracting Authority response due date, Contracting Authority response date, resubmission date, revision number, status of review, and conformance comment from Contracting Authority.
- (ff) “**Revised Baseline Works Schedule**” has the meaning given in Section 9.2(a).
- (gg) “**S-Curve**” has the meaning as set out in the Project Management Institute’s *Practice Standard for Earned Value Management - Second Edition*.
- (hh) “**Schedule Performance Index**” has the meaning as set out in the Project Management Institute’s *Practice Standard for Earned Value Management - Second Edition*.
- (ii) “**Scheduler**” means the Project Co employee responsible for creating and maintaining the Project Works Schedules.
- (jj) “**Stakeholder Consultation Activity**” means any of the following activities or Milestone Events:
- (i) Stakeholder partnering sessions;
 - (ii) Design Development Submittals and Construction Document Submittals development and finalization;
 - (iii) consultation, submission, review and approval process of any municipal, provincial, federal, or any other Governmental Authority;
 - (iv) milestones noting decisions that support final design integration between Contracting Authority’s systems and Project Co’s systems;
 - (v) design review meetings;
 - (vi) presentations or workshops on design topics expected to involve multiple Stakeholders, or any other activities required to satisfy and demonstrate design conformance; and
 - (vii) any additional activities as required by Project Co to fulfill the requirements of the Project Agreement with respect to Stakeholder consultation,
- and “**Stakeholder Consultation Activities**” means all such activities and Milestone Events.
- (kk) “**Three Week Look-Ahead Schedule**” has the meaning given in Section 15(a).
- (ll) “**Traceable**” means prepared in such a way that Contracting Authority has the ability to maintain, track and trace all activities and milestones including Activity ID’s, descriptions, activity codes, logical sequences, interdependencies and data consistency between and/or within all Project Works Schedules.

- (mm) “**Tracking Milestone**” is a schedule milestone that corresponds to a Baseline Tracking Milestone and is linked to the applicable Works Activities, Works Milestones, and Milestone Events and “**Tracking Milestones**” means all such scheduled milestones.
- (nn) “**Utility Relocation or Protection Activity**” means, for each system per phase or section of the Works, any of the following activities:
- (i) approvals by Utility Companies;
 - (ii) relocation for each specific occurrence of a Utility Infrastructure; and
 - (iii) inspection, acceptance and hand-back of the Utility Infrastructure to the owner of that applicable Utility Infrastructure,
- and “**Utility Relocation or Protection Activities**” means all such activities and associated Milestone Events.
- (oo) “**Variance Analysis Report**” means a narrative submitted in the Works Schedule Report that details the cumulative and monthly Earned Value Metrics and provides an explanation for all trends and variances in the Earned Value Metrics.
- (pp) “**Working Day**” means, for the purposes of this Schedule 12, a day on which Project Co has scheduled specific Works Activities to be carried out, as set out in the “Planned Working Calendar” required by Section 12.1(c)(v).
- (qq) “**Works Activity**” means any of the following:
- (i) Construction Access Management Activities;
 - (ii) Close-out Activities;
 - (iii) Commissioning Activities;
 - (iv) Construction Activities;
 - (v) Design Activities;
 - (vi) PLAA Activities;
 - (vii) Procurement Activities;
 - (viii) Stakeholder Consultation Activities;
 - (ix) Utility Relocation or Protection Activities;
 - (x) Review Procedure Activities; or
 - (xi) activities to be performed:

- (A) that cannot be started or finished without the involvement of Contracting Authority or one or more Stakeholders; or
- (B) that must be started or finished before a Contracting Authority activity or Stakeholder activity can be started or finished,

and “**Works Activities**” means all such activities.

(rr) “**Works Micro-Schedule**” has the meaning given in Section 11(a).

(ss) “**Works Micro-Schedule Activity**” means,

- (i) any Project Co activity that Contracting Authority determines, acting reasonably, is required to be included within a Works Micro-Schedule;
- (ii) all activities required pursuant to Schedule 11 – Quality Management;
- (iii) all activities required pursuant to Schedule 14 – Outline Commissioning Program and Handover; and
- (iv) traffic management, detours, staging, and closures including vehicle and pedestrian traffic,

and “**Works Micro-Schedule Activities**” means all such activities.

(tt) “**Works Micro-Schedule Milestone**” means any of the following Milestone Events:

- (i) any milestone signifying a handover of work between,
 - (A) Project Co and Contracting Authority; or
 - (B) Project Co and any owner of New Third Party Infrastructure; and
- (ii) any additional milestone as requested by Contracting Authority, acting reasonably,

and “**Works Micro-Schedule Milestones**” means all such Milestone Events.

(uu) “**Works Milestone**” means any of the following Milestone Events:

- (i) Commercial Close;
- (ii) Financial Close;
- (iii) open Site Office, pursuant to Schedule 15 – Output Specifications;
- (iv) completion of the TBM Completion Incentive Event;
- (v) completion of the 20m Tunnelling Incentive Event;

- (vi) submission by Project Co of all Design Development Submittals;
- (vii) submission by Project Co of all Construction Document Submittals;
- (viii) completion of the Utility Work;
- (ix) completion of the New Metrolinx Infrastructure;
- (x) completion of the New Third Party Infrastructure;
- (xi) submission by Project Co of all Commissioning Submittals, pursuant to Schedule 14 - Outline Commissioning Program and Handover;
- (xii) Scheduled Substantial Completion Date;
- (xiii) Scheduled Final Completion Date; and
- (xiv) the Longstop Date,

and “**Works Milestones**” means all such Milestone Events.

- (vv) “**Works Schedule Report**” has the meaning given in Section 13.1(a).

1.2 Interpretation

- (a) The Parties acknowledge and agree that, where the term “Baseline Works Schedule” is used in the Project Agreement, other than in this Schedule 12, such term means,
 - (i) the Interim Baseline Works Schedule before the establishment of a Baseline Works Schedule in accordance with Section 4(b); and
 - (ii) the Baseline Works Schedule following the establishment of a Baseline Works Schedule in accordance with Section 4(b).

2. DOCUMENTS COMPRISING THE WORKS SCHEDULE REQUIREMENTS SCHEDULE

- (a) This Schedule 12 is comprised of the following documents:
 - (i) these general provisions of this Schedule 12;
 - (ii) Appendix A – Project Works Schedule Technical Requirements; and
 - (iii) Appendix B – EVM Reporting Requirements.

3. DEVELOPMENT OF PROJECT WORKS SCHEDULES

3.1 Types and Purposes of Project Works Schedules

- (a) Project Co acknowledges and agrees that it will develop and maintain three types of Project Works Schedules as follows:
- (i) baseline schedules consisting of the Proposed Works Schedule, Interim Baseline Works Schedule, the Baseline Works Schedule and, if required, a Revised Baseline Works Schedule(s), each of which is required to demonstrate Project Co's intended schedule to complete the Works and from which progress will be measured;
 - (ii) monthly Progress Works Schedules and, if applicable, Works Micro-Schedules, each of which are required to demonstrate Project Co's actual progress of the Works up to and including the applicable Data Date; and
 - (iii) if requested by Contracting Authority, a Recovery Works Schedule(s) which meets the requirements set out in Section 14 and demonstrates Project Co's plan to mitigate delay and accelerate the Works.

3.2 Sequence of Project Works Schedules

- (a) Subject to the terms and conditions of this Schedule 12, Project Co acknowledges and agrees that the progression and development of the Project Works Schedules shall be as follows:
- (i) Project Co shall develop the Interim Baseline Works Schedule that is Traceable to the Proposed Works Schedule and in accordance with this Schedule 12 and shall submit it to Contracting Authority prior to Financial Close for review, after Financial Close, in accordance Schedule 10 – Review Procedure;
 - (ii) Once the Interim Baseline Works Schedule has been finalized in accordance with Section 4(b) it shall become the Interim Baseline Works Schedule applicable to the Works until replaced by the finalized Baseline Works Schedule;
 - (iii) Project Co shall submit the Baseline Works Schedule in accordance with this Schedule 12 for review in accordance with Schedule 10 – Review Procedure;
 - (iv) Once the Baseline Works Schedule has been finalized in accordance with Section 4(b) it shall become the Baseline Works Schedule that is applicable to the Works until Final Completion, unless it is replaced by a Revised Baseline Works Schedule in accordance with Section 9.2;
 - (v) For every month, from the month after Financial Close until Final Completion, Project Co shall submit an updated Progress Works Schedule in accordance with Section 10 and Schedule 10 – Review Procedure. Project Co shall progress each

updated Progress Works Schedule from the previous month's Progress Works Schedule and shall,

- (A) for the period prior to the finalization of the Baseline Works Schedule, ensure that the Progress Works Schedule is Traceable to and progressed from the Interim Baseline Works Schedule and the immediately previous Progress Works Schedule;
 - (B) for the period after the finalization of the Baseline Works Schedule, ensure that the Progress Works Schedule is Traceable to and progressed from the Baseline Works Schedule and the immediately previous Progress Works Schedule; and
 - (C) label the Progress Works Schedule(s) in sequence as Progress Works Schedule - MMMYYYY Revision 1, Progress Works Schedule – MMMYYYY Revision 2, and so on; and
- (vi) Once each Progress Works Schedule (Progress Works Schedule – MMMYYYY Revision 1, 2, etc.) has been finalized or considered acceptable in accordance with Section 4(b), the applicable revision of the Progress Works Schedule shall become the active Progress Works Schedule for the Project.

4. SUBMISSION AND REVIEW OF PROJECT WORKS SCHEDULES

- (a) Each Project Works Schedule shall be submitted to Contracting Authority, in draft, and shall be reviewed by Contracting Authority and, if applicable, the Independent Certifier and third parties, in accordance with Schedule 10 – Review Procedure.
- (b) No Project Works Schedule shall be finalized or considered an acceptable Project Works Schedule to Contracting Authority until it has received a No Comment or Minor Non-Conformance Designation. For clarity, Project Co is obliged to correct all non-conformances in any Project Works Schedule and detail to Contracting Authority how each Non-Conformance has been addressed before the Project Works Schedule is used for any purpose under this Project Agreement.
- (c) Contracting Authority may, in its sole discretion and at any time, convene a meeting or meetings with Project Co to review a Project Works Schedule and identify those Project Co Parties that are required to attend the meeting.
- (d) If a Project Works Schedule submitted by Project Co receives a “RE-SUBMIT”, “MAJOR NON-CONFORMANCE” or a “CRITICAL NON-CONFORMANCE” comment from Contracting Authority the following shall apply:
 - (i) Contracting Authority may, in its sole discretion and at any time, require Project Co to submit,
 - (A) additional information (including draft versions of an updated Project Works Schedule) to supplement the information originally provided in

the Project Works Schedule or the Works Schedule Report and such information shall be provided promptly by Project Co; and

- (B) one or more corrected versions of the applicable Project Works Schedule (each a “**Corrected Works Schedule**”) and such Corrected Works Schedule shall be provided by Project Co promptly.
- (ii) For clarity,
 - (A) any information provided pursuant to Section 4(d)(i)(A) is not a Works Submittal;
 - (B) a Corrected Works Schedule is a Works Submittal, and the requirements of Schedule 10 – Review Procedure apply; and
 - (C) all liquidated damages and Non-Conformance Reports associated with the submission and review of Project Works Schedules do not apply to the submission and review of Corrected Works Schedules.
 - (iii) In addition to complying with the Corrected Works Schedule requirements set out in Section 4(d)(iv), and notwithstanding the time period for resubmission of Works Submittals set out in Schedule 10 – Review Procedure, Project Co shall correct all non-conformances and deficiencies in a Progress Works Schedule in the next monthly submission of the Progress Works Schedule and shall provide detail in the Works Schedule Report setting out how the non-conformances and deficiencies have been corrected.
 - (iv) For the purpose of ensuring that a Progress Works Schedule is finalized for each month of the Project from Financial Close to Final Completion, Contracting Authority may, in its sole discretion, require Project Co to continue to submit one or more Corrected Works Schedules for a particular month (even after the deadline for the next monthly submission of the Progress Works Schedule) until the Corrected Works Schedule for that particular month receives a No Comment or Minor Non-Conformance Designation.

5. PROJECT WORKS SCHEDULE REQUIREMENTS

5.1 General Requirements for Project Works Schedules and Works Schedule Reports

- (a) Project Co shall ensure that all Project Works Schedules and Works Schedule Reports,
 - (i) are developed in accordance with Good Industry Practice, are compliant with the requirements of the Project Agreement, include appropriate schedule activities, logic, and sequencing;
 - (ii) demonstrate, in a clear and detailed way, Project Co’s planned execution of the Works and, in the case of Works Schedule Reports, the actual progress of the Works from Financial Close until Final Completion;

- (iii) include all Works Activities as they are defined in this Schedule 12;
 - (iv) include all Baseline Tracking Milestones and the corresponding Tracking Milestones;
 - (v) contain sufficient detail to enable Contracting Authority to,
 - (A) monitor the planned schedule for the Works and the progress to complete the Works, and determine whether Project Co is likely to achieve Handover of New Third Party Infrastructure and Substantial Completion by the Scheduled Substantial Completion Date; and
 - (B) manage Contracting Authority interfaces and analyze the schedule impacts of any potential delay, Delay Event or Variation;
 - (vi) take into account, and, subject to Section 32 of the Project Agreement, are consistent with, all dates and timelines that are pre-established in the Project Agreement; and
 - (vii) in the case of Progress Works Schedules, are progressed from and are Traceable to the Interim Baseline Works Schedule or the Baseline Works Schedule, as applicable, and that each successive monthly Progress Works Schedule is updated from and Traceable to the immediately previous Progress Works Schedule.
- (b) Project Co shall immediately give Notice to Contracting Authority of a change to a Works Activity if such change may impact the activities of Contracting Authority or Additional Contractors.
- (c) Project Co shall immediately give Notice to Contracting Authority if the amount of float on a Works Activity that is within 20 Business Days of the critical path changes by five Business Days from the amount of float shown in the previous submission of a Proposed Works Schedule, Interim Baseline Works Schedule, or Baseline Works Schedule, as appropriate. Thereafter, Project Co shall also immediately give an additional Notice to Contracting Authority each time this remaining float on the applicable Works Activity is reduced by five Business Days from the amount of float previously reported to Contracting Authority via such Notice(s).
- (d) If Project Co is obliged to provide any kind of notification (or Notice) to Contracting Authority or the Contracting Authority Representative pursuant to the Project Agreement, the submission of that notification (or Notice) by way of information included in a Project Works Schedule shall not constitute the provision of such Notice or notification by Project Co.

6. RESTRICTIONS ON PROJECT WORKS SCHEDULES

- (a) Project Co shall only be permitted to show the commencement of any Construction Activity for which Project Co has submitted all Works Submittals, including all Design Development Submittals and all Construction Document Submittals related to such

Construction Activities in any of the Project Works Schedules. For clarity, enabling Construction Activities that are subcomponents of larger Construction Activities (e.g. footings of a structure) may be shown to commence so long as Project Co has submitted all Design Development Submittals and all Construction Document Submittals for that enabling subcomponent and sufficient Design Development Submittals and Construction Document Submittals of the larger Construction Activity (subject to agreement by Contracting Authority, acting reasonably).

- (b) Notwithstanding Section 6(a), Project Co shall not be permitted to show the commencement of any Construction Activity in the Progress Works Schedule, other than,
- (i) Construction Activities related to topographical surveys, subsurface investigations or vegetation removal required to complete the Works, provided that Contracting Authority has accepted Project Co's Contractor Site Specific Safety Manual in accordance with Schedule 10 – Review Procedure; and
 - (ii) Construction Activities other than those listed in Section 6(b)(i) for which Project Co has submitted all Works Submittals, including all Design Development Submittals and all Construction Document Submittals related to such Construction Activities, provided that Project Co has,
 - (A) obtained acceptance from Contracting Authority for Project Co's Contractor Site Specific Safety Manual in accordance with Schedule 10 – Review Procedure;
 - (B) developed and implemented its Quality Management System in accordance with Schedule 11 – Quality Management; and
 - (C) submitted each Quality Management Plan in accordance with Schedule 11 – Quality Management and Schedule 10 – Review Procedure.

7. FAILURE TO SUBMIT A BASELINE WORKS SCHEDULE BY THE SUBMISSION DEADLINE AND DELAY EVENTS

- (a) If Project Co successfully claims, in accordance with the Project Agreement, that it has experienced one or more Delay Events and,
- (i) Project Co was late submitting its Baseline Works Schedule measured by the deadline for submission established by Section 9.1(a); or
 - (ii) Project Co failed to achieve a No Comment or Minor Non-Conformance Designation before the expiration of 75 days after Project Co's submission of the first draft of the Baseline Works Schedule,

the number of days that Project Co was late submitting its Baseline Works Schedule plus the number of days in excess of the time period referred to in Section 7(a)(ii) that it took Project Co to achieve a No Comment or Minor Non-Conformance Designation, shall be deducted from the number of days of delay that the Parties determine (or is determined

through the Dispute Resolution Procedure) that Project Co has experienced due to a Delay Event or Delay Events.

- (b) If Project Co includes a claim, assertion or inference that Project Co has experienced a Delay Event or Delay Events in any Project Works Schedule,
 - (i) such claim, assertion or inference shall not constitute the provision of Notice by Project Co of a Delay Event pursuant to Section 32.2(a) of the Project Agreement; and
 - (ii) no comment, question or other response (or lack of a comment, question or other response) by Contracting Authority with respect to the Project Works Schedule shall constitute any acknowledgment or acceptance by Contracting Authority of the Delay Event or Delay Events.

8. INTERIM BASELINE WORKS SCHEDULE

- (a) Prior to Financial Close, Project Co shall submit an interim baseline works schedule (the “**Interim Baseline Works Schedule**”) to Contracting Authority for its review, which review shall take place after Financial Close and in accordance with Schedule 10 – Review Procedure.
- (b) The Interim Baseline Works Schedule shall,
 - (i) have activities, including all Works Activities, that are Traceable to the activities in the Proposed Works Schedule;
 - (ii) supplement the Proposed Works Schedule by adding cost values to all Works Activities to Level 3 level of detail and to comply with this Schedule 12;
 - (iii) include cost values that are assigned to Works Activities within the Interim Baseline Works Schedule and shall add up to and incorporate all costs included in the Financial Model;
 - (iv) conform to this Schedule 12, including, for clarity, Appendix A to this Schedule 12;
 - (v) commence from the earlier of (i) the day upon which the Early Contractor Activities commenced and (ii) the date of Financial Close, and in each case shall show no progress;
 - (vi) include a Data Date that is equal to the date set out in Section 8(b)(v); and
 - (vii) address any comments provided by Contracting Authority to Project Co prior to Financial Close.
- (c) The Parties acknowledge and agree that notwithstanding that the Interim Baseline Works Schedule is based upon the Proposed Works Schedule and provided to Contracting Authority prior to Financial Close, the Interim Baseline Works Schedule shall remain

subject to review by Contracting Authority in accordance with Schedule 10 – Review Procedure, and the treatment of the Interim Baseline Works Schedule as set out in this Section 8 shall not, in any way,

- (i) diminish, reduce or otherwise modify or amend Contracting Authority’s rights under the Project Agreement to review the Interim Baseline Works Schedule in accordance with Schedule 10 – Review Procedure; or
 - (ii) constitute acceptance or comment by Contracting Authority of the Interim Baseline Works Schedule in accordance with Schedule 10 – Review Procedure.
- (d) For the purpose of Contracting Authority deadlines for review of the Interim Baseline Works Schedule provided by Project Co prior to Financial Close, Project Co will be deemed to have submitted the Interim Baseline Works Schedule on the first Business Day after Financial Close.

9. BASELINE WORKS SCHEDULE

9.1 Baseline Works Schedule

- (a) No later than 60 Business Days following Financial Close, Project Co shall submit a baseline works schedule to Contracting Authority for its review in accordance with Schedule 10 – Review Procedure (the “**Baseline Works Schedule**”).
- (b) The Baseline Works Schedule submitted by Project Co,
 - (i) shall have activities, including all Works Activities, which are Traceable to those that appeared in the Interim Baseline Works Schedule;
 - (ii) shall have cost values for all Works Activities to Level 3 level of detail and to comply with this Schedule 12;
 - (iii) include cost values that are assigned to Works Activities within the Baseline Works Schedule and shall add up to and incorporate all costs included in the Financial Model;
 - (iv) shall conform to the requirements of this Schedule 12, for clarity, including Appendix A to this Schedule 12;
 - (v) commence from the earlier of (i) the day upon which the Early Contractor Activities commenced and (ii) the date of Financial Close, and in each case shall show no progress;
 - (vi) include a Data Date that is equal to the date set out in Section 9(b)(v);
 - (vii) shall address any comments on the Interim Baseline Works Schedule provided by Contracting Authority;

- (viii) shall identify all differences between the Interim Baseline Works Schedule and the Baseline Works Schedule;
- (ix) shall not change any Activity ID numbers from Activity ID numbers set out in the Interim Baseline Works Schedule;
- (x) shall organize activities associated with traffic staging in a distinct and separate section of the Baseline Works Schedule under the heading “Traffic management and temporary diversions” in accordance with the following:
 - (A) Project Co shall use level-of-effort type activities without an associated cost indicating on which section of the existing, new or temporary City Road Allowance traffic will be traveling, and indicating the direction of the traffic;
 - (B) Project Co shall ensure that the first day of each traffic staging activity represents the day on which the traffic is switched onto the applicable section of the City Road Allowance;
 - (C) Project Co shall include a level-of-effort activity representing each closed existing roadway or ramp. (i.e. “travel NB, from Street A to Street B, on Diversion Road X”, “travel SB, from Street B to Street A, on existing lane 2 and 3 of Highway 3”);
 - (D) Project Co shall include a level-of-effort activity representing each closed existing roadway or ramp within or outside the City Road Allowance where each of these activities representing multi-modal traffic closures that are linked to the associated activities to be completed during the construction traffic closure (for example, “Closed Interchange A Ramp N-EW”);
 - (E) Project Co shall identify full or partial closure of the City Road Allowance, and associated impacts on multi-modal traffic operations, including any closure of the eastbound right turn lane, or closure of the northern sidewalk;
 - (F) the information set out in this Section 9.1(b)(x) shall be used in combination with the Traffic and Transit Management Plan to illustrate the intended traffic staging; and
- (xi) shall organize above and below grade activities within the City Road Allowance in a distinct and separate section in the Baseline Works Schedule under the heading “ROW Works for TOinview,” using level-of-effort type activities without an associated cost, and in support of the City capital works program and coordination process set out in Schedule 15, Article 3.14.6.4(h)(i), and Project Co shall indicate:
 - (A) the street name on which such activities are performed (i.e. the name of the road right-of-way planned to be occupied);

- (B) the “from street” on which such activities are performed (i.e. the first street that intersects the planned occupied street before the road occupation begins); and
 - (C) the “to street” on which such activities are performed (i.e. the first street that intersects the occupied street after the road occupation ends).
- (c) In its review of the Baseline Works Schedule pursuant to Schedule 10 – Review Procedure, Contracting Authority may, acting reasonably, request that additional milestones or activities be incorporated into the Progress Works Schedule included in the Baseline Works Schedule. Upon such request, Project Co shall promptly revise the Baseline Works Schedule to include the additional milestones and activities.

9.2 Revised Baseline Works Schedule

- (a) If Contracting Authority is of the opinion, acting reasonably, that, as a result of an amendment to the Project Agreement, Delay Event, a Variation Confirmation, or a Variation Directive, the scope and/or schedule of the Works has changed significantly since the finalization of the Baseline Works Schedule, Contracting Authority may require Project Co to replace the Baseline Works Schedule with a revised and updated Baseline Works Schedule (a “**Revised Baseline Works Schedule**”). If Contracting Authority gives Notice to Project Co that it requires a Revised Baseline Works Schedule, Project Co shall prepare and submit a Revised Baseline Works Schedule (as a Works Submittal), no later than 15 Business Days after Project Co receives such Notice, for review pursuant to Schedule 10 – Review Procedure.
- (b) If Project Co is of the opinion, acting reasonably, that, as a result of an amendment to the Project Agreement, a Variation Confirmation, or a Variation Directive, the scope of the Works has changed significantly since the finalization of the Baseline Works Schedule, Project Co may prepare a Revised Baseline Works Schedule for review in accordance with Schedule 10 – Review Procedure. As part of its review of Project Co’s Revised Baseline Works Schedule, Contracting Authority may, acting reasonably, determine whether a Revised Baseline Works Schedule is necessary or appropriate.
- (c) The Revised Baseline Works Schedule submitted by Project Co,
- (i) shall have all requirements as those listed for the Baseline Works Schedule;
 - (ii) shall have activities which are Traceable to those that appeared in the Baseline Works Schedule;
 - (iii) shall identify all differences between the Baseline Works Schedule and the Revised Baseline Works Schedule; and
 - (iv) shall include a Data Date that is determined by Contracting Authority.
- (d) If the Revised Baseline Works Schedule is finalized pursuant to Section 4(b), the Revised Baseline Works Schedule shall replace the Baseline Works Schedule.

10. PROGRESS WORKS SCHEDULE

- (a) Starting on the first month after Financial Close until Final Completion, no later than five Business Days after the last day of each month, Project Co shall submit to Contracting Authority an updated Progress Works Schedule for review by Contracting Authority in accordance with Schedule 10 – Review Procedure. For clarity, the submission of any Progress Works Schedule shall not amend either the Interim Baseline Works Schedule or the Baseline Works Schedule.
- (b) All Progress Works Schedules submitted by Project Co shall,
- (i) have activities that are progressed from and Traceable to those that appeared in the Interim Baseline Works Schedule or the Baseline Works Schedule, as applicable, and the immediately previous Progress Works Schedule;
 - (ii) conform to this Schedule 12, including Appendix A to this Schedule 12;
 - (iii) include cost values for all Works Activities at a Level 3 level of detail and to comply with this Schedule 12;
 - (iv) have a Data Date which is the last day of the month to which the Progress Works Schedule applies unless otherwise agreed to between Contracting Authority and Project Co;
 - (v) document the progress of the Works for all Works Activities and Works Milestones (via three distinct sets of activity bars) and progressed up to the end of the relevant month, measured relative to the Baseline Works Schedule and the Progress Works Schedule of the previously reported month;
 - (vi) include all Baseline Tracking Milestones and Tracking Milestones clearly indicating the variance between each Baseline Tracking Milestone and the corresponding Tracking Milestone;
 - (vii) include updated forecast dates required to complete the Works for all previously noted Works Activities and Works Milestones;
 - (viii) include additional milestones or activities that are requested by Contracting Authority, acting reasonably; and
 - (ix) include any additional Works Activities and Works Milestones, and/or updates to sequencing, activity durations, calendars and logic, permitted under Appendix A to this Schedule 12, which are required to complete the Works (such additional Works Activities and/or Works Milestones, and/or updates to sequencing, activity durations, calendars and logic shall be reported within the corresponding monthly Works Schedule Report, in accordance with this Schedule 12).

11. WORKS MICRO-SCHEDULE

- (a) If, in the opinion of Contracting Authority acting reasonably, a Project Co activity is a Works Micro- Schedule Activity, Contracting Authority may request that Project Co provide a sub-schedule of a Progress Works Schedule that focuses on that Works Micro-Schedule Activity (each, a “**Works Micro-Schedule**”). Each Works Micro-Schedule shall include the elements set out in Sections 11(b)(i) to 11(b)(v).
- (b) No later than 10 Business Days following a request by Contracting Authority (or longer as determined by the Contracting Authority Representative, acting reasonably), Project Co shall submit to Contracting Authority, for review in accordance with Schedule 10 – Review Procedure, a Works Micro-Schedule that includes:
- (i) a title which includes the name “Works Micro-Schedule”, a descriptor of the portion of the Works for which the Works Micro-Schedule is applicable, and the timeline for the Works Micro-Schedule;
 - (ii) all elements required to be included in the Progress Works Schedule;
 - (iii) all Works Micro-Schedule Milestones;
 - (iv) all Works Micro-Schedule Activities;
 - (v) any other activities to support day-by-day or hour-by-hour coordination with certain Contracting Authority Activities that have been identified by Contracting Authority or any other required high level of involvement by Contracting Authority or any other third party or authority as contemplated in the Project Agreement; and
 - (vi) a Data Date that is determined by Contracting Authority.
- (c) Every two weeks, or on a more frequent basis requested by Contracting Authority, acting reasonably, following the initial Works Micro-Schedule submission, Project Co shall submit an updated Works Micro-Schedule until the Works contemplated in the Works Micro-Schedule are complete. Project Co shall clearly illustrate in each updated Works Micro-Schedule, the actual progress of each Works Micro-Schedule Activity in comparison to the planned progress of such Works Micro-Schedule Activity.
- (d) Project Co shall ensure that Works Micro-Schedule Milestones dates and the Works Micro-Schedule Activities dates and durations indicated on the Works Micro-Schedule correspond to the Works Milestone dates and Works Activity dates and durations of the then current Progress Works Schedule.
- (e) Upon Contracting Authority’s request, Project Co shall provide a drawing of the affected Works, which shall clearly illustrate the sequence and timing of the Construction Activities depicted in any Works Micro-Schedule.
- (f) Project Co may request, for consideration by Contracting Authority, acting reasonably, that Project Co be permitted to provide a Works Micro-Schedule in Excel or MS Project.

12. BASIS OF WORKS SCHEDULE REPORT

12.1 Contents of the Report

- (a) With each of the Interim Baseline Works Schedule, the Baseline Works Schedule, the Revised Baseline Works Schedule (if applicable) and each Recovery Works Schedule (if applicable), Project Co shall submit a report on the basic principles underlying the applicable Interim Baseline Works Schedule, the Baseline Works Schedule, the Revised Baseline Works Schedule or the Recovery Works Schedule (each a “**Basis of Works Schedule Report**”).
- (b) Project Co shall ensure that each Basis of Works Schedule Report submitted by Project Co includes a black-lined document comparing the then current version to the immediately previous version of the Basis of Works Schedule Report clearly indicating the changes made by Project Co to the Basis of Works Schedule Report from the immediately previous version.
- (c) Project Co shall ensure that each Basis of Works Schedule Report includes, at a minimum, the following content and sections:
 - (i) a cover page including the title “Report on the Basis of Works Schedule”, the Project title, date of the report, issuance date, version date, and the version number of the associated Project Works Schedule, and the signature of the Project Co Representative who has approved the report;
 - (ii) “Section 1 – Project Description, Schedule Integration Process”, including a written narrative of a high-level description of the Project. Describe Project phases and the inclusion of schedule input from subcontractors, vendors, third parties (such as Governmental Authorities and Utility Companies), and Contracting Authority. Provide a written narrative of the Project scope, in addition to the basis for defining the work breakdown structure (WBS). This section may also cover total quantities for key Project commodities, so Project progress can be better tracked;
 - (iii) “Section 2 – Implementation Strategy”, including a written narrative of no less than 750 words describing the overall approach, proposed sequencing and work plan to complete the Works to achieve Substantial Completion and Final Completion. For clarity, the first Basis of Works Schedule Report shall explain the basis of development of the schedule, the means and methods, the Project Co plans to deploy in order to meet the Project milestones and completion date requirements. This section shall include diagrams to clarify intent and shall be written to identify the strategy or approach to:
 - (A) complete any additional site investigations and other due diligence;
 - (B) complete the design developments and review process;
 - (C) obtain any required major Permits, Licences, Approvals, and Agreements;

- (D) procurement strategy for suppliers and critical components of the Works; and
 - (E) testing and commissioning of the Works and Final Completion and Close-out Activities, including asset handover and development of final As-Built Drawings and manuals;
- (iv) “Section 3 – Critical Path Analysis” including the following:
- (A) Critical Path Risk, including a narrative in tabular form describing the risks to completing the critical path activities to achieve Substantial Completion, affected areas and Project Co’s strategy to mitigate or avoid these risks;
 - (B) overall project “Critical Path Activities” and “Near Critical Path Activities” that includes a Gantt chart schedule that shows the critical path of the Project as well as near critical path activities. Near critical path activities shall be activities having less than 20 Working Days total float Near Critical Path Activities; and
 - (C) longest path – provide programme layouts for the first three longest paths;
- (v) “Section 4 – Works Schedule Structure and Logic”, including the following:
- (A) a narrative to explain how the work breakdown structure (WBS) is organized and how activities are assigned to work breakdown structure level; and
 - (B) a narrative and table to explain the Activity ID and naming convention;
- (vi) “Section 5 – Planned Working Calendar” including a table defining each of the schedule calendars. For each calendar, include the Working Days (days of the week), normal working hours, number and hours of any shifts, and a list of all assumed non-Working Days for any part of the Works (such as statutory holidays, in the Province of Ontario environment restricted work windows, and other similar concepts) and the type of Works Activities that are assigned to each calendar;
- (vii) “Section 6 – Means and Methods”, including an executive summary of the intended means and methods for all Works Activities (Level 3) and include for each a short narrative on the type of work, any constructability issues and if the work will be self-performed by the Construction Contractor or sub-contracted;
- (viii) “Section 7 – Procurement”, including a table defining list of procurement of major items and the lead time detailing fabrication and delivery to site;
- (ix) “Section 8 – Resource Plan”, including for all Works Activities (Level 3):

- (A) a written narrative of no less than 250 words describing how Project Co intends to meet the resource requirements;
 - (B) number of teams and team composition (that is, staffing requirements) including subcontractor work;
 - (C) number and type of heavy machinery or equipment;
 - (D) anticipated resource constraints (such as pandemic related constraints, union related constraints and limits to the number of any specific heavy machinery available in the region); and
 - (E) for all automatic resource leveling functionality used by Project Co, in accordance with Section 1.7(c) of Appendix A to this Schedule 12, Project Co shall include resource limits that will be allocated for each case;
- (x) “Section 9 – Planned Production Rates”, including a table listing each Works Activity (Level 3) and indicating for each:
- (A) the assumed production rate for each activity expressed as a quantity per Working Day (i.e. units/day, ton/day, m/day, m2/day, or m3/day); and
 - (B) the intended schedule calendar or any variance to the normal working hours, such as “restricted to night work” or “Monday to Saturday, 3 x 8 hour shifts”.

For clarity, each Works Activity (Level 3) shall only be listed once in the table, even though more than one instance of the activity type is indicated in the applicable Project Works Schedule unless more than one team or calendar configuration is intended. In the case of multiple instances of the same activity type that reflect different production rates, Project Co shall provide an explanation and assumption for each instance;

- (xi) “Section 10 – Pandemic and Epidemic Response”, including a written narrative of no less than 1000 words:
- (A) describing Project Co’s plans and processes for addressing and implementing the COVID-19 Emergency Public Health Physical Distancing Requirements;
 - (B) describing the detailed steps Project Co intends to take to prepare for and respond to the effects of the COVID-19 Emergency Public Health Physical Distancing Requirements;
 - (C) demonstrating the effects of the COVID-19 Emergency Public Health Physical Distancing Requirements on the Project Works Schedule generally, and specifically with reference to the following areas of the Basis of Works Schedule Report:

- (1) Section 5 - Planned Working Calendar;
 - (2) Section 8 - Resource Plan,
 - (3) Section 9 - Planned Production Rates; and
 - (4) Section 12 - Constraints and Restrictions;
- (D) outlining Project Co's strategy to mitigate the effects described in Section 12.1(c)(xi)(C); and
- (E) outlining how the processes described in Section 12.1(c)(xi)(A) and Section 12.1(c)(xi)(B) will affect the Project Works Schedules;
- (xii) "Section 11 – General Assumptions", including any other assumptions used by Project Co to generate the schedule, including any known or foreseeable constraints or restrictions such as weather, traffic, environmental, utilities, working space, and other similar concepts;
- (xiii) "Section 12 – Constraints and Restrictions", including a table of any imposed date constraints used. For each constraint, the following shall be included: Activity ID, constraint description, constraint type, hard coded date used, reason for the constraint, and the date and reference to approval by Contracting Authority permitting the constraint;
- (xiv) "Section 13 – Planned Value Curve", including a graphical and tabular representation of the cost loaded schedule showing the cost per month and the cumulative curve; and
- (xv) "Section 14 – Planned Labour Resource Curve", including a graphical and tabular representation of the resource loaded schedule showing the hours per month per trade and the cumulative curve.

13. WORKS SCHEDULE REPORT

13.1 Content of the Works Schedule Reports

- (a) Project Co shall submit a report with each Progress Works Schedule (except for the Works Micro-Schedule) for review by Contracting Authority in accordance with Schedule 10 – Review Procedure (each a "**Works Schedule Report**").
- (b) Project Co shall ensure that each Works Schedule Report includes, at a minimum, the following content and sections:
 - (i) a cover page including the title "Works Schedule Report", the Project title, date of the report, issuance date, version date, the version number of the relevant Progress Works Schedule, and the signature of the Project Co Representative approving the report;

-
- (ii) “Section 1 – Executive Summary”, including an executive summary of progress of the Works, noteworthy milestones achieved, schedule variances, and issues and risks that have or that may impact the schedule;
 - (iii) “Section 2 – Update to Project Description, Schedule Integration Process”, including a written narrative of a high-level description of changes to the Project scope and schedule integration. Identify changes to Project phases and the inclusion of schedule input from subcontractors, vendors, third parties (such as Governmental Authorities and Utility Companies), and Contracting Authority. Identify any changes to the work breakdown structure (WBS). This section may also cover actual and remaining quantities for key Project commodities, so Project progress can be better tracked;
 - (iv) “Section 3 – Schedule Analysis” including a schedule analysis, as it exists for the Progress Works Schedule that the Works Schedule Report is applicable to, that includes:
 - (A) the projected Handover dates;
 - (B) the projected Substantial Completion Date compared to the then current Scheduled Substantial Completion Date;
 - (C) the terminal float, calculated as the difference between the then current Scheduled Substantial Completion Date and the date of completion of the last Works Activity on the critical path of the Progress Works Schedule to achieve Substantial Completion, expressed in days;
 - (D) a terminal float graph related to Section 13.1(b)(iv)(C) showing the historically calculated terminal float values for each month from Financial Close up to the applicable reporting period, including the terminal float for the applicable Progress Works Schedule;
 - (E) historical events that have impacted the terminal float for each reporting period; and
 - (F) an assessment and analysis of the risk of delay to the Baseline Works Schedule and the mitigation of such risks in tabular form;
 - (v) “Section 4 – Critical Path Analysis” that includes the following information:
 - (A) overall project critical path and Near Critical Path Activities that includes a Gantt chart schedule that shows the critical path of the Project as well as Near Critical Path Activities;
 - (B) actual progress against baseline target dates for each critical path or Near Critical Path Activity;
 - (C) any activities that were deemed critical or Near Critical Path Activities in the previous submission of a Proposed Works Schedule, Interim Baseline

Works Schedule, Baseline Works Schedule, or Progress Works Schedule, as applicable, and have consumed a minimum of five Working Days float since then;

- (D) any critical path or Near Critical Path Activities and/or milestones that are more than 20 Working Days behind schedule, relative to the Baseline Works Schedule;
- (E) any critical path or Near Critical Path Activities and/or milestones that are more than five Working Days behind schedule relative to the immediately previous Progress Works Schedule;
- (F) a narrative that describes the changes in the critical path or Near Critical Path Activities from the previous month;
- (G) a list of all Works Activities that have become Near Critical Path Activities during the last reporting period;
- (H) a list of all Works Activities that are Near Critical Path Activities that were forecasted in the immediately previous Progress Works Schedule, to start or finish in the current reporting period. Provide the reason for any of those activities that have not started or finished;
- (I) provisions for addressing the behind-schedule critical path or Near Critical Path Activities such that Substantial Completion will occur on the Scheduled Substantial Completion Date;
- (J) a table entitled “Milestone and Critical Path Variances” listing all Works Milestones and all critical path activities and, for each Works Milestone and critical path activity where the variance exceeds five Working Days from the immediately previous Progress Works Schedule, the following information:
 - (I) the Activity ID or milestone identification number and name;
 - (II) the “baseline Start and Finish Dates” in accordance with the Interim Baseline Works Schedule, the Baseline Works Schedule, the Revised Baseline Works Schedule or each Recovery Works Schedule, as applicable;
 - (III) the “planned Start and Finish Dates” set out in the immediately previous Progress Works Schedule;
 - (IV) the “forecast Start and Finish Dates”, or, if applicable, the “Actual Start and Finish Dates”, as set out in the associated Progress Works Schedule and a clear identification of any Works Milestones to be achieved by Project Co in the next 12 week period;

- (V) the physical percentage completion, or status;
- (VI) “Total Variance” expressed in Working Days, calculated as a difference of forecast finish date from the current Progress Works Schedule and the finish date from the Interim Baseline Works Schedule, the Baseline Works Schedule, or the Revised Baseline Works Schedule, as applicable; and
- (VII) the “Reporting Period Variance” calculated as the forecast finish date from the current Progress Works Schedule minus the finish date from the immediately previous Progress Works Schedule, expressed in Working Days;
- (K) a brief narrative on any actual or forecasted delays or issues that might have an impact on the scheduled completion dates of the Works in the Progress Works Schedule and a discussion of the measures being (or to be) adopted by Project Co to overcome them; and
- (L) longest path – provide programme layouts for the first three longest paths, extracted from the current Progress Works Schedule;
- (vi) “Section 5 – Variances” that includes the following information, as it exists for the Progress Works Schedule that the Works Schedule Report is applicable to:
 - (A) a narrative explaining the basis for any required changes to the sequencing of the Works, interdependencies or original activity durations as set out in the Progress Works Schedule;
 - (B) a table entitled “Schedule Changes” listing any:
 - (I) addition, deletion or changes to activity relationships;
 - (II) addition or deletion of activities;
 - (III) changes to any activity attributes including activity description, type, constraint, resources, budgeted cost value;
 - (IV) changes to activity durations;
 - (V) changes to activity calendar;
 - (VI) changes to the calendar default; and
 - (VII) changes to milestones, and any other changes;

For clarity, for each schedule change Project Co shall provide a discrete explanation for circumstances and reasons leading to the change. Project Co shall not provide a general blanket explanation, for example, similar to “change in strategy” or “according to recent

market conditions,” but shall diligently explain in detail the strategy change or the specific conditions that led to that change;

- (vii) “Section 6 – Resources”, including,
 - (A) a graphical and tabular presentation by resource of the utilization of resources in the Works clearly showing the baseline planned resources hours, actual hours, earned hours based on baseline planned work completed and estimate to complete hours; and
 - (B) a report on the availability of resources for the Works noting the percentage of resources secured versus the peak requirement from the baseline and current forecast to complete of each resource;
- (viii) “Section 7 – Progress Performance Management”, including,
 - (A) a report, in the form set out in Appendix B to this Schedule 12, of each of the following in tabular and graphical form:
 - (I) S-Curve showing Planned Value vs. Earned Value;
 - (II) Schedule Performance Index “SPI” trend over time;
 - (III) Cost Performance Index “CPI” trend over time;
 - (IV) To Complete Performance Index “TCPI”; and
 - (V) a Variance Analysis Report,

(collectively, the “**Earned Value Metrics**”) in accordance with the Project Management Institute’s *Practice Standard for Earned Value Measurement – Second Edition*; and
 - (B) a report of each of the Earned Value Metrics,
 - (I) for the entire Project;
 - (II) for each Works location, by phase or by segment; and
 - (III) for each major type of Works Activity, including:
 - (1) utilities;
 - (2) third party infrastructure;
 - (3) civil and roadwork;
 - (4) structural;

- (5) electrical;
 - (6) mechanical;
 - (7) urban and landscaping; and
 - (8) commissioning and handover;
- (ix) “Section 8 – Potential Delay Events”, including a register of all potential Delay Events pursuant to Section 32.1(a) of the Project Agreement and including for each potential Delay Event a description of the circumstance and nature of the claim, the date on which the Notice required pursuant to Section 32.2(a) of the Project Agreement was given by Project Co, and the date on which the details required by Sections 32.2(b) and 32.2(c) of the Project Agreement, the mitigation strategy implemented by Project Co, and the current status of mitigation measures; and
- (x) “Section 9 – Contracting Authority Submittal Review”, including an updated Review Procedure Activities Register, pursuant to Schedule 10 – Review Procedure.

14. RECOVERY WORKS SCHEDULES

14.1 Failure to Maintain Schedule for the Works

- (a) Without limiting any other provision of this Project Agreement but subject to Section 32 of the Project Agreement, if, at any time, Contracting Authority is of the opinion that:
- (i) the actual progress of the Works has fallen significantly behind progress of the Works set out in the Baseline Works Schedule;
 - (ii) Project Co will not achieve Substantial Completion by the Scheduled Substantial Completion Date; or
 - (iii) Project Co will not achieve Substantial Completion by the Longstop Date,
- then Contracting Authority may give Notice to Project Co that Contracting Authority requires Project Co to submit a schedule to recover the delay (each a “**Recovery Works Schedule**”) and a report supporting the Recovery Works Schedule (a “**Recovery Works Schedule Report**”) in accordance with this Section 14.
- (b) No later than five Business Days after the last day of the month (or longer as determined by the Contracting Authority Representative, acting reasonably) in which Project Co receives a Notice from Contracting Authority pursuant to Section 14.1(a), Project Co shall, in lieu of submitting a Progress Works Schedule for the applicable month or a Works Schedule Report for that month, prepare and submit to each of the Contracting Authority Representative and the Independent Certifier:

-
- (i) a Recovery Works Schedule in accordance with the requirements of Section 14.1(d); and
 - (ii) a Recovery Works Schedule Report, in accordance with the requirements of Section 14.1(e).
- (c) Project Co shall ensure that the Recovery Works Schedule and the Recovery Works Schedule Report, taken together, explain the causes of the delay in the progress of the Works (irrespective of whether such delays are Delay Events) and set out a strategy that is compliant with the Project Agreement and will be implemented by Project Co to eliminate or reduce the delay and,
- (i) achieve Substantial Completion by the Scheduled Substantial Completion Date; or
 - (ii) if Substantial Completion cannot be achieved by the Scheduled Substantial Completion Date, achieve Substantial Completion before or by the Longstop Date.
- (d) Project Co's Recovery Works Schedule shall,
- (i) be based on the terms and conditions of the Project Agreement, without amendment;
 - (ii) comply with the Progress Works Schedule requirements set out in Section 10(b);
 - (iii) be entitled "Recovery Works Schedule";
 - (iv) have activities which are Traceable to those that appeared in the Baseline Works Schedule and in the immediately previous Progress Works Schedule; and
 - (v) indicate the variance between the Recovery Works Schedule and,
 - (A) the immediately previous Progress Works Schedule; and
 - (B) the Baseline Works Schedule; and
 - (vi) include a Data Date that is determined by Contracting Authority.
- (e) Project Co's Recovery Works Schedule Report shall,
- (i) comply with the requirements of a Works Schedule Report as set out in Section 13.1;
 - (ii) be entitled "Recovery Works Schedule Report";
 - (iii) set out, in detail and in narrative form, the delays experienced by Project Co in carrying out the Works, including both delays which are and are not Delay Events;

- (iv) set out, in detail and in narrative form, the commercially reasonable mitigation measures being taken by Project Co to mitigate the delay and Project Co's plan to continue the mitigation measures until Substantial Completion;
 - (v) provide, in narrative form, an explanation of the variances between the Recovery Works Schedule and,
 - (A) the immediately previous Progress Works Schedule; and
 - (B) the Baseline Works Schedule; and
 - (vi) provide a revised Basis of Works Schedule Report detailing the assumptions used to generate the Recovery Works Schedule being submitted.
- (f) For clarity, Contracting Authority may require Project Co to meet the requirements of Sections 14.1(b), 14.1(c), 14.1(d) and 14.1(e), each time Contracting Authority reaches the opinion set out in Section 14.1(a).
- (g) Project Co shall notify the Contracting Authority Representative if, at any time Project Co is aware of any development relating to the Project that may reasonably be expected to affect,
- (i) Project Co's ability to achieve Substantial Completion by the Scheduled Substantial Completion Date; or
 - (ii) the functionality or the cost of the Project.
- (h) Contracting Authority may, acting reasonably, give notice to the Lenders' Agent pursuant to Section 15 of the Lenders' Direct Agreement that Project Co is failing to maintain the schedule, together with the relevant information supporting Contracting Authority's opinion that Project Co is failing to maintain the schedule.
- (i) For greater certainty, provided that Project Co has complied with this Section 14 and is not in default under Section 36.1(a)(iii) of the Project Agreement, the failure to meet the requirements to achieve Substantial Completion by the Scheduled Substantial Completion Date, or to achieve Final Completion by the Scheduled Final Completion Date on its own, shall not be a Project Co Event of Default for the purposes of Section 36.1(a)(ii) of the Project Agreement.
- (j) Once the Recovery Works Schedule has been accepted by Contracting Authority in accordance with this Schedule 12, it shall be considered the Progress Works Schedule for the month for which it replaced the Progress Works Schedule.

15. THREE WEEK LOOK-AHEAD SCHEDULE

- (a) Project Co shall prepare and provide a three week look-ahead schedule to Contracting Authority on a weekly basis that includes those elements of the Progress Works Schedule, developed to a greater level of detail for the upcoming three week period, to support the planning and coordination of Contracting Authority's activities, and the

activities to monitor Project Co's completion of the Works, including all Works Milestones, Works Activities and any other applicable milestones and activities in progress, starting, or ending during the applicable three week period. Such three week look-ahead schedule shall be in a form acceptable to Contracting Authority, acting reasonably, such as a Gantt chart or spreadsheet (the "**Three Week Look-Ahead Schedule**").

16. PROJECT SCHEDULES QUALITY MANAGEMENT PLAN

- (a) Project Co shall submit the Project Schedules Quality Management Plan for review by Contracting Authority in accordance with Schedule 10 – Review Procedure and within the timeframe specified in Schedule 11 – Quality Management.

APPENDIX A**PROJECT WORKS SCHEDULE TECHNICAL REQUIREMENTS****1.0 PROJECT WORKS SCHEDULE TECHNICAL REQUIREMENTS****1.1 Software Requirements**

- (a) Project Co shall identify all Works Activities in,
 - (i) a graphical, time-scaled, horizontal bar chart format; and
 - (ii) a geographic, time-location schedule.
- (b) Project Co shall generate the Project Works Schedules using Primavera P6 Professional Release: 8.3.0 or newer and TRIMBLE TILOS, to the satisfaction of Contracting Authority to support the completion of the Works in accordance with Section 13.1 of the Project Agreement. If Project Co recommends, and Contracting Authority approves, the use of scheduling software other than Primavera or Trimble TILOS, Project Co shall provide four licences and all software updates for the duration of the Project Term for use by Contracting Authority. If software-specific terminology is used in this Schedule 12 to define specific requirements, Project Co shall implement measures to achieve a similar or higher level of scheduling control, quality, content and output regardless of the software used to generate the schedules.
- (c) Project Co shall ensure that each Project Works Schedule submitted to Contracting Authority shall be submitted in the following file formats:
 - (i) the native file format of the software used to generate and manage the Project Works Schedules, which shall be the exported .XER file and .XML file for Primavera and .HSP files for TILOS, fully compliant with all requirements of this Project Agreement. The native file shall be fully calculated and in a stable state; and
 - (ii) two, word searchable high-resolution colour Portable Document Format (.PDF) version of each Project Works Schedule with one showing all content, and the other only showing the critical path activities and the Near Critical Path Activities. Each Project Works Schedule layout shall be arranged by work breakdown structure and shall include Activity ID categories, including “Activity Name”, “Original Duration”, “Remaining Duration”, “Percent Complete”, “Start”, “Finish”, “Baseline Start”, “Baseline Finish”, “Total Float”, “Baseline Total Float”, “Total Budgeted Cost” and “Earned Value”.
- (d) Project Co shall submit all tabular information including numerical data or calculations in two electronic soft copy file formats. The first format shall be in the native form such as the Microsoft Excel file format that would allow Contracting Authority to review the data and formulas for the purpose of evaluation and the second format shall be a high resolution PDF version.

- (e) Project Co shall create and maintain a register detailing the submission of each of the Project Works Schedule document sets. The register shall include the Project Works Schedule document title, submission date, publish date, Data Date, revision and version number. The updated register shall be included with each Project Works Schedule submission.
- (f) Upon Contracting Authority’s request, Project Co shall provide the details of the software and any additional software plug-ins used by Project Co, a copy of any templates, and the details for any software settings it has used in its scheduling software, such as calendar settings, user and administrative preferences, schedule settings, and any other information required to enable Contracting Authority to replicate the Project Works Schedules submitted by Project Co using the native file formats provided by Project Co.

1.2 Title Block Requirements

- (a) Project Co shall include in the title-block of each of the Project Works Schedules:
 - (i) Project title;
 - (ii) unique project identifier number;
 - (iii) unique document identifier number;
 - (iv) title of the document (i.e. “the type of Project Works Schedule being submitted”);
 - (v) Project Works Schedule (baseline) Version number, and the date on which the Project Works Schedule was agreed; If the Project Works Schedule has not been agreed, state “not-agreed”;
 - (vi) Data Date;
 - (vii) version and revision number;
 - (viii) author name;
 - (ix) date on which the document was published for distribution (PDF date); and
 - (x) any other information as required pursuant to the Project Agreement.

1.3 Guides and Standards

- (a) In addition to complying with the provisions of the Project Agreement and this Schedule 12, Project Co shall provide all Project Works Schedules in accordance with the following:
 - (i) A Guide to the Project Management Body of Knowledge (PMBOK® Guide)-Sixth Edition;
 - (ii) Construction Extension to the PMBOK Guide -Third Edition;

- (iii) AACE International Recommended Practice, “Schedule Levels of Detail – As Applied in Engineering, Procurement and Construction”;
- (iv) The Practice Standard for Work Breakdown Structures - Second Edition;
- (v) The Practice Standard for Scheduling - Second Edition;
- (vi) The Practice Standard for Earned Value Management - Second Edition; and
- (vii) The Practice Standard for Documenting the Schedule Basis – 38R-06.

1.4 Dates

- (a) Project Co shall include the following dates in each of the Project Works Schedules:
 - (i) if access to any part of the Lands is projected to be needed for longer/later than provided in Schedule 20 – Lands, the date that Project Co will cease to need access to the Lands (for clarity, this will not entitle Project Co to such access);
 - (ii) the dates any actions or acceptances are required by Contracting Authority;
 - (iii) the dates Project Co will provide equipment or assets to Contracting Authority;
 - (iv) the dates that Project Co requires specific information is needed from third parties; and
 - (v) the Lands availability dates as specified in Schedule 20 – Lands.

1.5 General Requirements for Project Works Schedules

- (a) For each Works Activity, Works Milestones or any other activity or Milestone Event included in the Project Works Schedules, the Project Works Schedule shall, at a minimum, provide:
 - (i) a unique activity identification number (“**Activity ID**”) and name or description using consistent and intuitive terminology that would be understandable to Contracting Authority and only using activity descriptions that begin with a verb or work function followed by an object, where the description shall not include percentages and shall, where applicable, contain a location and physical dimension;
 - (ii) early and late start dates, each with a starting time set as the intended work start time for each Working Day, but in any event before noon of the specific day;
 - (iii) early and late finish dates, each with a finish time set as the intended work finish time for each Working Day, but in any event after noon of the specific day;
 - (iv) original planned duration as defined by the Baseline Works Schedule, indicated as Working Days and not days, which duration shall be the most-likely duration

and used for the critical path calculation and shall be, at a minimum one Working Day long. Zero duration activities shall be coded as milestones and not activities;

- (v) for every Works Activity on the critical path or any Works Activity with a float less than 20 Working Days, shortest expected activity duration, to be used for schedule probability and sensitivity analysis;
- (vi) for every Works Activity on the critical path or any Works Activity with a float less than 20 Working Days, longest expected duration, to be used for schedule probability and sensitivity analysis;
- (vii) physical per cent completion with all activities using the same percentage completion type representing the physical completion of the activity (activities shall not use any other completion type such as duration completion or payment percentage);
- (viii) remaining duration, manually entered or calculated when entering the physical per cent completion and the forecasted finish date;
- (ix) expected finish date, manually entered or calculated when entering the physical per cent completion and the remaining duration for in-progress activities only;
- (x) actual duration for all completed activities;
- (xi) calendar assigned;
- (xii) total float or slack (i.e. the amount of time that the activity can be delayed without delaying the Substantial Completion Date);
- (xiii) free float (that is, the amount of time that the activity can be delayed without delaying the early start of its successor activity);
- (xiv) relationship with other activities and milestones;
- (xv) activity or milestone lag;
- (xvi) quantity representing the primary physical dimension of the Works element resulting from the activity as agreed with Contracting Authority (for example, linear meter of wall, square meter of tiles or concrete paving, number of doors) in accordance with the following:
 - (A) each activity with a cost value shall have an associated quantity, where no definable dimension exists, the unit type shall be “sum” and the quantity shall be set to “100”; and
 - (B) the quantity shall be purely used as an indicator of level of efforts and production rate estimated and is not to be used for Earned Value calculations;

- (xvii) quantity unit, which shall include: “units”, “m”, “m²”, “m³”, “ton” or “sum”;
 - (xviii) resources employed to achieve the activity;
 - (xix) user-defined field “Responsible” to indicate the related activity code defining the entity responsible to complete the Works Activity or Works Milestone, including Contracting Authority, third party, Project Co self-performance, or Subcontractor;
 - (xx) user-defined fields, in a format and referencing system agreed to with Contracting Authority, including the required geographic location data for each Construction Activity to allow Project Co and/or Contracting Authority to link the Construction Activity information to a geographic information system or building information system as may be applicable, to enable geographic based analysis and/or to present the schedule information in a time-location format;
 - (xxi) any other user-defined fields, as needed to comply with the requirements of the Project Agreement; and
 - (xxii) Earned Value data of the Works Activities to satisfy the Earned Value Metrics by location and work type as per Schedule 12.
- (b) Project Co shall only assign cost value, resources, and quantity to task dependent activity types, no cost value, resource, or quantity shall be assigned to level-of-effort.
 - (c) All Project Works Schedule activities shall be either task dependent, start milestone, finish milestone or level of effort; no schedule activity shall be resource dependent or work breakdown structure summary-type activity.
 - (d) Project Co shall minimize the use of level-of-effort type activities; level-of-effort type activities shall only be used for the purpose of showing overall duration for a group of activities.
 - (e) No changes to work breakdown structure are to be incorporated in any Progress Works Schedule unless agreed to by Contracting Authority.
 - (f) For Project Co to incorporate additional activities to any Progress Works Schedule, Project Co shall submit to Contracting Authority for acceptance, a Fragnet containing Activity ID, activity names, original duration, relationships between Fragnet activities, relationships between proposed Fragnet and Progress Works Schedule activities. Project Co shall incorporate additional activities only after acceptance by Contracting Authority.
 - (g) Out-of-sequence relationships where an activity has started and the predecessor activity has not finished shall not be modified or removed for schedule activities related to or logically linked to Lands, Construction Document Submittals, or Design Development Submittals.

- (h) Out-of-sequence relationships that are not logically linked to Lands, Construction Document Submittals, or Design Development Submittals shall be modified or removed to clear the out-of-sequence relationship.
- (i) Project Co shall not reverse the reported physical progress percentage for any of the schedule activities unless agreed to by Contracting Authority.
- (j) Project Co shall not change any actual data reported, including actual start date, actual finish date, actual quantity, actual resources and actual cost unless agreed to by Contracting Authority.
- (k) Project Co shall not change the activity name for any Project Works Schedule activity unless required by this Schedule 12 or agreed to by Contracting Authority.
- (l) Activity ID shall not be changed between any Project Works Schedule revisions unless agreed to by Contracting Authority.
- (m) In any current Progress Works Schedule, Project Co shall add activities to show all the current revision cycles, as of the Data Date, for any Works Submittals set out in Schedule 10 – Review Procedure.
- (n) Project Co shall assign all required logic relationships between Works Activities and the relevant Works Submittals activities revision as set out in this Schedule 12, Schedule 10 – Review Procedure and the Project Agreement.
- (o) Project Co shall not change the original duration for an activity in any Progress Works Schedule unless an explanation is provided. For clarity, Project Co shall provide, at a minimum, the previous production rate and resources in comparison to the current intended production rate and resources.
- (p) Project Co shall use the activity codes set out in CKH-SCHD-RFD-003 (P6 Data Dictionary, for Contractors - Subways) dated November 11, 2020 Rev. 00 (and successor documents).

1.6 Deleted Works Activity

- (a) No Works Activity or Works Milestone shall be deleted from any Project Works Schedule for any reason unless accepted by Contracting Authority that an activity or group of activities are no longer required (in that the scope of Project Works that the activities represent have been removed from the Project Agreement).
- (b) If Project Co intends to retire a schedule activity within any Progress Works Schedule for any reason, a “retired activities” node shall be created at work breakdown structure level 1 and to enable a retired activity to be moved to “retired activities” work breakdown structure band.
- (c) For any “retired activities”, all logic dependencies shall be removed for that activity.

- (d) The Progress Works Schedule logic shall be adjusted to ensure that the removal of any deleted activities does not leave any open ends and that the integrity of the schedule logic is not compromised.
- (e) A start and finish milestone (with an appropriate description) shall be added to work breakdown structure on the first instance of an activity deletion. The start milestone shall have a predecessor of the date of Financial Close and the finish milestone a successor of Final Completion. These milestones shall be used as the predecessor and successor to the deleted activities to ensure that they do not appear in any open ended report.
- (f) All deleted Works Activities shall have an actual start date and finish date applied applicable to the month and year of deletion (the day prior to the Data Date of that month) and at completion duration of zero days.
- (g) All activity codes, cost and resource values assigned to that retired activity shall be removed, and cost and resource values associated with that activity shall be reassigned to a “not-started” activity in the schedule.
- (h) Project Co shall explain in the scheduling software “Notebook” section the reason for retirement of an activity (subject to agreement with Contracting Authority).

1.7 Sequencing Logic

- (a) Project Co shall use unconstrained sequencing logic and shall not use imposed date constraints to replace or limit sequencing logic for any Works Activity or Works Milestone, except for the first starting milestone defining the Financial Close date and a Baseline Tracking Milestone unless it is impossible to sequence the Works otherwise, Project Co shall sequence the Works in accordance with the following:
 - (i) When a constraint is used it shall only be of the “start-no-earlier than” or “finish-no-later than” constraint types, and total constrained activities shall be less than [REDACTED] of total activities;
 - (ii) For every imposed date constraint used Project Co shall provide a narrative in the Basis of Works Schedule Report detailing the reason for using the imposed date constraint and the scheduling methodology used to prevent inaccuracy when calculating the critical path and available float; and
 - (iii) Project Co shall refrain from the “Expected Finish”, “Start On”, “Finish On”, “Mandatory Start”, “Mandatory Finish”, or any other similar constraint type, nor any other constraint type that would impact on the float calculations to determine the critical path;
- (b) include inter-relationships and logic dependencies between all Works Activities, Works Milestones or any other activities or milestones included in the Project Works Schedules, and Project Co shall:

-
- (i) use closed-sequence logic, each Works Activity shall have, at a minimum, one predecessor and one successor, and each Works Activity shall have a start and a finish relationship;
 - (ii) use closed-sequence logic for each Works Milestone shall have, at a minimum, one predecessor except for the first Works Milestone denoting Financial Close, and have, at a minimum, one successor except for the last Works Milestone denoting the Final Completion Date, and each Works Milestone except for the first and last shall have a start and a finish relationship, and with the exception of a Baseline Tracking Milestone that shall not be linked to any other Works Activity or Works Milestone;
 - (iii) not use the start-to-finish (SF) activity relationship type between activities unless otherwise agreed to by Contracting Authority;
 - (iv) for each start milestone only define a finish-to-start (FS) or start-to-start (SS) relationship with its predecessor, a start-to-start (SS) or start-to-finish (SF) relationship with its successor, a start-to-start (SS) relationship with any other start milestone, or a start-to-finish (SF) relationship to a finish milestone;
 - (v) for each finish milestone only define a finish-to-finish (FF) or start-to-finish (SF) relationship with its predecessor, a finish-to-start (FS) or finish-to-finish (FF) relationship with its successor, a finish-to-start (FS) relationship to any other start milestone, or a finish-to-finish (FF) with any other finish milestone;
 - (vi) not use a negative lag between any Works Activities and/or Works Milestones unless substantiated by Project Co and accepted by Contracting Authority;
 - (vii) only use positive lag between Works Activities and/or Works Milestones upon substantiation by Project Co and acceptance by Contracting Authority, to model a specific waiting duration for a process directly related to the preceding Works Activity (e.g. concrete curing time);
 - (viii) for any two Works Activities or Works Milestones with a start-to-start (SS) relationship define a lag no longer than the duration of the predecessor duration;
 - (ix) not use finish-to-finish (FF) relationship logic between any two construction Works Activities that are task-dependent unless agreed with Contracting Authority;
 - (x) not use reverse logic, a Works Activity shall not have a finish-to-finish relationship with a predecessor, and a Works Activity shall not have a start-to-start (SS) relationship with a successor; and
 - (xi) only define one relationship per activity or milestone pair, except for the finish-to-finish (FF) and start-to-start (SS) relationship pair that may be used together for an activity or milestone pair;

- (c) Project Co shall be permitted to use automatic resource leveling functionality in the scheduling software if the following is applied:
 - (i) Project Co shall allocate resource limits and report them in Section 8 – Resource Plan of the Basis of Works Schedule Report;
 - (ii) Project Co shall amend software settings to preserve scheduled early dates and late dates;
 - (iii) Project Co shall amend software settings to allow zero over-allocation of resources;
 - (iv) Project Co shall be limited to levelling resources within the total float of an activity;
 - (v) Project Co shall ensure levelled resources do not impact critical path; and
 - (vi) Project Co shall ensure a minimum total float of 10 Working Days is preserved for any resource levelling used.
- (d) Project Co shall ensure that Project Works Schedule shall reflect the constraints related to allowable hours of work on the Site, inclement weather, environmental work windows, or any other schedule related restrictions in establishing the calendars, logical relationships and durations for the activities.

1.8 Calendars

- (a) Project Co shall define and use appropriate non-global project level activity based calendars, and for each calendar define:
 - (i) a descriptive calendar name using intuitive terminology that would be understandable to Contracting Authority;
 - (ii) the intended Working Days and working hours conforming to the requirements of the Project Agreement and any other governing approvals and permits that are used as the basis for critical path calculations, and all non-Working Days;
 - (iii) all non-Working Days including all statutory holidays, winter shut-down, any environmental restricted time periods for the full project timeframe;
 - (iv) the first day of each work week as a Monday; and
 - (v) the starting time for each Working Day to the intended normal starting time, but in any event no later than noon, and set the finish time for each Working Day to the intended normal finish time, but in any event no earlier than noon of the day;
- (b) Project Co shall not use global calendars and shall minimize the number of calendars used.

- (c) For each calendar, Project Co shall include all statutory holidays in the Province of Ontario and shall use days as the planning unit for each activity.
- (d) Project Co shall specify activity durations using only full Working Days and shall not use fractional durations (for example, Project Co shall not use 5.5 days).
- (e) Project Co shall define and use calendars in such a way that:
 - (i) calendar no. 1 shall be a 5-day work week, from Monday to Friday, with statutory holidays;
 - (ii) calendar no. 2 shall be a 6-day work week, from Monday to Saturday, with statutory holidays;
 - (iii) calendar no. 3 shall be a 7-day work week, from Monday to Sunday, with statutory holidays;
 - (iv) calendar no. 4 shall be a 2-day work week, from Saturday to Sunday, with statutory holidays; and
 - (v) calendar no. 5 shall be a seven 7-day work week, from Monday to Sunday, with no statutory holidays.
- (f) Project Co shall assign a calendar to each activity, based on when such activity is planned to occur, and in accordance with the requirements of the Project Agreement.
- (g) Notwithstanding Section 1.8(e), subject to Contracting Authority's approval, Project Co may define and use additional calendars that are necessary for the completion of the Works, in accordance with the requirements of the Project Agreement.
- (h) For each calendar, Project Co shall use only shifts and shift hours which have been previously agreed with Contracting Authority. Project Co shall include a narrative on shifts and shift hours in each Basis of Works Schedule Report.

1.9 Works Activity Level of Detail

- (a) Project Co shall ensure that the Project Works Schedules define the Works Activities to a level of detail that would limit any Works Activity value to a value no greater than **[REDACTED]** of the total Design and Construction Contract value.
- (b) Subject to the Parties otherwise agreeing Project Co shall ensure that durations for any Works Activity, except for single process-step activities (such as manufacturing time, and delivery periods), and "hammock" activities are as follows:
 - (i) any Works Activity shall not be less than one Working Day and no more than 20 Working Days; and
 - (ii) Works Micro-Schedule Activities duration shall be no more than five Working Days.

- (c) Project Co shall ensure that the Project Works Schedules provide the crewing or equipment resource levels for the activities and the dependency logic that is governed by or represents crewing or equipment availability.

1.10 Critical Path

- (a) Project Co shall determine and indicate the critical path applicable to achieve Substantial Completion in each Project Works Schedule. The critical path shall:
 - (i) be calculated using the “retained-logic” scheduling methodology and shall not use a progress override option;
 - (ii) not include any “level of effort” type activities, all activities on the critical path shall be either task-dependent activities or milestones;
 - (iii) be the result of an unmodified software calculation of the critical path using the critical path method. Project Co shall not employ any additional filters or any other manual manipulation whatsoever to calculate the critical path;
 - (iv) be continuous, logic driven, and determined based on unmodified software calculation with no use of additional filters;
 - (v) consist only of activities with a float of less than or equal to zero; and
 - (vi) in situations where the same critical path is not identified as calculated using the software’s various standard critical path filters, provide all critical path alternatives together with Project Co’s narrative on which critical path is most representative of the Works.
- (b) The total number of critical path activities shall be less than [REDACTED] of the total activities, and the number of Near Critical Path Activities shall be less than [REDACTED] of the total activities.
- (c) If required to do so by Contracting Authority, Project Co shall indicate all activities with a total float of up to 20 Working Days.

APPENDIX B

EVM REPORTING REQUIREMENTS

The EVM reporting requirements are set out in the table below.

Project-wide Summary - EV

Data	Financial Close (FC)	FC plus one month (MMMYYY)*	FC plus two months (MMMYYY)*	...	Every month through to Substantial Completion (SC) (MMMYYY)*
PV (Period)					
EV (Period)					
PV (Cumulative)					
EV (Cumulative)					
CPI (Period)					
SPI (Period)					
CPI (Cumulative)					
SPI (Cumulative)					

*date format to be used (MMMYYY) example: JAN2021

MT MTDOS 41633381

SCHEDULE 13

PROJECT CO PROPOSAL EXTRACTS

[REDACTED]

SCHEDULE 14**OUTLINE COMMISSIONING PROGRAM AND HANDOVER****1. DEFINITIONS**

In this Schedule 14, unless the context indicates a contrary intention, terms that are defined in the Project Agreement (and not otherwise defined in this Schedule 14 shall have the meanings given to them in the Project Agreement and the following terms shall have the following meanings:

- 1.1 “**Associated Temporary Works**” has the meaning given in Section 6.9.
- 1.2 “**Commissioning Brief**” has the meaning given in Section 8.1(a).
- 1.3 “**Commissioning Manuals**” has the meaning given in Section 8.1(f).
- 1.4 “**Commissioning Schedule**” has the meaning given in Section 8.1(d).
- 1.5 “**Commissioning Submittals**” has the meaning given in Section 8.1.
- 1.6 “**Commissioning Team**” has the meaning given in Section 4.1.
- 1.7 “**Commissioning Test Plan and Procedures**” has the meaning given in Section 8.1.
- 1.8 “**Monthly Commissioning Reports**” has the meaning given in Section 8.1(e).
- 1.9 “**Outline Commissioning Program**” has the meaning given in Section 8.1(c).
- 1.10 “**Project Co Commissioning Authority**” has the meaning given in Section 3.1.
- 1.11 “**Station Parcel**” means a portion of the City Road Allowance or private properties designated for a future station site as follows:
 - (a) surface areas comprising the future station site between chainages 15+764.943 and 15+939.943 (Scarborough Centre Station) (“**Station Parcel 1**”); and
 - (b) surface areas comprising the future station sites between chainages 13+420.701 and 13+586.801 (Lawrence East Station) (“**Station Parcel 2**”).

2. APPLICABLE STANDARDS

- 2.1 Project Co shall plan, schedule, coordinate and execute all Project Co Commissioning activities for each component of the New Metrolinx Infrastructure and New Third Party Infrastructure in accordance with the requirements of the Project Agreement, including this Schedule 14, Schedule 15 – Output Specifications and the following standards in respect of New Toronto Infrastructure:
 - (a) the City of Toronto Standards; and

- (b) all requirements that are relevant to the commissioning and handover of New Toronto Infrastructure as set out in the Output Specifications and Appendix A to this Schedule 14.

3. PROJECT CO COMMISSIONING AUTHORITY

- 3.1 Project Co shall appoint a commissioning authority to perform the obligations of the Project Co commissioning authority set out in this Schedule 14 (the “**Project Co Commissioning Authority**”).
- 3.2 Project Co Commissioning Authority shall plan, prepare documentation for, and shall execute, the Outline Commissioning Program and ensure compliance with all requirements of this Schedule 14.
- 3.3 The Project Co Commissioning Authority shall:
 - (a) be an individual, with a minimum of fifteen years’ experience in the commissioning of infrastructure of similar scope and complexity to the New Metrolinx Infrastructure and the New Third Party Infrastructure;
 - (b) be licensed by the Association of Professional Engineers of the Province of Ontario; and
 - (c) be familiar with and knowledgeable about each of the standards set out in this Schedule 14 and Schedule 15 – Output Specifications.
- 3.4 The Project Co Commissioning Authority shall be responsible for developing and submitting the Monthly Commissioning Reports to Contracting Authority on a monthly basis in accordance with Section 8.
- 3.5 The Project Co Commissioning Authority shall chair meetings of the Commissioning Team.

4. COMMISSIONING TEAM

- 4.1 The commissioning team shall be comprised of,
 - (a) a representative of Project Co;
 - (b) at least two representatives of Contracting Authority;
 - (c) the Project Co Commissioning Authority;
 - (d) the Independent Certifier;
 - (e) representatives of the Design Team, Construction Contractor, suppliers and Subcontractors as required;
 - (f) representatives of other third parties, as determined by Contracting Authority; and
 - (g) representatives of the relevant equipment manufacturers, as required,

(collectively, the “**Commissioning Team**”).

- 4.2 The Commissioning Team shall be assembled during the design stage and prior to the submission of the Construction Document Submittals.
- 4.3 Prior to the submission of the Construction Document Submittals, the Project Co Commissioning Authority shall convene a meeting of the Commissioning Team for the purpose of establishing commissioning parameters, designating the responsibilities of the various parties involved in the Project Co Commissioning, and establishing the documentation requirements for the Project Co Commissioning.
- 4.4 Following the initial meeting described in Section 4.3, the Commissioning Team shall meet monthly to review the progress of the Project Co Commissioning, unless otherwise agreed by Project Co and Contracting Authority.
- 4.5 In addition to the regular meetings described in Section 4.4, any member of the Commissioning Team may call a meeting of the Commissioning Team with respect to the Project Co Commissioning activities that fall within that member’s field of expertise.

5. HANDOVER OF STATION PARCELS, AND RESTRICTIONS TO ADDITIONAL WORKS

- 5.1 Project Co shall handover the Station Parcels in accordance with the following:
 - (a) Station Parcel 1 no later than **[REDACTED]**;
 - (b) Station Parcel 2 no later than **[REDACTED]**;
- 5.2 Handover of each Station Parcel shall not occur until:
 - (a) after TBM cutter head has passed the south headwall of each Station Parcel by at least **[REDACTED]**; and
 - (b) stable readings of **[REDACTED]** per month or less of all monitoring instrumentation within the ZOI associated with the Bored Tunnel in each Station Parcel is achieved.
- 5.3 Works above or adjacent to the Bored Tunnel will be subject to the following restrictions:
 - (a) Installation of piles or other SOE are permitted, provided that,
 - (i) piles, slurry walls, jet grouted columns or other SOE shall not be installed within the minimum clearance dimension, from the tunnel extrados, set out in the following table:

[REDACTED]

*Note: Offsets are from the extrados of the tunnel lining to the closest face of the SOE

- (b) Bulk excavations may occur but maintaining at least 9.0 meters vertical clearance to the extrados of the Bored Tunnel at Station Parcel 1 and 15.0 meters at Station Parcel 2 respectively. Excavations for Utility Work may occur within Station Parcel 1 and 2 subject to review by the Contracting Authority.

6. PROJECT CO COMMISSIONING RESPONSIBILITIES AND COMMISSIONING PARAMETERS

- 6.1 Project Co shall plan and implement the Project Co Commissioning activities in accordance with:
- (a) this Schedule 14 and all the requirements set out in Schedule 15 – Output Specifications; and
 - (b) all briefs, plans, schedules, test briefs and other Works Submittals required to be prepared by Project Co and submitted to Contracting Authority in accordance with this Schedule 14 and Schedule 10 – Review Procedure.
- 6.2 Project Co shall be solely responsible for implementing and carrying out all Project Co Commissioning activities in relation to all components of the New Metrolinx Infrastructure and the New Third Party Infrastructure as described in this Schedule 14 and Schedule 15 – Output Specifications, including, for clarity, all activities relating to receiving, delivery, construction, installation, testing, acceptance and training set out in this Schedule 14 and Schedule 15 – Output Specifications.
- 6.3 Project Co shall supply, install, start up, test, adjust and clean each component of the New Metrolinx Infrastructure and the New Third Party Infrastructure as required. Where applicable, Project Co shall complete Project Co Commissioning in accordance with the relevant equipment vendor’s guidance.
- 6.4 Project Co shall provide all necessary labour, materials, equipment, testing apparatus and incidentals necessary to completely start up, verify, performance test and carry out Project Co Commissioning for each component of the New Metrolinx Infrastructure and the New Third Party Infrastructure as required.
- 6.5 Project Co shall engage in any joint planning, joint review, and working groups with applicable third parties that may be required to perform the Project Co Commissioning in accordance with this Schedule 14.
- 6.6 Project Co shall comply with all requirements in the Appendices to this Schedule 14 in respect of testing and commissioning of New Third Party Infrastructure to be constructed for the applicable Municipalities.
- 6.7 Project Co Commissioning shall include the commissioning of all components of New Metrolinx Infrastructure, including:
- (a) Bored Tunnel and all associated components, including (but not limited to) the Pre-cast Concrete Tunnel Liner;
 - (b) Shafts; and

- (c) Headwalls.
- 6.8 Project Co Commissioning shall include the commissioning of all components of New Third Party Infrastructure, including:
- (a) sanitary sewers and associated apparatuses and structures, including service connections;
 - (b) watermains and associated apparatuses and structures, including service connections;
 - (c) storm sewers and associated apparatuses and structures, including service connections;
 - (d) retaining walls;
 - (e) THESL infrastructure and service connections;
 - (f) telecommunication utility infrastructure, including service connections;
 - (g) street lighting;
 - (h) roadways;
 - (i) traffic signals;
 - (j) landscaping; and
 - (k) any other structure required by the Works.
- 6.9 Project Co Commissioning shall include the commissioning and handover of all temporary components of the New Metrolinx Infrastructure and all temporary components of the New Third Party Infrastructure, in accordance with Schedule 15 – Output Specifications and this Schedule 14, including the following:
- (a) temporary decking systems, as applicable;
 - (b) temporary fire protection systems;
 - (c) temporary tunnel low points and shafts drainage system (dewatering pumps, piping and systems components);
 - (d) temporary water supply and system components;
 - (e) temporary electrical power supply for site services, including temporary substation and, for clarity, excluding power supply and distribution required for TBM operations;
 - (f) temporary electrical site services, including tunnel lighting;
 - (g) survey control monuments and deep benchmarks;
 - (h) tunnel survey brackets;

- (i) monitoring instrumentation (including ADAMS);
 - (j) temporary traffic signals;
 - (k) temporary signage;
 - (l) temporary roads, including temporary lighting;
 - (m) temporary hoarding;
 - (n) temporary gates, including fences;
 - (o) temporary concrete barriers along the Shafts or Site;
 - (p) all foundations, equipment pads and other similar structures that may have been constructed by Project Co in the LS-1 area as temporary works to support TBM operations;
 - (q) temporary hard standing and pavements;
 - (r) emergency access stair towers and lifts,
- (collectively, the “**Associated Temporary Works**”).
- 6.10 Project Co Commissioning shall include the commissioning of all components of New Third Party Infrastructure in accordance with requirements set out in Appendices to this Schedule 14, and the agreements between Project Co and each Utility Company.
- 6.11 Project Co shall hand over all components of Associated Temporary Works, New Third Party Infrastructure, and New Metrolinx Infrastructure at Substantial Completion.
- 6.12 Project Co, as part of Project Co Commissioning, shall provide evidence that Non-Conformances associated with New Metrolinx Infrastructure and New Third Party Infrastructure have been remedied in accordance with Schedule 11 – Quality Management.
- 6.13 Project Co, as part of the Project Co Commissioning, shall provide Record Drawings and the BIM model with associated data as outlined in Schedule 15 – Output Specifications and Schedule 26 - Record Provisions.
- 6.14 Project Co, as part of the Project Co Commissioning, shall provide technical specifications, Design Certificates and Construction Certificates for the New Metrolinx Infrastructure and New Third Party Infrastructure.
- 7. COMMISSIONING PROCEDURES**
- 7.1 Project Co and the Project Co Commissioning Authority shall plan and prepare all documentation related to Project Co Commissioning, and shall execute all processes and procedures related to Project Co Commissioning in accordance with this Schedule 14 and Schedule 15 – Output Specifications.

- 7.2 Project Co shall modify or replace, re-adjust, re-test, re-balance and re-start any component of New Metrolinx Infrastructure and New Third Party Infrastructure that fails to perform as required by the Project Agreement.
- 7.3 The Project Co Commissioning Authority shall lead the Commissioning Team in reviewing the start-up, verification and performance testing check sheets appropriate to each component of New Metrolinx Infrastructure and New Third Party Infrastructure.
- 7.4 The Project Co Commissioning Authority shall prepare and issue to the members of the Commissioning Team the start-up, verification and performance testing check sheets for each component of New Metrolinx Infrastructure and New Third Party Infrastructure. The Project Co Commissioning Authority shall prepare the check sheets in accordance with the standards listed in Section 2 of this Schedule 14 and shall modify the check sheets in order to reflect the particular needs of the Project.
- 7.5 Each member of the Commissioning Team shall complete the check sheet(s) or portion(s) thereof that pertain to that member’s field of expertise. Members of the Commissioning Team that have direct knowledge and expertise with respect to specific check sheet(s) or portion(s) thereof shall review the check sheet(s) or portion(s) thereof when they have been completed, and shall initial such check sheet(s) to indicate their acceptance of the check sheet(s) or portion(s) thereof.
- 7.6 The Project Co Commissioning Authority shall provide a Notice to Contracting Authority in advance of all start-up, testing, balancing, and training activities with respect to the New Metrolinx Infrastructure and New Third Party Infrastructure. Such Notice shall be given a minimum of five Business Days prior to the commencement of such activities.
- 7.7 Project Co shall ensure that independent third party testing and inspection contractors will be used for all testing and inspections for each component of New Metrolinx Infrastructure and New Third Party Infrastructure required by this Schedule 14.
- 7.8 Project Co shall develop and incorporate commissioning specifications into the Construction Document Submittals.
- 7.9 Project Co shall ensure that records of all Project Co Commissioning activities are available on archive video for use by Contracting Authority and Contracting Authority Representatives as requested by Contracting Authority.

8. COMMISSIONING SUBMITTALS

- 8.1 Project Co shall prepare and submit the following Works Submittals to the Independent Certifier and Contracting Authority for review in accordance with Schedule 10 – Review Procedure:
- (a) prior to the commencement of the Construction Activities, a commissioning brief describing the commissioning approach to all design and performance requirements of the New Metrolinx Infrastructure and the New Third Party Infrastructure (the “**Commissioning Brief**”);
 - (b) the test plan and related procedures to verify all elements and equipment, including the following:

- (i) test objectives;
- (ii) prerequisite training required;
- (iii) test methods;
- (iv) test equipment;
- (v) test schedule;
- (vi) test location;
- (vii) test scenarios;
- (viii) test pass/fail criteria;
- (ix) reference specifications and standards;
- (x) qualified and trained staffing, including safety certification and training requirements from Contracting Authority and third parties, as required;
- (xi) identification of professional personnel and resumes of those responsible for sign-off;
- (xii) required safety methods; and
- (xiii) test reports, results and recommendations,

(collectively, the “**Commissioning Test Plan and Procedures**”);

- (c) a detailed verification, test, acceptance and commissioning plan for each component of New Metrolinx Infrastructure and New Third Party Infrastructure (the “**Outline Commissioning Program**”) in accordance with the following:
 - (i) no later than three months after Financial Close, Project Co shall submit a draft of the Outline Commissioning Program to Contracting Authority for review in accordance with Schedule 10 – Review Procedure;
 - (ii) no later than six months after commencement of the Construction Activities, Project Co shall update and re-submit the Outline Commissioning Program to the Contracting Authority for review in accordance with Schedule 10 – Review Procedure; and
 - (iii) Project Co shall update the Outline Commissioning Program, as required, addressing changes to the program. If an update is required, Project Co shall submit the updated Outline Commissioning Program to Contracting Authority for review in accordance with Schedule 10 – Review Procedure;

-
- (d) in the timeframe set out in the Outline Commissioning Program as reviewed by Contracting Authority in accordance with Schedule 10 – Review Procedure, a detailed schedule of Project Co Commissioning activities for each item of New Metrolinx Infrastructure and New Third Party Infrastructure (the “**Commissioning Schedule**”);
- (i) Project Co shall incorporate the Commissioning Schedule into the Works Schedule no later than six months after commencement of the Construction Activities; and
 - (ii) the Commissioning Schedule shall include scheduled submission dates for Record Drawings as part of the Outline Commissioning Program;
- (e) monthly commissioning reports that sets out Project Co’s progress of the Project Co Commissioning (the “**Monthly Commissioning Reports**”);
- (f) in the timeframe set out in the Outline Commissioning Program as reviewed by Contracting Authority in accordance with Schedule 10 – Review Procedure, detailed commissioning manuals for each component of the New Metrolinx Infrastructure and New Third Party Infrastructure (the “**Commissioning Manuals**”), which shall include:
- (i) identification of each item of New Metrolinx Infrastructure and New Third Party Infrastructure to be commissioned;
 - (ii) the date each item of New Metrolinx Infrastructure and New Third Party Infrastructure will be commissioned;
 - (iii) all test forms, verification forms, quality records and performance test forms for each component of the New Metrolinx Infrastructure and New Third Party Infrastructure; and
 - (iv) final acceptance check sheets signed off by the Commissioning Team for each item of the New Metrolinx Infrastructure and New Third Party Infrastructure; and
- (g) records of the commissioning and acceptance of New Third Party Infrastructure from the applicable third party owner,
- (collectively, the “**Commissioning Submittals**”).
- 8.2 All hard copies of the Commissioning Manuals submitted by Project Co in accordance with Section 8.1(g),
- (a) shall be submitted as bound copies in hard cover within D-ring binders with a transparent cover on front and spine, and have machine printable index dividers to organize each manual by component of the New Metrolinx Infrastructure and New Third Party Infrastructure;

- (b) shall be clearly labeled with:
 - (i) the name and logo of Contracting Authority;
 - (ii) the name of the Project;
 - (iii) the Project number;
 - (iv) the identification of each component of New Metrolinx Infrastructure and New Third Party Infrastructure that was commissioned by Project Co; and
 - (v) the date on which each component of New Metrolinx Infrastructure and New Third Party Infrastructure was commissioned by Project Co; and
- (c) shall have machine printable index dividers to organize each manual by component of the New Metrolinx Infrastructure and New Third Party Infrastructure and by Project Co Commissioning stage, and each commissioning manual shall include:
 - (i) test reports;
 - (ii) equipment check sheets (for start-up, verification and performance) for each item of equipment provided as part of the Works;
 - (iii) New Metrolinx Infrastructure commissioning check sheets for each component of New Metrolinx Infrastructure;
 - (iv) Final Completion acceptance check sheets for each component of New Metrolinx Infrastructure;
 - (v) New Third Party Infrastructure commissioning check sheets for each component of the New Third Party Infrastructure;
 - (vi) Associated Temporary Works commissioning check sheets for each component; and
 - (vii) warranty terms, warranty certificates, extended warranty details (if applicable) and warranty start/end dates for all applicable components of the New Metrolinx Infrastructure and New Third Party Infrastructure.

9. OUTLINE COMMISSIONING PROGRAM

- 9.1 Project Co shall prepare and execute a verification, test, acceptance and commissioning plan in order to demonstrate the successful Commissioning of the New Metrolinx Infrastructure and New Third Party Infrastructure in accordance with the Project Agreement.
- 9.2 Project Co shall at a minimum include the following in the Outline Commissioning Program:
 - (a) a description of all commissioning activities to be carried out during each stage of the Project;

- (b) resumes of key personnel involved detailing years of experience;
 - (c) organization chart of the Commissioning Team and their discipline responsibilities;
 - (d) a description of planned resources;
 - (e) the commissioning progress management forms and the summary forms to be used for the commissioning reports; and
 - (f) a description of safety and security certification and defect correction activities.
- 9.3 The Outline Commissioning Program shall demonstrate how Project Co intends to validate and verify that all requirements, including all functional, technical, quality and safety requirements, and performance criteria set out in the Project Agreement have been met or exceeded for the New Metrolinx Infrastructure and New Third Party Infrastructure.
- 10. COORDINATION WITH CONTRACTING AUTHORITY**
- 10.1 Project Co shall coordinate with and provide reasonable assistance to Contracting Authority in implementing and coordinating all commissioning activities.
- 10.2 The Project Co Commissioning Authority shall co-ordinate with Contracting Authority throughout the performance of Project Co Commissioning in accordance with this Schedule 14, including the following:
- (a) review of test, verification and performance test forms;
 - (b) review of commissioning progress management forms and performance testing;
 - (c) review of the Outline Commissioning Program;
 - (d) review of the Commissioning Schedule;
 - (e) sample witnessing of tests and performance testing;
 - (f) review of the operations and maintenance manuals;
 - (g) sample witnessing of seasonal performance testing;
 - (h) review of the Monthly Commissioning Reports; and
 - (i) attendance at commissioning meetings.
- 10.3 Project Co shall report to Contracting Authority regarding the progress of Project Co Commissioning.
- 10.4 For greater clarity, Contracting Authority shall not bear any responsibility for Project Co Commissioning or for any commissioning with respect to this Project.

APPENDIX A**NEW TORONTO INFRASTRUCTURE****1. DEFINITIONS**

The following terms shall have the following meanings for purposes of this Appendix A:

- (a) **“Operations Data and Maintenance Manuals”** means the operations data and maintenance manuals Project Co is required to deliver pursuant to Section 4.3 of Attachment 1 of this Appendix A.
- (b) **“Special Infrastructure”** means, for purposes of this Appendix A, the assets described in the Toronto Water Wellness Report under the headings of “Underground Storage Tanks/Superpipes”, “Oil Grit Separators” and “Wet or Dry Pond or Other Stormwater Management Facilities”.
- (c) **“Toronto Water Wellness Report”** means the report attached as Attachment 2 to this Appendix A.
- (d) **“Witness and Hold Point”** has the meaning given in Schedule 11 – Quality Management.

2. INSPECTION, COMMISSIONING, AND HANDOVER**2.1 Interim Inspection of New Toronto Infrastructure**

- (a) Project Co shall comply with all requirements set out in this Schedule 14 (including, for clarity, this Appendix A) as well as all requirements set out in Section 25.14 of the Project Agreement in connection with interim inspections of New Toronto Infrastructure.
- (b) Project Co shall notify Contracting Authority and the City of Toronto of achievement of all milestones set out in the Inspection and Test Plan in respect of New Toronto Infrastructure as well as all Witness and Hold Points in respect of New Toronto Infrastructure.

2.2 Final Inspection of New Toronto Infrastructure

- (a) Project Co shall comply with all requirements set out in this Schedule 14 (including, for clarity, this Appendix A) as well as all requirements set out in Section 25.14 of the Project Agreement in connection with final inspections of New Toronto Infrastructure.
- (b) Prior to final inspection of New Toronto Infrastructure, Project Co shall, in addition to all other requirements set out in Section 25.14 of the Project Agreement:
 - (i) remove all Associated Temporary Works no longer required from the site subject to final inspection, including but not limited to fencing, sign board, samples, and any other items not considered to be part of New Metrolinx Infrastructure or New Toronto Infrastructure, except for those items required for ongoing Works; and

- (ii) clean all New Toronto Infrastructure prior to Handover following final inspection of such New Toronto Infrastructure including:
 - (A) sweeping/spraying of roads, boulevards and sidewalks;
 - (B) flushing of sewers; and
 - (C) cleaning out of catch basins, maintenance holes, and valve chambers,all taking into account ongoing Works.
- (c) Prior to final inspection of New Toronto Infrastructure, Project Co shall, in addition to all other requirements set out in Section 25.14 of the Project Agreement, prepare a record of the following, and submit it to Contracting Authority for review in accordance with Schedule 10 – Review Procedure at least 20 Business Days before the final inspection:
 - (i) a list of any required Operations Data and Maintenance Manuals, as required for New Toronto Infrastructure that is Special Infrastructure and highways, as set forth in Attachment 1 of this Appendix A.

2.3 Pre-Conditions to Handover of New Toronto Infrastructure

- (a) In addition to any other requirements in the Project Agreement, Project Co shall satisfy the requirements of this Appendix A, prior to, and as a condition of, Handover of New Toronto Infrastructure.

3. REQUIREMENTS FOR COMMISSIONING, HANDOVER, AND ACCEPTANCE

3.1 Applicable to all New Toronto Infrastructure

- (a) Project Co shall, prior to and as a pre-condition of achievement of Handover of New Toronto Infrastructure, submit the following to Contracting Authority in accordance with Section 4 of this Appendix A for review in accordance with Schedule 10 – Review Procedure:
 - (i) certification of the New Toronto Infrastructure in accordance with Section 3 of this Appendix A; and
 - (ii) final Record Drawings in accordance with Sections 4.1 and 4.2 of this Appendix A, unless final Record Drawings are not reasonably available at the time of commissioning of the New Toronto Infrastructure, in which case Project Co shall:
 - (A) provide red-lined as-built drawings within ten Business Days after final inspection of the New Toronto Infrastructure; and
 - (B) provide final Record Drawings in accordance with Sections 4.1 and 4.2 of this Appendix A within three (3) months of Handover of such New Toronto Infrastructure.

3.2 Applicable to Sanitary, Storm and Combined Sewers

- (a) For New Toronto Infrastructure comprised of sanitary sewers, storm sewers, and combined sewers, and for maintenance holes and catchbasins in addition to the documents and other items required to be delivered and/or performed by Project Co pursuant to Section 3.1 of this Appendix A and other documents, actions or deliverables otherwise required to be delivered or performed pursuant to the Project Agreement, Project Co shall, prior to and as a pre-condition of Handover of such New Toronto Infrastructure, complete and perform the following:
- (i) complete all tasks listed under the headings ‘Sanitary, Storm and Combined Sewers’, ‘Maintenance Hole’, and ‘Catchbasins’ in the Toronto Water Wellness Report to the satisfaction of Contracting Authority or the City of Toronto (if a Notice of Delegation has been issued under the Project Agreement in respect of such New Toronto Infrastructure); and
 - (ii) Project Co shall submit the following to Contracting Authority in accordance with Section 4.1 of this Appendix A, for review in accordance with Schedule 10 – Review Procedure:
 - (A) a copy of the Toronto Water Wellness Report prepared, stamped, signed and dated by a professional engineer licensed in the Province of Ontario for all applicable items under the headings ‘Sanitary, Storm and Combined Sewers’, ‘Maintenance Hole’, and ‘Catchbasins’ in the Toronto Water Wellness Report;
 - (B) material testing results;
 - (C) performance test results;
 - (D) manufacturer’s manuals and instructions;
 - (E) compaction testing results for backfilling and paving;
 - (F) video report and detailed written report and electronic files containing chainage-specific defect codes from a CCTV inspection. Where deficiencies have been identified by the CCTV inspection, Contracting Authority shall arrange for additional examinations as required to demonstrate that all deficiencies have been rectified to the satisfaction of Contracting Authority or the City of Toronto (if a Notice of Delegation has been issued under the Project Agreement in respect of such New Toronto Infrastructure);
 - (G) design documents, including design sheets, reports, and technical studies; and
 - (H) service connection cards prepared on the standard form supplied by Contracting Authority or the City of Toronto.

3.3 Applicable to Watermains

- (a) For New Toronto Infrastructure comprised of watermains, in addition to the documents and other items required to be delivered and/or performed by Project Co pursuant to Section 3.1 of this Appendix A and other documents, actions or deliverables otherwise required to be delivered or performed pursuant to the Project Agreement, Project Co shall, prior to and as a pre-condition of Handover of such New Toronto Infrastructure, complete and perform the following:
- (i) complete all tasks listed under the headings ‘Watermain’, ‘Fire Hydrants’, ‘Tracer Wires’, and ‘Water Service Connections’ in the Toronto Water Wellness Report to the satisfaction of Contracting Authority or the City (if a Notice of Delegation has been issued under the Project Agreement in respect of such New Toronto Infrastructure); and
 - (ii) submit the following to Contracting Authority in accordance with Section 4.1 of this Appendix A, for review in accordance with Schedule 10 – Review Procedure:
 - (A) a copy of the Toronto Water Wellness Report prepared, stamped, signed and dated by a professional engineer licensed in the Province of Ontario for all applicable items under the headings ‘Watermain’, ‘Fire Hydrants’, ‘Tracer Wires’, and ‘Water Service Connections’;
 - (B) material testing results;
 - (C) performance test results;
 - (D) manufacturer’s manuals and instructions;
 - (E) compaction testing results for backfilling and paving;
 - (F) documentation related to the applicable hydrostatic pressure testing, disinfection/chlorination and bacteriological test results, and tracer-wire reports;
 - (G) design documents, including design reports, and technical studies; and
 - (H) service connection cards prepared on the standard form supplied by Contracting Authority or the City of Toronto.

3.4 Applicable to Special Infrastructure

- (a) For New Toronto Infrastructure comprised of Special Infrastructure, in addition to the documents and other items required to be delivered and/or performed by Project Co pursuant to Section 3.1 of this Appendix A and other documents, actions or deliverables otherwise required to be delivered or performed pursuant to the Project Agreement, Project Co shall, prior to and as a pre-condition of Handover of such New Toronto Infrastructure, complete and perform the following:

-
- (i) complete all tasks listed under the headings ‘Underground Storage Tanks/Superpipes’, ‘Oil Grit Separators’, and ‘Wet or Dry Pond or Other Stormwater Management Facilities’ in the Toronto Water Wellness Report to the satisfaction of Contracting Authority or the City of Toronto (if a Notice of Delegation has been issued under the Project Agreement in respect of such New Toronto Infrastructure);
 - (ii) submit the following to Contracting Authority in accordance with Section 4.1 of this Appendix A, for review in accordance with Schedule 10 – Review Procedure:
 - (A) a copy of the Toronto Water Wellness Report prepared, stamped, signed and dated by a professional engineer licensed in the Province of Ontario for all applicable items under the headings ‘Underground Storage Tanks/Superpipes’, ‘Oil Grit Separators’, and ‘Wet or Dry Pond or Other Stormwater Management Facilities’;
 - (B) material testing results;
 - (C) performance test results;
 - (D) manufacturer’s manuals and instructions;
 - (E) compaction testing results for backfilling and paving;
 - (F) video report and detailed written report and electronic files containing chainage-specific defect codes from a CCTV inspection. Where deficiencies have been identified by the CCTV inspection, Project Co shall arrange for additional examinations as required to demonstrate that all deficiencies have been rectified to the satisfaction of Contracting Authority;
 - (G) design documents, including design sheets, reports, and technical studies; and
 - (H) Operations Data and Maintenance Manuals in accordance with the requirements set out in Section 4.3 of this Appendix A;
 - (iii) Project Co shall have provided system demonstration and training to the City of Toronto for all Special Infrastructure, which training shall include hands-on instruction of City of Toronto personnel in the operation, adjustment and maintenance of the Special Infrastructure. At the time of the instruction, Project Co shall provide an operations and maintenance manual (in form and content to satisfy the requirements of Section 4.3 of this Appendix A), which shall be used by Project Co to assist in the instructions; and
 - (iv) Project Co shall complete all other requirements for commissioning and acceptance that are conditions to approvals and permits obtained for Special Infrastructure.

3.5 Applicable to Highways

- (a) For New Toronto Infrastructure comprised of highways as defined in the City of Toronto Act, (Ontario), in addition to the documents and other items required to be delivered and/or performed by Project Co pursuant to Section 3.1 of this Appendix A and other documents, actions or deliverables otherwise required to be delivered or performed pursuant to the Project Agreement, Project Co shall, prior to and as a pre-condition of Handover of such New Toronto Infrastructure, complete and perform, as applicable, the following:
- (i) rectify and repair of all damages, settlements and depressions to the above ground road subgrade;
 - (ii) submit the following to Contracting Authority in accordance with Section 4.1 of this Appendix A, for review in accordance with Schedule 10 – Review Procedure:
 - (A) Electrical Safety Authority (ESA) certificate for any traffic signal plant including red light cameras; and
 - (B) inspection and testing reports for all traffic plant including traffic control signals, red light cameras, and arterial cameras; and
 - (iii) for any special equipment associated with traffic management, Project Co shall provide:
 - (A) system demonstration and training to the City of Toronto for all highways, which training shall include hands-on instruction of City of Toronto personnel in the operation, adjustment and maintenance of the highways. At the time of the instruction, Project Co shall also provide an Operations and Maintenance Manual (in form and content to satisfy the requirements of Section 4.3 of this Appendix A), which shall be used by Project Co to assist in the instructions; and
 - (B) an Operations Data and Maintenance Manual, in form and content shall satisfy the requirements in Section 4.3 of this Appendix A.

3.6 Applicable to Street Trees

- (a) For New Toronto Infrastructure comprised of street trees, in addition to the documents and other items required to be delivered and/or performed by Project Co pursuant to Section 3.1 of this Appendix A and other documents, actions or deliverables otherwise required to be delivered or performed pursuant to the Project Agreement, Project Co shall, prior to and as a pre-condition of Handover of such New Toronto Infrastructure, submit the following in accordance with Section 4.1 of this Appendix A:
- (i) A full list of trees planted by Project Co on public lands, including on City Road Allowance.

4. DOCUMENTATION

4.1 Submittals

- (a) Project Co shall submit to Contracting Authority all documentation (including drawings) required to be delivered under this Appendix A as follows:
 - (i) to Contracting Authority for review in accordance with Schedule 10 – Review Procedure; and
 - (ii) in the following formats and quantities in respect of all Record Drawings required to be delivered to Contracting Authority pursuant to this Appendix A:
 - (A) for Record Drawings, four CDs/DVDs, one full size hard copy set, and one (1) reduced size hard copy set unless specified otherwise by Contracting Authority;
 - (B) for Special Infrastructure, five CDs/DVDs and two hard copy sets, unless specified otherwise by Contracting Authority;
 - (C) for all other documents (other than documents referenced in (A) and (B)), four CDs/DVDs and one hard copy set, unless otherwise specified by Contracting Authority; and
 - (D) each of the foregoing shall be in PDF format generated from the source electronic document and not scanned from hard copies.

4.2 Record Drawings

- (a) Project Co shall provide Record Drawings for the New Toronto Infrastructure in compliance with the City of Toronto Standards, or such other standards as are agreed to by Project Co and Contracting Authority.
- (b) Project Co shall provide Record Drawings for New Toronto Infrastructure for review in accordance with Schedule 10 – Review Procedure, as follows:
 - (i) Record Drawings shall be in Microstation and PDF format showing the final plan and profile locations of the New Toronto Infrastructure, including service connections;
 - (ii) only the plan and profile drawings shall be updated and submitted as the Record Drawings;
 - (iii) profile drawings shall not be required if profile drawings are not required by the City of Toronto during the approval and permitting stage; and
 - (iv) Record Drawings shall accurately record deviations from the original drawings accepted by the City of Toronto, including changes caused by site conditions.

4.3 Operations Data and Maintenance Manuals

- (a) In respect of New Toronto Infrastructure that is Special Infrastructure or highways, as contemplated in Sections 3.4 and 3.5 of this Appendix A, Project Co shall prepare Operations Data and Maintenance Manuals for Contracting Authority and City in accordance with the following requirements:
- (i) vinyl, hard covered, three ring, loose leaf binder for 215 mm X 280 mm sized paper;
 - (ii) title sheet, labelled ‘Operations Data and Maintenance Manual’, project name, date, and list of contents;
 - (iii) contents organized in the respective sections of work with each section marked by labelled tabs protected with celluloid covers fastened to hard paper dividing sheets. The electronic copy shall be bookmarked with the list of contents hyperlinked;
 - (iv) details of operation and maintenance instructions for equipment and systems, including a complete list of equipment and part lists consisting of make, size, capacity, and serial number;
 - (v) names, addresses, and phone numbers of subcontractors and suppliers;
 - (vi) warranties showing the ‘Title’ of the Project, guarantee periods reflecting the start date, a clear indication on parts and parcels that are covered under guarantee, and due authorization of competent signatories; and
 - (vii) any additional materials used in the applicable New Toronto Infrastructure showing names of manufacturers and source supplies including manufacturers’ literature.
- (b) All PDF documents included within all Operations Data and Maintenance Manuals shall be generated from the source electronic document and not scanned from hard copies.

5. CERTIFICATION

- (a) Prior to achievement of Handover of New Toronto Infrastructure, and as a pre-condition of Handover, Project Co shall submit to Contracting Authority or the City of Toronto (if a Notice of Delegation has been issued in respect of the New Toronto Infrastructure) written certification of the New Toronto Infrastructure in the form attached as Attachment 1 of this Appendix A. Each certificate shall be stamped, signed and dated by professionals licensed in the Province of Ontario qualified to certify the specific type of work and equipment being certified.

ATTACHMENT 1

FORM OF NEW TORONTO INFRASTRUCTURE CERTIFICATION

Certificate Reference Number [...]
(insert reference number)

CERTIFICATE OF MUNICIPAL INFRASTRUCTURE

A. General

1. This certificate is in respect of:
 - (a) [...] (insert details of the New Toronto Infrastructure to be certified) (the “**Certificate**”); and
 - (b) the Project Agreement between Contracting Authority and Project Co dated [...] (*insert date of Project Agreement*) (the “**Project Agreement**”) relating to the Project.
2. Defined terms and expressions used in the Project Agreement have the same meanings in this Certificate.
3. This Certificate is used by Project Co for certifying, as applicable:
 - (a) the substantial completion of construction activities in respect of those components of the Works set out in paragraph A1 of this Construction Certificate; or
 - (b) the total completion of construction activities in respect of any Reinstatement Work carried out by the Construction Contractor pursuant to Section 11.11 of the Project Agreement in accordance with a Reinstatement Plan,

in accordance with the Project Agreement, City of Toronto Standards, the designs and plans submitted by Project Co and accepted by the City of Toronto, other standards that have been agreed to in writing by the City of Toronto and Project Co, and good engineering practices.

B. Construction Contractor’s Statement

1. We certify that the components of the Works set out in paragraph A1 of this Construction Certificate have been designed, constructed, **[substantially completed as set out in paragraph A3(a)], [totally completed as set out in paragraph A3(b)]**, commissioned and tested in all respects in accordance with: (*Inapplicable language to be deleted*)
 - (a) the relevant Design Data, Design Certificates, and Construction Certificates pursuant to Schedule 10 of the Project Agreement in each case to which there has been no objection under the Review Procedure;
 - (b) the provisions of the Project Agreement, including all applicable Output Specifications, as amended by the following Variation(s):

- (i) [...] (List, if any, the change(s) made by the issue of any Variation(s)); and
- (c) the requirements of City of Toronto Standards, the designs and plans submitted by Project Co and accepted by the City of Toronto, other standards that have been agreed to in writing by the City of Toronto and Project Co, and good engineering practices.

Signed..... (Construction Contractor’s representative)

Name.....

Date.....

C. Design Team’s Statement

1. We certify that the components of the Works set out in paragraph A1 of this Construction Certificate have been designed, constructed, **[substantially completed as set out in paragraph A3(a)], [totally completed as set out in paragraph A3(b)]**, commissioned and tested in all respects in accordance with: the requirements for examination of the Works contained in the Design Quality Management Plan and the Construction Quality Management Plan and utilizing the standards of care, skill and diligence that, in accordance with the standards of our profession, are required of experienced professionals undertaking such examinations. *(Inapplicable language to be deleted)*

2. We further certify that in our professional opinion the components of the Works set out in paragraph A1 of this Construction Certificate have been designed, constructed, **[substantially completed as set out in paragraph A3(a)], [totally completed as set out in paragraph A3(b)]**, commissioned and tested in all respects in accordance with: *(Inapplicable language to be deleted)*

(a) the relevant Design Data, Design Certificates, and Construction Certificates pursuant to Schedule 10 of the Project Agreement in each case to which there has been no objection under the Review Procedure;

(b) the provisions of the Project Agreement, including all applicable Output Specifications, as amended by the following Variation(s):

- (i) [...] (List, if any, the change(s) made by the issue of any Variation(s)); and
- (c) the requirements of City of Toronto Standards, the designs and plans submitted by Project Co and accepted by the City of Toronto, other standards that have been agreed to in writing by the City of Toronto and Project Co, and good engineering practices.

Signed..... (Design Team’s Principal)

Name.....

Date.....

Professional Registration Number: (Affix Professional Seal)

D. Contracting Authority Representative

1. This Certificate is:

- (a) reviewed*
- (b) reviewed as noted as follows*
- (c) returned marked “rejected” as follows:*

* delete as appropriate

Signed: (Contracting Authority Representative)

Name:

Date:

**ATTACHMENT 2
TORONTO WATER WELLNESS REPORT**



WELLNESS REPORT

REVISION DATE: February 2017

Date:	
Project Name:	
Contract Number / Project ID:	
Project Description:	
Project Location:	
Construction Contractors:	
Developer Name: (If Applicable)	
Design Consultants: (If Applicable)	
Environmental Compliance Approval Number: (If Applicable)	
City of Toronto Transfer of Review Tracking Number: (If Applicable)	
Completed by:	Case / Project Manager (Print Name):
	Signature:
Concurred by:	Manager (Print Name):
	Signature:

INSTRUCTIONS: Please perform activities as outlined below by asset type and check boxes on completion; Submit documents as required following Part 11 & 12



WELLNESS REPORT

REVISION DATE: February 2017

CHECK ITEMS

NOTES

1. WATERMAIN		
<input type="checkbox"/>	Direction to Open Valves - Certify the correct opening and closing direction of water isolation valves based on the following standard: For Etobicoke/York (former city of York, east of the Humber River), North York, Toronto/East York districts: Open Clockwise Operating nut supplied at time of installation is painted red . For Etobicoke/York (former city of Etobicoke, west of the Humber River) and Scarborough districts: Open Counter Clockwise Operating nut supplied at time of installation is painted black .	
<input type="checkbox"/>	Approved Chlorination Plan/Disinfection Test provided by City Case Manager	
<input type="checkbox"/>	Perform Pressure Test in presence of the City Inspector	
<input type="checkbox"/> <input type="checkbox"/>	All construction debris is removed from chamber/Valve box: After construction (pre-warranty period) End of warranty period	
<input type="checkbox"/>	Air Valves are installed and Drain Valves are installed and working properly	
2. FIRE HYDRANTS		
<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	Fire Flow Testing and Marking of Fire Hydrants All hydrants are colour coded in accordance with NFPA 291 "Fire Flow Testing and Marking of Fire Hydrants." Accordingly, barrels are to be chrome yellow. The tops and hose nozzle caps should be painted with the following capacity indicating colour scheme to provide simplicity and consistency with colours used to signal safety, danger and intermediate condition. The capacity colours are to be reflective paint by type, for rapid identification at night: • Class AA—rated capacity of 5680 litres/minute or greater— light blue • Class A—rated capacity of 3784–5680 litres/minute— green • Class B—rated capacity of 1900–3785 litres/minute— orange • Class C—rated capacity of less than 1900 litres/minute— red Flow Testing Report accepted by the City's Case Manager Copy of results sent to local District Operations Contact (Refer to Part 11)	



WELLNESS REPORT

REVISION DATE: February 2017

3. TRACER WIRES	
<input type="checkbox"/>	All tracer wires have been installed on all non-metallic watermains along the full length of the pipe so as to provide a means of locating the main to ensure/test for electrical continuity of tracer wire.
<input type="checkbox"/>	Tracer wire on non-metallic systems have been connected to new or existing metallic watermain piping or associated fittings connected to the metallic watermain.
<input type="checkbox"/>	No tracer wires installed on all metallic watermain
4. WATER SERVICE CONNECTIONS	
<input type="checkbox"/>	Curb boxes functional and set to grade
<input type="checkbox"/>	Water locate cards
5. SANITARY, STORM AND COMBINED SEWERS	
<input type="checkbox"/>	Sewer Service Connection - Clean-out at street line for all sewer service connections for residential lots have been installed
<input type="checkbox"/>	Drain Cards - Ensure drain cards record sewer connection
<input type="checkbox"/>	Verify that there are no crossed sewer service connections by dye test
	Sanitary and Storm Sewer Cleaning – new sewer cleaned and CCTV inspected with appropriate Water Research Centre (WRC) coding of service and structural issues:
<input type="checkbox"/>	After construction (pre-warranty period)
<input type="checkbox"/>	End of warranty period
	Sewer Deformation Test(s) completed and results submitted:
<input type="checkbox"/>	After construction (pre-warranty period)
<input type="checkbox"/>	End of warranty period
	Sewer Air/Water Exfiltration Test(s) completed and results submitted:
<input type="checkbox"/>	After construction (pre-warranty period)
6. MAINTENANCE HOLE	
	All construction debris has been removed from maintenance hole:
<input type="checkbox"/>	After construction (pre-warranty period)
<input type="checkbox"/>	End of warranty period



WELLNESS REPORT

REVISION DATE: February 2017

7. CATCHBASINS	
<input type="checkbox"/>	All construction debris has been removed from catch basin and sediment and erosion control during construction in place:
<input type="checkbox"/>	After construction (pre-warranty period)
<input type="checkbox"/>	End of warranty period
8. UNDERGROUND STORAGE TANKS / SUPERPIPES	
<input type="checkbox"/>	Inspection and Monitoring Reports have been completed and submitted, including an estimate of the quantity of any sediment removed
<input type="checkbox"/>	Operation & Maintenance manual has been completed and submitted
<input type="checkbox"/>	Underground storage tank cleaned as documented in Operation & Maintenance manual as well as at the beginning of the warranty period and before assumption by City
9. Manufacturer Treatment Devices(MTDs)	
<input type="checkbox"/>	Sediment Inspection Report has been completed and submitted, including an estimate of the quantity of any sediment removed
<input type="checkbox"/>	Operation & Maintenance manual has been completed and submitted
<input type="checkbox"/>	MTD cleaned as documented in Operation & Maintenance manual as well as at the beginning of the warranty period and before assumption by City
10. WET OR DRY PONDS OR OTHER STORMWATER MANAGEMENT FACILITIES	
<input type="checkbox"/>	Inspection and Monitoring Report have been completed and submitted, including an estimate of the quantity of any sediment removed
<input type="checkbox"/>	Operation & Maintenance manual has been completed and submitted
<input type="checkbox"/>	Cleaned as documented in Operation & Maintenance manual prior to assumption by the City
11. FINAL SUBMISSION DOCUMENTS (Submit to contacts specified in Part 12)	
<input type="checkbox"/>	As-Built Drawings,
<input type="checkbox"/>	Environmental Compliance Approvals (ECA) in PDF, with the Applicant Name changed to "City of Toronto, Metro Hall 18 th Floor, 55 John St., M5V 3C6", if applicant is not already "City of Toronto"
<input type="checkbox"/>	Water Service Cards and Drain Cards,
<input type="checkbox"/>	Inspection & Maintenance Reports
<input type="checkbox"/>	Performance Monitoring Reports
<input type="checkbox"/>	Fire Flow Test Results



WELLNESS REPORT

REVISION DATE: February 2017

<input type="checkbox"/>	Watermain Water Quality Results	
<input type="checkbox"/>	Operation & Maintenance Manual(s)	
<input type="checkbox"/>	Other relevant documentation: _____	

12. CONTACT INFORMATION

<input type="checkbox"/>	<p>One digital version in PDF on CD to "Candice Au, Manager of Watermain Asset Planning, Water Infrastructure Management", Toronto Water (Candice.Au@toronto.ca) (Metro Hall 18th flr, 55 John St. M5V 3C6)</p> <p>One paper copy and one PDF on CD to the applicable District Toronto Water Distribution & Collection Manager(s):</p>								
<input type="checkbox"/>		<table border="1" style="width: 100%;"> <tr> <td style="width: 33%;">Toronto, East York and Scarborough Districts:</td> <td style="width: 33%;">Ed Francis (Ed.Francis@toronto.ca)</td> <td style="width: 33%;">30 Northline Rd. M4B 3E2</td> </tr> <tr> <td>North York and Etobicoke / York Districts:</td> <td>Joe Cirillo (Joe.Cirillo@toronto.ca)</td> <td>150 Disco Rd. M9W 1M4</td> </tr> </table>	Toronto, East York and Scarborough Districts:	Ed Francis (Ed.Francis@toronto.ca)	30 Northline Rd. M4B 3E2	North York and Etobicoke / York Districts:	Joe Cirillo (Joe.Cirillo@toronto.ca)	150 Disco Rd. M9W 1M4	
Toronto, East York and Scarborough Districts:	Ed Francis (Ed.Francis@toronto.ca)	30 Northline Rd. M4B 3E2							
North York and Etobicoke / York Districts:	Joe Cirillo (Joe.Cirillo@toronto.ca)	150 Disco Rd. M9W 1M4							
<p>IMPORTANT: For Stormwater Management Assets (i.e. Ponds, Oil & Grit Separators, Storage Tanks, Superpipes, etc.), provide one additional paper copy and PDF on CD to Program Maintenance:</p>	<p>Program Maintenance (City-wide)</p>	<p>Rob Gillis (Rob.Gillis@toronto.ca)</p>	<p>60 Tiffield Rd. M1V 5N2</p>						

MT MTDOS 41633386

SCHEDULE 15
OUTPUT SPECIFICATIONS

[REDACTED]

SCHEDULE 16**ENCUMBRANCES**

- (a) For purposes of this Schedule 16, the defined term “Lands” shall include any portion of the Lands.
- (b) Each of the following, to the extent affecting the interest (whether real property interest or contractual interest) of Metrolinx in the Lands is considered to be an encumbrance for the purposes of the Project Agreement (each, an “**Encumbrance**”):
- (i) All encumbrances, pledges, liens, charges, security agreements, security interests, leases, subleases, title retention agreements, mortgages, easements, encroachments, right-of-ways, restrictive covenants, work orders, options or adverse claims of any kind or character whatsoever relating to the title to the Lands disclosed or noted on the land registry office parcel registers or abstract indices for the Lands from time to time, including (but not limited to) those that may have been included in the Background Information as of the date of the Project Agreement and including those referred to in the legal descriptions for the Lands available in the applicable land registry office, in each case as assigned, amended, extended, supplemented, substituted and replaced from time to time.
 - (ii) Liens, charges or prior claims for taxes (which term includes charges, rates and assessments) or utilities (including levies or imposts for sewers and other municipal utility services) not yet due or if due, the validity of which is being contested in good faith, and liens or charges for the excess of the amount of any past due taxes or utilities charges for which a final assessment or account has not been received over the amount of such taxes or utilities charges as estimated and paid by Contracting Authority.
 - (iii) Inchoate liens incidental to construction, renovations or current operations, a claim for which shall not at the time have been registered against the Lands or of which notice in writing shall not at the time have been given to Contracting Authority pursuant to the Construction Act or otherwise or any lien or charge, a claim for which, although registered, or notice of which, although given, relates to obligations not overdue or delinquent and in respect of any of the foregoing cases, Contracting Authority has, where applicable, complied with the holdback or other similar provisions or requirements of the relevant construction contracts.
 - (iv) The rights reserved to or vested in the public or any municipality or governmental or other public authority by any statutory provision.
 - (v) Any subsisting reservations, limitations, provisions and conditions contained in any grants from the Crown of any land or interests therein, including reservations of under-surface rights to mines and minerals of any kind including rights to enter, prospect and remove the same.
 - (vi) Any encroachments, easements, rights of way, rights to use or similar interests revealed by any survey of the Lands or which would be revealed by an up-to-date survey of the Lands.

- (vii) Any rights in favour of or accruing to holders of under-surface rights which could be ascertained by a review of registered title or other public records, or, if unregistered, which do not materially interfere with the use of the Lands for the purposes of the Works.
- (viii) Unregistered agreements with any municipal, provincial or federal governments or authorities and any public utilities or private suppliers of services, provided such unregistered agreements have been disclosed to Project Co, or which could be ascertained by commercially standard off-title searches, or, if not so disclosed or ascertained, which do not materially interfere with the use of the Lands for the purposes of the Works, and further provided such agreements have been complied with, or, if not complied with, that any non-compliance does not materially interfere with the use of the Lands for the purposes of the Works.
- (ix) Unregistered agreements, authorizations, consents, postponements, subordinations, licences or instruments entered into provided that they have been disclosed to Project Co, or which could be ascertained by commercially standard off-title searches, or, if not so disclosed or ascertained by commercially standard off-title searches, or, if not so disclosed or ascertained, which do not materially interfere with the use of the Lands for the purposes of the Works, and further provided such agreements have been complied with, or, if not complied with, that any non-compliance does not materially interfere with the use of the Lands for the purposes of the Works.
- (x) Unregistered easements, rights of way, rights to use, restrictions, restrictive covenants and similar rights in real property or any interest therein provided that they have been disclosed to Project Co, or which could be ascertained by commercially standard off-title searches, or, if not so disclosed or ascertained by commercially standard off-title searches, or, if not so disclosed or ascertained, which do not materially interfere with the use of the Lands for the purposes of the Works, and further provided such agreements have been complied with, or, if not complied with, that any non-compliance does not materially interfere with the use of the Lands for the purposes of the Works.
- (xi) Minor imperfections of title.
- (xii) Statutory exceptions to title and any rights reserved to or vested in any person by any statutory provision.
- (xiii) The right of any prior owner, occupant or tenant of any portion of the Lands to occupy any portion of the Lands or to remove buildings, fixed machinery, equipment, fittings or other fixtures located on such portion of the Lands.
- (xiv) The rights of any person entitled to any portion of the Lands through length of adverse possession or prescription.

MT MTDOS 41633401v2

SCHEDULE 17

ENVIRONMENTAL OBLIGATIONS

TABLE OF CONTENTS

1. DEFINITIONS	3
1.1 Definitions.....	3
2. ENVIRONMENTAL MANAGEMENT SYSTEM	11
2.1 Environmental Management System	11
2.2 Environmental Management System Software Solution	13
3. GENERAL ENVIRONMENTAL PROVISIONS	14
3.1 Compliance with Environmental Reference Documents	14
3.2 Project Co Additional Environmental Obligations	15
3.3 Contracting Authority’s Environmental Obligations	16
3.4 Environmental Impacts and Changes.....	17
3.5 Environmental Plans and Reports	18
4. NOTIFICATION, RECORDS AND REPORTING REQUIREMENTS	18
4.1 Permits, Licences, Approvals and Agreements.....	18
4.2 Notice to Contracting Authority	18
4.3 Communications with Governmental Authorities	19
4.4 Indigenous Communities Engagement	19
4.5 Environmental Records.....	19
5. KEY INDIVIDUALS AND ENVIRONMENTAL WORKING GROUP	20
5.1 Environmental Positions	20
5.2 Environmental Manager(s)	20
5.3 Environmental Permits and Approvals Coordinator(s).....	22
5.4 Environmental Compliance Officer	23
5.5 Environmental Specialists.....	23
5.6 Environmental Inspector(s).....	30
5.7 Environmental Working Group	30
6. ENVIRONMENTAL MANAGEMENT	32
6.1 Other Required Environmental Reports.....	32
7. MANAGEMENT OF SOIL AND EXCAVATED MATERIALS	34
7.1 Soil and Excavated Materials Management Plan.....	34
7.2 Soil and Excavated Material Software Solution	35
7.3 Soil and Excavated Material Management Implementation Report	37
8. MANAGEMENT OF GROUNDWATER	38
8.1 Groundwater Management and Dewatering Plan	38
8.2 Groundwater Management Software Solution.....	39
8.3 Groundwater Management and Dewatering Implementation Report	40

9.	MANAGEMENT OF CONTAMINATION	41
9.1	Notification Requirements in Respect of Contamination	41
9.2	Management, Removal and Remediation of Contamination	42
10.	DESIGNATED SUBSTANCES AND HAZARDOUS MATERIALS.....	43
10.1	Hazardous Substances Brought onto the Lands.....	43
10.2	Designated Substances and Hazardous Materials Management Plan	43
11.	EROSION AND SEDIMENT CONTROL PLAN	44
12.	SPILL PREVENTION AND RESPONSE PLAN.....	45
13.	ARCHAEOLOGY AND CULTURAL HERITAGE.....	46
13.1	Archaeology Risk Management.....	46
13.2	Built Heritage and Cultural Heritage Landscapes.....	47
14.	AIR QUALITY DURING CONSTRUCTION PHASE.....	49
14.1	Air Quality General.....	49
14.2	Applicable Air Quality Criteria and Limits	49
14.3	Air Quality Management Plan	49
14.4	Air Quality Monitoring Requirements.....	51
14.5	Complaints During Project Term.....	51
14.6	Equipment and Best Practice Requirements	52
15.	NOISE AND VIBRATION	53
15.1	Noise and Vibration General.....	53
15.2	Noise and Vibration Reference Documents.....	54
15.3	Noise and Vibration Performance Limits	54
15.4	Noise and Vibration Management Plan	55
15.5	Noise and Vibration Sensitive Receptors.....	57
15.6	Prediction and Assessment of Noise and Vibration.....	59
15.7	Assessment and Monitoring During the Project Term.....	59
15.8	Complaints During Project Term.....	61
16.	TREE AND VEGETATION MANAGEMENT.....	62
17.	LIGHTING DURING CONSTRUCTION	64
17.1	Lighting During Construction.....	64
18.	EXISTING MONITORING WELLS	66
18.1	Protection / Decommissioning of Existing Monitoring Wells.....	66
19.	SPECIES AT RISK.....	66

LIST OF APPENDICES

Appendix A-1 – Project Co’s General Environmental Commitments
Appendix A-2 – Contracting Authority’s Environmental Commitments
Appendix A-3 – Shared Environmental Commitments
Appendix B – Plans and Reports

SCHEDULE 17
ENVIRONMENTAL OBLIGATIONS

1. DEFINITIONS

1.1 Definitions

In this Schedule 17, unless the context indicates a contrary intention, terms which are defined in the Project Agreement (and not otherwise defined in this Schedule 17) shall have meanings given to them in the Project Agreement and the following terms shall have the following meanings:

- (a) **“Additional Environmental Report”** has the meaning given in Section 3.5(a).
- (b) **“Additional Noise and Vibration Sensitive Receptor Performance Requirements”** has the meaning given in Section 15.5(g).
- (c) **“Air Quality Impact Zone”** has the meaning given in Section 14.3(a)(ii).
- (d) **“Air Quality Management Plan”** has the meaning given in Section 14.3(a).
- (e) **“Air Quality Sensitive Receptor”** means any property or location, including a residential, institutional, commercial or industrial property or building, that may be susceptible to air pollution impacts.
- (f) **“Air Quality Specialist”** means an individual possessing the minimum qualifications set out in Section 5.5(b)(i).
- (g) **“Annual Environmental Compliance Monitoring Report”** has the meaning given in Section 6.1(a).
- (h) **“ANSI Recommended Practice”** means ANSI/IES RP-8-18 – Recommended Practice for Design and Maintenance of Roadway and Parking Lighting Facility, as amended from time to time.
- (i) **“Applicable Air Quality Criteria and Limits”** means the criteria and limits set out in Section 14.2(a).
- (j) **“Applicable Noise and Vibration Requirements”** has the meaning given in Section 15.1(a).
- (k) **“Aquatic Specialist”** means the individual possessing the minimum qualifications set out in Section 5.5(b)(ii).
- (l) **“Arborist”** means an individual possessing the minimum qualifications set out in Section 5.5(b)(iii).
- (m) **“Arborist Report – Metrolinx Lands”** has the meaning given in Section 16(b).
- (n) **“Arborist Report – Third Party Lands”** has the meaning given in Section 16(f).

-
- (o) “**Archaeological Reference Documents**” has the meaning given in Section 13.1(a).
- (p) “**Archaeological Risk Management Plan**” has the meaning given in Section 13.1(a).
- (q) “**Archaeological Risk Management Plan Update**” has the meaning given in Section 13.1(d).
- (r) “**Biologist**” means an individual possessing the minimum qualifications set out in Section 5.5(b)(xii).
- (s) “**Built Heritage Resource**” means a building, structure, monument, installation or any manufactured remnant that,
- (i) is located on a property, including a property that has been designated under Parts IV or V of the *Ontario Heritage Act* (Ontario), or included on local, provincial and/or federal registers; and
 - (ii) contributes to such property’s cultural heritage value or interest as identified by a community, including an Indigenous Community.
- (t) “**Conservation Authorities Act (Ontario)**” means the *Conservation Authorities Act*, R.S.O. 1990, c. C.27, as amended from time to time.
- (u) “**Conservation Authority**” means a conservation authority established by or under the *Conservation Authorities Act* (Ontario).
- (v) “**Contamination Management Plan**” has the meaning given in Section 9.2(a)(iii).
- (w) “**Contracting Authority Environmental Commitments**” has the meaning given in Section 3.3(b).
- (x) “**Cultural Heritage Landscape**” means a geographical area that is identified as having cultural heritage value or interest by a community, including an Indigenous Community, including,
- (i) heritage conservation districts designated under the *Ontario Heritage Act* (Ontario);
 - (ii) areas recognized by federal or international designation authorities (for example, a “National Historic Site or District” or a “UNESCO World Heritage Site” designation); and
 - (iii) villages, parks, battlefields, mainstreets and neighbourhoods, cemeteries, trailways, viewsheds, natural areas and industrial complexes of heritage significance.
- (y) “**Cultural Heritage Reference Documents**” has the meaning given in Section 13.2(a).
- (z) “**Cultural Heritage Risk Management Plan**” has the meaning given in Section 13.2(a)(vii).
- (aa) “**Cultural Heritage Risk Management Plan Update**” has the meaning given in Section 13.2(c).

-
- (bb) “**Cultural Heritage Specialist**” means an individual possessing the minimum qualifications set out in Section 5.5(b)(iv).
- (cc) “**Designated Substances and Hazardous Materials**” includes,
- (i) those substances identified by Ontario Regulation 490/09, as amended, under the *Occupational Health and Safety Act* (Ontario);
 - (ii) polychlorinated biphenyls as identified in Ontario Regulation 362, as amended under the *Environmental Protection Act* (Ontario); and
 - (iii) mould, acrylonitrile, arsenic, asbestos, benzene, coke oven emissions, ethylene oxide, isocyanates, lead, mercury, silica, vinyl chloride and polychlorinated biphenyls.
- (dd) “**Designated Substances and Hazardous Materials Implementation Report**” has the meaning given in Section 10.2(b).
- (ee) “**Designated Substances and Hazardous Materials Management Plan**” has the meaning given in Section 10.2(a).
- (ff) “**Documents Relating to Indigenous Communities**” has the meaning given in Section 4.4(b).
- (gg) “**EMS Software Solution**” has the meaning given in Section 2.2(a).
- (hh) “**Endangered Species Act (Ontario)**” means the *Endangered Species Act, 2007*, S.O. 2007, c.6, as amended from time to time.
- (ii) “**Environmental Activity and Sector Registration**” means a registration requirement under the Environmental Activity and Sector Registry in respect of construction-related water taking activities prescribed under Ontario Regulation 63/16 of the *Environmental Protection Act* (Ontario).
- (jj) “**Environmental Activity and Sector Registry**” means the public registry established under Part II.2 of the *Environmental Protection Act* (Ontario).
- (kk) “**Environmental Approvals**” means:
- (i) all authorizations issued by the MECP; and
 - (ii) all Permits, Licences, Approvals and Agreements relating to environmental matters,
- and “**Environmental Approval**” means any such authorization or Permit, Licence, Approval and Agreement.
- (ll) “**Environmental Aspect**” has the meaning given in ISO 14001.
- (mm) “**Environmental Aspect Table**” has the meaning given in Section 2.1(e).

- (nn) “**Environmental Assessment Act (Ontario)**” means the *Environmental Assessment Act*, R.S.O. 1990, c. E18, as amended from time to time.
- (oo) “**Environmental Assessments**” means all environmental assessments completed or required under the *Environmental Assessment Act* (Ontario), including all environmental assessments required under the Municipal Class Environmental Assessment, or the Transit Project Assessment Process (TPAP) as described in Ontario Regulation 231/08, Transit Projects and Metrolinx Undertakings under the *Environmental Assessment Act* (Ontario). The Environmental Assessments include the following documents, only to the extent that these documents are applicable to the Project:
- [REDACTED]
- (pp) “**Environmental Audit Report**” has the meaning given in Section 6.1(f).
- (qq) “**Environmental Compliance Officer**” has the meaning given in Section 5.4(a).
- (rr) “**Environmental Consultant**” means a reputable, qualified and experienced environmental consulting or engineering firm employing individuals who have the designation of Qualified Person pursuant to part II section 5 of Ontario Regulation 153/04 under the *Environmental Protection Act* (Ontario) that has been retained by Project Co to provide technical expertise and guidance to Project Co on any Project Co Environmental Commitments, the Environmental Approvals or any other environmental obligations and matters, including monitoring, managing and addressing soil and groundwater impacts and occupational and public health and safety issues.
- (ss) “**Environmental Controls**” means measures to mitigate potentially negative impacts to the environment, including control of chemicals, spills and wastes, the minimization of noise and dust, the protection of fauna and flora, the conservation of forests and landscapes and the protection of heritage values, all in accordance with Applicable Law and Good Industry Practice.
- (tt) “**Environmental Incident**” means an occurrence or a set of circumstances that causes, directly or indirectly,
- (i) pollution or adverse environmental impact; or
 - (ii) the likelihood of pollution or adverse environmental impact.
- (uu) “**Environmental Inspector**” has the meaning given in Section 5.6(a).
- (vv) “**Environmental Law**” means all Applicable Law relating to,
- (i) the environmental assessment processes;
 - (ii) public health and safety; or
 - (iii) the protection of the environment, including Species at Risk.
- (ww) “**Environmental Management System**” or “**EMS**” has the meaning given in Section 2.1(a).

-
- (xx) “**Environmental Management System Updates**” has the meaning given in Section 2.1(k).
- (yy) “**Environmental Manager**” has the meaning given in Section 5.2(a).
- (zz) “**Environmental Permits and Approvals Coordinator**” has the meaning given in Section 5.3(a).
- (aaa) “**Environmental Planning Specialist**” means an individual possessing the minimum qualifications set out in Section 5.5(b)(v).
- (bbb) “**Environmental Protection Act (Ontario)**” means the *Environmental Protection Act*, R.S.O. 1990, c. E. 19, as amended from time to time.
- (ccc) “**Environmental Reference Documents**” has the meaning given in Section 3.1(a)(i).
- (ddd) “**Environmental Specialist**” has the meaning given in Section 5.5(a).
- (eee) “**Environmental Specialists Qualifications Plan**” has the meaning given in Section 5.1(c).
- (fff) “**Environmental Working Group**” has the meaning given in Section 5.7(a).
- (ggg) “**Environmentally Sensitive Construction Activities**” means Construction Activities that have a high potential for causing adverse environmental impacts, including,
- (i) Construction Activities that have the potential to impact human health, including with respect to noise, vibration and air quality;
 - (ii) rapid-bridge replacements;
 - (iii) in-water Construction Activities;
 - (iv) steep slope Construction Activities;
 - (v) deep foundation Construction Activities that take place near Sensitive Receptors; and
 - (vi) Construction Activities with respect to piers in a watercourse.
- (hhh) “**Erosion and Sediment Control Plan**” has the meaning given in Section 11(a).
- (iii) “**Fish and Wildlife Conservation Act (Ontario)**” means the *Fish and Wildlife Conservation Act*, S.O. 1997, c.41, as amended from time to time.
- (jjj) “**Fisheries Act (Canada)**” means the *Fisheries Act*, R.S.C. 1985, c. F-14, as amended from time to time.
- (kkk) “**FTA Manual**” has the meaning given in Section 15.2(a)(xi).
- (lll) “**Groundwater Management and Dewatering Implementation Report**” has the meaning given in Section 8.3(a).

- (mmm) “**Groundwater Management and Dewatering Plan**” has the meaning given in Section 8.1(a).
- (nnn) “**Groundwater Management Monthly Dashboard**” has the meaning given in Section 8.2(b).
- (ooo) “**Groundwater Management Software Solution**” has the meaning given in Section 8.2(a).
- (ppp) “**Hydrogeologist**” means an individual possessing the minimum qualifications set out in Section 5.5(b)(vi).
- (qqq) “**IEC Standard 61672**” means the following, as amended from time to time,
- (i) IEC 61672-1 Electroacoustics – Sound level meters – Part 1: Specifications (September 2013);
 - (ii) IEC 61672-2 Electroacoustics – Sound level meters – Part 2: Pattern evaluation tests (April 2017); and
 - (iii) IEC 61672-3 Electroacoustics – Sound level meters – Part 3: Periodic tests (September 2013).
- (rrr) “**Independent Environmental Audit**” has the meaning given in Section 6.1(c).
- (sss) “**Indigenous Communities**” means, collectively, the original peoples of North America, including First Nations (Indians), Métis and Inuit.
- (ttt) “**Indigenous Community Engagement**” means a process of engaging meaningfully with Indigenous Communities whose rights and interests may be affected by the Project, including providing relevant information to community leaders and members about the Project, meaningfully considering their input, and coordinating on matters of interest to avoid, reduce or mitigate potential adverse impacts.
- (uuu) “**ISO 14001**” means ISO 14001:2015 – Environmental management systems – Requirements with guidance for use, as amended from time to time.
- (vvv) “**Licensed Archaeologist**” means an individual possessing the minimum qualifications set out in Section 5.5(b)(viii).
- (www) “**MECP**” means the Ontario Ministry of the Environment, Conservation and Parks, and any successor ministry thereto.
- (xxx) “**MHSTCI**” means the Ontario Ministry of Heritage, Sport, Tourism and Cultural Industries, and any successor ministry thereto.
- (yyy) “**Monthly Environmental Report**” has the meaning given in Section 6.1(b).
- (zzz) “**Monthly Erosion and Sediment Control Monitoring Report**” has the meaning given in Section 11(d).
- (aaaa) “**Noise and Vibration Management Plan**” has the meaning given in Section 15.4(a).

- (bbbb) “**Noise and Vibration Performance Limits**” means the limits set out in Section 15.3.
- (cccc) “**Noise and Vibration Reference Documents**” has the meaning given in Section 15.2(a).
- (dddd) “**Noise and Vibration Sensitive Receptor**” means any property or location, including a residential, institutional, commercial or industrial property or building, that may be susceptible to noise or vibration impacts, including, for clarity, Vibration Sensitive Structures.
- (eeee) “**Noise Specialist(s)**” means an individual possessing the minimum qualifications set out in Section 5.5(b)(vii).
- (ffff) “**O. Reg. 406/19**” means Ontario Regulation 406/19: On-Site and Excess Soil Management, filed December 4, 2019 under the Environmental Protection Act (Ontario), and as amended from time to time.
- (gggg) “**Occupational Health and Safety Act (Ontario)**” means the *Occupational Health and Safety Act*, R.S.O. 1990, c. O. 1, as amended from time to time.
- (hhhh) “**Ontario Heritage Act (Ontario)**” means the *Ontario Heritage Act*, R.S.O. c. O.18, as amended from time to time.
- (iiii) “**Ontario Water Resources Act (Ontario)**” means the *Ontario Water Resources Act*, R.S.O. c. O.40, as amended from time to time.
- (jjjj) “**Overall Benefit Permit**” means a permit that:
- (i) is required to perform an activity that is not otherwise allowed under the *Endangered Species Act* (Ontario); and
 - (ii) authorizes a person, company or organization to perform the activity, as long as such person, company or organization provides an overall benefit to a species in the Province of Ontario.
- (kkkk) “**Permit To Take Water**” or “**PTTW**” means a permit issued by the MECP for the taking of water in accordance with Ontario Regulation 387/04 under the *Ontario Water Resources Act* (Ontario) or an Environmental Activity and Sector Registration under Ontario Regulation 63/16 under the *Environmental Protection Act* (Ontario).
- (llll) “**Project Co Deviation Report**” has the meaning given in Section 3.4(b).
- (mmmm) “**Project Co Environmental Commitments**” has the meaning given in Section 3.1(a)(ii)(B).
- (nnnn) “**Project Leader**” has the meaning given in Section 3.2(d).
- (oooo) “**Provincial Heritage Properties**” has the meaning given in the Standards and Guidelines for the Conservation of Provincial Heritage Properties issued by MHSTCI pursuant to the *Ontario Heritage Act* (as amended from time to time).

- (pppp) “**Provincial Heritage Properties of Provincial Significance**” has the meaning given in the Standards and Guidelines for the Conservation of Provincial Heritage Properties issued by MHSTCI pursuant to the *Ontario Heritage Act* (as amended from time to time).
- (qqqq) “**Qualified Person**” when used in this Schedule 17 has the meanings given in section 5 of Ontario Regulation 153/04 under the Environmental Protection Act (Ontario).
- (rrrr) “**Representative Noise and Vibration Sensitive Receptor**” means the Noise and Vibration Sensitive Receptor exposed to the worst-case effects of ground borne vibration, and air and ground borne noise compared to all the nearby Noise and Vibration Sensitive Receptors. The Representative Noise and Vibration Sensitive Receptor is intended to represent all other Noise and Vibration Sensitive Receptors.
- (ssss) “**Sensitive Receptor**” means any property or location, including a residential, institutional, commercial or industrial property or building, a parkland, a watercourse or a wetland, that may be susceptible to adverse environmental impacts related to the Works.
- (tttt) “**Soil and Excavated Material Management Implementation Report**” has the meaning given in Section 7.3(a).
- (uuuu) “**Soil and Excavated Material Management Plan**” has the meaning given in Section 7.1(a).
- (vvvv) “**Soil and Excavated Material Monthly Dashboard**” has the meaning given in Section 7.2(b).
- (wwww) “**Soil and Excavated Material Software Solution**” has the meaning given in Section 7.2(a).
- (xxxx) “**Soil and Groundwater Contamination and Management Specialist**” means an individual possessing the minimum qualifications set out in Section 5.5(b)(xi).
- (yyyy) “**Species at Risk Act (Canada)**” means the *Species at Risk Act*, S.C. 2002, c. 29, as amended from time to time.
- (zzzz) “**Species at Risk Framework**” means the Species at Risk framework prepared by Metrolinx, dated August 2, 2020.
- (aaaaa) “**Species at Risk Handover Report**” has the meaning given in Section 19(a)(vi).
- (bbbbb) “**Species at Risk Specialist**” means an individual possessing the minimum qualifications set out in Section 5.5(b)(ix).
- (ccccc) “**Spill**” means any deposit, emission, leak, spill or release to the environment of any solid, liquid, gas, odour, heat, sound, vibration, radiation or combination thereof that,
- (i) arises, either directly or indirectly from human activities; and
 - (ii) causes or may cause an adverse effect on the environment.

- (dddd) “**Spill Prevention and Response Implementation Report**” has the meaning given in Section 12(e).
- (eeee) “**Spill Prevention and Response Occurrence Report**” has the meaning given in Section 12(d).
- (ffff) “**Spill Prevention and Response Plan**” has the meaning given in Section 12(a).
- (gggg) “**Standards and Guidelines of the Conservation of Provincial Heritage Properties**”, mean the Standards and Guidelines of the Conservation of Provincial Heritage Properties issued by the MHSTCI pursuant to the *Ontario Heritage Act* (Ontario), dated April 2010, and as amended from time to time.
- (hhhh) “**Stationary Sources**” has the meaning given in MECP publication *Environmental Noise Guideline – Stationary Transportation Sources – Approval and Planning* (NPC-300), dated August 2013, as amended from time to time.
- (iiii) “**TRCA**” means Toronto and Region Conservation Authority.
- (jjjj) “**Tree Tracker**” has the meaning given in Section 16(d).
- (kkkk) “**Vibration Sensitive Structures**” means heritage designated or listed properties and sensitive structures or buildings or infrastructure as defined in City of Toronto By-Law No. 514-2008, Built Heritage Resources and Cultural Heritage Landscapes.
- (llll) “**Vibration Specialist**” means an individual possessing the minimum qualifications set out in Section 5.5(b)(x).
- (mmmm) “**Weekly Air Quality Monitoring Report**” has the meaning given in Section 14.4(d).
- (nnnn) “**Weekly Noise and Vibration Monitoring Report**” has the meaning given in Section 15.7(g).
- (oooo) “**Zone of Influence**” means the area in which the noise or vibration impact of an activity associated with the Project may cause the exceedance of applicable exposure criteria or limits.

2. ENVIRONMENTAL MANAGEMENT SYSTEM

2.1 Environmental Management System

- (a) Project Co shall develop an environmental management system for the Project that conforms with ISO 14001 and this Section 2.1(a) (an “**Environmental Management System**” or “**EMS**”). Throughout the Project Term, Project Co shall implement, maintain and continuously improve the EMS.
- (b) Project Co shall submit the Environmental Management System to Contracting Authority in accordance with Schedule 10 - Review Procedure and in accordance with the timeframe for submission set out in Appendix B to this Schedule 17.
- (c) Project Co shall be the “organization” for the purposes of applying ISO 14001.

-
- (d) The Environmental Management System shall be applicable to all Works throughout the Project Term.
- (e) The Environmental Management System shall include a clearly organized table (the “**Environmental Aspect Table**”) setting out all Environmental Aspects, including the following information for each Environmental Aspect:
- (i) all environmental factors impacted by the Environmental Aspect and a description of impact of each environmental factor;
 - (ii) all compliance requirements set out in this Schedule 17 and Applicable Law;
 - (iii) significance evaluation and rating and determination of significance in accordance with ISO 14001;
 - (iv) objectives related to the Environmental Aspect;
 - (v) environmental operational controls related to the Environmental Aspect; and
 - (vi) adequacy of operational controls for the Environmental Aspect.

Project Co shall, on a monthly basis, evaluate the adequacy of operational controls component of the Environmental Aspect Table, and update the Environmental Aspect Table on a monthly basis. Project Co shall provide the Environmental Aspect Table upon request by Contracting Authority.

- (f) In the description of roles and responsibilities required by ISO1 4001 in the Environmental Management System, Project Co shall include a description of the roles and responsibilities for individuals performing specialized environmental tasks, including Key Individuals and Environmental Specialists defined in Section 5.
- (g) In addition to the requirements set out in ISO 14001, Project Co shall include the following in its Environmental Management System:
- (i) a process for the identification and monitoring of Sensitive Receptors and Environmentally Sensitive Construction Activities;
 - (ii) a description of integration with the Environmental Quality Management Plan defined in Schedule 11 - Quality Management; and
 - (iii) the EMS Software Solution as outlined in Section 2.2 of Schedule 17.
- (h) Project Co shall ensure that the compliance obligations required in accordance with ISO 14001 includes all requirements under Environmental Law, all requirements of Permits, Licenses, Approvals and Agreements, and all requirements defined in this Schedule 17, including Project Co Environmental Commitments.
- (i) Notwithstanding the requirement of ISO 14001 for the organization to determine monitoring, measurement, analysis and evaluation requirements, Project Co shall ensure that all requirements for performance evaluation in the Environmental Management System, including,

- (i) the methods for monitoring, measurement, analysis and evaluation;
 - (ii) the criteria against which environmental performance is measured;
 - (iii) the timing for performance of monitoring and measuring; and
 - (iv) the timing for analysis and evaluation of the results from monitoring and measuring, comply with the requirements set out in this Schedule 17.
- (j) Project Co shall ensure that the Environmental Management System includes a description of contingency measures developed by Project Co that will be implemented by Project Co during and immediately following Environmental Incidents, including storm and wind events.
- (k) Throughout the Project Term, Project Co shall implement, expand, update and continually improve the Environmental Management System (collectively, the “**Environmental Management System Updates**”) in conformance with ISO 14001.

2.2 Environmental Management System Software Solution

- (a) Project Co shall establish software solution for the administration of the Environmental Management System (the “**EMS Software Solution**”). The EMS Software Solution shall:
- (i) allow Contracting Authority users to remotely log in and access the solution with single sign-on capability to review Environmental Management System information;
 - (ii) allow easy access to data that is required to be reported in accordance with the Environmental Management System including business analytics features to enable monitoring of the performance indicators determined in accordance with ISO 14001;
 - (iii) include a central repository for all historical and current versions of the documents required to be managed in the Environmental Management System, organized in a manner that promotes efficient access to the documents; and
 - (iv) include a database that accurately and effectively records and tracks all data required to be managed in the Environmental Management System.
- (b) Throughout the Project Term, Project Co shall ensure that,
- (i) the EMS Software Solution is, at all times, the most current version of the software selected by Project Co; and
 - (ii) the EMS Software Solution and all data and documents contained therein are electronically accessible to Contracting Authority, at all times, on a real-time basis through the single sign-on capability.

3. GENERAL ENVIRONMENTAL PROVISIONS

3.1 Compliance with Environmental Reference Documents

(a) Without limitation to any of Project Co's rights, remedies or obligations under the Project Agreement, and any other obligations with respect to Project Co conducting its own due diligence investigations:

(i) Project Agreement, Project Co shall, at all times, perform the Works in accordance with Environmental Law and in a manner that ensures that Contracting Authority and the Works are in compliance with all obligations under the following (to the extent that each document is applicable to the Works):

- (A) the Environmental Assessments;
- (B) the Environmental Approvals;
- (C) the Environmental Reports;
- (D) the Cultural Heritage Reports;
- (E) the Archaeological Reports;
- (F) the phase 1 and phase 2 environmental site assessment reports;
- (G) the Designated Substances and Hazardous Materials Reports;
- (H) the Designated Substances and Hazardous Material Management Plans;
- (I) Noise and Vibration Reference Documents;
- (J) Metrolinx Vegetation Guideline (2020), as amended from time to time; and
- (K) the Guide to Environmental Assessment Requirements for Transit Projects (MECP, January 2014),

(collectively the “**Environmental Reference Documents**”).

(ii) Project Co shall comply with all recommendations and requirements, and perform all commitments and obligations in the Environmental Reference Documents, including those set out as the responsibility of the proponent or co-proponents in the Environmental Reference Documents, including, for clarity, the Project Co commitments and obligations that are set out in Appendix A-1 and Appendix A-3 to this Schedule 17, except that Project Co:

- (A) shall not be responsible for performance of and compliance with those commitments and obligations that are explicitly set out as Contracting Authority commitments or obligations in Appendix A-2 or Appendix A-3 to this Schedule 17; and

- (B) shall be responsible for complying with the provisions of Schedule 15 – Output Specifications, pertaining to the Environmental Reference Documents in the manner set out in Schedule 15 – Output Specifications,

(collectively, the “**Project Co Environmental Commitments**”). For clarity, Project Co acknowledges and agrees that, notwithstanding that a recommendation or consideration is not expressed in an Environmental Reference Document as a requirement, commitment or obligation, and is instead expressed as a recommendation or consideration (for example, using the phrase, “may”, “will”, “should”, “it is recommended”, or “to be considered”), such recommendation or consideration is deemed to be a “Project Co Environmental Commitment” for the purposes of the Project Agreement, and a specific reference to the manner in which an obligation in Schedule 15 – Output Specifications should be performed or complied with takes precedence over any discretion accorded to performance of or compliance with such obligation in the Environmental Reference Documents.

- (b) If there is any conflict between any criterion, commitment or requirement contained in one or more of the Environmental Reference Documents, under Environmental Law or the requirements of this Schedule 17, the more stringent criterion, commitment or requirement shall apply.
- (c) Project Co shall submit all documentation which demonstrates Project Co is compliant with the Project Co Environmental Commitments in accordance with Schedule 10 – Review Procedure.

3.2 Project Co Additional Environmental Obligations

- (a) Throughout the Project Term, Project Co shall manage all environmental matters and perform all environmental obligations associated with the Project in accordance with the Project Agreement, including this Schedule 17, and in coordination with Contracting Authority.
- (b) Project Co shall submit the following information for review by Contracting Authority in accordance with Schedule 10 – Review Procedure:
- (i) information that is required by an Environmental Reference Document or an Additional Environmental Report, other than any information that is explicitly Contracting Authority’s obligation to provide pursuant to a Contracting Authority Environmental Commitment;
 - (ii) information that is required at any time pursuant to this Schedule 17, including all plans, reports, Works Submittals and other documents described in this Schedule 17; and
 - (iii) information that is otherwise requested by Contracting Authority, in its sole discretion, upon reasonable advance Notice to Project Co,
 - (A) that is in the possession and control of Project Co or otherwise contemplated in the Project Agreement, at no cost to Contracting Authority; or
 - (B) that is not in the possession and control of Project Co and which would require additional work or investigation of Project Co that is not otherwise contemplated in the Project Agreement, at the cost and expense of Contracting Authority.

For clarity, the information requested by Contracting Authority in accordance with this Section 3.2(b) may include documentation that is necessary and sufficient to demonstrate that the Works are compliant with the Project Co Environmental Commitments. Project Co shall provide such documentation to Contracting Authority promptly following a request by Contracting Authority.

- (c) If a plan, report, system or other document set out in this Schedule 17 is required to be submitted by Project Co in accordance with Schedule 10 – Review Procedure, Project Co shall implement such plan, report, system or other document upon receipt of a “NO COMMENT” notification for the plan, report, system or other document by Contracting Authority, in accordance with Schedule 10 – Review Procedure.
- (d) Project Co shall undertake, fulfill and be responsible for all obligations of the “**Project Leader**” as defined in Ontario Regulation 406/19 under the Environmental Protection Act and shall be responsible for the preparation and implementation of all plans associated with the Regulation for Excess Soil Management.

3.3 Contracting Authority’s Environmental Obligations

- (a) Contracting Authority shall review all documentation submitted by Project Co under Section 3.2(b) or otherwise in accordance with this Schedule 17 in accordance with Schedule 10 – Review Procedure.
- (b) Contracting Authority shall deliver, comply with and perform all commitments and obligations set out in Appendix A-2 to this Schedule 17 (the “**Contracting Authority Environmental Commitments**”). For clarity, the Contracting Authority Environmental Commitments are limited to Contracting Authority’s obligations in Appendix A-2 to this Schedule 17 and Contracting Authority’s portions of the shared obligations set out in Appendix A-3 to this Schedule 17.
- (c) No later than 30 days following Financial Close, or such longer period as agreed upon by the Parties, Contracting Authority shall:
 - (i) provide Project Co with a summary report of any activities known to Contracting Authority that have been completed, in whole or in part, and the status of works performed prior to Financial Close, by Contracting Authority and other Governmental Authorities relevant to Project Co’s obligations under Sections 3.1 and 3.2;
 - (ii) provide Project Co with all applicable documentation related to any obligation or commitment contained in any Environmental Assessments that have been performed by Contracting Authority or a Governmental Authority and known to Contracting Authority prior to Financial Close;
 - (iii) schedule a meeting between Project Co and Contracting Authority to review the summary report and documentation referred to in Sections 3.3(c)(i) and 3.3(c)(ii); and
 - (iv) schedule an appropriate number of site visits with Project Co to review field activities performed by Contracting Authority prior to Financial Close.

3.4 Environmental Impacts and Changes

- (a) Project Co shall carry out the Works to ensure that the environmental impacts of the Works are at all times within the magnitude and extent permitted by the Environmental Reference Documents, Additional Environmental Reports and Environmental Law.
- (b) If it is not possible to contain the environmental impact of any aspect of the Works to be within the magnitude and extent permitted by the Environmental Reference Documents and the Additional Environmental Reports, then Project Co shall prepare and submit a report setting out the reason and details for the deviation in accordance with Schedule 10 – Review Procedure and the timeframe for submission set out in Appendix B to this Schedule 17 (each a “**Project Co Deviation Report**”). The Project Co Deviation Report shall include,
- (i) a detailed description of and reason for, as applicable the change(s) of the design of the Works from the design concept set out in the Environmental Assessments, Environmental Reference Documents and Additional Environmental Reports;
 - (ii) Project Co’s assessment and evaluation of any environmental impacts, and the magnitude of such environmental impacts, that may arise, directly or indirectly, from the design of the Works, as compared to the reference design concept set out in the Environmental Assessments, Environmental Reference Documents and Additional Environmental Reports;
 - (iii) Project Co’s proposed measures for mitigating any negative environmental impacts that may arise, directly or indirectly, from the change(s); and
 - (iv) Project Co’s opinion as to whether the change(s) constitute significant change(s), and the reasons for such opinion.
- (c) If Contracting Authority determines, in its sole discretion, that an environmental project report addendum or revision(s) to site Environmental Approvals are required in accordance with Environmental Law or if Environmental Reference Documents or Additional Environmental Reports require addenda or revision(s), then Contracting Authority shall, in its sole discretion,
- (i) require Project Co to undertake the amendment process required in accordance with Environmental Law on behalf of Contracting Authority, and Project Co shall undertake such amendment process at Project Co’s sole cost and expense in accordance with Contracting Authority’s instructions; or
 - (ii) undertake the amendment process using Contracting Authority’s own forces or third party consultants at Project Co’s sole cost and expense, and Project Co shall provide Contracting Authority with all assistance and documentation that Contracting Authority may request with respect to such amendment process.
- (d) With respect to any amendments to Environmental Assessments that may be required as a result of Section 3.4(c), Metrolinx shall be the “proponent” under the O.Reg. 231/08 and Project Co shall be Metrolinx’s agent in preparing any such amendment, which shall be submitted to the Contracting Authority Representative in accordance with Schedule 10 - Review Procedure and the timeframe for submission set out in Appendix B to this Schedule 17.

3.5 Environmental Plans and Reports

- (a) In addition to those plans and reports required by Schedule 17, Project Co shall prepare and submit to the Contracting Authority Representative (and to the applicable Governmental Authority) any additional reports, plans and documentation relating to the Project that are required by any Environmental Law or any Environmental Reference Document (each an “**Additional Environmental Report**”). All plans and reports explicitly set out in this Schedule 17 and all Additional Environmental Reports shall be submitted to the Contracting Authority Representative in accordance with Schedule 10 – Review Procedure, prior to submission to any Governmental Authority.
- (b) Without limiting Section 3.5(a), Project Co shall, within 10 Business Days or within a time period agreed upon by the Parties, provide the Contracting Authority Representative with copies of all evaluations and investigations, monitoring data, reports, drawings, electronic files, checklists, documents, and lab / test results relating to the Lands, the Works or the Project conducted by or on behalf of or coming into the possession of Project Co at any time whether before or after Financial Close.

4. NOTIFICATION, RECORDS AND REPORTING REQUIREMENTS

4.1 Permits, Licences, Approvals and Agreements

- (a) Project Co acknowledges and agrees that Section 11.8 of the Project Agreement and Appendix A to Schedule 1 – Permits, Licences, Approvals and Agreements applies to all Permits, Licences, Approvals and Agreements necessary to fulfill Project Co’s environmental obligations under the Project Agreement, including those relating to the amendment of any Environmental Reference Document or Additional Environmental Report.

4.2 Notice to Contracting Authority

- (a) Project Co shall immediately give Notice to the Contracting Authority Representative of Project Co’s knowledge of:
- (i) any breach by Project Co or any Project Co Party of any Environmental Law relating to the performance of the Works or the Lands;
 - (ii) any charge, order, investigation or notice of violation or non-compliance issued under any Environmental Law,
 - (A) against Project Co or any Project Co Party;
 - (B) relating to the performance of the Works; or
 - (C) relating to the Lands; or
 - (iii) any actual or potential notice, claim, action or other proceeding brought by any person under any Environmental Law,
 - (A) against Project Co or any Project Co Party;

- (B) relating to the performance of the Works; or
- (C) relating to the Lands.

4.3 Communications with Governmental Authorities

- (a) Unless otherwise specified in the Project Agreement, Project Co shall liaise directly with the MECP and other applicable Governmental Authorities regarding Project Co's environmental obligations under the Project Agreement, except that Contracting Authority and Project Co shall jointly establish the first point of contact with MECP and other applicable Governmental Authorities following Commercial Close.
- (b) If requested by Contracting Authority, Project Co shall promptly provide the Contracting Authority Representative with any written documentation or authorizations required by Contracting Authority related to any inquiry of any Governmental Authority with respect to Project Co's compliance with this Schedule 17, any Environmental Law or any Permits, Licences, Approvals and Agreements relating to environmental matters on the Project.
- (c) Project Co shall forward to the Contracting Authority Representative a copy of any report, submission, application or other document relating to environmental matters on, at, affecting or otherwise relating to the Works or the Lands, concurrent with the filing or submission of the report, submission, application or other document to any Governmental Authority.
- (d) Project Co shall provide Contracting Authority with a minimum of five Business Days advance Notice of all planned meetings with any Governmental Authority related to environmental matters and Project Co acknowledges and agrees that Contracting Authority may, in its sole discretion, attend such meetings. Project Co shall file or submit the report or other document after receipt of a "NO COMMENT" notification from Contracting Authority and in accordance with the timeframe for submission set out in Appendix B to this Schedule 17, as applicable.

4.4 Indigenous Communities Engagement

- (a) Contracting Authority shall be responsible for all Indigenous Communities Engagement and will liaise directly with the applicable Indigenous Communities throughout the Project Term. Contracting Authority may require Project Co to assist with, and support, Contracting Authority's Indigenous Communities Engagement.
- (b) Project Co shall comply with the requirements of Schedule 18 – Communication and Public Engagement Protocol with respect to providing information for, or completing any report, assessment, submission, application, communications material or other document relating to Indigenous Communities ("**Documents Relating to Indigenous Communities**") and all other planned communications with Indigenous Communities.

4.5 Environmental Records

- (a) Project Co shall maintain all documents and records relating to environmental matters for the Project (including the Environmental Reference Documents, Additional Environmental Reports and any environmental Project Co Permits, Licences, Approvals and Agreements) in accordance with Schedule 26 – Record Provisions.

5. KEY INDIVIDUALS AND ENVIRONMENTAL WORKING GROUP

5.1 Environmental Positions

- (a) Project Co shall ensure that distinct qualified individual(s) are appointed to each of the following roles:
- (i) Environmental Manager;
 - (ii) Environmental Permits and Approvals Coordinator;
 - (iii) Environmental Compliance Officer;
 - (iv) the Environmental Specialist roles set out in Section 5.5; and
 - (v) Environmental Inspector.
- (b) Project Co shall ensure that no single individual occupies more than one of the roles listed in Sections 5.1(a)(i) to 5.1(a)(v) unless Project Co has obtained the prior written consent of Contracting Authority.
- (c) Project Co shall submit sufficient documentation (the “**Environmental Specialists Qualifications Plan**”) to Contracting Authority in accordance with Schedule 10 – Review Procedure and in accordance with the timeframe for submission set out in Appendix B to this Schedule 17, to demonstrate that the qualifications of each individual assigned to an environmental position set out in Sections 5.1(a)(i) to 5.1(a)(v) are sufficient to carry out his or her respective responsibilities, as set out in Sections 5.2 to 5.5 as applicable for such roles.

5.2 Environmental Manager(s)

- (a) Project Co shall appoint one or more environmental manager(s) who shall, throughout the Project Term, have defined authority for ensuring compliance with all of Project Co’s environmental obligations for the Project and the day-to-day implementation of Project Co’s environmental obligations set out in the Project Agreement (each an “**Environmental Manager**”). Each Environmental Manager shall be a Key Individual. Each Environmental Manager shall be independent of the Construction Contractor.
- (b) Without limiting the generality of Section 5.2(a), the Environmental Manager shall:
- (i) direct all aspects of Project Co’s environmental programs for the Project, including the annual environmental reporting activities;
 - (ii) ensure environmental issues are addressed and requirements are met in accordance with the Project Agreement and all Environmental Reference Documents and Additional Environmental Reports;
 - (iii) manage all environmental issues associated with the Project on a day-to-day basis, including overseeing the environmental monitoring and follow-up program in accordance

- with the Environmental Reference Documents, Additional Environmental Reports, Environmental Law and any applicable Permits, Licences, Approvals and Agreements;
- (iv) establish and maintain working relationships with relevant Governmental Authorities and Stakeholders in cooperation with the Contracting Authority Representative;
 - (v) take a lead role in internal environmental design reviews including development of mitigation and compensation proposals acceptable to the Contracting Authority and Governmental Authorities;
 - (vi) liaise with the Contracting Authority and with Governmental Authorities (through the Contracting Authority) as required and acting as the single point of contact for Project Co on all matters relating to environmental management;
 - (vii) direct the preparation and submission to the Contracting Authority of all plans, reports, documents and other information required by this Schedule 17;
 - (viii) act as lead authorizing signatory for Project Co before the release of any new or amended plan, report or document set out in Schedule 10 – Review Procedure and any other plan, report or document identified under Section 3.2(b), which authority shall be executed in accordance with the requirements of Schedule 11 – Quality Management;
 - (ix) act as lead authorizing signatory for Project Co before the release of any new or amended plan, report or document pursuant to environmental components of Design Development Submittals, Construction Document Submittals and Project Works Schedules, which authority shall be executed in accordance with the requirements of Schedule 11 – Quality Management;
 - (x) ensure effective operation of the Environmental Management System on a day-to-day basis;
 - (xi) ensure that environmental issues are addressed and requirements are met in accordance with the Environmental Reference Documents, Additional Environmental Reports and the Project Agreement; and
 - (xii) ensure effective development, tracking and monitoring of environmental metrics in line with best practice standards.
- (c) The Environmental Manager(s) shall have the following minimum qualifications:
- (i) a minimum of 10 years of work-related experience for projects of similar size, scope, and complexity to the Project;
 - (ii) a bachelor or advanced degree from a recognized post-secondary institution with specialization in planning, environmental planning, geography or another related discipline;
 - (iii) experience in successfully managing all Environmental Aspects of transit projects in Ontario;

- (iv) knowledge of Ontario’s Transit Project Assessment Process and *Environmental Assessment Act* (Ontario);
- (v) knowledge of relevant federal and Ontario environmental policies, procedures and legislation;
- (vi) experience with implementation and management of environmental management systems that conform to ISO 14001;
- (vii) experience liaising with other specialty consultants, contractors and Governmental Authorities; and
- (viii) experience with similar projects in Ontario.

5.3 Environmental Permits and Approvals Coordinator(s)

- (a) Project Co shall appoint one or more environmental permits and approvals coordinator(s) (each an “**Environmental Permits and Approvals Coordinator**”) who shall, throughout the Project Term and under direction of an Environmental Manager, be responsible for obtaining and ensuring the compliance with environmental Permits, Licences, Approvals and Agreements relating to the performance of the Works.
- (b) Without limiting the generality of Section 5.3(a), the Environmental Permits and Approvals Coordinator(s) shall:
 - (i) manage all environmental Permits, Licences, Approvals and Agreements associated with the Project on a day-to-day basis;
 - (ii) establish and maintain working relationships with relevant Governmental Authorities and Stakeholders through the Contracting Authority Representative; and
 - (iii) ensure that environmental plans and records related to Permits, Licences, Approvals and Agreements are uploaded into registries as required by Governmental Authorities.
- (c) The Environmental Permits and Approvals Coordinator shall have the following minimum qualifications:
 - (i) a minimum of 10 years of work-related experience;
 - (ii) a bachelor or advanced degree from a recognized post-secondary institution with specialization in planning, environmental planning, geography or another related discipline;
 - (iii) experience in successfully managing the process of procuring all environmental permits and approvals on transit projects in Ontario;
 - (iv) knowledge of Ontario’s Transit Project Assessment Process and Environmental Assessment Act (Ontario);

- (v) knowledge of relevant federal and Ontario environmental policies, procedures and legislation;
- (vi) ability to liaise with other specialty consultants, contractors, Governmental Authorities and Indigenous Communities, in accordance with Schedule 18 – Communication and Public Engagement Protocol; and
- (vii) experience with similar projects in Ontario.

5.4 Environmental Compliance Officer

- (a) Project Co shall appoint one or more environmental compliance officer(s) (each, an “**Environmental Compliance Officer**”) who shall, throughout the Project Term and under the direction of the Environmental Manager(s), be responsible for monitoring and managing the implementation of the Environmental Aspects of the Works on a daily basis to confirm compliance with the requirements of:
 - (i) the commitments of the Environmental Reference Documents;
 - (ii) environmental Permits, Licences, Approvals and Agreements;
 - (iii) all plans, reports and Additional Environmental Reports implemented pursuant to Section 3.2(c); and
 - (iv) managing all compliance related issues associated with the Project on a day-to-day basis.
- (b) Project Co’s Environmental Compliance Officer shall have the following minimum qualifications:
 - (i) a bachelor or advanced degree in an environmental related discipline (ecology, biology, or environmental science) from a recognized university;
 - (ii) a minimum of five years of experience conducting environmental inspections, monitoring and compliance;
 - (iii) knowledge of methods, approaches, and best management practices related to environmental inspections, including experience with the MTO Construction Administration and Inspection Task Manual, dated April, 2005, and as amended from time to time; and
 - (iv) experience with similar projects in Ontario.

5.5 Environmental Specialists

- (a) Project Co shall have available as required during the Project Term, under direction of an Environmental Manager, a multi-disciplinary team of specialists experienced in the disciplines required to meet Project Co’s obligations under this Schedule 17, including,
 - (i) Air Quality Specialist(s);

- (ii) Aquatic Specialist(s);
 - (iii) Arborist(s);
 - (iv) Cultural Heritage Specialist(s);
 - (v) Environmental Planning Specialist(s);
 - (vi) Hydrogeologist(s);
 - (vii) Noise Specialist(s);
 - (viii) Licenced Archaeologist(s);
 - (ix) Species at Risk Specialist(s);
 - (x) Vibration Specialist(s);
 - (xi) Soil and Groundwater Contamination and Management Specialist(s); and
 - (xii) Biologist(s),
- (each an “**Environmental Specialist**”).
- (b) Each Environmental Specialist used by Project Co to meet its obligations under the Project Agreement shall have the following minimum qualifications:
- (i) each Air Quality Specialist shall have:
 - (A) a minimum of 10 years of work-related experience;
 - (B) a bachelor or advanced degree from a recognized university with specialization in chemical, civil or environmental engineering;
 - (C) experience in predicting the greenhouse gas emission implications of transportation alternatives;
 - (D) experience in designing and evaluating appropriate air quality impact mitigation for transportation projects;
 - (E) experience utilizing scientifically approved dispersion models, such as CAL3QHC and CAL3QHCR, and vehicle emission model, such as MOVES;
 - (F) experience in the determination of existing ambient air quality and exceedances in ambient air quality criteria prescribed by municipal, provincial and/or national standards;
 - (G) experience in Air Quality Sensitive Receptor identification, assessment of impacts, and the identification of mitigation measures;

- (H) understanding of federal, Ontario and municipal laws and regulations as they pertain to air quality; and
 - (I) ability to liaise with other specialty consultants, contractors and Governmental Authorities;
- (ii) each Aquatic Specialist shall have:
- (A) a minimum of five years of work-related experience;
 - (B) a bachelor or advanced degree from a recognized post-secondary institution with specialization in ecology, conservation biology, environmental science or another related discipline;
 - (C) knowledge of the *Species at Risk Act* (Canada), the *Fisheries Act* (Canada), the *Endangered Species Act* (Ontario), the *Fish and Wildlife Conservation Act* (Ontario) and related policies;
 - (D) experience in applying for MECP permits and DFO approvals as they pertain to aquatic species, including experience in preparing Overall Benefit Permits and compensation plans;
 - (E) knowledge of the ecological concepts, function of ecosystems and how human land uses are impacting ecosystems; and
 - (F) demonstrated experience involving,
 - (I) the identification and assessment of aquatic species and habitat;
 - (II) aquatic impact assessments;
 - (III) development of aquatic mitigation measures; and
 - (IV) experience with similar projects in Ontario;
- (iii) each Arborist shall have:
- (A) a minimum of five years of work-related experience;
 - (B) a bachelor or advanced degree from a recognized post-secondary institution in a field of study related to trees, landscaping and arboriculture;
 - (C) a certified membership in good standing with the International Society of Arboriculture;
 - (D) knowledge of federal, Ontario, municipal, and Metrolinx policies, procedures and legislation;

- (E) ability to liaise with other specialty consultants, contractors and Governmental Authorities; and
 - (F) experience with similar projects in Ontario;
- (iv) each Cultural Heritage Specialist shall have:
- (A) a minimum of five years of work-related experience;
 - (B) a bachelor or advanced degree from a recognized university in a field of study related to historical and architectural aspects of Built Heritage Resources and Cultural Heritage Landscapes;
 - (C) membership in the Canadian Association of Heritage Professionals;
 - (D) experience in the identification and evaluation of cultural heritage resources;
 - (E) experience in the development of heritage resource mitigation measures, including relocation, salvage and conservation plans for architecture and landscape;
 - (F) knowledge of federal, Ontario, and Metrolinx cultural heritage policies, procedures and legislation;
 - (G) ability to liaise with other specialty consultants, contractors and Governmental Authorities; and
 - (H) experience with similar projects in Ontario;
- (v) each Environmental Planning Specialist shall have:
- (A) a minimum of 10 years of work-related experience;
 - (B) a bachelor or advanced degree from a recognized university with specialization in urban and land use planning, environmental, geography or another related discipline;
 - (C) experience in successfully managing transit projects in Ontario;
 - (D) experience in obtaining environmental Permits, Licences, Approvals and Agreements in Ontario;
 - (E) knowledge of Ontario's Transit Project Assessment Process;
 - (F) knowledge of relevant federal, provincial, municipal and Metrolinx environmental policies, procedures and legislation;
 - (G) ability to liaise with other specialty consultants, contractors and Governmental Authorities; and

- (H) experience with similar projects in Ontario;
- (vi) each Hydrogeologist shall have:
- (A) a minimum of 10 years of work-related experience;
 - (B) a bachelor or advanced degree from a recognized university in hydrogeology or geoscience or engineering;
 - (C) a designation as a “Professional Geoscientist” in the Province of Ontario and be a practicing member of the Association of Professional Geoscientists of Ontario and/or an appropriately trained Professional Engineer licensed in the Province of Ontario, or have other relevant credentials approved by Contracting Authority;
 - (D) experience designing, implementing and overseeing dewatering systems, including obtaining all necessary Permits To Take Water, Environmental Activity and Sector Registrations, municipal sewer use permits or other discharge permits;
 - (E) knowledge of Ontario Regulation 387/04 and the *Ontario Water Resources Act* (Ontario); and
 - (F) experience with similar projects in Ontario;
- (vii) each Noise Specialist shall have:
- (A) a minimum of 10 years of work-related experience;
 - (B) a designation as an accredited Professional Engineer in Ontario, or have other relevant credentials approved by Contracting Authority;
 - (C) experience in successfully managing noise assessments for transit projects in North America;
 - (D) knowledge of relevant federal, Ontario and municipal policies, procedures and legislation and, where none exists, knowledge and experience of other appropriate legislation, guidance or standards;
 - (E) ability to liaise with other specialty consultants, contractors and Governmental Authorities; and
 - (F) experience with similar projects in Ontario;
- (viii) each Licenced Archaeologist shall have:
- (A) a minimum of 10 years of work-related experience;
 - (B) a licence to practice archaeology in the Province of Ontario in accordance with the *Ontario Heritage Act* (Ontario);

- (C) knowledge of federal, Ontario, and Metrolinx heritage policies, procedures and legislation;
 - (D) experience in industrial archaeology, specifically in rail line construction and historic engineering; and
 - (E) ability to liaise with other specialty consultants, contractors, Governmental Authorities and Indigenous Communities;
- (ix) each Species at Risk Specialist shall have:
- (A) a minimum of five years of work-related experience;
 - (B) a bachelor or advanced degree from a recognized university with specialization in ecology, conservation biology, environmental science or another related discipline;
 - (C) knowledge of the ecological concepts, function of ecosystems and how human land uses are impacting ecosystems;
 - (D) general familiarity with flora and fauna, and knowledge of Species at Risk and their ecological requirements, that occur in the part of Ontario in which the Project is located;
 - (E) knowledge of the *Species at Risk Act* (Canada), the *Fisheries Act* (Canada), the *Endangered Species Act* (Ontario) and related policies;
 - (F) experience in registration of species with MECP and applying for MECP permits especially in preparing Overall Benefit Permits for Species at Risk; and
 - (G) experience in implementing projects in compliance with permits relevant to Species at Risk;
 - (H) experience with similar projects in Ontario;
- (x) each Vibration Specialist shall have:
- (A) a minimum of 10 years of work-related experience;
 - (B) a designation as an accredited Professional Engineer in Ontario, or have other relevant credentials approved by Contracting Authority;
 - (C) experience in successfully managing vibration assessments for transit projects in North America;
 - (D) knowledge of relevant federal and Ontario environmental policies, procedures and legislation and, where none exists, knowledge and experience of other appropriate legislation, guidance or standards; and

- (E) ability to liaise with other specialty consultants, contractors and Governmental Authorities;
- (xi) each Soil and Groundwater Contamination and Management Specialist shall have:
 - (A) a minimum of 10 years of work-related experience;
 - (B) designation as a “Qualified Person”;
 - (C) experience with and understanding of the application and interpretation of Canadian Standards Association (CAN/CSA Z768 and CAN/CSA Z769) investigation criteria and criteria relating to the assessment of contaminated lands;
 - (D) experience with and understanding of the application and interpretation of Ontario Regulation 153/04, under the *Environmental Protection Act* (Ontario), as amended from time to time, and investigation criteria relating to the assessment of contaminated lands;
 - (E) experience in designing, implementing and overseeing:
 - (I) soil management plans;
 - (II) phase 1 and 2 environmental site assessments;
 - (III) soil and groundwater characterization programs;
 - (IV) remedial action plans for soil and/or groundwater and/or surface water;
 - (V) site inspection and monitoring programs for construction activities;
 - (VI) excess soil beneficial reuse strategies; and
 - (VII) dewatering effluent treatment and discharge strategies;
 - (F) knowledge of relevant federal and Ontario policies, procedures and legislation, including waste management and related legislation, regulations, guidelines, and policies for water protection and materials management and the MTO contaminated property process;
 - (G) ability to liaise with other specialty consultants, contractors and Governmental Authorities; and
 - (H) experience with similar projects in North America; and
- (xii) each Biologist shall have:
 - (A) a minimum of five years of work-related experience;

- (B) a bachelor or advanced degree from a recognized post-secondary institution with specialization in one, or several, of the following fields: conservation biology, wildlife biology (including avian and fish), zoology, terrestrial biology, aquatic biology, ecology, or another related field;
- (C) knowledge of ecological concepts, the function of ecosystems, and how human land uses are impacting ecosystems;
- (D) general familiarity with fauna, including bird species and their ecological requirements, that occur in the part of Ontario in which the Project is located; and
- (E) experience with similar projects in Ontario.

5.6 Environmental Inspector(s)

- (a) Project Co shall appoint one or more environmental inspector(s) who shall, under direction of the Environmental Compliance Officer, ensure compliance of the Works with the Environmental Management System and the Project Agreement (each an “**Environmental Inspector**”).
- (b) Each Environmental Inspector shall have a minimum of three years of demonstrated work experience in all aspects of environmental monitoring and mitigation during roadway construction, specifically with respect to work in and around watercourses and in the application and correction of erosion and sedimentation control measures, reporting Spills and the containment of effluent and dust during construction, and with projects in Ontario of a similar scope and complexity to this Project. Each Environmental Inspector shall also hold certification as a Canadian Certified Inspector of Sediment and Erosion Control (CAN-CISEC), or have proven proficiency in observing, inspecting and reporting on the implementation of Erosion and Sediment Control Plans.
- (c) Without limiting the generality of Section 5.6(a), the job specification and responsibilities of each Environmental Inspector shall include the following:
 - (i) as a minimum, conduct monitoring and inspections on all aspects of the Works in accordance with the Environmental Management System;
 - (ii) maintain a log of monitoring and inspection events, which shall include photographic evidence to support the observations recorded during such monitoring and inspection events;
 - (iii) complete monitoring and inspection reports and provide to the Environmental Compliance Officer; and
 - (iv) provide advice and recommendations for improving environmental protection and correcting any inefficient practices and/or issues of non-compliance within 24 hours of noticing a potential issue.

5.7 Environmental Working Group

- (a) Project Co shall form an environmental working group that is comprised of,

-
- (i) no fewer than four qualified Project Co representatives, including Environmental Manager(s), Environmental Permits and Approvals Coordinator(s), and the Environmental Compliance Officer; and
 - (ii) a representative of Contracting Authority,
- (the “**Environmental Working Group**”).
- (b) The Environmental Working Group shall meet on a bi-weekly basis, or more frequently if required by Contracting Authority throughout the Project Term, commencing within 14 days following Financial Close. No later than five Business Days prior to each Environmental Working Group meeting, Project Co shall advise Contracting Authority of such meeting and a representative of Contracting Authority may, in the sole discretion of Contracting Authority, participate in the meeting.
 - (c) The Environmental Working Group shall provide teleconference details for those unable to attend in-person.
 - (d) The Environmental Working Group shall identify its working relationship, roles and responsibilities matrix, and approvals processes, to comply with the environmental requirements of this Project Agreement.
 - (e) At the Contracting Authority Representative’s request, applicable Environmental Specialists shall attend Environmental Working Group meetings to discuss environmental submissions, content, established submission dates and other relevant requirements in compliance with the Project Agreement and any Applicable Law.
 - (f) At Environmental Working Group meetings, Project Co shall be prepared to report on:
 - (i) key environmental issues and field activities associated with environmental obligations contemplated in this Schedule 17;
 - (ii) environmental and design activities and Construction Activities undertaken as part of the Works;
 - (iii) environmentally-related communications with Governmental Authorities;
 - (iv) the identification of, and issues related to, all Sensitive Receptors and Environmentally Sensitive Construction Activities for review by Contracting Authority;
 - (v) the status, frequency and results of the monitoring and inspection activities required in accordance with this Schedule 17;
 - (vi) the status of environmental protection measures, issues of non-compliance or non-conformance and associated corrective actions and resolution of issues, including presentation of descriptions and photos as required to facilitate such;

- (vii) the status of information that is required at any time pursuant to this Schedule 17, including all plans, reports, submittals and other documents set out in this Schedule 17; and
- (viii) status of Permits, Licences, Approvals and Agreements.
- (g) The Environmental Working Group meetings shall be facilitated by Project Co and Project Co shall prepare and distribute an agenda and presentation to the Contracting Authority Representative at least 48 hours in advance of an Environmental Working Group meeting.
- (h) Project Co shall prepare and submit Environmental Working Group meeting minutes to the Contracting Authority Representative no later than five Business Days following each Environmental Working Group. Project Co shall incorporate all comments received by Contracting Authority with respect to accuracy of the meeting minutes and shall provide revised meeting minutes to Contracting Authority no later than five Business Days following receipt of Contracting Authority's comments on the meeting minutes.

6. ENVIRONMENTAL MANAGEMENT

6.1 Other Required Environmental Reports

- (a) Project Co shall prepare annual environmental compliance monitoring reports (each an “**Annual Environmental Compliance Monitoring Report**”) in accordance with a format agreed upon by Contracting Authority. Project Co shall submit each Annual Environmental Compliance Monitoring Report to the Contracting Authority Representative in accordance with Schedule 10 – Review Procedure and in accordance with the submission timeframe set out in Appendix B to this Schedule 17. In each Annual Environmental Compliance Monitoring Report, Project Co shall document the status of all Project Co Environmental Commitments and include a roll-up summary of activities, issues, outcomes, and ongoing matters from the Monthly Environmental Reports of the previous calendar year.
- (b) Project Co shall prepare and submit to the Contracting Authority Representative monthly environmental reports (each a “**Monthly Environmental Report**”). Project Co shall submit each Monthly Environmental Report to the Contracting Authority Representative in accordance with Schedule 10 – Review Procedure and in accordance with the submission timeframe set out in Appendix B to this Schedule 17. In each Monthly Environmental Report, Project Co shall document:
 - (i) descriptions of environmental issues encountered;
 - (ii) environmental non-conformances and incidents that have occurred;
 - (iii) preventative, corrective, and other follow up actions associated with environmental non-conformances and incidents that have occurred; the expected timelines for such actions; and responsibilities associated with such actions; and
 - (iv) a look-ahead for the next month for the following:

- (A) status of field activities associated with environmental obligations contemplated in this Schedule 17;
 - (B) environmental process and design activities and Construction Activities undertaken as part of the Works during the period relevant to Project Co's obligations under this Schedule 17, including surveys, inspections, repairs, and construction work undertaken for environmental protection and mitigation measures;
 - (C) key environmental issues, concerns and risks associated with the Project;
 - (D) studies and permitting activities;
 - (E) consultation activities and environmentally related communications with Governmental Authorities;
 - (F) design and implementation of mitigation measures (successes and failures) associated with key environmental issues, concerns and risks, monitoring activities, resolutions to environmental impacts, and a status update on complying with Project Co Environmental Commitments; and
 - (G) administrative activities, including training meetings, presentations on health and safety, progress of Permits, Licences, Approvals and Agreements and other environmental plans and reports and submission requirements.
- (c) Project Co shall obtain, from an independent Environmental Consultant acceptable to Contracting Authority, acting reasonably, an annual independent environmental audit (the "**Independent Environmental Audit**") of Project Co's compliance with its environmental obligations under the Project Agreement.
- (d) The Environmental Consultant undertaking the Independent Environmental Audit shall have the knowledge and skills necessary to complete the defined Independent Environmental Audit scope, including:
- (i) appropriate education, skills, experience and/or training considering Applicable Law and local or national guidelines;
 - (ii) relevant technical skills specific to the scope, boundaries, and Independent Environmental Audit objective; and
 - (iii) knowledge of the requirements of best practice standards for environmental audits.
- (e) All costs and expenses associated with the Independent Environmental Audit, including costs and expenses related to undertaking any additional investigations or remedial measures recommended by the Environmental Consultant, shall be borne by Project Co.
- (f) Project Co shall submit the resulting report from the Independent Environmental Audit ("**Environmental Audit Report**") to the Contracting Authority Representative no later than 30 days following the completion of the Independent Environmental Audit by the Environmental

Consultant, in accordance with Appendix B to this Schedule 17 and in accordance with Schedule 10 – Review Procedure.

7. MANAGEMENT OF SOIL AND EXCAVATED MATERIALS

7.1 Soil and Excavated Materials Management Plan

- (a) Project Co shall prepare and implement a soil and excavated material management plan (a “**Soil and Excavated Material Management Plan**”) that describes how Project Co will address management of all excavated material (i.e. soil, rock and solid waste, including Contamination), including handling, transportation, testing, disposal and/or ultimate disposition of all excavated material generated as part of the Works. The Soil and Excavated Material Management Plan shall comply with O. Reg. 406/19, including MECP’s “Rules for Soil Management and Excess Soil Quality Standards” and all other Applicable Law, and shall describe, at a minimum, the following:
- (i) the general principles that Project Co will apply for managing soil and excavated materials (including soil and rock mixtures, and rock from tunneling operations and bedrock excavation);
 - (ii) preparation and implementation of all plans and reports that are set out in O. Reg. 406/19, including:
 - (A) the assessment of past uses;
 - (B) the sampling and analysis plan;
 - (C) the soil characterization report; and
 - (D) the excess soil destination report;
 - (iii) the over-arching soil and excavated materials management strategy in terms of sustainable principles and compliance with regulatory requirements and best practices;
 - (iv) estimated quantities, by location, of soil and excavated materials to be managed during the Works and proposed methods for minimizing these quantities;
 - (v) protocols for characterizing excavated material as waste or excess soils and determining management, including disposal requirements;
 - (vi) how soil and excavated materials will be temporarily staged or stored at the Site or other worksites for treatment and/or re-use or subsequent transfer to disposal with regard for potential environmental effects and impacts to human health and safety;
 - (vii) methods for minimizing the quantity of material requiring excavation and management;
 - (viii) methods to maximize the re-use of excavated material within the Works;

- (ix) estimated quantities by location and by volume and mass of total excavated material including excess soil and waste resulting from the Works, soil and excavated material that will be re-used in the Site, and soil and excavated material to be transported from the Site for re-use or disposal;
 - (x) procedures for testing and characterizing the soil and excavated material in compliance with applicable regulations;
 - (xi) how excess soil and excavated material generated by the Works will be managed using best management practices;
 - (xii) how areas of known or inferable Contamination will be managed and estimated quantities of contaminated material to be disposed outside of the Lands;
 - (xiii) how the discovery of Contamination in areas not previously identified will be managed including a general plan of action for the remediation or removal of Contamination as detailed in the Contamination Management Plan;
 - (xiv) procedures for determining suitable source sites for importing soil to the Lands and what quality of soil is suitable for importation to the Lands;
 - (xv) what analytical testing will be completed on soil imported to the Lands; and
 - (xvi) reporting procedures to document how all management activities and best practices have been implemented.
- (b) Project Co shall submit the Soil and Excavated Material Management Plan to Contracting Authority in accordance with Schedule 10 – Review Procedure and in accordance with the submission timeframe set out in Appendix B to this Schedule 17.
- (c) If Project Co intends to dispose of excess soil and excavated material outside the Lands, Project Co shall demonstrate, to the satisfaction of Contracting Authority, that testing and sampling protocols have been followed to establish concentrations for chemical parameters of concern and that Project Co has complied with all Environmental Law.

7.2 Soil and Excavated Material Software Solution

- (a) Project Co shall implement a software solution for soil and excavated material management monitoring with each movement of soil and excavated materials by Project Co being captured in a database (a “**Soil and Excavated Material Software Solution**”), which solution must:
- (i) be compliant with the tracking system requirements under O.Reg. 406/19;
 - (ii) contain an up-to-date and complete inventory of all receiver sites of soil and of excavated material generated by the Works that cannot be reused on the Lands. This includes MECP licensed facilities, temporary storage areas, commercial fill operations, beneficial re-use sites, processing and recycling facilities, landfills and any other receiving site. This inventory shall include the following details and shall be updated at a minimum on a monthly basis until such time as the Works have been completed:

- (A) the municipal address of receiver site;
 - (B) the name of receiver site owner and operator;
 - (C) the name of Qualified Person overseeing receiver site activities;
 - (D) the Governmental Authority having jurisdiction over the receiver site;
 - (E) the type of approval under which the site is operating;
 - (F) the total volume of soil and/or excavated material transported to the site;
 - (G) the description of the source of the soil and/or excavated material transported to the site; and
 - (H) a description of the number of samples collected and analyzed and a list of parameters included in the analyses;
- (iii) provide for in-month evidence and certification by a Qualified Person that the quality of soil transported to each receiver site is compliant with the receiver site license, approval, operational requirements, and fill management plan;
 - (iv) account for any waste manifests or shipping documentation associated with waste and excess soils in compliance with O. Reg. 406/19; and
 - (v) include a fill management plan for each receiver site. For all receiver sites that do not have an owner-supplied fill management plan in place, Project Co shall prepare at no additional cost to Contracting Authority its own fill management plan for that receiver site that is in accordance with O. Reg. 406/19 Excess Soil Regulation and Rules for Soil Management and Excess Soil Standards, the type of approval under which the receiver site is operating and all Applicable Law.
- (b) The Soil and Excavated Material Software Solution shall include a monthly dashboard report for soil and excavated material which presents cumulative data for each calendar month (the “**Soil and Excavated Material Monthly Dashboard**”). The Soil and Excavated Material Monthly Dashboard shall be automatically generated on the first day of each month for the preceding month as set out in Appendix B to this Schedule 17.
 - (c) The Soil and Excavated Material Monthly Dashboard shall include the following for the applicable month:
 - (i) the total quantities of soil and of excavated material resulting from the Works;
 - (ii) the total quantities of soil and of excavated material that were re-used in the Works;
 - (iii) the total quantities of soil and of excavated material that were transported from the Site for re-use or disposal, including a detailing of quantities by mass transported to each receiver;

- (iv) the total quantity of soil and aggregate imported to the Works, the provenance of the imported soil and aggregate, the location of imported soil and aggregate placement and the analytical results of testing conducted on the imported soil; and
 - (v) the results of soil and excavated material characterization.
- (d) Project Co shall make the information in the Soil and Excavated Material Monthly Dashboard available to any Governmental Authority when requested by that Governmental Authority. Should a registration or tracking system for soil movement be implemented by any Governmental Authority, Project Co shall be responsible for providing all necessary information to the Governmental Authority as prescribed by the Governmental Authority.

7.3 Soil and Excavated Material Management Implementation Report

- (a) Project Co shall prepare and submit a soil and excavated material management implementation report (a “**Soil and Excavated Material Management Implementation Report**”) to the Contracting Authority Representative in accordance with the submission timeframe set out in Appendix B to this Schedule 17. The Soil and Excavated Material Management Implementation Report shall,
- (i) describe and summarize how all of Project Co’s excavated material management activities have been implemented during the Works;
 - (ii) provide a summary of the total quantities by location of: soil and excavated material resulting from the Works, soil and excavated material that was re-used in the Works, and soil and excavated material that was transported from the Site for re-use or disposal, including a detailing of quantities transported to each receiver site;
 - (iii) include an accurate and final inventory at each receiver site of soil and/or excavated material generated by the Works that cannot be reused on the Lands. This includes MECP licensed facilities, temporary soil storage areas, commercial fill operations, beneficial re-use sites, processing and recycling facilities, landfills and any other receiving site. This inventory shall include the following details and shall cover the period of the Works:
 - (A) the municipal address of receiver site;
 - (B) the name of receiver site owner and operator;
 - (C) the name of the Qualified Person overseeing receiver site activities;
 - (D) the Governmental Authority having jurisdiction over the receiver site;
 - (E) the type of approval under which the site is operating;
 - (F) the total volume of soil and/or excavated material transported to the site;
 - (G) the description of the source of the soil and/or excavated material transported to the site;

- (H) a description of the number of samples collected and analyzed and a list of parameters included in the analyses; and
- (I) any waste manifests or shipping documentation associated with soil or excavated material;
- (iv) include evidence and certification by a Qualified Person that the quality of soil and/or excavated material transported to each receiver site is compliant with the receiver site license, approval, operational requirements, and fill management plan;
- (v) include a final fill management plan for each receiver site, and for those receiver sites that did not have a fill management plan, Project Co shall re-submit its own fill management plan for that site as required pursuant to Section 7.2(a)(v);
- (vi) provide a summary of all sources of imported soil and aggregate, including the location of soil and aggregate placed from those sources and analytical results confirming the quality of the imported soil meets that proposed in the Soil and Excavated Materials Management Plan; and
- (vii) summarize the information provided to Governmental Authorities related to soil and excavated materials.

8. MANAGEMENT OF GROUNDWATER

8.1 Groundwater Management and Dewatering Plan

- (a) Project Co shall prepare and implement a dewatering management plan (a “**Groundwater Management and Dewatering Plan**”) that describes how Project Co will address the management of excess water, groundwater, and dewatering effluent generated by the Project during the performance of the Works. The Groundwater Management and Dewatering Plan shall include any dewatering requirements detailed in Schedule 15 – Output Specifications and shall include, at a minimum, the following:
 - (i) the general principles that Project Co will apply for managing groundwater and dewatering activities;
 - (ii) Project Co’s over-arching groundwater and dewatering management in terms of sustainable principles and compliance with regulatory requirements and best practices;
 - (iii) locations of anticipated groundwater management and dewatering activities and estimated timeframes of management activities at each location;
 - (iv) estimated quantities of dewatering effluent to be managed during the Works and proposed methods for minimizing these quantities;
 - (v) how areas of known or inferable groundwater Contamination will be managed and estimated quantities of contaminated material to be disposed outside of the Lands;

- (vi) the proposed approval (Environmental Activity and Sector Registration or PTTW) for the water taking at each dewatering location and the municipal approval required for the water discharge location;
 - (vii) protocols for characterizing groundwater and dewatering effluent quality and determining management, including disposal requirements;
 - (viii) how groundwater and dewatering effluent will be treated and disposed of with regard to potential environmental effects and impacts to human health and safety;
 - (ix) procedures for water testing, containment, classification, treatment, and disposal/discharge of extracted groundwater;
 - (x) how Project Co will ensure that no impacts will result to adjacent trees, vegetation and ecosystems that may be dependent upon existing, near-surface groundwater conditions;
 - (xi) how Project Co will conduct its groundwater management activities in compliance with Environmental Law, and MECP, municipal and Conservation Authority approval;
 - (xii) a monitoring program to monitor for potential effects of dewatering on the environment and on the structural integrity of adjacent structures;
 - (xiii) contingency plans to mitigate impacts due to dewatering; and
 - (xiv) reporting procedures to document how all management activities, best practices and mitigation measures have been implemented.
- (b) Project Co shall submit the Groundwater Management and Dewatering Plan to the Contracting Authority Representative in accordance with Schedule 10 – Review Procedure and in accordance with submission timeframe set out in Appendix B to this Schedule 17.

8.2 Groundwater Management Software Solution

- (a) Project Co shall implement a software solution for groundwater management monitoring (“**Groundwater Management Software Solution**”). The Groundwater Management Software Solution shall include:
- (i) an up to date and complete inventory of all dewatering effluent discharge points generated by the Works. This includes MECP licensed facilities, storm and sanitary sewer connections and any other receiving site. This inventory shall include the following details and shall be updated on a monthly basis until such time as the Works have been completed:
 - (A) the municipal address of receiver;
 - (B) the name of receiver site owner and operator;
 - (C) the Governmental Authority having jurisdiction over the receiver;

- (D) the type of approval under which the site is operating;
 - (E) the total volume of groundwater or dewatering effluent discharged to each receiver;
 - (F) the description of the source of the groundwater or dewatering effluent discharged to each receiver;
 - (G) a description of the number of samples collected and analyzed and a list of parameters included in the analyses; and
 - (H) an electronic copy of the Certificate(s) of Analysis for the samples collected and analyzed; and
- (ii) in-month evidence and certification by the Hydrogeologist or Qualified Person that the quality of dewatering effluent discharged to each receiver is compliant with receiver requirements.
- (b) The Groundwater Management Software Solution shall include a monthly dashboard report which presents cumulative data for each calendar month and shall be submitted the first day of each month for the preceding month (“**Groundwater Management Monthly Dashboard**”) as set out in Appendix B of this Schedule 17.
 - (c) The Groundwater Management Monthly Dashboard shall include the following for the applicable month:
 - (i) the total quantities of dewatering effluent derived from the Works;
 - (ii) the total quantities of dewatering effluent derived from each dewatering location;
 - (iii) the total volume of dewatering effluent discharged to each receiver by dewatering location and a description of the PTTW or Environmental Activity and Sector Registration under which the taking occurred;
 - (iv) the analytical results supporting the discharge and/or disposal of dewatering effluent; and
 - (v) the treatment technologies used at each discharge location, as applicable.
 - (d) Project Co shall make the information in the Groundwater Management Software Solution available to any Governmental Authority when requested by that Governmental Authority in accordance with Section 4.3. If a registration or tracking system for soil movement is implemented by any Governmental Authority, Project Co shall be responsible for providing all necessary information to the Governmental Authority as prescribed by the Governmental Authority in accordance with Section 4.3.

8.3 Groundwater Management and Dewatering Implementation Report

- (a) Project Co shall prepare and submit a groundwater management and dewatering implementation report (a “**Groundwater Management and Dewatering Implementation Report**”) to the

Contracting Authority Representative in accordance with the submission timeframe set out in Appendix B to this Schedule 17. The Groundwater Management and Dewatering Implementation Report shall,

- (i) describe and summarize how all of Project Co's groundwater management and dewatering activities have been implemented during the Works;
- (ii) provide a summary of the total quantities of: groundwater and dewatering effluent managed from the Works, including a detailing of quantities transported to each receiver site and a description of the volumes of water taken from each location and under each PTTW or Environmental Activity and Sector Registration;
- (iii) include an accurate and final inventory at each receiver of dewatering effluent generated by the Works. This includes MECP licensed facilities, storm and sanitary sewer connections and any other receiving site. This inventory shall include the following details and shall cover the period of the Works:
 - (A) the municipal address of receiver;
 - (B) the name of receiver site owner and operator;
 - (C) the Governmental Authority having jurisdiction over the receiver;
 - (D) the type of approval under which the site is operating;
 - (E) the total volume of groundwater or dewatering effluent discharged to each receiver;
 - (F) the description of the source of the groundwater or dewatering effluent discharged to each receiver; and
 - (G) a description of the number of samples collected and analyzed and a list of parameters included in the analyses; and
- (iv) evidence and certification by the Hydrogeologist or Qualified Person that the quality of dewatering effluent discharged to each receiver is compliant with receiver requirements.

9. MANAGEMENT OF CONTAMINATION

9.1 Notification Requirements in Respect of Contamination

- (a) Without limiting the notification obligations of Project Co in Section 18.3 of the Project Agreement in respect of Contamination, Project Co shall comply with the following notification requirements:
 - (i) Project Co shall immediately notify the Contracting Authority Representative of:
 - (A) the discovery of Contamination;

- (B) any Spill of any Hazardous Substance on, under, at, from or to the Lands, together with full particulars of such Spill including the time and location of the Spill, Governmental Authorities notified, estimated damages suffered or caused and remedial action taken; and
 - (C) any notice, claim, action or other proceeding by any person against Project Co or any Project Co Party or otherwise relating to the performance of the Works concerning any actual or alleged Spill of a Hazardous Substance.
- (b) In addition to notifying the Contracting Authority Representative in accordance with Section 9.1(a) where required by Applicable Law, Project Co shall notify the relevant Governmental Authority of any Spill of a Hazardous Substance on, under, at, from or to the Lands.

9.2 Management, Removal and Remediation of Contamination

- (a) Upon the discovery of any Contamination that is not addressed in the Soil and Excavated Material Management Plan or the Groundwater Management and Dewatering Plan, and,
- (i) that Project Co is responsible for pursuant to Section [18.3(e)] of the Project Agreement; or
 - (ii) that Contracting Authority is responsible for in accordance with Section 18.3 of the Project Agreement and, only if instructed to do so by the Contracting Authority Representative in accordance with Section 18.3 of the Project Agreement,
- unless otherwise instructed by Contracting Authority, Project Co shall, within the timeframe specified by Contracting Authority,
- (iii) prepare and submit to the Contracting Authority Representative, in accordance with Schedule 10 – Review Procedure and Appendix B to this Schedule 17, a plan for the management of the Contamination (the “**Contamination Management Plan**”), in accordance with Applicable Law or as otherwise required under the Project Agreement, or
 - (iv) confirm, in writing to the Contracting Authority Representative, that no such remediation or removal of the Contamination is required by Applicable Law.
- (b) Project Co shall implement the plan submitted in accordance with Section 9.2(a)(iii) upon receipt of a “NO COMMENT” notification from Contracting Authority, in accordance with Schedule 10 - Review Procedure.
- (c) Project Co’s reasonable costs and expenses associated with the preparation of the Contamination Management Plan, shall be borne by,
- (i) Project Co, if Project Co is responsible for the Contamination in accordance with Section 18.3 of the Project Agreement; and
 - (ii) Contracting Authority, if Contracting Authority is responsible for the Contamination in accordance with Section 18.3 of the Project Agreement.

- (d) Project Co shall be responsible for the characterization, testing, and analysis of soil and groundwater that requires off-Site disposal, off-Site re-use or on-Site re-use to the satisfaction of the receiver or disposal site.
- (e) Project Co is encouraged to re-use (rather than remove or replace) as much soil on the Lands as possible in a manner that is consistent with O. Reg. 406/19 Excess Soil Regulation and Rules for Soil Management and Excess Soil Standards, provided that Project Co complies with its obligations under the Project Agreement.

10. DESIGNATED SUBSTANCES AND HAZARDOUS MATERIALS

10.1 Hazardous Substances Brought onto the Lands

- (a) Notwithstanding any Applicable Law or any other provision in the Project Agreement to the contrary, all products and materials, goods or other items which in their natural, original state, or through environmental transformation or degradation contain Hazardous Substances, that are brought onto the Lands by Project Co or any Project Co Party or any person for whom Project Co is at law responsible shall be and remain the sole and exclusive property and responsibility of Project Co and shall not become the property or responsibility of Contracting Authority, notwithstanding their incorporation into or affixation to the Lands, the New Metrolinx Infrastructure or New Third Party Infrastructure and notwithstanding any termination or expiration of the Project Agreement. Any resulting Contamination at the Lands in respect of any Hazardous Substances so brought onto the Lands and the remediation and/or removal thereof and the cost of such remediation and/or removal shall be the sole responsibility of Project Co.

10.2 Designated Substances and Hazardous Materials Management Plan

- (a) Project Co shall prepare and implement a Designated Substances and Hazardous Materials management plan (a “**Designated Substances and Hazardous Materials Management Plan**”). Project Co shall submit the Designated Substances and Hazardous Materials Management Plan to the Contracting Authority Representative in accordance with Schedule 10 – Review Procedure and in accordance with the submission timeframe set out in Appendix B to this Schedule 17. The Designated Substances and Hazardous Materials Management Plan shall describe:
 - (i) how Project Co will manage all Designated Substances and Hazardous Materials, including abatement, handling, transportation, testing, disposal and/or ultimate disposition of all Designated Substances and Hazardous Materials generated as part of the Works;
 - (ii) the general principles that Project Co will apply for managing the removal of Designated Substances and Hazardous Materials;
 - (iii) Project Co’s over-arching Designated Substances and Hazardous Materials management strategy in terms of sustainable principles and compliance with Applicable Law and best practices;
 - (iv) locations of Designated Substances and Hazardous Materials to be abated, managed or removed by Project Co during the Works;

- (v) Project Co's protocols for safe handling, abatement, management and removals, including disposal requirements;
 - (vi) how Project Co will ensure that no impacts will result to adjacent properties during the abatement, handling, management or removal of Designated Substances and Hazardous Materials;
 - (vii) how Project Co will conduct its activities in compliance with the *Occupational Health and Safety Act* (Ontario) and all Applicable Law;
 - (viii) Project Co's contingency plans to mitigate impacts; and
 - (ix) Project Co's reporting procedures to document and report to Contracting Authority how all management activities, best practices and mitigation measures have been implemented.
- (b) Project Co shall prepare and submit a Designated Substances and Hazardous Materials implementation report (a "**Designated Substances and Hazardous Materials Implementation Report**") to the Contracting Authority Representative in accordance with the submission timeframe set out in Appendix B to this Schedule 17. The Designated Substances and Hazardous Materials Implementation Report shall summarize how all Designated Substances and Hazardous Materials Management Plan activities were implemented during the Works and the associated outcomes.

11. EROSION AND SEDIMENT CONTROL PLAN

- (a) Project Co shall prepare and implement an erosion and sediment control plan (an "**Erosion and Sediment Control Plan**") in compliance with the Erosion and Sediment Control Guidelines for Urban Construction (Greater Golden Horseshoe Area Conservation Authorities, 2006), as amended from time to time. The Erosion and Sediment Control Plan shall describe and include the following:
- (i) a description of land use, topography, drainage, and watercourses;
 - (ii) a description of soils on the site, including erodibility and grain size analysis;
 - (iii) a description of the erosion and sediment control measures to be used on the site to minimize erosion and to minimize the release of sediment to the site and to adjacent sites;
 - (iv) a description of how erosion and sediment control measures will be monitored and maintained during the performance of the Works;
 - (v) a description of how the Lands will be stabilized after construction is complete; and
 - (vi) erosion and sediment control drawings sealed and signed by an accredited Professional Engineer in Ontario.

- (b) Project Co shall submit the Erosion and Sediment Control Plan to Contracting Authority in accordance with Schedule 10 – Review Procedure and in accordance with submission timeframe set out in Appendix B to this Schedule 17.
- (c) Project Co shall conduct inspections of all protections used to control erosion and sediment on a weekly basis, after rainfall and snowmelt events, and daily during extended rain or snowmelt periods.
- (d) Project Co shall prepare and submit to the Contracting Authority Representative a monthly report describing the results of inspections and corrective actions for the reporting period in accordance with the Erosion and Sediment Control Guidelines for Urban Construction (Greater Golden Horseshoe Area Conservation Authorities, 2006), as amended from time to time (each a “**Monthly Erosion and Sediment Control Monitoring Report**”). Project Co shall submit each Monthly Erosion and Sediment Control Monitoring Report to the Contracting Authority in accordance with Schedule 10 – Review Procedure and in accordance with the submission timeframe set out in Appendix B to this Schedule 17.

12. SPILL PREVENTION AND RESPONSE PLAN

- (a) Project Co shall prepare and implement a Spill prevention and response plan (a “**Spill Prevention and Response Plan**”). The Spill Prevention and Response Plan shall describe the measures Project Co will take to prevent Spills, including spills of chemicals, fuels and lubricants, and manage or otherwise mitigate the effects of any such Spills during the Project Term. The Spill Prevention and Response Plan shall incorporate consideration of site-specific characteristics, and include, at a minimum, the following:
 - (i) the types and nature of chemicals, fuels and lubricants to be used during the performance of the Works;
 - (ii) the facilities and procedures to be used for storing and handling such materials, including Spill response, containment and clean-up materials;
 - (iii) monitoring and inspection procedures, including monthly inspections of Spill response and safety equipment, to ensure that management requirements are maintained and that inspections are documented;
 - (iv) employee training on the storage and use of chemicals, fuels and lubricants and the prevention of Spills;
 - (v) subsurface infrastructure (for example, weeping tile, infiltration galleries, etc.) that may influence the destination of any Spill material;
 - (vi) the identification of municipal and natural discharge locations (for example, municipal catch basins) and drainage pathways on the Lands, and a description of the direction of flow in the event of a Spill;
 - (vii) Spill response procedures for each type of material that may be spilled, and the various environmental media that may be affected (for example, atmosphere, water bodies, ground surface);

- (viii) procedures for clean-up and restoration of surfaces and environmental media that may be affected by the Spill; and
 - (ix) procedures for notification and reporting of Spill events to Project Co Parties and to Governmental Authorities, as applicable.
- (b) Project Co shall submit the Spill Prevention and Response Plan to the Contracting Authority Representative in accordance with Schedule 10 – Review Procedure and in accordance with submission timeframe set out in Appendix B to this Schedule 17.
 - (c) Project Co shall ensure that a hard copy of the latest revision of the Spill Prevention and Response Plan is available in all site trailers and all site offices.
 - (d) After each and any occurrence of a Spill, irrespective of the quantity or characteristics of the material spilled, Project Co shall prepare and submit a Spill prevention and response occurrence report (a “**Spill Prevention and Response Occurrence Report**”) to the Contracting Authority Representative in accordance with the submission timeframe set out in Appendix B to this Schedule 17. The Spill Prevention and Response Occurrence Report shall summarize how all Spill Prevention and Response Plan activities were implemented during the remediation and management of the occurrence of the Spill and the associated outcomes.
 - (e) Project Co shall prepare and submit a Spill prevention and response implementation report (a “**Spill Prevention and Response Implementation Report**”) to the Contracting Authority Representative in accordance with the submission timeframe set out in Appendix B to this Schedule 17. The Spill Prevention and Response Implementation Report shall summarize how all Spill Prevention and Response Plan activities were implemented during the Works and the associated outcomes.

13. ARCHAEOLOGY AND CULTURAL HERITAGE

13.1 Archaeology Risk Management

- (a) Project Co shall comply with the following archaeological reference documents (“**Archaeological Reference Documents**”):
 - (i) Ministry of Heritage, Sport, Tourism and Culture Industries. *Standards and Guidelines for Consultant Archaeologists*. 2011 (for clarity, Project Co shall meet both the standards and guidelines in the Standards and Guidelines for Consultant Archaeologists, 2011); and
 - (ii) Archaeological Reports.
- (b) Project Co shall prepare and implement an archaeological risk management plan (“**Archaeological Risk Management Plan**”). The Archaeological Risk Management Plan shall be consistent with Project Co’s obligations set out in Section 18.4 of the Project Agreement and shall address any recommendations resulting from Archaeological Reports prepared for the Project and protocols for the discovery of human remains or undocumented archaeological resources.

- (c) Project Co shall submit the Archaeological Risk Management Plan to Contracting Authority in accordance with Schedule 10 – Review Procedure and in accordance with submission timeframe set out in Appendix B to this Schedule 17. The Archaeological Risk Management Plan shall include, at a minimum the following requirements:
- (i) the actions required resulting from the recommendations of the Archaeological Reports including any archaeological monitoring requirements by a Licensed Archaeologist during the Construction Activities;
 - (ii) a process for amending the Archaeological Risk Management Plan to incorporate any additional actions required resulting from subsequent Archaeological Reports completed;
 - (iii) a protocol to be followed if human remains are discovered which includes how Project Co will ensure that human remains are managed in compliance with Applicable Law and all requirements of Governmental Authorities with respect to such discovery, including the *Funeral, Burial and Cremations Services Act, 2002* (Ontario) and the Standards and Guidelines for Consultant Archaeologists (2011) issued by the MHSTCI pursuant to the *Ontario Heritage Act*;
 - (iv) a protocol to be followed if previously undocumented archaeological resources are discovered which describes how Project Co will comply with Applicable Law regarding management of previously undocumented archaeological resources;
 - (v) a process to ensure that Project Co complies with Applicable Law for the management of archaeological sites;
 - (vi) a process for the accommodation of Indigenous monitors for Stage 2, 3 and/or 4 Archaeological Assessment field work; and
 - (vii) be developed in accordance with any Indigenous Communities Engagement commitments as identified in the Archaeological Reports;
 - (viii) a process to ensure that all public consultations will be carried out in accordance with the requirements set out in Schedule 18 – Communications and Public Engagement; and
 - (ix) a process to ensure that Project Co provides to a Governmental Authority any Archaeological Report as may be required of Project Co pursuant to Applicable Law, the Environmental Assessments or the Archaeological Reports.
- (d) Throughout the Project Term, Project Co shall update the Archaeological Risk Management Plan in accordance with Section 6.1(b)(ii), (each, a “**Archaeological Risk Management Plan Update**”). Each Archaeological Risk Management Plan Update shall be submitted to Contracting Authority in accordance with Schedule 10 – Review Procedure and in accordance with the submission timeframe set out in Appendix B to this Schedule 17.

13.2 Built Heritage and Cultural Heritage Landscapes

- (a) Project Co shall comply with the following cultural heritage reference documents (“**Cultural Heritage Reference Documents**”):

- (i) *Metrolinx Interim Cultural Heritage Management Process*. 2013;
 - (ii) *Ministry of Tourism, Culture and Sport. Standards and Guidelines for Conservation of Provincial Heritage Properties: Heritage Identification Process*. 2014;
 - (iii) MHSTCI Guidance on “*Cultural Heritage Report: Existing Conditions and Preliminary Impact Assessment*” and Environmental Project Reports (EPR) under Transit Project Assessment Process (TPAP) for Proponents and their Consultants 2019;
 - (iv) *Ministry of Tourism, Culture and Sport. Standards and Guidelines for Conservation of Provincial Heritage Properties*. 2010;
 - (v) *Information Bulletin No. 2: Strategic Conservation Plans for Provincial Heritage Properties*. MTCS 2017;
 - (vi) *Information Bulletin No. 3: Heritage Impact Assessments for Provincial Heritage Properties*. MTCS 2017; and
 - (vii) Cultural Heritage Reports.
- (b) Project Co shall prepare and implement a cultural heritage risk management plan (the “**Cultural Heritage Risk Management Plan**”). Project Co shall submit the Cultural Heritage Risk Management Plan to Contracting Authority for review in accordance with Schedule 10 - Review Procedure by the deadline set out in Appendix B to this Schedule 17. The Cultural Heritage Risk Management Plan and all updates thereto shall include, at a minimum, the following requirements for all directly and indirectly impacted properties of heritage significance (including, for clarity, Provincial Heritage Properties and Provincial Heritage Properties of Provincial Significance):
- (i) the actions required of Project Co pursuant to the recommendations and requirements set out in the Environmental Assessments and the Cultural Heritage Reports and Section 3.1;
 - (ii) Project Co’s planned approach to carrying out the actions described in Section 13.2(b)(i);
 - (iii) a process for updating and resubmitting the Cultural Heritage Risk Management Plan in accordance with Section 13.2(c);
 - (iv) a process to ensure that Project Co complies with Applicable Law for the management of heritage resources and with the *Metrolinx Interim Cultural Heritage Management Process*; and
 - (v) a process to ensure that Project Co provides to Contracting Authority any cultural heritage evaluation reports, cultural heritage evaluation report recommendations, cultural heritage assessment reports, heritage impact assessments, conservation plans, or any other documentation as may be required of Project Co pursuant to Applicable Law, the Environmental Assessments or the Cultural Heritage Reports.
- (c) Throughout the Project Term, Project Co shall update the Cultural Heritage Risk Management Plan in accordance with the process set out in Section 6.1(b), (each, a “**Cultural Heritage Risk Management Plan Update**”). Each Cultural Heritage Risk Management Plan Update shall be

submitted to Contracting Authority in accordance with Schedule 10 – Review Procedure and in accordance with the submission timeframe set out in Appendix B to this Schedule 17.

14. AIR QUALITY DURING CONSTRUCTION PHASE

14.1 Air Quality General

- (a) During the Project Term, Project Co shall:
- (i) comply with all Environmental Approvals and Permits, Licences, Approvals and Agreements and Good Industry Practice related to air quality management, including when designing, purchasing and operating equipment;
 - (ii) implement measures for managing Project-related air emissions including fugitive dust and odour;
 - (iii) meet all applicable regulatory requirements and standards regarding air emissions including fugitive dust and odour; and
 - (iv) if any Applicable Air Quality Criteria and Limits are exceeded, Project Co shall undertake the appropriate mitigation measures in order to achieve compliance with the Applicable Air Quality Criteria and Limits.

14.2 Applicable Air Quality Criteria and Limits

- (a) In carrying out the Works, Project Co shall ensure that ambient air quality complies with:
- (i) *Ontario Regulation 419/05 for Air Pollution – Local Air Quality*;
 - (ii) *Ontario Ambient Air Quality Criteria*, published by MECP and updated April 2019;
 - (iii) *the Canadian Ambient Air Quality Standards*, published by CCME, and dated 2017; and
 - (iv) the air quality limits shown in Table 14.2-1,
- (collectively, the “**Applicable Air Quality Criteria and Limits**”).

Table 14.2-1: Air Quality Criteria and Limits for PM2.5 and PM10

[REDACTED]

- (b) Project Co shall ensure that odours from sulfur-containing and other odour producing substances are controlled to meet the 10-minute odour standards in schedule 3 of Ontario Regulation 419/05, under the *Environmental Protection Act* (Ontario).

14.3 Air Quality Management Plan

- (a) Project Co shall submit a detailed and comprehensive air quality management plan for all Construction Activities to the Contracting Authority Representative in accordance with Schedule

10 – Review Procedure and in accordance with submission timeframe set out in Appendix B to this Schedule 17 (the “**Air Quality Management Plan**”). The Air Quality Management Plan shall include, at a minimum, the following:

- (i) a description of the activities and conditions with the potential to result in the generation or dispersion of airborne particulate matter or other airborne contaminants;
 - (ii) based on simulation modeling or other scientific approaches consistent with Good Industry Practice, estimations of the potential worst-case air quality impacts of the Works on receptors on the Site and on lands within the air quality impact zone within a 500 m radius of the boundaries of the Site (the “**Air Quality Impact Zone**”);
 - (iii) a description of the receptors including buildings, the general public and workers that may fall within the Air Quality Impact Zone;
 - (iv) a list of best practice methods to be implemented by Project Co for each major Construction Activity in order to reduce, control and manage emissions to prevent the Spill of airborne particulate matter and other airborne contaminants to offsite areas, including,
 - (A) relevant best practices from the “Best Practices for the Reduction of Air Emissions from Construction and Demolition Activities”, published by Environment Canada, dated 2005; and
 - (B) the best practices set out in Section 14.6;
 - (v) a description of Project Co’s mitigation measures including dust control measures to reduce air quality impacts, including measures required by any and all of the Environmental Reference Documents;
 - (vi) a description of Project Co’s air sampling and monitoring program to:
 - (A) establish a baseline level of air contaminants with known health hazards, including particulate matter within the Air Quality Impact Zone prior to the commencement of any Demolition or other Construction Activities; and
 - (B) determine the level of particulate matter and other contaminants in the air during and following Demolition and any other Construction Activities in the Air Quality Impact Zone; and
 - (C) establish air monitoring and sampling methods, locations and frequencies of air contaminants, the rationale for the choice of such methods, locations and frequencies and any changes that will be made to such methods, locations and frequencies over the duration of the Project Term for any contaminant of concern.
- (b) Project Co shall implement the air sampling and monitoring program described in Section 14.3(a)(iv) that has been reviewed and accepted by Contracting Authority no later than 14 days prior to the commencement of Construction Activities.

14.4 Air Quality Monitoring Requirements

- (a) No later than 30 days following Financial Close, Project Co shall develop, as a component of the Complaints Protocol set out in Schedule 18 – Communication and Public Engagement Protocol, a process for managing and responding to air quality concerns during the Project Term. This component of the Complaints Protocol shall be developed in consultation with concerned Stakeholders identified by Project Co.
- (b) For Construction Activities that take place on a specific Site for fewer than 30 consecutive days and that have the potential to exceed the Applicable Air Quality Criteria and Limits, Project Co shall ensure that there are no visible dust emissions discharged into the atmosphere beyond the geographical boundaries of the Site. Dust shall be considered “visible” if opacity at a geographical boundary of the Site exceeds 20% for more than three minutes during any 60-minute period, as measured with a calibrated opacity meter.
- (c) For Construction Activities that take place on a specific Site for 30 or more consecutive Business Days, and that have the potential to exceed the Applicable Air Quality Criteria and Limits, Project Co shall continuously and simultaneously monitor PM_{2.5} and PM₁₀ over the course of the performance of the Construction Activities in order to assess compliance with the Applicable Air Quality Criteria and Limits in accordance with the following:
- (i) Project Co shall log data frequently, and at a maximum of 15-minute intervals and the monitoring instrument shall have an accuracy of $\pm 10\%$;
 - (ii) Project Co shall ensure that the Contracting Authority Representative receives real-time e-mail alerts of any exceedances of the Applicable Air Quality Criteria and Limits for PM_{2.5}, PM₁₀ and any other air contaminant being monitored;
 - (iii) Project Co shall ensure that all historical and real-time monitoring data is available to Contracting Authority at all times through a web-hosted platform; and
 - (iv) Project Co shall retain all monitoring data and related reports for the duration of the Project Term, unless otherwise directed by Contracting Authority.
- (d) Project Co shall prepare and submit to the Contracting Authority Representative a weekly report describing the monitoring conducted and data collected in accordance with Section 14.4(c) as well as instrument calibration data (each a “**Weekly Air Quality Monitoring Report**”). Project Co shall submit each Weekly Air Quality Monitoring Report to the Contracting Authority Representative in accordance with the time frame set out in Appendix B to this Schedule 17.
- (e) Project Co shall develop and implement air quality mitigation measures to address any non-conformance with the Applicable Air Quality Criteria and Limits in consultation with Contracting Authority.

14.5 Complaints During Project Term

- (a) Project Co shall address and respond to each complaint regarding air quality arising from Construction Activities during the Project Term in accordance with the Complaints Protocol developed in accordance with Schedule 18 – Communication and Public Engagement Protocol.

Upon receipt of a request by Contracting Authority to investigate a complaint regarding air quality, Project Co shall conduct additional air quality investigations and measurements, as required by Contracting Authority, in order to determine:

- (i) the source of the air quality issue that is the subject of the complaint;
 - (ii) if concentration of the contaminant of concern exceeds any of the Applicable Air Quality Criteria and Limits; and
 - (iii) if mitigation measures or additional monitoring are required to confirm compliance with the Applicable Air Quality Criteria and Limits.
- (b) If mitigation measures or additional monitoring are required pursuant to Section 14.5(a)(iii), then Project Co shall completely define the required mitigation measures and additional monitoring, as applicable, within two Business Days following Project Co's completion of additional air quality investigations and measurements required by Contracting Authority, or within a longer timeframe that may be agreed to by the Parties. Project Co shall implement the mitigation measures and additional monitoring, as applicable, in full within a timeframe agreed upon by the Parties and shall rectify any non-conformance with Applicable Air Quality Criteria and Limits.
- (c) Project Co shall be responsible for all costs and expenses related to any air quality measurements, and investigations and mitigation and monitoring measures required in accordance with Section 14.5(a) in response to the first 30 separate requests by Contracting Authority to investigate a complaint during each year.
- (d) The costs of any additional site-specific air quality measurements required in any year above the number set out in Section 14.5(c) shall be borne by:
- (i) Project Co if the results indicate that Project Co did not comply with the Applicable Air Quality Criteria and Limits; or
 - (ii) Contracting Authority, subject to and in accordance with Schedule 22 – Variation Procedure, if the results indicate that Project Co activities were in compliance with Applicable Air Quality Criteria and Limits.
- (e) If Contracting Authority receives complaints from the public with respect to Construction Activities that are not in compliance with Applicable Air Quality Criteria and Limits, then Contracting Authority may, in its sole discretion, require Project Co to cancel or discontinue such Construction Activities, and Project Co shall cancel or discontinue such Construction Activities as instructed by Contracting Authority.

14.6 Equipment and Best Practice Requirements

- (a) Project Co shall ensure that all diesel fuel and gasoline powered on-road and off-road equipment meet applicable exhaust and evaporative exhaust emission standards established pursuant to Ontario Regulation (O. Reg.) 457/19, as amended from time to time, and are maintained in accordance with the applicable manufacturer's specifications.

- (b) Project Co shall coordinate its air pollution management and noise mitigation measures for maximum effectiveness, so as to ensure that the use of noise walls, curtains, enclosures and other potential noise control methods are also effective for air pollution control where possible.

15. NOISE AND VIBRATION

15.1 Noise and Vibration General

- (a) Without limiting any other provision in the Project Agreement or this Section 15, Project Co shall carry out the Works in compliance with the noise and vibration obligations set out in this Section 15, and shall,
- (i) implement measures to manage the adverse effects of ground-borne and air-borne noise and vibration by minimizing and mitigating noise and vibration generated as a result of the Works;
 - (ii) comply with,
 - (A) Applicable Law, including all federal and provincial laws relating to ground-borne and air-borne noise or vibration;
 - (B) Good Industry Practice for minimizing ground-borne and air-borne noise and vibration in respect of the Works;
 - (iii) design, construct, and operate equipment in accordance with this Section 15;
 - (iv) use construction equipment and perform Construction Activities in a manner that minimizes ground-borne and air-borne noise and vibration;
 - (v) carry out the Works so that the New Metrolinx Infrastructure and New Third Party Infrastructure complies with Applicable Noise and Vibration Requirements; and
 - (vi) ensure that all mobile equipment and vehicles on the Project Site that have backup alarms are equipped with broadband backup alarms only,
- (collectively, the “**Applicable Noise and Vibration Requirements**”).
- (b) If Project Co performs Construction Activities overnight, on weekends or on statutory holidays, as defined by Tables 15.3 and 15.3-2, and Project Co has failed to,
- (i) provide Notice to Contracting Authority in accordance with Section 10(b)(i) of Schedule 18 – Communication and Public Engagement Protocol; or
 - (ii) provide public notification in accordance with Section 10(b)(ii) of Schedule 18 – Communication and Public Engagement Protocol,

and such Construction Activities generate complaints from the public or Contracting Authority determines, in its sole discretion, that such Construction Activities are likely to generate complaints from the public, then Contracting Authority may, in its sole discretion, require Project

Co to cancel or discontinue such Construction Activities, and Project Co shall cancel or discontinue such Construction Activities as instructed by Contracting Authority.

15.2 Noise and Vibration Reference Documents

- (a) In carrying out the Works, Project Co shall comply with noise and vibration reference documents (“**Noise and Vibration Reference Documents**”) applicable to the Project, including, the following documents, as each document is amended or replaced from time to time during the Project Term:
- (i) MECP Publication NPC-101, *Technical Definitions*;
 - (ii) MECP Publication NPC-102, *Instrumentation*;
 - (iii) MECP Publication NPC-103, *Procedures*;
 - (iv) MECP Publication NPC-104, *Sound Level Adjustments*;
 - (v) MOECC Publication NPC-115, *Construction Equipment*;
 - (vi) MOECC Publication NPC-118, *Motorized Conveyances*;
 - (vii) MOECC Publication NPC-206, Sound levels due to road traffic (2016);
 - (viii) MOECC Publication NPC-233, Information to be submitted for approval of stationary sources of sound (2016);
 - (ix) MOECC Publication NPC-300, Environmental Noise Guideline – Stationary and Transportation Sources – Approval and Planning (August 2013);
 - (x) MOEE/GO Transit Draft Protocol for Noise and Vibration Assessment, 1995;
 - (xi) US Federal Transit Administration’s *Transit Noise and Vibration Impact Assessment Manual*, FTA Report No. 0123, September 2018 (the “**FTA Manual**”); and
 - (xii) US Federal Highway Administration’s *Construction Noise Handbook*, FHWA-HEP-06-015, August 2006.
- (b) Project Co shall update the list of Noise and Vibration Reference Documents as necessary to reflect changes in Applicable Noise and Vibration Requirements and Applicable Law. Project Co shall submit all updated lists of Noise and Vibration Reference Documents to Contracting Authority in accordance with Schedule 10 – Review Procedure and in accordance with submission timeframe set out in Appendix B to this Schedule 17.

15.3 Noise and Vibration Performance Limits

- (a) Project Co shall comply with,

- (i) the airborne construction noise performance requirements set out in Tables 15.3-1 and 15.3-2; and
 - (ii) the ground-borne construction noise exposure limits set out in Table 15.3-3, measured in accordance with the FTA Manual for all above ground construction and repetitive tunneling support operations recorded at any receiver extending over a period of more than 48 hours.
- (b) Project Co shall ensure that construction vibration peak particle velocities at ground level do not exceed the limits set out in Table 15.3-4, measured in accordance with City of Toronto Municipal Code Chapter 363. Project Co shall ensure that the peak particle velocities at ground level adjacent to any Vibration Sensitive Structures do not exceed the “Protection of Vibration Sensitive Structures” values shown in Table 15.3-4, unless higher site-specific limits are supported by engineering analysis.
- (c) In order to mitigate the risk of public annoyance and complaints, Project Co shall ensure that the vibration root-mean-square velocity from repetitive tunneling support operations felt at any receiver extending over a period of more than 48 hours does not exceed 0.175 mm/s.
- (d) Unless otherwise indicated, measurements for compliance with Noise and Vibration Performance Limits for Construction Activities and Stationary Sources shall be measured as described in MOECC Publication NPC-103.
- (e) Project Co shall comply with all noise and vibration performance requirements provided in this Section 15 for particular sources and receivers of noise or vibration set out in the current version of the Noise and Vibration Reference Documents.

Table 15.3-1: Weekday (Monday to Friday) Maximum Airborne Noise Exposure Limits

[REDACTED]

Table 15.3-2: Weekend and Statutory Holiday Maximum Airborne Noise Exposure Limits

[REDACTED]

Table 15.3-3 Maximum Ground-Borne Noise Exposure Limits

[REDACTED]

Table 15.3-4 Maximum Construction Vibration Peak Particle Velocity Limits (mm/s)

[REDACTED]

15.4 Noise and Vibration Management Plan

- (a) Project Co shall develop and submit a construction noise and vibration control plan (the “**Noise and Vibration Management Plan**”) to Contracting Authority in accordance with Schedule 10 –

Review Procedure and in accordance with submission timeframe set out in Appendix B to this Schedule. The Noise and Vibration Management Plan shall, at a minimum,

- (i) include a schedule of proposed activities and efforts as well as required methodologies, deliverables and inputs required to comply with Applicable Noise and Vibration Requirements throughout the Project Term;
 - (ii) identify major noise and vibration producing Construction Activities;
 - (iii) identify and describe ground-borne and air-borne noise and vibration prediction and measurement procedures, and methods to evaluate ground-borne and air-borne noise and vibration from the Works, the New Metrolinx Infrastructure and the New Third Party Infrastructure;
 - (iv) include a prediction and assessment of ground-borne and air-borne noise and vibration impacts for Noise and Vibration Sensitive Receptors as described in Section 15.6;
 - (v) identify a plan to minimize, mitigate and monitor noise and vibration levels to the extent required to meet the Applicable Noise and Vibration Requirements;
 - (vi) identify mitigation measures to be applied when and where calculated ground-borne or air-borne noise or vibration levels exceed the Noise and Vibration Performance Limits or any other limit under the Applicable Noise and Vibration Requirements, provided that the inclusion or absence of a mitigation measure from this Noise and Vibration Management Plan shall not limit Project Co's obligation to mitigate any amount of noise and vibration required under the Project Agreement;
 - (vii) provide Project Co's procedures for conducting compliance verification measurements, measurement processes, measurement equipment and analysis methods to confirm that the Works are being carried out in compliance with Applicable Noise and Vibration Requirements;
 - (viii) provide Project Co's procedures for identifying potential Representative Noise and Vibration Sensitive Receptors, including taking baseline measurements;
 - (ix) provide Project Co's procedures for conducting compliance verification measurements to confirm that Noise and Vibration Sensitive Receptors are not exposed to noise and/or vibration that exceed the limits set out in this Section 15.4, including an outline of the measurement processes, measurement equipment, and analysis methods that will be implemented; and
 - (x) specify how Project Co intends to consult with Noise and Vibration Sensitive Receptors and any nearby residents.
- (b) The Noise and Vibration Management Plan shall be prepared and signed by a Professional Engineer with a minimum of 10 years of experience in assessing and controlling construction related noise and vibration.

- (c) Project Co shall update the Noise and Vibration Management Plan and submit the updated plan to the Contracting Authority Representative every six months and in accordance with Schedule 10 – Review Procedure.
- (d) Project Co shall not commence any activity with the potential to exceed the Applicable Noise and Vibration Requirements prior to receiving a “NO COMMENT” notification from Contracting Authority on the Noise and Vibration Management Plan.

15.5 Noise and Vibration Sensitive Receptors

- (a) Prior to commencement of Construction Activities, Project Co shall conduct a survey of the Lands and the vicinity of the Works, including a Zone of Influence for potential ground-borne or air-borne noise or vibration impacts from the planned Works, New Metrolinx Infrastructure and New Third Party Infrastructure, to identify Noise and Vibration Sensitive Receptors, including Vibration Sensitive Structures, and to identify Representative Noise and Vibration Sensitive Receptors. The survey shall:
 - (i) include the identification of specific sensitive equipment, structures, facilities or procedures;
 - (ii) be conducted in consultation with the potential Noise and Vibration Sensitive Receptors and in accordance with any public consultation requirements set out in Schedule 18 – Communication and Public Engagement Protocol; and
 - (iii) select Representative Noise and Vibration Sensitive Receptors such that they are:
 - (A) exposed to the worst-case effects of ground borne vibration, and air and ground borne noise compared to all the nearby Noise and Vibration Sensitive Receptors that the Representative Noise and Vibration Sensitive Receptor is intended to represent; and
 - (B) distributed across areas with differing characteristics affecting noise and vibration levels from the Works, New Metrolinx Infrastructure and New Third Party Infrastructure. Example characteristics include:
 - (I) differences in setback from the designed track alignment;
 - (II) differences in grade elevation between the designed track alignment and Representative Noise and Vibration Sensitive Receptor;
 - (III) differences in shielding from the Works, New Metrolinx Infrastructure and New Third Party Infrastructure (for example, buildings and barriers); and
 - (IV) differences in sensitivity to vibration (for example, theatres and high sensitivity medical imaging).

-
- (b) If two or more adjacent structures could potentially be subject to differences in impact from the worst-case effects of noise or vibration, then Project Co shall select all such adjacent structures to be included as Representative Construction Noise and Vibration Sensitive Receptors.
- (c) Project Co shall prepare, and keep up to date, a list of Representative Noise and Vibration Sensitive Receptors and shall submit the list, along with any updates, in accordance with Schedule 10 – Review Procedure and in accordance with submission timeframe set out in Appendix B to this Schedule 17. Project Co shall submit all baseline noise and vibration measurement data in respect of Representative Noise and Vibration Sensitive Receptors to Contracting Authority.
- (d) Project Co shall perform and record baseline noise and vibration measurements at or within each Representative Noise and Vibration Sensitive Receptor, consisting of a minimum of:
- (i) three days of continuous noise monitoring at each Representative Noise and Vibration Sensitive Receptor, provided that for any outdoor locations the weather conditions are suitable for measurement as per MOECC Publication NPC-103; and,
 - (ii) three days of continuous vibration monitoring at each Representative Noise and Vibration Sensitive Receptor.
- (e) For the purposes of establishing the baseline noise levels for the purposes of Table 15.3-1 and Table 15.3-2, Project Co shall calculate baseline values for each Representative Noise and Vibration Sensitive Receptor using the following averages from the continuous monitoring data obtained by the measurements taken in accordance with Section 15.5(d):
- (i) 12-hour weekday averages from 7:00 to 19:00 to be used for the day-time baseline in Table 15.3-1;
 - (ii) 12-hour weeknight averages from 19:00 to 7:00 for Monday evening to Friday morning to be used for the nighttime baseline in Table 15.3-1;
 - (iii) 10-hour averages from 9:00 to 19:00 on Saturday and Sunday to be used for the daytime baseline in Table 15.3-2; and
 - (iv) 10-hour averages from 19:00 on Saturday to 9:00 on Sunday to be used for the nighttime baseline in Table 15.3-2.
- (f) If Project Co and a property owner or receiver do not agree on whether to designate a particular location or property as a Noise and Vibration Sensitive Receptor, Contracting Authority shall make a final determination, in its sole discretion, based on,
- (i) a review of the baseline noise and vibration measurement data for the particular property or location; and
 - (ii) any evidence of susceptibility of the location or property to noise or vibration levels at or lower than the Applicable Noise and Vibration Requirements.

- (g) Project Co shall develop additional noise and vibration performance requirements for any Noise and Vibration Sensitive Receptors not covered by the Noise and Vibration Reference Documents through,
- (i) an assessment and evaluation of the baseline measurements;
 - (ii) consultation with the Sensitive Receptor groups; and
 - (iii) a review of the noise and vibration requirements for any sensitive equipment or operation that may be impacted by the Works,
- (the “**Additional Noise and Vibration Sensitive Receptor Performance Requirements**”).
- (h) Project Co shall submit all Additional Noise and Vibration Sensitive Receptor Performance Requirements, including any associated measurement data, to the Contracting Authority Representative for review in accordance with Schedule 10 – Review Procedure and in accordance with the submission timeframe set out in Appendix B to this Schedule 17.

15.6 Prediction and Assessment of Noise and Vibration

- (a) Project Co shall, during the Project Term, undertake ground-borne and air-borne noise and vibration assessments for Representative Noise and Vibration Sensitive Receptors and the possible mitigation measures identified in the Noise and Vibration Management Plan in compliance with:
- (i) “Noise Assessment” and “Construction Vibration Assessment” methods as such terms are defined and described in the FTA Manual, as amended from time to time; and
 - (ii) MOECC Publications NPC-300 and NPC-233, as amended from time to time, in relation to noise and vibration emitted by Stationary Sources within Station property.
- (b) Project Co may apply alternative and equivalent methods of assessment to the methods set out in Section 15.6(a) if such alternatives are deemed appropriate by Contracting Authority, in its sole discretion.
- (c) Project Co shall submit a report of all Ground-borne and Air-borne Noise and Vibration Assessments conducted in accordance with Section 15.6 or Section 15.7 to the Contracting Authority Representative in accordance with Schedule 10 – Review Procedure and the submission timeframe set out in Appendix B to this Schedule 17.

15.7 Assessment and Monitoring During the Project Term

- (a) Prior to the commencement of any Construction Activity that is at any receptor referenced in Section 15.5, and that is:
- (i) expected to exceed the noise exposure limits in Table 15.3-1 or Table 15.3-2;
 - (ii) expected to exceed a construction vibration Zone of Influence threshold of 5 mm/s or 3 mm/s for a Vibration Sensitive Structure; or

- (iii) expected to last more than seven days and reasonably expected to produce air-borne or ground-borne noise exceeding the ambient $L_{eq}1h$ due to road traffic (as measured by Project Co in accordance with MECP/MOECC procedures),

Project Co shall conduct and submit to Contracting Authority in accordance with Schedule 10 – Review Procedure and the submission timeframe set out in Appendix B to this Schedule 17, an assessment at all Representative Noise and Vibration Sensitive Receptors likely to be impacted by such Construction Activity. The assessment shall include estimated ground-borne and air-borne noise and vibration, the expected duration and the mitigation measures that Project Co will apply to demonstrably minimize any impacts of noise and vibration and to meet the Applicable Noise and Vibration Requirements.

- (b) Prior to the use of any construction equipment on a Site, Project Co shall conduct an assessment (using either the manufacturer’s noise data or by measurement) to confirm that such equipment can and will be used in compliance with the Applicable Noise and Vibration Requirements.
- (c) Prior to the commencement of the Works, Project Co shall develop, as a component of its Complaints Protocol detailed in Schedule 18 – Communication and Public Engagement Protocol, a process for managing and responding to noise and vibration concerns during the Project Term. This component of the Complaints Protocol shall be developed in consultation with Noise and Vibration Sensitive Receptors, if applicable, and other concerned Stakeholders identified by Project Co.
- (d) Project Co shall continuously monitor noise in accordance with the requirements of Section 15.7(e) of any Construction Activity that,
 - (i) is localized and where receptors are exposed to the Project’s noise for more than 30 consecutive Business Days;
 - (ii) uses processes or equipment for over 10 minutes during the daytime with a noise emission level exceeding 85 dBA at the lower of 20 meters from the equipment or the distance to the nearest construction area perimeter;
 - (iii) uses processes or equipment for over 10 minutes during the nighttime with a noise emission level exceeding 75 dBA at the lower of 20 meters from the equipment or the distance to the nearest construction area perimeter; or
 - (iv) has Noise and Vibration Sensitive Receptors located less than 50 meters from any boundary of the construction, staging or laydown site.
- (e) If Project Co is required to undertake continuous noise monitoring in accordance with Section 15.7(d), Project Co shall ensure that such continuous noise monitoring is carried out in accordance with the following requirements:
 - (i) the location of the monitor shall be adjusted in response to changes in Construction Activity to capture the highest noise exposure level;
 - (ii) the microphone of the monitor shall be placed between 1.5 metres and 4.5 metres above the ground level;

- (iii) continuous noise monitoring shall employ Class 1 or Class 2 integrating sound level meters meeting IEC Standard 61672;
 - (iv) each sound level meter shall be calibrated no later than one week prior to its initial use and no less frequently than once per month thereafter;
 - (v) the frequency weighting of the sound level meter shall be set to “A” and the speed of response shall be set to “slow”;
 - (vi) each noise monitor shall have data logging capability with recorded data;
 - (vii) output data shall contain for each day:
 - (A) the maximum level recorded;
 - (B) a maximum 5-minute averaging time period (periods lower than 5-minutes are acceptable);
 - (C) each 12-hour daytime average (7:00 to 19:00) and each 12-hour nighttime average (19:00 to 7:00) for weekdays; and
 - (D) each 10-hour daytime average (9:00 to 19:00) and each 14-hour nighttime average (19:00 to 9:00) for weekends;
 - (viii) Project Co shall ensure that real-time monitoring data can be accessed by Contracting Authority; and
 - (ix) Project Co shall ensure that the Contracting Authority Representative receives real-time e-mail alerts of any exceedances of Applicable Noise and Vibration Requirements.
- (f) Project Co shall undertake vibration monitoring in accordance with the Noise and Vibration Management Plan for structures that are within the Zone of Influence of construction related vibration and expected to experience vibration peak particle velocities in exceedance of 5 mm/s. The Zone of Influence for vibration shall be established in accordance with the methodology described in the FTA Manual.
- (g) Project Co shall prepare and submit to the Contracting Authority Representative a weekly report describing the monitoring conducted and summarizing the data collected for the reporting period (each a “**Weekly Noise and Vibration Monitoring Report**”). Project Co shall submit each Weekly Noise and Vibration Monitoring Report to the Contracting Authority Representative in accordance with the time frame set out in Appendix B to this Schedule 17.
- (h) Project Co shall develop and implement mitigation measures to address any non-conformance in consultation with any affected Noise and Vibration Sensitive Receptor and Contracting Authority.

15.8 Complaints During Project Term

- (a) Project Co shall address and respond to each complaint regarding noise or vibration received during the Project Term for the Project in accordance with the Complaints Protocol developed in

accordance with Schedule 18 – Communication and Public Engagement Protocol. Upon receipt of a request by Contracting Authority to investigate a complaint regarding noise or vibration, Project Co shall conduct additional ground-borne and air-borne noise and vibration measurements, as required by Contracting Authority, to determine:

- (i) the source of the ground-borne and air-borne noise and vibration that is the subject of the complaint;
 - (ii) if the ground-borne or air-borne noise or vibration exceeds any of the limits required by the Applicable Noise and Vibration Requirements; and
 - (iii) if mitigation measures or additional monitoring are required to confirm compliance with the Applicable Noise and Vibration Requirements.
- (b) If mitigation measures or additional monitoring are required pursuant to Section 15.8(a)(iii), then Project Co shall completely define the required mitigation measures and additional monitoring, as applicable, within two Business Days of the completion of additional field measurements conducted in accordance with the request by Contracting Authority to investigate, or within a longer time frame agreed to by the Contracting Authority Representative. Project Co shall implement the mitigation measures and additional monitoring, as applicable, in full within a timeframe agreed upon by the Parties and shall rectify any non-conformance with Applicable Noise and Vibration Requirements.
- (c) Project Co shall be responsible for all costs and expenses related to any noise and vibration measurements, investigations, and mitigation and monitoring measures required in accordance with Section 15.8(a) in response to the first 30 separate requests by Contracting Authority to investigate a complaint during each year.
- (d) The costs of any additional site-specific noise and vibration measurements required in any year above the number set out in Section 15.8(c) shall be borne by:
- (i) Project Co if the results indicate that Project Co activities were not in compliance with Applicable Noise and Vibration Requirements; or
 - (ii) Contracting Authority, subject to and in accordance with Schedule 22 – Variation Procedure, if the results indicate that Project Co activities were in compliance with Applicable Noise and Vibration Requirements.
- (e) If Contracting Authority receives complaints from the public with respect to Construction Activities that are not in compliance with Applicable Noise and Vibration Requirements, then Contracting Authority may, in its sole discretion, require Project Co to cancel or discontinue such Construction Activities, and Project Co shall cancel or discontinue such Construction Activities as instructed by Contracting Authority.

16. TREE AND VEGETATION MANAGEMENT

- (a) Project Co is responsible for tree protection and management on the Lands until Substantial Completion, including compliance with all Applicable Law, Environmental Reference Documents and the Project Agreement.

-
- (b) Project Co shall engage an Arborist to develop an arborist report for the Metrolinx Lands (the “**Arborist Report – Metrolinx Lands**”) that includes,
- (i) a detailed inventory of all trees on the Metrolinx Lands as of Commercial Close, including,
 - (A) a description of the type of tree and the precise GPS location of tree; and
 - (B) a clear indication of whether each tree will be removed, protected, or left as is by Project Co during the course of the Works; and
 - (ii) for the trees that Project Co intends to protect during the course of the Works, a description of Project Co’s protection measures to ensure that the trees will be preserved and undamaged.
- (c) Project Co shall submit the Arborist Report – Metrolinx Lands to Contracting Authority in accordance with Schedule 10 - Review Procedure and in accordance with the timeframe for submission set out in Appendix B to this Schedule 17. Project Co shall ensure that it implements the protection measures set out in the Arborist Report – Metrolinx Lands prior to carrying out Works in the vicinity of trees that require protection.
- (d) Throughout the Project Term, Project Co shall continuously manage and update a tracker that includes a detailed inventory of all trees on the Metrolinx Lands and Third Party Lands that are greater than 10 cm diameter at breast height and that have been removed during the Project Term, including a description of the type of tree and the precise GPS location of tree (the “**Tree Tracker**”). Project Co shall provide such list to Contracting Authority upon request by Contracting Authority in accordance with Schedule 10 - Review Procedure and in accordance with the timeframe for submission set out in Appendix B to this Schedule 17.
- (e) For Lands that are not Metrolinx Lands, Project Co shall obtain all tree removal/injury permits from the applicable municipality that are required to perform the Works. Project Co shall ensure that Contracting Authority is kept apprised of all discussions and agreements respecting tree and vegetation replacement and compensation with municipalities.
- (f) Project shall engage an Arborist to develop an arborist report for Lands that are not Metrolinx Lands (the “**Arborist Report – Third Party Lands**”) that meets the requirements of applicable municipal by-laws and that includes,
- (i) a detailed inventory of all trees on the Lands (other than Metrolinx Lands) as of Commercial Close, including,
 - (A) a description of the type of tree and the precise GPS location of tree; and
 - (B) a clear indication of whether each tree will be removed, protected, or left as is by Project Co during the course of the Works; and
 - (ii) for the trees that Project Co intends to protect during the course of the Works, a description of Project Co’s protection measures to ensure that the trees will be preserved and undamaged.

- (g) Project Co shall submit the Arborist Report – Third Party Lands to Contracting Authority in accordance with Schedule 10 - Review Procedure and in accordance with the timeframe for submission set out in Appendix B to this Schedule 17. Project Co shall ensure that it implements the protection measures set out in the Arborist Report – Third Party Lands prior to carrying out Works in the vicinity of trees that require protection.

17. LIGHTING DURING CONSTRUCTION

17.1 Lighting During Construction

- (a) Project Co shall assign lighting zone designations for the Site and all adjacent areas that may be impacted by the Works. Recommended limits for light trespass are provided for within the IESNA Recommended Practice Lighting for Exterior Environments (RP-33-99) in order to determine the ratings that apply to each lighting zone, as further set out in this Section 17.1.
- (b) Project Co shall undertake any and all mitigation measures that may be required in order to:
- (i) prevent areas with lower lighting zone designations from being impacted by the Works occurring in areas with higher lighting zone designations;
 - (ii) minimize light trespass or address visibility problems caused by eye adaptation when transitioning from a brightly lit area to a more dimly lit area; and
 - (iii) consider that the light source directly visible and in line of sight to motorists (not intended to illuminate the driving surface, or serve a specific function) could be a distraction and a major concern for glare.
- (c) If Project Co uses outdoor luminaires in a lighting zone, such luminaires shall not, where reasonably practicable, exceed the ratings shown in Table 17.1-1, Table 17.1-2, and Table 17.1-3 that are applicable to such lighting zone.

Table 17.1-1: MLO Recommended Uplight Ratings for Light Zones

Lighting Zones	Recommended Uplight Rating
LZ-0	U0
LZ-1	U1
LZ-2	U2
LZ-3	U3
LZ-4	U4

Table 17.1-2: MLO Recommended Backlight Ratings for Light Zones

Location of Luminaire from the Property Boundary	Lighting Zone and Recommended Backlight Rating				
	LZ-1	LZ-1	LZ-2	LZ-3	LZ-4
Greater than 2 mounting heights	B1	B3	B4	B5	B5
1 to less than 2 mounting heights and ideally oriented	B1	B2	B3	B4	B4
0.5 to 1 mounting heights and ideally oriented	B0	B1	B2	B3	B3
Less than 0.5 mounting heights and ideally oriented	B0	B0	B0	B1	B2

Table 17.1-3: MLO Maximum Allowable Glare Ratings for Light Zones

Orientation and Location of Luminaire	Lighting Zone and Maximum Allowable Glare Rating				
	LZ-1	LZ-1	LZ-2	LZ-3	LZ-4
Luminaire ideally oriented	G0	G1	G2	G3	G4
Luminaire not ideally oriented and 1 to 2 mounting heights from property line of concern	G0	G0	G1	G1	G2
Luminaire not ideally oriented and 0.5 to 1 mounting heights from property line of concern	G0	G0	G0	G1	G1
Luminaire not ideally oriented and less than 0.5 mounting heights from property line of concern	G0	G0	G0	G0	G1

- (d) If adherence to ratings set out in Table 17.1-1, Table 17.1-2, and Table 17.1-3 is not reasonably practicable, Project Co shall not be permitted to use outdoor luminaires, other than full cut-off outdoor luminaires for temporary nighttime illumination.
- (e) Project Co shall not exceed the maximum initial vertical illuminance spill light from exterior lighting recommended for a lighting zone, as recommended by ANSI Recommended Practice.
- (f) Project Co shall choose more efficient luminaires and lamps which shall reduce the total number of luminaires and in turn resulting in less wasted light emitted into areas where the light is not needed

- (g) Project Co shall mitigate sources of glare to observers within line of sight of light sources on construction work areas. Mitigation methods may include one or several options such as using an internal or external shield of light source, adjusting mounting heights, decreasing source lumens, using luminaires with low-G BUG ratings, or dimming light sources. Project Co shall also carefully evaluate angles between the luminaire beam axis and drivers' line of sight during photometric analysis to keep glare levels in check.

18. EXISTING MONITORING WELLS

18.1 Protection / Decommissioning of Existing Monitoring Wells

- (a) Project Co shall be responsible for temporary protection, maintenance and final decommissioning of all existing or newly installed monitoring wells in accordance with Ontario Regulation 903, under the *Ontario Water Resources Act* (Ontario), as directed and confirmed by Contracting Authority prior to well decommissioning, including with respect to:
- (i) any and all monitoring wells installed as part of geotechnical, environmental, or hydrogeological investigations in connection with the Project; and
 - (ii) all wells installed as part of the studies undertaken by Contracting Authority and that were provided as part of the Background Information.
- (b) Project Co shall complete monitoring well decommissioning at any additional locations identified and as directed and confirmed by Contracting Authority prior to well decommissioning from time to time prior to Final Completion.
- (c) Project Co shall, prior to Substantial Completion (unless Contracting Authority provides an alternative timing), decommission any supplementary wells installed by Project Co as part of its own investigation and monitoring work as necessary to complete the Works as directed and confirmed by Contracting Authority prior to well decommissioning.

19. SPECIES AT RISK

- (a) Throughout the Project Term, Project Co shall comply with and implement the Project Co requirements of the Species at Risk Framework. Project Co shall be responsible for:
- (i) additional investigations and assessment of impacts associated with Project Co's design of the Project, as identified in the Species at Risk Framework;
 - (ii) adherence to the timing constraints, environmental parameters and requirements identified in the Species at Risk Framework, and where necessary, confirmation of timing constraints, environmental parameters and requirements in consultation with Contracting Authority and the appropriate Governmental Authority;
 - (iii) preparation of all documentation and deliverables identified in the Species at Risk Framework;
 - (iv) monitoring and associated reporting as identified in the Species at Risk Framework;

- (v) decommissioning and inspection activities as identified in the Species at Risk Framework and any required or associated corrective actions and reports; and
- (vi) providing to Contracting Authority, 180 days prior to the completion of the Project Term, a Species at Risk handover report (the “**Species at Risk Handover Report**”) that outlines:
 - (A) the status of Works related to Species at Risk, including Works completed and to be completed prior to the end of the Project Term; and
 - (B) all conditions identified in the Species at Risk Framework that are the responsibility of Project Co.

The Species at Risk Handover Report shall be submitted in accordance with Schedule 10 – Review Procedure and in accordance with submission timeframe set out in Appendix B to this Schedule 17.

**APPENDIX A-1
PROJECT CO’S GENERAL ENVIRONMENTAL COMMITMENTS**

Specific compliance items that will be carried out and reported by Project Co pursuant to the Project Agreement include Table A-1.1 – Project Co’s Environmental Commitments.

Table A-1.1 – Project Co’s Environmental Commitments

Item No. / Page	Requirement	Additional Comment	Submitted in Accordance with Schedule 10 – Review Procedure
Environmental Commitments			
Intentionally Blank	Intentionally Blank	Intentionally Blank	Intentionally Blank

**APPENDIX A-2
CONTRACTING AUTHORITY’S ENVIRONMENTAL COMMITMENTS**

Table A-2.1 – Contracting Authority’s Environmental Commitments

Item No. / Page	Requirement	Additional Comment
Environmental Commitments		
Intentionally Blank	Intentionally Blank	Intentionally Blank

**APPENDIX A-3
SHARED ENVIRONMENTAL COMMITMENTS**

Item No. / Page	Requirement	Additional Comment
Environmental Commitments		
	Contracting Authority may request Project Co to assist or support Contracting Authority’s Indigenous Communities Engagement. If and where Contracting Authority determines that there is a duty to consult an Indigenous Community, that duty lies with Contracting Authority. Contracting Authority may request Project Co to assist or support such consultation with Indigenous Communities.	

**APPENDIX B
PLANS AND REPORTS**

Schedule of Plans and Reports Submission Requirements

No	Deliverable Name	Section Reference(s)	Due Date	Deliverable Submission Period
1.	Environmental Management System (initial version)	Sections 2.1	120 days after Financial Close	By due date
2.	Environmental Management System Updates	Section 2.1(k)	30 days prior to planned date for commencement of Construction Activities or on date that is otherwise agreed by both the Contracting Authority and Project Co	Throughout the Project Term
3.	Project Co Deviation Report	Section 3.4(b)	30 days prior to planned date for commencement of Construction Activities or on date that is otherwise agreed by both the Contracting Authority and Project Co	By due date
4.	Environmental Specialists Qualifications Plan	Sections 5.1(c)	The earlier of, a) 120 days after Financial Close; or b) 30 days prior to planned date for commencement of Construction Activities	By due date
5.	Environmental Working Group Meeting Minutes	Section 5.7(h)	Five Business Days following EWG meetings	Throughout Project Term
6.	Annual Environmental Compliance Monitoring Report	Section 6.1(a)	Annually, no later than March 31	Throughout Project Term
7.	Monthly Environmental Report	Section 6.1(b)	Monthly, 10 days following the end of the previous month	Throughout Project Term
8.	Environmental Audit Report	Section 6.1(f)	No later than 30 days following the completion of the Independent Environmental Audit	Throughout Project Term
9.	Soil and Excavated Material Management Plan	Section 7.1(a)	The earlier of, a) 120 days after Financial Close; or b) 30 days prior to planned date for commencement of Construction Activities	By due date

No	Deliverable Name	Section Reference(s)	Due Date	Deliverable Submission Period
10.	Soil and Excavated Material Monthly Dashboard	Section 7.2(b)	Monthly, on the first day of each month for the preceding month	Throughout Project Term
11.	Soil and Excavated Material Management Implementation Report	Section 7.3(a)	14 days prior to Substantial Completion	By due date
12.	Groundwater Management and Dewatering Plan	Section 8.1(a)	The earlier of, a) 120 days after Financial Close; or b) 30 days prior to planned date for commencement of Construction Activities	By due date
13.	Groundwater Management Monthly Dashboard	Section 8.2(b)	Monthly, on the first day of each month for the preceding month	Throughout Project Term
14.	Groundwater Management and Dewatering Implementation Report	Section 8.3(a)	14 days prior to Substantial Completion	By due date
15.	Contamination Management Plans	Section 9.2(a)(iii)	Within 10 Business Days of the discovery of any Contamination that is not addressed in the Soil and Excavated Material Management Plan or in the Groundwater Management and Dewatering Plan, or on the date that is otherwise agreed by both the Contracting Authority and Project Co	By due date
16.	Designated Substances and Hazardous Materials Management Plan	Section 10.2(a)	The earlier of, a) 120 days after Financial Close; or b) 30 days prior to planned date for commencement of Construction Activities	By due date
17.	Designated Substances and Hazardous Materials Implementation Report	Section 10.2(b)	14 days prior to Substantial Completion	By due date

No	Deliverable Name	Section Reference(s)	Due Date	Deliverable Submission Period
18.	Erosion and Sediment Control Plan	Section 11(a)	The earlier of, a) 120 days after Financial Close; or b) 30 days prior to planned date for commencement of Construction Activities	By due date
19.	Monthly Erosion and Sediment Control Monitoring Report	Section 11(d)	Monthly, 10 days following the end of the previous month	Throughout Project Term
20.	Spill Prevention and Response Plan	Section 12(a)	The earlier of, a) 120 days after Financial Close; or b) 30 days prior to planned date for commencement of Construction Activities	By due date
21.	Spill Prevention and Response Occurrence Report (for each spill occurrence)	Section 12(d)	Within 2 days of occurrence	By due date
22.	Spill Prevention and Response Implementation Report	Section 12(e)	14 days prior to Substantial Completion	By due date
23.	Archaeological Risk Management Plan	Sections 13.1(b)	The earlier of, a) 120 days after Financial Close; or b) 30 days prior to planned date for commencement of Construction Activities	By due date
24.	Archaeological Risk Management Plan Updates	Section 13.1(d)	30 days prior to planned date for commencement of Construction Activities or on date that is otherwise agreed by both the Contracting Authority and Project Co	Throughout Project Term
25.	Cultural Heritage Risk Management Plan	Section 13.2(b)	The earlier of, a) 120 days after Financial Close; or b) 30 days prior to planned date for commencement of Construction Activities	By due date

No	Deliverable Name	Section Reference(s)	Due Date	Deliverable Submission Period
26.	Cultural Heritage Risk Management Plan Update	Section 13.2(b)	30 days prior to planned date for commencement of Construction Activities or on date that is otherwise agreed to by both the Contracting Authority and Project Co	Throughout Project Term
27.	Air Quality Management Plan	Section 14.3(a)	The earlier of, a) 120 days after Financial Close; or b) 30 days prior to planned date for commencement of Construction Activities	By due date
28.	Weekly Air Quality Monitoring Report	Section 14.4(d)	Friday each week in areas where Construction Activities are underway	Throughout Project Term
29.	Updates to the Noise and Vibration Reference Documents	Section 15.2(b)	As necessary to reflect changes in Applicable Noise and Vibration Requirements and Applicable Law	Throughout Project Term
30.	Noise and Vibration Management Plan	Section 15.4(a)	The earlier of, a) 120 days after Financial Close; or b) 30 days prior to planned date for commencement of Construction Activities	By due date with updates throughout Project Term
31.	Updates to the Noise and Vibration Management Plan	Section 15.4(c)	Every six months	Throughout the Project Term
32.	List of Representative Construction Noise and Vibration Sensitive Receptors	Section 15.5(c)	The earlier of, a) 120 days after Financial Close; or b) 30 days prior to planned date for commencement of Construction Activities	By due date
33.	Additional Noise and Vibration Sensitive Reception Performance Requirements	Section 15.5(g)	The earlier of, a) 120 days after Financial Close; or b) 30 days prior to planned date for commencement of Construction Activities	Throughout Project Term

No	Deliverable Name	Section Reference(s)	Due Date	Deliverable Submission Period
34.	Ground-Borne and Air-borne Noise and Vibration Assessments	Section 15.6(c)	The earlier of, a) 120 days after Financial Close; or b) 30 days prior to planned date for commencement of Construction Activities	Throughout the Project Term
35.	Assessment at all Representative Noise and Vibration Sensitive Receptors likely to be impacted by such Construction Activity	Section 15.7	The earlier of, a) 120 days after Financial Close; or b) 30 days prior to planned date for commencement of Construction Activities	Throughout the Project Term
36.	Weekly Noise and Vibration Monitoring Report	Section 15.7(g)	Friday each week in areas where Construction Activities are underway	Throughout Project Term
37.	Arborist Report – Metrolinx Lands	Section 16(b)	30 days prior to planned date for commencement of Construction Activities or on date that is otherwise agreed by both the Contracting Authority and Project Co	By due date
38.	Arborist Report – Third Party Lands	Section 16(f)	30 days prior to planned date for commencement of Construction Activities or on date that is otherwise agreed by both the Contracting Authority and Project Co	By due date
39.	Tree Tracker	Section 16(d)	As required by Contracting Authority	Throughout Project Term
40.	Species at Risk Handover Report	Section 19(a)(vi)	180 days prior to the end of the Project Term	By due date

MT MTDOS 41633402v2

SCHEDULE 18

COMMUNICATION AND PUBLIC ENGAGEMENT PROTOCOL

1. DEFINITIONS

In this Schedule 18, unless the context indicates a contrary intention, terms which are defined in the Project Agreement (and not otherwise defined in this Schedule 18) shall have meanings given to them in the Project Agreement and the following terms shall have the following meanings:

- 1.1 “**Accessibility for Ontarians with Disabilities Act (Ontario)**” means the *Accessibility for Ontarians with Disabilities Act, 2005*, S.O. 2005, c. 11, as amended from time to time.
- 1.2 “**Business Improvement Areas**” means any municipally designated “Business Improvement Areas” as recognized by the City of Toronto.
- 1.3 “**Communications and Public Engagement Protocol**” means this Schedule 18.
- 1.4 “**Communications Calendar**” has the meaning given in Section 4.2(a)(ii).
- 1.5 “**Communications Repository**” has the meaning given in Section 5(a).
- 1.6 “**Communications Signage**” has the meaning given in Section 9.8(a).
- 1.7 “**Communications Working Group**” has the meaning given in Section 4.1(a).
- 1.8 “**Complaints Protocol**” has the meaning given in Section 9.11(b)(i).
- 1.9 “**Construction Activities Incident**” has the meaning given in Section 10.5.
- 1.10 “**Construction Communication Liaison(s)**” means the individual(s) employed by Project Co as communications liaison worker(s) for the Project.
- 1.11 “**Contracting Authority Community Liaison Representative**” means the individual(s) employed by Contracting Authority as community liaison worker(s) for the Project who are stationed in the community offices or at Contracting Authority’s offices during the Project Term.
- 1.12 “**Crisis Communication Plan**” has the meaning given in Section 9.3(a).
- 1.13 “**Documents Relating to Indigenous Communities**” has the meaning given in Schedule 17.
- 1.14 “**Indigenous Communities**” has the meaning given in Schedule 17.
- 1.15 “**Indigenous Communities Engagement**” has the meaning given in Schedule 17.
- 1.16 “**Indigenous Entities**” means Indigenous-run organizations and businesses.
- 1.17 “**Indigenous Entities Engagement**” means a process of meaningfully engaging with Indigenous Entities whose interests may be affected by the Project, including providing relevant information to Indigenous Entities about the Project and meaningfully considering their input.

- 1.18 “**Major Impact**” has the meaning given in Section 10.2.
- 1.19 “**Medium Impact**” has the meaning given in Section 10.3.
- 1.20 “**Minor Impact**” has the meaning given in Section 10.4.
- 1.21 “**Monthly Editorial Meeting**” has the meaning given in Section 9.2(c).
- 1.22 “**Project Co Communications Plan**” has the meaning given in Section 7(a).
- 1.23 “**Project Co Communications Protocol**” has the meaning given in Section 6(a).
- 1.24 “**Project Co Communications Team**” has the meaning given in Section 3(a).
- 1.25 “**Project Website**” means Contracting Authority’s websites www.metrolinx.com and www.infrastructureontario.ca, a section of which will be designated for the Project.
- 1.26 “**Project Website and Social Media Calendar**” has the meaning given in Section 4.2(a)(ii).
- 1.27 “**Signage and Hoarding Coverage Plan**” has the meaning given in Section 9.8(a).

2. GENERAL

2.1 General Communications Principles

- (a) The Project represents an important transit infrastructure commitment by Contracting Authority. As Project Co carries out its responsibilities under the Project Agreement, comprehensive communications and Stakeholder relations plans are required to ensure that the public is informed and engaged where necessary and to meet Contracting Authority’s communications requirements. These communications and Stakeholder relations plans will support effective timely, and transparent communications between Project Co and Contracting Authority, Indigenous Communities, Indigenous Entities, Stakeholders, local businesses, residents, transit users and the public during the Project Term.
- (b) Project Co acknowledges that:
- (i) Project Co is Contracting Authority’s and the Stakeholders’ primary source of information with respect to all matters within Project Co’s control in respect of the Project; and
 - (ii) Contracting Authority and the Stakeholders, at all times during the Project Term, shall rely upon Project Co to,
 - (A) anticipate matters which may be of interest and concern to Contracting Authority or the Stakeholders during the Project Term (based on its experience as well as lessons learned during the course of the Project); and
 - (B) proactively organize and disseminate information in accordance with Project Co’s obligations in the Project Agreement so as to permit the Parties to perform their obligations hereunder.

- (c) Project Co's communications, marketing and community engagement obligations of the Project are as follows:
- (i) to provide regular and timely updates throughout the Project Term in order to,
 - (A) communicate anticipated construction and its progress, Project highlights, potential traffic or transit system changes and other traffic or transit information to the public and customers;
 - (B) proactively identify issues; and
 - (C) generally enhance opportunities for open, transparent, effective and proactive communications with the public so as to minimize complaints and increase the public's understanding of the Project;
 - (ii) to ensure that Stakeholder input is obtained in a timely manner so that it may be properly considered by the Parties;
 - (iii) to provide the Stakeholders with regular and timely information in respect of Project status and progress, potential traffic or transit system changes and noise, dust, vibration, and congestion impacts on businesses and residents and other actual and potential impacts of Project activities;
 - (iv) to be accountable to the Stakeholders for the effective delivery of communications and community engagement plans as set out in the Project Agreement; and
 - (v) to recognize the contribution of the Parties in the Project Agreement.
- (d) Contracting Authority and Project Co shall work together to deliver communications and public engagement activities pursuant to the Project Agreement, including this Schedule 18.

2.2 General Communications Responsibilities

- (a) Project Co shall:
- (i) carry out all activities required to fulfill all of Project Co's communications and community engagement obligations in accordance with and as set out in this Schedule 18;
 - (ii) develop all plans, protocols, and other documentation that Project Co is required to develop in accordance with this Schedule 18 in consultation with Contracting Authority, Stakeholders, and Governmental Authorities, and submit all such plans, protocols and documentation to Contracting Authority for review in accordance with Schedule 10 – Review Procedure;
 - (iii) in consultation with Contracting Authority, Stakeholders, and Governmental Authorities, implement and comply with all plans, protocols and other documentation that have been reviewed and accepted or approved by Contracting Authority in accordance with this Schedule 18;

-
- (iv) provide all information, materials, support and consultation to Contracting Authority as Contracting Authority may require with respect to Contracting Authority’s communications, public engagement, community liaison and public and customer notification activities, Stakeholder consultation, and reporting related to the Project throughout the Project Term;
 - (v) be available to assist Contracting Authority and the City of Toronto, as applicable, in responding to media, government and public enquiries related to the Project as requested and in accordance with all timelines prescribed by Contracting Authority;
 - (vi) review and develop communications and/or technical materials reasonably requested by Contracting Authority;
 - (vii) provide regular updates and support to Contracting Authority related to all community impacts associated with the Project during the Project Term;
 - (viii) provide experienced communications and public engagement staff, as set out in Section 3(a), to support the implementation of this Communications and Public Engagement Protocol, and to participate in the Communications Working Group, internal and external meetings and public in-person and virtual events;
 - (ix) provide dedicated communications and Project experts to participate in communications meetings and the Communications Working Group;
 - (x) work with Contracting Authority to build and foster relationships with local businesses and the public in order to address the community’s concerns about the Works that may impact the community, and use best practices for seeking and receiving public comments;
 - (xi) develop and execute business disruption mitigation and business engagement strategies, in consultation with Contracting Authority, in order to address businesses’ concerns about Construction Activities;
 - (xii) consult with Contracting Authority with respect to design opportunities to engage the community in the Project’s design process where feasible, and as directed by Contracting Authority;
 - (xiii) support Contracting Authority and the following Stakeholders when carrying out Project Co’s obligations as set out in this Schedule 18:
 - (A) the City of Toronto and the TTC;
 - (B) MTO, MOI, conservation authorities and other Governmental Authorities;
 - (C) Utility Companies;
 - (D) Emergency Service Providers;
 - (E) neighbourhood groups (including property owners, ratepayers, citizens);

- (F) local businesses (including individual operators and Business Improvement Areas); and
- (G) various community interest groups (including environmental, health, natural and cultural heritage, advocacy groups); and
- (xiv) ensure that each Project Co Party exhibits a high degree of professionalism and courtesy when working on the Project and when interacting with Stakeholders, Indigenous Communities, Indigenous Entities, customers, businesses, residents and the public when carrying out Project Co's obligations under this Schedule 18, including,
 - (A) acting with appropriate decorum when attending public consultations and events;
 - (B) parking in a manner that will not negatively impact neighbourhood or station access or customer parking;
 - (C) not littering and being respectful of public and private property;
 - (D) replacing or repairing waste receptacles, plantings and signage should these items become damaged or defaced; and
 - (E) not engaging in inconsiderate conversation near public spaces.
- (b) Project Co shall ensure that all public-facing communications materials and information are provided in colour (and not black and white), unless otherwise directed by Contracting Authority.
- (c) Project Co acknowledges and agrees that, notwithstanding any other provision in this Schedule 18,
 - (i) all communications-related protocols, plans, materials, advertisements, notices, activities, approaches and strategies with respect to the Project, shall be subject to Contracting Authority's review and approval; and
 - (ii) Project Co may not consult with, communicate with or disseminate any materials to the public, Governmental Authorities, Stakeholders, Indigenous Communities or Indigenous Entities with respect to the Project without the prior consent of Contracting Authority.

3. PROJECT CO COMMUNICATIONS TEAM

- (a) No later than 30 days following Financial Close, Project Co shall form a dedicated communications team for the Project (the "**Project Co Communications Team**"). The Project Co Communications Team shall be comprised of the following:
 - (i) a Communications and Public Engagement Lead, who shall,
 - (A) be a media-trained spokesperson with a minimum of 10 years of transit or construction-related communications experience in media relations, crisis communications, issues management, corporate and community relations;

- (B) oversee the Project Co Communications Team and ensure that Project Co's communications-related obligations under the Project Agreement are being met; and
 - (C) be a Key Individual.
- (ii) no fewer than two additional full-time staff members, each of whom shall possess a minimum of five years of communications, marketing or other relevant experience (transit, construction/infrastructure experience will be considered an asset), including in media relations, customer communications, crisis communications, issues management, community relations and public engagement; and
 - (iii) any additional staff that may be required in order for Project Co to fulfill its communications obligations under the Project Agreement.
- (b) The Project Co Communications Team shall work closely with Contracting Authority's staff at community office locations, if required.

4. COMMUNICATIONS WORKING GROUP

4.1 Establishment of Communications Working Group

- (a) Contracting Authority representatives and the Project Co Communications Team shall form a communications working group (the "**Communications Working Group**"). The Communications Working Group shall develop and implement all communications plans and public consultation, marketing and community engagement activities for the Project in accordance with this Schedule 18. Project Co shall ensure that Key Individuals and any other staff from Project Co or any Project Co Party that Contracting Authority may require, are made available to support the Communications Working Group as required.
- (b) No later than 45 days following Financial Close, the Communications Working Group shall convene to discuss the Project Co Communications Protocol and to identify the working relationship, roles and responsibilities matrix, and approvals processes for the Project. The Communications Working Group shall provide direction and feedback on communications deliverables and plans expected from Project Co on an ongoing basis.
- (c) The Communications Working Group shall meet bi-weekly throughout the Project Term (or more or less frequently if requested by Contracting Authority), to plan and implement communications, marketing and public engagement strategies for the Project, share information, discuss community relations updates, identify and plan for communications and Project milestones, manage issues and receive schedule updates. Strategies and tactics developed and employed by the Communications Working Group shall,
 - (i) provide for timely, open, transparent, effective, consistent and proactive communications with Contracting Authority, the public and elected officials and the public;
 - (ii) foster and maintain positive and constructive relationships with neighbourhoods, agencies and businesses that may be affected by decisions regarding the scope of the Project as well as Construction Activities; and

- (iii) build trust and maximize public understanding and support for the Project.

4.2 Submittals for Communications Working Group

- (a) No later than one week prior to each Communications Working Group meetings, Project Co shall provide the following submittals to Contracting Authority for review:
 - (i) an agenda for the Communications Working Group meeting, a final version of which is to be circulated no later than two days prior to the meeting; and;
 - (ii) an up-to-date calendar outlining the communications deliverables and activities for the next six-month period, including,
 - (A) the identification and scope of the deliverable or activity being addressed;
 - (B) the tactic or tools to be employed in order to achieve each deliverable and carry out each activity;
 - (C) the objectives, target audience, timing and deadlines associated with each deliverable and activity; and
 - (D) the Project Co resource(s) assigned to each deliverable and activity,

(the “**Communications Calendar**”). As part of the Communications Calendar, Project Co shall provide a stand-alone content calendar that includes the timeline for development, submission, review and approval for the content described in Section 9.2(b) (the “**Project Website and Social Media Calendar**”).
- (b) Contracting Authority may, in its sole discretion, provide comments to Project Co with respect to the conformance of the Communications Calendar and the Communications Repository with the requirements of the Project Agreement. Project Co shall incorporate all such comments provided by Contracting Authority and shall provide updated, corrected versions to Contracting Authority in accordance with the timeframes prescribed by Contracting Authority, acting reasonably.
- (c) No later than five days following each Communications Working Group meeting, Project Co shall submit meeting minutes to Contracting Authority for review in accordance with Schedule 10 – Review Procedure.

5. COMMUNICATIONS REPOSITORY

- (a) Project Co shall implement and maintain, throughout the Project Term, an electronic repository using software that is agreed upon by the Parties (the “**Communications Repository**”). The Communications Repository shall include all communications submittals, documents, plans, deliverables, agendas, photos, videos, and other media contemplated in this Schedule 18. Project Co shall, throughout the Project Term, allow Contracting Authority users to remotely log in and access the Communications Repository to review all information set out in the Communications Repository.

6. PROJECT CO COMMUNICATIONS PROTOCOL

- (a) Project Co shall, no later than 45 days following Financial Close, submit a communications protocol for review by Contracting Authority pursuant to Schedule 10 – Review Procedure that describes how Project Co will meet its communications-related obligations under the Project Agreement (the “**Project Co Communications Protocol**”). The Project Co Communications Protocol shall include the following:
- (i) an executive summary of objectives and description of Project Co’s approach to all communications aspects of the Project;
 - (ii) a summary of proposed communication tools to be used by Project Co to consult with and report to Contracting Authority in accordance with this Schedule 18, with a view towards ensuring that a system is in place for media and community relations, social media management, graphics capabilities, issues management, complaints management, dispute resolution and crisis communications for the purposes of informing and engaging the community, businesses and other Stakeholders about the progress of the Project, as well as any impacts and the benefits of the Project;
 - (iii) a summary of Project Co’s proposed plan with respect to notifying, in consultation with Contracting Authority, affected residents and businesses, including Contracting Authority’s community relations representatives, as soon as possible of unplanned or unexpected impacts of the Works (including going door-to-door, providing updates for Contracting Authority’s Project Website and information telephone line, including after-hours support), and providing an estimate of the expected duration of the impact to affected residents and businesses; and
 - (iv) a description of the Project Co Communications Team, including,
 - (A) the identification by name of the Communications and Public Engagement Lead and all other staff comprising the Project Co Communications Team; and
 - (B) the roles, responsibilities and experience of each member of the Project Co Communications Team.
- (b) Project Co shall update the Project Co Communications Protocol,
- (i) on an annual basis; or
 - (ii) more frequently as required to account for any changes in circumstances with respect to the Project or lessons learned, or as directed by Contracting Authority, in its sole discretion.

Project Co shall resubmit each updated Project Co Communications Protocol to Contracting Authority for review pursuant to Schedule 10 – Review Procedure.

7. PROJECT CO COMMUNICATIONS PLAN

- (a) Project Co shall, no later than 90 days following Financial Close, and prior to initiating any communications-related activity or disseminating any communications-related materials, submit a communications plan for review by Contracting Authority pursuant to Schedule 10 – Review Procedure that describes how Project Co will meet its communications-related obligations under

the Project Agreement (the “**Project Co Communications Plan**”). The Project Co Communications Plan shall include:

- (i) a description of Project Co’s objectives and strategies and specific tactics, timelines, deliverables and responsibilities to support,
 - (A) initiatives for public engagement and consultation, including in-person and virtual; and
 - (B) local or community-based communications, advertising and notification related to the Works;
 - (ii) a detailed description of the communication tools outlined in the Project Co Communications Protocol;
 - (iii) a description of the communications and community engagement activities set out in Section 8 and Section 9, including a description of how Project Co will carry out such communications activities in accordance with its obligations set out in this Schedule 18;
 - (iv) a description of how the approach will be coordinated with respect to other protocols and plans developed by Contracting Authority or Project Co as part of this Schedule 18;
 - (v) a description of Project Co’s approach and strategy with respect to carrying out its obligations as set out in Section 8;
 - (vi) the Communications Calendar, including, for clarity, the Project Website and Social Media Calendar; and
 - (vii) a description of Project Co’s approach and strategy with respect to maintaining and updating the Communications Calendar and Communications Repository.
- (b) Project Co shall update the Project Co Communications Plan,
- (i) on an annual basis at minimum; or
 - (ii) more frequently as may be directed by Contracting Authority, in its sole discretion, or as may be required to account for any changes in the circumstances of or lessons learned with respect to the Project.
- (c) Project Co shall resubmit each updated Project Co Communications Plan to Contracting Authority for review pursuant to Schedule 10 – Review Procedure.

8. COMMUNITY ENGAGEMENT DURING THE PROJECT TERM**8.1 General**

- (a) During the Project Term, public engagement activities shall be conducted by Contracting Authority and Project Co on a range of topics, in accordance with the Project Co Communications Plan.

8.2 Community Engagement - Events

- (a) Contracting Authority and Project Co shall collaborate to develop, plan, and coordinate various events during the Project Term. Project Co shall,
- (i) participate in planning and executing events for the Project as needed and as requested by Contracting Authority;
 - (ii) facilitate reasonable access to the Metrolinx Lands and the New Metrolinx Infrastructure from time to time for governmental, public relations, media and public tours and events;
 - (iii) ensure sufficient insurance and liability coverage is in place for any special events or venues;
 - (iv) make Project Co staff available for events and tours and provide accommodation and support as may be required by Contracting Authority or the City of Toronto, as applicable;
 - (v) where in-person events are not feasible, provide resources to deliver virtual events; and
 - (vi) provide support to produce various communication materials required for the event.
- (b) During the Project Term, Contracting Authority shall,
- (i) lead and organize special events, including tours of the Metrolinx Lands and milestone celebrations, costs of which will be borne by Contracting Authority (excluding costs related to shutdown of the Works or accommodations at the Metrolinx Lands to organize such events, which shall be borne by Project Co); and
 - (ii) provide no less than two weeks advance Notice to Project Co to support any event described in Section 8.2(b)(i) as requested by Contracting Authority.
- (c) During the Project Term, Project Co shall, in consultation with Contracting Authority, provide support for no fewer than 24 public engagement meetings or events per year, with provision for additional meetings or events where there may be contentious issues or major work by:
- (i) planning, organizing, leading, resourcing and executing these meetings and events;
 - (ii) preparing and submitting to Contracting Authority for review and approval individual plans and materials for each public engagement meeting or event, no later than one month prior to such meeting or event, including clear objectives, target audiences, meeting or event format, approach and tactics;

- (iii) being responsible for all logistics for the meetings and events, including,
 - (A) renting the venue, tables and chairs;
 - (B) producing displays, invitations, signage and printed material;
 - (C) undertaking print, social media and radio advertising in trade, community and national media outlets as determined by Contracting Authority;
 - (D) issuing invitations, tracking RSVPs and administering surveys to attendees;
 - (E) using best efforts to ensure that the majority of attendees at each event and meeting are residents, individuals associated with a business, and Stakeholders located within a one kilometre radius of the area; and
 - (F) supplying computers, projectors, cables, power cords, screens, easels, flip charts, pens, markers, registration and sign in sheets;
- (iv) preparing meeting and event summaries for submission to Contracting Authority for approval, including quick turnaround synopses for Contracting Authority's exclusive use and more comprehensive reports at the conclusion of a particular public engagement program (for example, a set of workshops); and
- (v) submitting high resolution, professional-quality photos of the event (and video, if requested by Contracting Authority) which may be used publicly.
- (d) Project Co shall attend, upon request by Contracting Authority, with representatives of Contracting Authority, Stakeholder meetings, municipal council meetings and presentations, and such other meetings and events as Contracting Authority deems necessary. Project Co shall provide sufficient and appropriately experienced personnel to present at or to staff such meetings and events and shall provide draft meeting and event materials for review by Contracting Authority.
- (e) Project Co shall support Contracting Authority in arranging meetings, in advance, with residents and businesses where Project Co requires access to properties of such residents and businesses.
- (f) In addition to the requirement set out in Section 8.2(c), Project Co shall also attend and participate in no fewer than 50 events and meetings per year during the Project Term at local schools, community associations, Contracting Authority events and other Stakeholder events and otherwise as reasonably requested by Contracting Authority. Project Co shall,
 - (i) provide materials for such events;
 - (ii) provide Project Co staff to present on the event topic or theme and/or make Project Co staff available to conduct outreach by engaging with the public; and
 - (iii) collect feedback and distribute marketing information to support the Project.

- (g) Project Co shall, in consultation with Contracting Authority, plan, organize, lead and execute one public tradeshow in a central location for the Project, no later than 180 days following Financial Close, in accordance with the following requirements:
- (i) no later than two months prior to the tradeshow, Project Co shall prepare and submit to Contracting Authority for review and approval plans and materials for the tradeshow, including an outline of clear objectives, target guest list, tradeshow format, approach and tactics;
 - (ii) Project Co shall ensure that the tradeshow provides a beneficial and efficient networking opportunity between Project Co and local contractors, vendors, community businesses and agencies, with the intent to foster mutually-beneficial relationships and contracts;
 - (iii) Project Co shall be responsible for all logistics for the public tradeshow, including:
 - (A) renting the venue, tables and chairs and organizing other logistics such as supplying computers, projectors, cables, power cords, screens, easels, flip charts, pens, markers, and registration and sign in sheets;
 - (B) providing a virtual option for engagement and presentation (for example, telephone and online town hall);
 - (C) producing displays, invitations, signage and printed material;
 - (D) catering;
 - (E) print, social media and radio advertising in trade and community and national media outlets as determined by Contracting Authority targeted to industry vendors, suppliers, businesses and job seekers as Project Co seeks to promote procurement and employment opportunities early on regarding the Project; and;
 - (F) issuing invitations, tracking RSVPs and administering a survey to attendees;
 - (iv) promptly following the tradeshow, Project Co shall prepare and submit to Contracting Authority a post-tradeshow report summarizing feedback from event participants, lessons learned and confirmed contracts and business opportunities attained for the Project as a result of the tradeshow; and
 - (v) promptly following the tradeshow, Project Co shall submit high resolution, professional-quality photos (and video, if requested by Contracting Authority) to Contracting Authority, the content of which may be posted publicly.

8.3 Community Engagement – General Obligations

- (a) Project Co shall provide media-trained technical staff for involvement and participation in community events and meetings, including,
- (i) Key Individuals;
 - (ii) noise and vibration specialists; and

- (iii) other technical staff as requested by Contracting Authority.
- (b) In consultation with Contracting Authority, Project Co shall determine how Stakeholder input shall be considered, responded to, and/or accommodated in the Project, including provision of respectful, meaningful, and timely feedback to those providing comments and ideas.
- (c) Project Co shall provide any necessary information required to demonstrate compliance with and fulfillment of the consultation related provisions of the Environmental Approvals.
- (d) In order to allow local residents and businesses easy access to information about progress, Construction Activities, mitigation measures and other Project information, Project Co shall provide dedicated communications staff in accordance with Section 3 to work out of Contracting Authority's community office at 4142 Sheppard Avenue East, Ontario.
- (e) Project Co shall make staff available to respond to enquiries from the public and Stakeholders about the Works.
- (f) In consultation with Contracting Authority, Project Co shall provide regular updates to the immediately affected property owners, tenants and neighbourhoods on Works-related issues with particular attention to communicating the scope, schedule and status of the Works. This includes having processes to proactively address any Works-related enquiries and issues (for example, public enquiries and complaints regarding noise, hours of work and dust).
- (g) In consultation with Contracting Authority, Project Co shall notify affected residents and businesses, including Contracting Authority's community relations representatives, as soon as possible of unplanned or unexpected impacts of Construction Activities (including by going door-to-door and providing updates for the Project Website and updated messages on Contracting Authority's information telephone line, including after-hours support), and provide an estimate of the expected duration of the impact.
- (h) Project Co shall maintain a written record of all public enquiries, complaints and communications and shall provide copies to Contracting Authority's lead communications contact on a weekly basis (or immediately if urgent) as per the Complaints Protocol as set out Section 9.11.
- (i) Project Co shall develop a tracking and reporting system (via a dashboard) that is agreed by the Parties to,
 - (i) track and monitor the progress of the Apprenticeship and Workforce Development Plan in accordance with Section 11.25 (*Apprenticeship and Workforce Development Plan and Program*) of the Project Agreement, noting local job impacts of the Project, with reporting to Contracting Authority on an annual basis; and
 - (ii) demonstrate any other local employment impacts, including the hiring of professional, administrative and technical staff for the Project by Project Co and Project Co Parties, in order to track economic benefits, including employment benefits, arising from the Project; and
 - (iii) demonstrate how Project Co has utilized local businesses for goods and services during the construction of the Project, noting:

- (A) business name and location;
- (B) type(s) of good(s) or service(s) procured and dollar amount of the contracts;
- (C) details pertaining to the performance or quality of the work; and
- (D) how the contracts were sourced.

8.4 Communications with Indigenous Communities and Indigenous Entities

- (a) Contracting Authority shall be responsible for Indigenous Entities Engagement and will liaise directly with Indigenous Entities throughout the Project Term. Contracting Authority may require Project Co to assist with, and support, Contracting Authority's Indigenous Entities Engagement.
- (b) No later than 45 days following Financial Close, Project Co shall attend a meeting with the Metrolinx Indigenous Relations Office as directed by Contracting Authority. The meeting shall be for the purpose of the Metrolinx Indigenous Relations Office providing Project Co with an overview and a series of guidelines for Indigenous Communities Engagement and Indigenous Entities Engagement.
- (c) Project Co shall consult with the Metrolinx Indigenous Relations Office prior to establishing any contact with any Indigenous Community or Indigenous Entity and shall follow any direction of the Metrolinx Indigenous Relations Office.
- (d) During the Project Term, Project Co shall attend and provide assistance to Contracting Authority with respect to planning and executing one special event for, and a maximum of two meetings collectively, with Indigenous Communities and Indigenous Entities, for which Project Co shall be responsible for,
 - (i) logistical and organizational requirements;
 - (ii) catering; and
 - (iii) provision of presentation or other meeting materials that are required for the special event and meetings.
- (e) Project Co shall prepare, in accordance with templates provided by Contracting Authority, as requested by Contracting Authority:
 - (i) Documents Relating to Indigenous Communities, all communications and communications materials, to support Contracting Authority's Indigenous Communities Engagement; and
 - (ii) any report, assessment, submission, application, communication, communications material or other documents to support Contracting Authority's Indigenous Entities Engagement.
- (f) Project Co shall submit to Contracting Authority in accordance with Schedule 10 – Review Procedure and clearly noted as an “Indigenous Relations Matter”:

- (i) as it relates to Indigenous Communities Engagement, all Documents Relating to Indigenous Communities and all other planned communications with Indigenous Communities;
- (ii) as it relates to Indigenous Entities Engagement, all planned reports, assessments, submissions, applications, communications, communications materials or other document concerning or with Indigenous Entities,

prior to providing to any Governmental Authority, Indigenous Community or Indigenous Entity as applicable. Project Co shall proceed only after receipt of a “NO COMMENT” notification from Contracting Authority in accordance with Schedule 10 – Review Procedure, unless a longer period for review is otherwise prescribed by the Project Agreement.

- (g) Project Co shall, subject to and in accordance with Schedule 22 – Variation Procedure, be entitled to a Variation where Contracting Authority’s request for assistance, support, information or documentation is not specified as being a responsibility of Project Co with respect to Indigenous Communities Engagement and Indigenous Entities Engagement pursuant to the Project Agreement.
- (h) For clarity, Project Co shall not contact or provide information to persons beyond the Project team related to Indigenous Communities Engagement and Indigenous Entities Engagement, or comment on any issues related to Indigenous Communities and Indigenous Entities, unless permission is first obtained from Contracting Authority, or as otherwise contemplated by this Project Agreement.
- (i) Project Co shall provide Contracting Authority with a minimum of five Business Days advance Notice of any identified need for meetings or communications with any Indigenous Community or Indigenous Entity. Project Co shall not proceed with any such meeting or communication without Contracting Authority’s authorization. Project Co acknowledges and agrees that Contracting Authority may, in its sole discretion, attend, facilitate, or lead any meeting with Indigenous Communities or Indigenous Entities. Project Co shall minute any such meetings and distribute those minutes to Contracting Authority.

9. COMMUNICATIONS ACTIVITIES

9.1 Communications Activities – General

- (a) Project Co shall support Contracting Authority in the implementation of the following communication tactics during the Project Term:
 - (i) Project Website and social media;
 - (ii) crisis communications;
 - (iii) issues management;
 - (iv) media relations;
 - (v) government relations;

- (vi) special events;
- (vii) Project identity, design and livery;
- (viii) signage;
- (ix) advertising and marketing;
- (x) photography and video production; and
- (xi) the Complaints Protocol.

9.2 Project Website and Social Media

- (a) Throughout the Project Term, Project Co shall:
 - (i) support Contracting Authority’s social media strategy for the Project (which includes tools such as Twitter, Facebook and YouTube and Instagram);
 - (ii) support the Project Website by providing static (written) and dynamic (multimedia) content; and
 - (iii) ensure that the quality of multimedia content aligns with Metrolinx standards.
- (b) As part of Project Co’s obligation set out in Section 9.2(a), Project Co shall provide the following content for review and approval by Contracting Authority:
 - (i) no less frequently than once per week, Project Co shall provide static (written) and dynamic (multimedia) content related to the Works and upcoming notifications, with a minimum length of 150 words;
 - (ii) no less frequently than once per week, Project Co shall provide professional-grade, high resolution visuals, graphics, renderings, photos or video clips showcasing the design of the Works and progress of the Construction Activities;
 - (iii) no less frequently than once per month, Project Co shall provide a monthly feature web article that,
 - (A) is of a minimum length of 500 words;
 - (B) includes static (written) and dynamic (multimedia content); and
 - (C) highlights no fewer than one aspect of the Project, including design, innovations on the Project, local workers, general contractors, local companies, Construction Activities, or Project benefits, along with additional content to support related posts on the Project’s social media channels and content for virtual public engagement events;

- (iv) no less frequently than once per month, Project Co shall provide an e-newsletter content and associated multimedia content, using the design template provided by Contracting Authority; and
- (v) as requested by Contracting Authority in its sole discretion, Project Co shall provide,
 - (A) draft content with respect to public notification of events, public consultations, consultation materials and post-consultation summaries; and
 - (B) draft content to support government and Stakeholder (for example, MOI, MTO and City of Toronto) web and social media communications needs.
- (c) No later than 15 days following the finalization of the Project Co Communications Plan, and thereafter on a monthly basis, Project Co shall attend and participate in an editorial meeting with Contracting Authority for the purpose of planning and discussing the content described in Section 9.2(b) (each, a “**Monthly Editorial Meeting**”). At the Monthly Editorial Meetings, Project Co shall present on the topics and content, as requested by Contracting Authority and shall incorporate all comments received from Contracting Authority into the content that is submitted to Contracting Authority for review and approval.
- (d) In addition to the submittal requirements set out in Section 4.2(a), no later than one week in advance of each Monthly Editorial Meeting, Project Co shall provide an updated Project Website and Social Media Calendar to Contracting Authority.
- (e) Project Co shall employ social media tools to monitor and analyze public responses to the Project, and, no later than two hours after Project Co or Contracting Authority becomes aware of an adverse impact identified by the public, Project Co shall provide draft responses to online comments for Contracting Authority to review and issue, in Contracting Authority’s sole discretion.

9.3 Crisis Communication

- (a) No later than 60 days following Financial Close, Project Co shall submit a crisis communications plan that is consistent with Contracting Authority’s crisis communications plan and that includes the following:
 - (i) the identification of Project Co individuals comprising Project Co’s crisis response team, including the name, title and role of lead staff;
 - (ii) a description of the roles and responsibilities of Project Co, Contracting Authority and other partners and Stakeholders as required (for example, the City of Toronto, local transit authorities, and MTO) with respect to crisis communications;
 - (iii) a list of tools and tactics to be employed by Project Co in crisis communications;
 - (iv) the identification and ranking of a list of potential crisis issues that could develop during the performance of the Works;
 - (v) key messages to be communicated to the public; and

(vi) a description of the crisis simulations that Project Co intends to conduct during the Project Term,

(the “**Crisis Communication Plan**”).

(b) Project Co shall submit the Crisis Communication Plan to Contracting Authority for review in accordance with Schedule 10 – Review Procedure. Project Co shall update each of the Crisis Communication Plan,

(i) on an annual basis; or

(ii) more frequently as may be directed by Contracting Authority, in its sole discretion, or as may be required to account for any changes in the circumstances of or lessons learned with respect to the Project.

Project Co shall resubmit each updated Crisis Communication Plan to Contracting Authority for review pursuant to Schedule 10 – Review Procedure.

(c) During the Project Term, Project Co shall:

(i) consult with and provide assistance to Contracting Authority to implement the Crisis Communication Plan and update the Crisis Communication Plan;

(ii) during a crisis situation, make available sufficient Project Co communications staff and Project resources in order to work effectively with Contracting Authority to proactively manage and perform Project Co’s communications responsibilities as set out in this Schedule 18; and

(iii) conduct a crisis simulation annually in accordance with the Crisis Communications Plan, and Project Co shall take all actions and make all adjustments in response to lessons learned from each crisis simulation exercise.

9.4 Issues Management

(a) Throughout the Project Term, Project Co shall consult with and provide assistance to Contracting Authority and the City of Toronto with respect to:

(i) identifying issues and trends as they emerge, including social media monitoring approach, and develop strategies for tracking, addressing, mitigating, and minimizing issues related to the Project;

(ii) developing messages and strategies to address issues and provide accurate and timely information to affected Stakeholders; and

(iii) sharing information about potential issues related to the Project with other Stakeholders.

(b) Project Co shall respond to all issues identified by Contracting Authority and the City of Toronto within a timeframe as determined by Contracting Authority.

9.5 Media Relations

- (a) Throughout the Project Term, Project Co shall,
- (i) direct all media enquiries and interview requests to Contracting Authority’s lead communications contact who will determine the organization that is most suitable to respond to the enquiry or request;
 - (ii) provide draft responses and messaging to Contracting Authority with respect to all media enquiries and interview requests in a timely manner and track each request that Project Co responds to in a media request log;
 - (iii) support Contracting Authority with respect to all media enquiries and interview requests;
 - (iv) provide designated media relations staff (with back-up media-trained personnel, as required) with 24/7 availability to monitor, draft messaging and respond to enquiries as requested by Contracting Authority;
 - (v) make available a Project Co designated media relations spokesperson and construction manager or similar expert who is media trained, for the purposes of responding to technical matters related to media and interview requests as requested by Contracting Authority; and
 - (vi) provide communications training to Project Co staff, including refresher training regarding Contracting Authority’s communication protocols and policies for handling media, public, and Stakeholder interaction.

9.6 Government Relations

- (a) Except as otherwise set out in this Section 9.6, Contracting Authority shall be responsible for any government relations activities.
- (b) Throughout the Project Term, Project Co shall:
- (i) support Contracting Authority as Contracting Authority liaises with affected Governmental Authorities and boards to provide information about the Project status, upcoming milestones, and issues that may affect the Project;
 - (ii) support Contracting Authority by regularly providing information about construction status, upcoming Works milestones, and issues related to Construction Activities and reviewing messaging for government relations purposes; and
 - (iii) participate in meetings with Contracting Authority, the City of Toronto and Stakeholders as and when requested by Contracting Authority.
- (c) Project Co, in carrying out its obligations as set out in this Schedule 18, shall not engage with any elected officials or their staff or agents at any level of government without the prior written approval of Contracting Authority.

9.7 Project Identity, Design and Livery

-
- (a) Contracting Authority shall develop the brand identity for the Project, in coordination with its marketing and brand guidelines, and provide templates to Project Co during the Project Term.
- (b) During the Project Term, Project Co shall,
- (i) apply Contracting Authority’s design templates for Project communications and comply with Project identity standards on all information materials;
 - (ii) provide all content and design layout of communication and community engagement materials, including newsletters, advertisements, public notices, flyers and publications to Contracting Authority for review and approval no later than the deadline specified in Section 10, or, if no deadline is specified, no later than three weeks prior to distribution; and
 - (iii) use a Project Co corporate brand that:
 - (A) visually differentiates from Metrolinx, Infrastructure Ontario, GO Transit, UP Express, MiWay, TTC, and any other project of Contracting Authority;
 - (B) is simple in design, and consistently applied at all times; and
 - (C) is applied to Project Co’s:
 - (I) corporate communications materials;
 - (II) uniforms and identification for personnel; and
 - (III) branding on items such as vehicles and equipment.
- (c) Contracting Authority may, in its sole discretion, review and approve Project Co’s brand identity and livery prior to use by Project Co.
- (d) Contracting Authority shall not retain design rights over Project Co’s brand identity.

9.8 Communications Signage

- (a) No later than 120 days following Financial Close, Project Co shall submit a signage and hoarding coverage plan (“**Signage and Hoarding Coverage Plan**”) in accordance with Schedule 10 – Review Procedure, which leverages Metrolinx templates and signage suite, ensuring 80% coverage of all temporary facings, fast fencing, temporary fencing, concrete barrier walls, temporary hoarding, and thoroughfare relocations, with approved messaging, in accordance with the Metrolinx signage catalogue.
- (b) During the Project Term, Project Co shall design, produce, translate (if required), print and install Project promotional signage, business support and shop local signage, and wayfinding/safety campaign signage for the Project in accordance with any signage templates that may be provided by Contracting Authority from time to time (the “**Communications Signage**”).

-
- (c) 60 days in advance of construction commencement, Project Co shall install purpose-built billboards (2 panels, 12ft x 8ft per panel and 24ft x 8ft in total) at each future Station location in addition to a maximum of four more sites to be determined by Contracting Authority, to promote the benefit of the Works to the customer, using Metrolinx provided templates and messaging.
- (d) Project Co shall install government signage (Ontario Builds or other as directed) at each future Station location in addition to a maximum of four more sites to be determined by Contracting Authority, to be displayed in a visible location along the corridor throughout the Project Term.
- (e) Project Co shall ensure that a minimum of 80 per cent of the public-facing surface area of all construction hoarding, fencing and barriers on the Site is covered with Communications Signage. Project Co shall provide to Contracting Authority the dimensions of all hoarding, fencing and barriers on the Site in order to enable Contracting Authority to evaluate Project Co's conformance with this requirement. Project Co shall ensure that appropriate Communications Signage is provided in a visible location on the Site to indicate the presence of and means of accessing affected businesses.
- (f) Project Co shall,
- (i) use signage material for Communications Signage based on Good Industry Practice and in accordance with Applicable Law;
 - (ii) ensure that all Communications Signage is kept in good condition at all times during the Project Term;
 - (iii) replace any Communications Signage that is damaged at Project Co's expense;
 - (iv) remove graffiti on all Communications Signage within 24 hours;
 - (v) provide personnel to install, remove and relocate signage within two weeks, as requested by Contracting Authority from time to time at its sole discretion; and
 - (vi) ensure appropriate signage is provided in a visible location for affected businesses to ensure continuity of their business operations.
- (g) Prior to installing any Communications Signage, Project Co shall provide to Contracting Authority for approval, stamped shop drawings of the sign fabrication and installation details, together with a graphic design mock-up of the signage, location and confirmation of the applicable Permit, Licence, Approval or Agreement.
- (h) Project Co shall ensure signage and hoarding is installed to cover all construction staging temporary fencing and hoarding within 21 days of Contracting Authority approval.
- (i) Project Co shall install, remove or relocate any signage that is provided by Contracting Authority or a Governmental Authority on the Site, as directed by Contracting Authority. Project Co shall ensure that such signs are visibly displayed on the Site.
- (j) The requirements for signage as set out in this Section 9.8 shall not limit and are intended to supplement Project Co's other obligations with respect to signage as set out in the rest of the Project Agreement including, for clarity, Schedule 15 – Output Specifications.

9.9 Advertising and Marketing

- (a) During the Project Term, Contracting Authority shall:
- (i) plan, develop and execute advertisement and communications marketing strategies for the Project;
 - (ii) review advertisements produced by Project Co about the Project's design and construction impacts and public engagement opportunities related to the Project; and
 - (iii) provide templates to Project Co to use for public notices and advertisements of public engagement opportunities and construction impacts.
- (b) During the Project Term, Project Co shall:
- (i) support and contribute to the planning, development and execution of Contracting Authority's public education and advertising campaigns related to the Works;
 - (ii) budget for all paid media efforts as required;
 - (iii) plan, develop, and coordinate the placement of advertisements to communicate ongoing construction impacts and to inform the public of public engagement activities and, in placing such advertisements, Project Co shall include target ethnic and diverse populations across the full Project alignment through a multichannel media approach and in a multi-lingual format (where required), including,
 - (A) print (for example, newspapers and magazines);
 - (B) display media units (for example, email and programmatic banners);
 - (C) social platforms (for example, Facebook, Twitter and Instagram) and terrestrial/digital audio (Spotify); and
 - (D) online video placements (OLV) such as YouTube and Connected TV spots;
 - (iv) for social media campaigns, Project Co shall plan, develop, and execute an effective community management strategy, where applicable, to measure campaign impact and adjust the strategy as needed (for example, responding to comments, providing information to users and tracking sentiment);
 - (v) for each of the 24 public engagement meetings set out in Section 8.2(c), provide one advertisement insertion in two local newspapers (in full colour and half page in size) and consider digital executions, such as Facebook event advertisements, as digital platforms provide a more measurable response and target for success (for example, in volume of total signups and cost-per-acquisition.);
 - (vi) for construction notices that indicate significant, long-term construction impacts of more than six months in duration, provide advertisements and notices, including one local newspaper and one major daily newspaper notice per major Works stage (in full colour and quarter page in size);

- (vii) in support of “shop local” or local business sustainment and promotion efforts,
- (A) release two direct mail pieces (printed in full colour) annually to residential and business owners, tenants and other property occupants who own, lease and otherwise occupy property within 1,000 metres on either side and end of the Bored Tunnels;
 - (B) annually issue four advertisements in the City of Toronto consisting of two ad insertions in local newspapers (in full-colour and half page in size);
 - (C) conduct quantitative and qualitative research on an annual basis with local Chambers of Commerce, Business Improvement Areas or equivalent to develop, and amend as required, a “shop local” campaign and business support strategy, in which Project Co shall:
 - (I) develop and fund promoted social media advertising to support a “shop local” campaign promoted year round along with other digital media considerations (for example, YouTube and display banners);
 - (II) develop promotions and “construction hat specials” for local businesses (particularly the restaurants and service industry);
 - (III) leverage restaurant week-type events or create events if no program exists on the corridor for the duration of construction, and on-board restaurants along the corridor with food delivery platforms;
 - (IV) hire a promotional or events company to design and carry out community events in support of a “shop local” campaign and cover street event fees for community events, if applicable; and
 - (V) in conjunction with local arts councils or equivalent, conduct a review of street art, mural, and alleyway opportunities along the corridor and commission new projects at Project Co’s expense; and
 - (D) develop and implement a community engagement program, in which Project Co shall,
 - (I) canvass every street-level, front-facing corridor property in order to raise awareness for the Project, provide information about Project social media, and obtain email addresses from local residents and businesses for newsletter updates;
 - (II) produce and print canvassing materials for distribution to the public as directed by Contracting Authority;
 - (III) twice annually, provide information sessions during a four to six week period for residential and commercial high rises, to provide project updates, address concerns and inform on-going communications planning;

- (IV) use a source cloud-based canvass software to support the program, which Project Co shall use while canvassing to record email addresses and keep track of where Project Co has canvassed; and
 - (V) recruit, train, support and manage a part-time, seasonal team, who Project Co shall provide with seasonal apparel with project identifier and logos as identified by Contracting Authority for the purposes of canvassing.
- (c) For significant, long-term construction impacts and in support of “shop local” or local business sustainment and promotion efforts, Project Co shall produce and book regular 15 second sponsor messages on the radio on weekdays, in the morning and afternoon peak commuter times in accordance with the following:
 - (i) radio advertisements shall be played twice each hour between 6:00 a.m. and 10:00 a.m. in the morning and between 3:00 p.m. and 7:00 p.m. in the afternoon; and
 - (ii) radio advertisements shall appear on local City of Toronto radio stations (for example, CFRB and 680 News).
- (d) Project Co shall secure paid advertising space for a four-week time slot per quarter during the Project Term, that includes,
 - (i) two transit shelters at each future subway stop location between Kennedy Road and Sheppard Avenue;
 - (ii) seven horizontal billboards and mobile signs (colour and 10’ x 20’ in size);
 - (iii) three superboards (48’ x 14’ in size) and/or horizontal backlights (22’ x 9’);
 - (iv) geotargeted programmatic display advertising between Kennedy Rd. and Sheppard Avenue at each future subway stop location;
 - (v) paid advertisement placement on local Toronto radio stations such as CFRB and 680 News;
 - (vi) secure paid TV advertising space for a four-week time slot, semi-annually during the Project Term, to appear on local Toronto TV stations such as CP24;
 - (vii) support Contracting Authority’s efforts to communicate with ethnic and diverse populations by:
 - (A) identifying ethnic and diverse populations along the corridor, their share of market, and their associated languages;
 - (B) working with Contracting Authority to draft and translate content for advertisements, according to the ethnic and diverse populations identified;
 - (C) securing paid media space in ethnic publications including print (for example, newspapers and magazines), display media units (for example, email and

programmatic banners), social platforms (for example, Facebook, Twitter and Instagram), terrestrial/digital audio (for example, Spotify), and online video placements (OLV) such as YouTube and Connected TV spots, as directed by Contracting Authority; and

- (D) placing the final advertisements produced by Contracting Authority in the media spaces set out in Section 9.9(d)(vii)(C), as approved by Contracting Authority.
- (e) Project Co shall procure and coordinate Canada Post distribution of construction notices based on a distribution area of 500 metre radius of the Works, where the applicable Construction Activities are set up.
- (f) Project Co shall produce and use sample designs in public information and public engagement materials to illustrate principles, provided that such information and materials are reviewed and approved by Contracting Authority.
- (g) Project Co shall not use hoarding or any other areas within the Lands for advertisement and shall not permit, engage or authorize any third party to use any areas within the Lands for advertisement, without the prior written consent of Contracting Authority.
- (h) Project Co shall submit all advertisements, insertions, construction notices, messages, and other associated documentation contemplated in Section 9.9(b) for review and approval by Contracting Authority prior to distributing, placing, posting, issuing, or producing any such advertisement, insertion, construction notice, message or any other documentation.

9.10 Photography and Video

- (a) For the purposes of record-keeping and demonstrating the progress of the Project, Project Co shall provide the following to Contracting Authority on a monthly basis:
 - (i) professional quality (high resolution) images that are taken a few times per hour and that capture the construction of the Project at the Site from start to finish;
 - (ii) professional quality (high resolution) video footage capturing the construction of the Project at the Site from start to finish, including live-streaming of construction of the Project if requested by Contracting Authority;
 - (iii) high-resolution photos that capture the same angles as renderings provided in design; and
 - (iv) professional quality (high resolution) time-lapse videos with music.
- (b) Project Co shall,
 - (i) obtain all of the rights necessary for Project Co and Contracting Authority to use, reproduce, modify and brand all of the images and footage described in this Schedule 18 without restrictions; and

- (ii) ensure that Project Co and all Project Co Parties' employees provide consent to Contracting Authority with respect to Contracting Authority's disclosure of photos and videos relating to the Project.
- (c) Project Co shall provide Contracting Authority with access to all images and video files through a cloud-based server that is accessible to Contracting Authority's authorized users throughout the duration of the Project Term.
- (d) During the Project Term, Project Co shall, from time to time, as reasonably requested by Contracting Authority, facilitate on-site access for Contracting Authority designated photographers and videographers.

9.11 Complaints Protocols

- (a) Throughout the Project Term, Contracting Authority shall be responsible for approving all responses to complaints and enquiries relating to the Project.
- (b) During the Project Term, Project Co shall:
 - (i) incorporate into the Project Co Communications Plan, and align with the Crisis Communication Plan, a "**Complaints Protocol**" that,
 - (A) addresses how Project Co will deal with and respond to enquiries, suggestions, claims and complaints received with respect to the Project and identify complaints that require escalation; and
 - (B) requires that Project Co deal with all enquiries, suggestions, claims and complaints and suggestions no later than five days following receipt;
 - (ii) provide a live 24/7 call service and support on a 24/7 basis to support the Complaints Protocol;
 - (iii) provide and maintain a software system that will track all complaints, enquiries and suggestions received and responses provided, and for each entry, document the response provided and the date;
 - (iv) provide monthly reports of complaint to Contracting Authority, including an analysis of the main areas of concern to complainants; and
 - (v) coordinate Project Co's complaint tracking and complaint reports with any internal complaint tracking or complaint reports established by Contracting Authority with respect to the Project, as requested by Contracting Authority.
- (c) Project Co shall update the Complaints Protocol,
 - (i) on a semi-annual basis; or
 - (ii) more frequently as may be requested by Contracting Authority, or as may be required to account for any changes in the circumstances of or lessons learned with respect to the Project.

- (d) Project Co acknowledges and agrees that the Complaints Protocol may be made publicly available at the request of Contracting Authority.

10. NOTIFICATION

10.1 Major Impact on Third Party Owners

- (a) With respect to Construction Activities that are reasonably anticipated to have a Major Impact on third-party property owners, Project Co shall:
- (i) provide Notice to Contracting Authority of such Construction Activities no later than six months prior to the commencement of such Construction Activities or impacts;
 - (ii) provide a draft public notification for Contracting Authority's review, no later than four months prior to the commencement of such Construction Activities; and
 - (iii) prepare and distribute via Canada Post, public notifications printed in full colour and approved by Contracting Authority, ensuring receipt by all property owners within a 500 metre radius of the Construction Activities, at least two months prior to the commencement of the Works or impact.

The public notifications provided by Project Co in accordance with this Section 10.1 shall include a comprehensive list of the elements owned by a third party which Project Co anticipates will have to be removed or relocated by the property owner, what elements can remain on the property, detailed drawings that describes the proposed Construction Activities (including new location of relocated items or impacts that might result from the Construction Activities and restoration plans), proposed timeline for Construction Activities (including duration and anticipated completion), contact information to obtain additional information, and any updates or complaints relating to such Construction Activities.

10.2 Major Impact on Transit Users, Customers and Public

- (a) With respect to Construction Activities that are reasonably anticipated to have a Major Impact on transit users, pedestrians, cyclists, residents, traffic, and/or the public generally, Project Co shall:
- (i) provide Notice to Contracting Authority of such Construction Activities no later than three months prior to the commencement of such Construction Activities or impacts;
 - (ii) provide a draft public notification for Contracting Authority's review, no later than two months prior to the commencement of such Construction Activities;
 - (iii) prepare and distribute via Canada Post public notifications printed in full colour and approved by Contracting Authority, ensuring receipt by residents, business owners and the community within a 500 metre radius of the Construction Activities, at least one month prior to the commencement of the Works or impact; and
 - (iv) provide notification using geo-targeted advertising on social media to residents, business owners and the community based on the same distribution area for printed notifications, unless otherwise instructed by Contracting Authority.

For the purposes of Section 10.1 and this Section 10.2, “**Major Impact**” shall include overnight construction, temporary Construction Activities, paving, privately owned elements to be relocated or removed by Project Co, transit stop relocations, and activities that affect pedestrian circulation.

10.3 Medium Impact

- (a) With respect to Construction Activities that are reasonably anticipated to have a Medium Impact on business owners, property owners, transit users, pedestrians, cyclists, residents, traffic, and/or the public generally, Project Co shall:
- (i) provide Notice to Contracting Authority of such Construction Activities no later than 20 Business Days prior to the commencement of such Construction Activities or impacts;
 - (ii) provide a draft public notification for Contracting Authority’s review, no later than 15 Business Days prior to the commencement of such Construction Activities;
 - (iii) prepare and distribute via Canada Post, public notifications printed in full colour and approved by Contracting Authority, ensuring receipt by residents, business owners and the community within a 500 metre radius of the Construction Activities at least 10 business days prior to the commencement of the Works or impact; and
 - (iv) provide notification using geo-targeted advertising on social media to residents, business owners and the community based on the same distribution area for printed notifications, unless otherwise instructed by Contracting Authority.

For the purposes of this Section 10.3, “**Medium Impact**” shall include major intersection work, any disruption to water, gas and/or other utilities, and impacts from noise, vibration or dust. For clarity, the notification provided by Project Co pursuant to Section 10.3(a)(ii) shall be delivered by Contracting Authority to all affected properties by Project Co and in consultation with Utility Companies, as applicable.

10.4 Minor Impact

- (a) With respect to Construction Activities that are reasonably anticipated to have a Minor Impact on business owners, property owners, transit users, pedestrians, residents, traffic and/or the public generally, Project Co shall:
- (i) provide Notice to Contracting Authority of such Construction Activities no later than five Business Days prior to the commencement of such Construction Activities or impacts;
 - (ii) provide a draft public notification for Contracting Authority’s review no later than 48 hours prior to the commencement of such Construction Activities to Contracting Authority for review; and
 - (iii) prepare and distribute by hand delivery, public notifications printed in full colour and approved by Contracting Authority, ensuring receipt by all impacted residents, business owners and the community at least 24 hours prior to the commencement of the Works or impact.

For the purposes of this Section 10.4, “**Minor Impact**” shall include short-term lane closures, minor pedestrian detours, and minor access and driveway work. Project Co shall ensure that access is maintained to properties impacted by the Construction Activities.

10.5 Other Impact

- (a) With respect to incidents related to Construction Activities that are reasonably anticipated to have an impact on Project Co employees and contractors, transit users, pedestrians, residents, traffic and/or the public generally, and with respect to which Project Co cannot reasonably provide advance notice of any kind to Contracting Authority or the public (each a “**Construction Activities Incident**”), Project Co shall:
- (i) immediately notify Contracting Authority of such Construction Activities Incident;
 - (ii) comply with all requirements of Schedule 34 – Construction Safety;
 - (iii) provide a draft public notification or messaging to Contracting Authority for review, no later than two hours following the commencement of the Construction Activities Incident to Contracting Authority for review;
 - (iv) be prepared to provide a public statement with respect to the Construction Activities Incident at the request of Contracting Authority; and
 - (v) be prepared to enact a Crisis Communications Plan in consultation with Contracting Authority and to react quickly to provide an immediate response to the public and Stakeholders.

For the purposes of this Section 10.5, a “Construction Activities Incident” shall include an accident on site or a major catastrophe.

11. ACCESSIBILITY

11.1 Accessibility

- (a) Project Co shall ensure that all communications with respect to the Project comply with the *Accessibility for Ontarians with Disabilities Act* (Ontario).
- (b) As required by Contracting Authority, Project Co shall provide translation of all communication materials (including videos, graphics, photo captions, advertising, multimedia, and other communication materials) into French and in the top five languages most commonly used in the local area of the Project.

12. PUBLIC DISCLOSURE AND MEDIA RELEASES

12.1 Public Disclosure and Media Releases

- (a) Except as otherwise permitted in the Project Agreement:
- (i) neither Project Co nor any of Project Co’s Parties shall issue or disseminate any media release, public announcement or public disclosure (whether for publication in the press,

on the radio, television, internet or any other medium) relating to the Project, the Project Agreement, Contracting Authority's activities or any related matters, without the prior written consent of Contracting Authority; and

- (ii) neither Party shall use the other Party's name or refer to the other Party, directly or indirectly, in any media release, public announcement or public disclosure (whether for publication in the press, on the radio, television, internet or any other medium) relating to the Project, the Project Agreement, Contracting Authority activities or any matter related thereto, without the prior written consent of the other Party.
- (b) Project Co shall comply and shall ensure that all Project Co Parties comply, at all times, with Contracting Authority's media release and publicity protocols or guidelines, as such protocols and/or guidelines are updated by Contracting Authority from time to time.

MT MTDOCS 41633404v2

SCHEDULE 19

[INTENTIONALLY DELETED]

MT MTDOCS 41633405v2

**SCHEDULE 20
LANDS****PART A – DEFINITIONS AND INTERPRETATION**

In this Schedule 20, unless the context indicates a contrary intention, terms that are defined in the Project Agreement (and not otherwise defined in this Schedule 20) shall have meanings given to them in the Project Agreement and the following terms shall have the following meanings:

- (a) **“City Road Allowance”** means, collectively the municipal streets and rights of way owned or otherwise controlled by the City of Toronto (or to which the City of Toronto has acquired or will acquire rights) commonly known as:
 - (A) Eglinton Avenue and any municipal streets or rights of way intersecting Eglinton Avenue, approximately from Midland Avenue to Danforth Road;
 - (B) Danforth Road and any municipal streets or rights of way intersecting Danforth Road, approximately from Eglinton Avenue to Perivale Crescent; and
 - (C) McCowan Road and any municipal streets or rights of way intersecting McCowan Road, approximately from Perivale Crescent to Nugget Avenue.
- (b) **“Lands”** means the Metrolinx Lands, the City Road Allowance and the MTO Lands.
- (c) **“Metrolinx Easement Lands”** means the lands located within the City Road Allowance and the required location for the New Metrolinx Infrastructure as set out in Schedule 15 – Output Specifications.
- (d) **“Metrolinx Lands”** means the lands owned or to be acquired by Metrolinx or lands in respect of which Metrolinx has acquired or will acquire certain rights, all as set out in the table in Part B of this Schedule 20, and includes, for clarity, Metrolinx Easement Lands.
- (e) **“MTO Lands”** means the lands owned by MTO that Project Co accesses in order to perform the Works as permitted by any MTO Encroachment Permits issued by MTO to Project Co in respect of performance of the Works, as set out in the table in Part C.
- (f) **“Standard Agreements”** has the meaning given in Section (h)(iii) in this Part A of Schedule 20.
- (g) **“Third Party Lands”** means the City Road Allowance, and the MTO Lands (other than the Metrolinx Easement Lands).
- (h) For the purpose of this Schedule 20,
 - (i) Subject to Section (h)(ii) of Part A, the Metrolinx Lands will be made available to Project Co in accordance with Section 16 of the Project Agreement from the date provided as the “Commencement Date” in the table in Part B of this Schedule 20 until the earlier of,

- (A) the end of the period or end date in the column marked “Duration or End Date” in the table in Part B of this Schedule 20; and
 - (B) Final Completion.
- (ii) To the extent that,
- (A) Project Co is required to perform Warranty Work on the Metrolinx Lands or portion(s) thereof beyond the end date for access set out in Section (h)(i) of Part A; or
 - (B) Project Co is entitled to a Delay Event pursuant to the terms and conditions of the Project Agreement, with respect to which Contracting Authority has fixed a revised Scheduled Substantial Completion Date or a revised Scheduled Final Completion Date in accordance with Section 32 of the Project Agreement, and Project Co is required to access the Metrolinx Lands or portion(s) thereof beyond the end date for access set out in Section (a)(A) of Part A in order to perform the Works in a manner that is consistent with Project Co’s current Progress Works Schedule,

provided that Project Co provides written Notice to Contracting Authority no later than 90 days prior to the commencement date of the Warranty Work or Works, as applicable, Contracting Authority shall be responsible for acquiring access required to carry out the Warranty Work or the Works, as applicable.

- (iii) Pursuant to this Schedule 20, for certain Metrolinx Lands, Metrolinx will enter into easement, licence, or similar agreement(s) after Financial Close. Metrolinx intends to enter into such agreement(s) on substantively the same terms and conditions as the existing easement, licence or similar agreements that have been entered into by Metrolinx and that are provided as Background Information prior to Financial Close or are currently contemplated in the “Restrictions and Requirements” column of Part B (the “**Standard Agreements**”). If, after Financial Close,
- (A) Metrolinx enters into one or more easement, licence or similar agreement(s) in respect of the Metrolinx Lands; or
 - (B) Metrolinx acquires Metrolinx Lands that are subject to any easement, licence or similar agreement(s),

and such agreement(s) have substantively the same terms and conditions as the Standard Agreements, such agreement(s) shall be treated, for the purposes of Section 17 of the Project Agreement and for the purpose of Schedule 16 – Encumbrances, as though Project Co had knowledge of such agreements prior to Financial Close. For clarity, this Section (h)(iii) of Part A shall not apply in circumstances where Metrolinx enters into an easement, licence, or similar agreement after Financial Close on different terms and conditions from the Standard Agreement if such differences cause a delay to Project Co in

performing the Works, create additional obligations or liabilities for Project Co, or cause an increase in cost to Project Co.

- (iv) Subject to Project Co's obligations with respect to Permits, Licences, Approvals and Agreements and the terms and conditions of the Project Agreement, Project Co's access to and use of the Metrolinx Lands for the purposes of the Works is subject to the restrictions, qualifications, requirements and other provisions contained in the applicable grant, including the restrictions, qualifications and requirements that are set out in the column marked "Restrictions and Requirements" set out in the table in Part B of this Schedule 20.
- (v) The information provided in the column marked "Address" in the table in Part B and Part C of this Schedule 20 is provided for information only. The information provided in the column marked "PIN" takes precedence over address information in the identification of exact locations of various properties.

PART B – METROLINX LANDS

[REDACTED]

PART C – MTO LANDS

[REDACTED]

MT MTDPCS 41633406v2

SCHEDULE 21**LIQUIDATED DAMAGES AND CONSTRUCTION ENFORCEMENT REGIME****1. INTERPRETATION AND DEFINITIONS****1.1 Interpretation**

- (a) In this Schedule 21, and for the purposes of all calculations pursuant to this Schedule 21, all amounts cited in respect of capital costs and/or costs in respect of the construction of the Works are amounts prior to any *Construction Act* (Ontario) holdback.

1.2 Definitions

In this Schedule 21, unless the context indicates a contrary intention, terms which are defined in the Project Agreement (and not otherwise defined in this Schedule 21) shall have meanings given to them in the Project Agreement and the following terms shall have the following meanings:

- (a) “**Construction Period Deduction**” means a deduction for any Construction Period Quality Failure, as calculated in accordance with Section 5.2.
- (b) “**Construction Period Event**” means an incident or state of affairs that does not meet or comply with the Construction Period Performance Criteria, and that is capable of becoming a Construction Period Quality Failure.
- (c) “**Construction Period Failure Category**” means the failure category described in the column entitled “Construction Period Failure Category” in the table set out in Appendix A.
- (d) “**Construction Period Failure Type**” means the failure type described in the column entitled “Construction Period Failure Type” in the table set out in Appendix A.
- (e) “**Construction Period Performance Criteria**” means the level of performance (as set out in the column entitled “Requirement to be Met” in the table set out in Appendix A) that Project Co must achieve to avoid a Construction Period Event for a failure to achieve compliance with the applicable provision of the Project Agreement.
- (f) “**Construction Period Quality Failure**” means any failure by Project Co to provide the services in accordance with any Construction Period Performance Criteria designated as Construction Period Failure Type of “CPQF” as set out in the column entitled “Construction Period Failure Type” in the table set out in Appendix A.
- (g) “**Construction Period Quality Failure Deduction**” has the meaning given in Section 5.2(a).
- (h) “**Contested Non-Conforming Works**” means Works in respect of which Contracting Authority has given Notice to Project Co, pursuant to Section 51 of the Project Agreement (but not an NCR) initiated by Contracting Authority pursuant to Schedule 11 – Quality Management), that, in the opinion of Contracting Authority, the Works are not in accordance with the Project Agreement, and Project Co has asserted that, in Project Co’s opinion, the Works are in accordance with the Project Agreement.

-
- (i) “**Critical Construction Period Quality Failure**” means a Construction Period Quality Failure designated as “Critical” in the column entitled “Construction Period Failure Category” in the table set out in Appendix A.
- (j) “**Critical Qualifying NCR**” means a Qualifying NCR raised by Contracting Authority or Project Co on a Non-Conformance that requires all or any portion of Project Co Accepted Works to be removed or repeated because such Project Co Accepted Works have, or would reasonably be expected to have, a significant adverse or material adverse impact on:
- (i) the safety of the Project, the environment or the public;
 - (ii) the quality of the Works; or
 - (iii) the durability of the Works.
- (k) “**Critical Qualifying Process NCR**” means a Qualifying Process NCR raised by Contracting Authority or Project Co on a Non-Conformance that requires physical progress on any part of Works to be stopped for longer than 24 hours.
- (l) “**Lane Closure**” means any restriction or closure of a lane (including partial closures of a lane) on Highway 401 or the Highway 401 Ramps, which, in any such case, is (i) required by MTO or Contracting Authority (a) upon the occurrence of Macro-level Emergency (as determined by MTO or Contracting Authority in their sole discretion) caused or contributed to by an act or omission of Project Co or a Project Co Party; or (b) due to the occurrence of an event or circumstance caused or contributed to by Project Co’s failure to perform the Works or any of its other obligations under the Project Agreement in accordance with the requirements set forth in the Project Agreement; or (c) required in order to rectify or correct any damage or destruction to Highway 401, or the Highway 401 Ramps, which has been caused or contributed to by an act or omission of Project Co or any Project Co Party, or (ii) instituted by Project Co.
- (m) “**Lane Closure Costs**” means Specified Costs and damages for loss of use of the highway for each occurrence of a Lane Closure which occurs, at a time other than the Permitted Periods for Closures (including, for clarity, where there is a Lane Closure earlier than the Permitted Periods for Closure and including when Project Co fails to re-open lanes or ramps within the Permitted Period for Closures) payable by Project Co to Contracting Authority **in accordance with Section 3(a)**, provided that Project Co’s obligation to indemnify Contracting Authority pursuant to Section 46.1(a)(i) of the Project Agreement shall remain unaffected by, and shall apply in addition to, any liquidated damages payable by Project Co pursuant to Section 3(a).
- (n) “**Macro – level Emergency**” means an unplanned event that has the potential to adversely affect the safety of the travelling public and/or ongoing traffic operations on one or more provincial roadways.
- (o) “**Medium Construction Period Quality Failure**” means a Construction Period Quality Failure designated as “Medium” in the column entitled “Construction Period Failure Category” in the table set out in Appendix A.

- (p) “**Medium Qualifying NCR**” means a Qualifying NCR raised by Contracting Authority or Project Co on a Non-Conformance for all or any portion of Project Co Accepted Works. If a Qualifying NCR meets both definitions of:
- (i) Critical Qualifying NCR; and
 - (ii) this definition of Medium Qualifying NCR,
- then the Qualifying NCR shall be a Critical Qualifying NCR and not a Medium Qualifying NCR.
- (q) “**Medium Qualifying Process NCR**” means a Qualifying Process NCR raised by Contracting Authority or Project Co on a Non-Conformance that requires changes to a Works Submittal being used by Project Co in its delivery of the Works. If a Qualifying Process NCR meets both definitions of:
- (i) Critical Qualifying Process NCR; and
 - (ii) this definition of Medium Qualifying Process NCR,
- then the Qualifying Process NCR shall be a Critical Qualifying Process NCR and not a Medium Qualifying Process NCR.
- (r) “**Minor Construction Period Quality Failure**” means a Construction Period Quality Failure designated as “Minor” in the column entitled “Construction Period Failure Category” in the table set out in Appendix A.
- (s) “**Minor Construction Period Quality Failure Tolerance**” has the meaning given in Section 5.3(a).
- (t) “**Minor Qualifying NCR**” means a Qualifying NCR raised by Contracting Authority on a Non-Conformance on all or any portion of the Works that have been inspected and tested or approved by Project Co at a Witness and Hold Point, pursuant to the Inspection and Test Plan and relevant Inspection and Test Sub-Plan(s), but are not yet Project Co Accepted Works. For clarity, a Minor Qualifying NCR does not mean a Qualifying NCR raised by Project Co.
- (u) “**Minor Qualifying Process NCR**” means a Qualifying Process NCR raised by Contracting Authority on a Non-Conformance that is not a Critical Qualifying Process NCR or Medium Qualifying Process NCR. For clarity, a Minor Qualifying Process NCR does not mean a Qualifying Process NCR raised by Project Co.
- (v) “**NCR**” means a Non-Conformance Report.
- (w) “**Permitted Periods for Closures**” means the permitted periods for Lane Closures set out in Section 4.6.5 and Section 4.6.6 of Schedule 15 – Output Specifications.
- (x) “**Project Co Accepted Works**” means all physical elements of the Works that have been accepted by Project Co as meeting its acceptance criteria for those Works pursuant to the Inspection and Test Plan.

- (y) **“Qualifying NCR”** means an NCR in accordance with Schedule 11 – Quality Management regarding any Non-Conformance discovered in the physical elements of any of the Works:
- (i) for which Project Co has continued, or has stated the intention to continue, construction of the Works past the relevant Witness and Hold Point in contravention of the Inspection and Test Plan and relevant Inspection and Test Sub-Plan(s); or
 - (ii) following Project Co’s stated completion of a task or component and Project Co’s statement that the requirements for the Design and Construction Certification Procedure have been met in respect of such Works and such Works have been inspected and tested by Project Co pursuant to the Inspection and Test Plan and relevant Inspection and Test Sub-Plan(s),
- and shall include “Critical Qualifying NCR”, “Medium Qualifying NCR” or “Minor Qualifying NCR”.
- (z) **“Qualifying Process NCR”** means an NCR in accordance with Schedule 11 – Quality Management regarding any Non-Conformance that is not a Qualifying NCR and shall include “Critical Qualifying Process NCR”, “Medium Qualifying Process NCR” or “Minor Qualifying Process NCR”.
- (aa) **“Remedial Period”** means the applicable remedial period set out in the column entitled “Remedial Period” in the table set out in Appendix A.
- (bb) **“Repeated Minor Construction Period Quality Failure”** has the meaning given in Section 5.3(c).
- (cc) **“Specified Costs”** means those costs and expenses incurred by any of Contracting Authority, MTO or Province Persons in relation to staffing, technical advisors and the Independent Certifier, in each case assuming normal utilization.
- (dd) **“Substantial Completion LD Commencement Date”** has the meaning given in Section 4.1(a).
- (ee) **“Total Construction Period Deduction”** has the meaning given in Section 5.1(a).

2. LIQUIDATED DAMAGES – GENERAL

- (a) Except as expressly provided herein, nothing in this Schedule 21 shall restrict, limit, prejudice or in any other way impair the rights or remedies of the Parties under any other provision of this Project Agreement.
- (b) Project Co acknowledges and agrees that all liquidated damages set out in this Schedule 21 shall be payable whether or not Contracting Authority or MTO incurs or mitigates these damages, and that neither Contracting Authority nor MTO shall have an obligation to mitigate these damages.
- (c) Project Co agrees that it is, and shall be, estopped from alleging that any liquidated damages set out in this Schedule 21 are a penalty and not liquidated damages, or are otherwise unenforceable for any reason, including that such damages were not incurred.

- (d) If liquidated damages are incurred by Project Co in accordance with this Schedule 21, Contracting Authority may, in its sole discretion and at any time, subject to Section 2(e), deduct the amount of those liquidated damages, as calculated and determined by Contracting Authority in accordance with this Schedule 21, from any amount due to Project Co by Contracting Authority.
- (e) Contracting Authority shall not deduct liquidated damages from any Milestone Payment.
- (f) The Parties agree that the liquidated damages set out in this Schedule 21 are not a penalty but represent a genuine and reasonable pre-estimate of,
- (i) with respect to Section 3(a), Lane Closure Costs for each occurrence of a Lane Closure which occurs at a time other than the Permitted Periods for Closure (including, for clarity, where there is a Lane Closure earlier than the Permitted Periods for Closure and including when Project Co fails to re-open lanes or ramps within the Permitted Period for Closures);
 - (ii) with respect to Section 4.1, Specified Costs arising from Project Co failing to achieve the requirements for the Substantial Completion Certificate and a Substantial Completion Certificate not being issued on or before the Substantial Completion LD Commencement Date; and
 - (iii) with respect to Section 5, a portion of Specified Costs arising from Project Co failing to perform its obligations in accordance with the Project Agreement.
- (g) The liquidated damages payable by Project Co in accordance with Section 4.1, and the Construction Period Deductions calculated in accordance with Section 5, shall only apply for the period prior to the Substantial Completion Date. The liquidated damages payable by Project Co in accordance with Section 3(a) shall apply during the entire Project Term, together with any period thereafter in which Warranty Work is performed by Project Co or any Project Co Party.

3. LIQUIDATED DAMAGES – LANE CLOSURES

- (a) For each and every occurrence of a Lane Closure which occurs at a time other than the Permitted Periods for Closure (including, for clarity, when there is a Lane Closure earlier than the Permitted Periods for Closure and including when Project Co fails to re-open lanes or ramps within the Permitted Periods for Lane Closures), Project Co shall pay to Contracting Authority liquidated damages in the following amounts:
- (i) [REDACTED]
 - (ii) [REDACTED]

4. LIQUIDATED DAMAGES – SUBSTANTIAL COMPLETION

4.1 Failure to Achieve Substantial Completion

- (a) If Project Co has failed to achieve the requirements for the Substantial Completion Certificate and a Substantial Completion Certificate has not been issued on or before the date which is 30 days

following the Scheduled Substantial Completion Date (the “**Substantial Completion LD Commencement Date**”) Project Co shall pay the liquidated damages in the amount of [REDACTED] per Business Day, commencing on the Substantial Completion LD Commencement Date and concluding on the earlier of,

- (i) the Substantial Completion Date; and
 - (ii) the date on which the termination of the Project Agreement takes effect in accordance with its terms.
- (b) Subject and without prejudice to the other remedies of Contracting Authority in the Project Agreement (including remedies for termination for a Project Co Event of Default), payment in accordance with Section 4.1(a) shall constitute full and final satisfaction of any and all damages for Specified Costs that may be claimed by Contracting Authority and Province Persons as a result of Project Co not achieving Substantial Completion by the Scheduled Substantial Completion Date.
- (c) Notwithstanding Section 4.1(a), Project Co’s obligation to indemnify and save harmless Contracting Authority and the Province Persons pursuant to Section 46.1(a)(i) of the Project Agreement shall remain unaffected by, and shall apply in addition to, any liquidated damages payable by Project Co pursuant to Section 4.1(a) of this Schedule 21, provided, however, that any amount for which Project Co is required to indemnify and save harmless Contracting Authority and the Province Persons pursuant to Section 46.1(a)(i) of the Project Agreement shall exclude Specified Costs and expenses in respect of which liquidated damages have been paid or are payable.

5. CONSTRUCTION ENFORCEMENT REGIME

5.1 Construction Period Deductions

- (a) If, at any time prior to Substantial Completion, Project Co commits one or more Construction Period Quality Failures, Contracting Authority may, in its sole discretion, deduct corresponding Construction Period Deductions from the Substantial Completion Payment. The cumulative amount of all Construction Period Deductions (the “**Total Construction Period Deduction**”) shall be applied against and shall decrease the Substantial Completion Payment.

5.2 Calculation of the Total Construction Period Deduction and the Construction Period Deductions

- (a) The Total Construction Period Deduction shall be calculated in accordance with the following formula:

[REDACTED]

(the “**Construction Period Quality Failure Deduction**”).

- (b) The Construction Period Deduction attributable to each Construction Period Quality Failure shall be as follows:
- (i) in the case of a Minor Construction Period Quality Failure for an NCR initiated by Project Co, there shall be no Construction Period Deduction;
 - (ii) in the case of a Medium Construction Period Quality Failure for an NCR initiated by Project Co, each Construction Period Deduction shall equal [REDACTED];
 - (iii) subject to Section 5.3, in the case of a Minor Construction Period Quality Failure for an NCR initiated by Contracting Authority:
 - (A) the first Construction Period Deduction shall equal [REDACTED]; and
 - (B) each subsequent Construction Period Deduction arising from a failure to remediate prior to the expiration of the applicable Remedial Period, shall be [REDACTED] of the immediately previous Construction Period Deduction but shall not exceed [REDACTED] of the applicable first Construction Period Deduction;
 - (iv) in the case of a Medium Construction Period Quality Failure for an NCR initiated by Contracting Authority:
 - (A) the first Construction Period Deduction shall equal [REDACTED]; and
 - (B) each subsequent Construction Period Deduction arising from a failure to remediate prior to the expiration of the applicable Remedial Period shall equal [REDACTED] of the immediately previous Construction Period Deduction but shall not exceed [REDACTED] of the applicable first Construction Period Deduction; and
 - (v) in the case of a Critical Construction Period Quality Failure for an NCR initiated by either Party:
 - (A) the first Construction Period Deduction shall equal [REDACTED]; and
 - (B) each subsequent Construction Period Deduction arising from a failure to remediate prior to the expiration of the applicable Remedial Period shall equal [REDACTED] of the immediately previous Construction Period Deduction but shall not exceed [REDACTED] of the applicable first Construction Period Deduction.
- (c) For clarity, the occurrence of a Construction Period Quality Failure will immediately give rise to a right, on behalf of Contracting Authority, to apply the Construction Period Deductions against the Substantial Completion Payment, irrespective of the Remedial Period permitted.
- (d) After the occurrence of a Construction Period Quality Failure, Project Co shall remediate the Construction Period Quality Failure prior to the expiration of the applicable Remedial Period set out in Appendix A. If, prior to the expiration of the applicable Remedial Period, Project Co

demonstrates, to the satisfaction of the Contracting Authority Representative, acting reasonably, that it has remedied the Construction Period Quality Failure, no further Construction Period Deduction shall be made in respect of that Construction Period Quality Failure. If Project Co fails to remediate a Construction Period Quality Failure prior to the expiration of the applicable Remedial Period, Contracting Authority, may, in its sole discretion, apply a further Construction Period Deduction, calculated in accordance with this Section 5.2, and a further Remedial Period (or Remedial Periods) of the same duration shall be deemed to have commenced. Contracting Authority may, in its sole discretion, apply the applicable Construction Period Deduction each time Project Co fails to remediate a Construction Period Quality Failure prior to the expiration of the applicable Remedial Period until such time as Project Co demonstrates, to the satisfaction of the Contracting Authority Representative, acting reasonably, that it has remediated the applicable Construction Period Quality Failure.

5.3 Tolerances for Minor Construction Period Quality Failures for Non-Conformance Reports Initiated by Contracting Authority

- (a) Contracting Authority shall assess Construction Period Quality Failures on a month to month basis. Except as provided in Section 5.3(c), Contracting Authority shall not apply a Construction Period Deduction due to a Minor Construction Period Quality Failure for an NCR initiated by Contracting Authority in respect of any month in which the total number of Minor Construction Period Quality Failures for Non-Conformance Reports initiated by Contracting Authority for that month is less than or equal to [REDACTED] (the “**Minor Construction Period Quality Failure Tolerance**”).
- (b) If the Minor Construction Period Quality Failure Tolerance is exceeded, Contracting Authority may, in its sole discretion, apply a Construction Period Deduction for each Minor Construction Period Quality Failure for an NCR initiated by Contracting Authority in excess of the Minor Construction Period Quality Failure Tolerance during the applicable month.
- (c) If, in any month, a Minor Construction Period Quality Failure for an NCR initiated by Contracting Authority is due to circumstances that are substantively the same cause as a previous Minor Construction Period Quality Failure for an NCR initiated by Contracting Authority (within the same month or in a different month) (a “**Repeated Minor Construction Period Quality Failure**”), then a Construction Period Deduction shall be made in respect of the third and each subsequent Repeated Minor Construction Period Quality Failure, irrespective of the Minor Construction Period Quality Failure Tolerance.

5.4 Administration of Construction Period Quality Failures and Construction Period Deductions

- (a) Subject to Sections 5.4(b), 5.4(c), 5.4(d) and 5.4(e), Contracting Authority shall use the Monthly Non-Conformance Report produced by Project Co for the purposes of calculating the relevant Construction Period Deductions.
- (b) If either Party believes that there is an error or omission in a Monthly Non-Conformance Report, that Party shall promptly provide Notice to the other Party of such error or omission. Immediately after a Notice given pursuant to this Section 5.4(b), Project Co and Contracting Authority shall attempt to resolve or clarify the error or omission and amend the applicable Monthly Non-Conformance Report, to their mutual satisfaction, acting reasonably. Subject to

Section 5.4(e), if the Parties fail to resolve or clarify the error or omission within 10 Business Days after a Notice given pursuant to this Section 5.4(b), either Party may refer the matter to the Dispute Resolution Procedure. Subject to Section 5.4(d) and Section 5.4(e), the Parties are prohibited from giving Notice of an error or omission in the applicable Monthly Non-Conformance Report pursuant to this Section 5.4(b) after the expiration of 60 days after the date of the applicable Monthly Non-Conformance Report.

- (c) Subject to Section 5.4(e), if Project Co fails to monitor or accurately report a Construction Period Event or Construction Period Quality Failure then, in addition to the Construction Period Deduction to be made in respect of the relevant Construction Period Quality Failure (if any), a failure to monitor or report a Construction Period Event or a Construction Period Quality Failure shall be deemed to be a Minor Construction Period Quality Failure.
- (d) In the event that Contracting Authority or Project Co discovers new errors, omissions or failures of the type referred to in Section 5.4(b) or Section 5.4(c), such errors, omissions or failures shall be dealt with in accordance with Section 5.4(b) or Section 5.4(c), as applicable, and, for clarity, Contracting Authority may, in its sole discretion, apply Construction Period Deductions in respect of any Construction Period Quality Failures discovered pursuant to this Section 5.4(d) in the manner set out in Section 5.2. Any such Construction Period Deductions shall be made from the Substantial Completion Payment. For clarity, the 60 day deadline set out in Section 5.4(b) shall not apply to errors, omissions or failures revealed pursuant to this Section 5.4(d).
- (e) For the purposes of Sections 5.4(b), 5.4(c) and 5.4(d), if Project Co or a Project Co Party has engaged in any fraudulent action or inaction, deliberate misrepresentation, or gross misconduct or incompetence,
 - (i) in the preparation of the Monthly Non-Conformance Report; or
 - (ii) in carrying out the Work resulting in Construction Period Quality Failures,then,
 - (iii) the 60 day deadline set out in Section 5.4(b) shall not apply; and
 - (iv) a failure to monitor or accurately report a Construction Period Event or Construction Period Quality Failure pursuant to Section 5.4(c) shall be deemed to be a Critical Construction Period Quality Failure.

5.5 Additional Requirements for Tracking and Reporting

- (a) In addition to the requirements of Section 7.2 of Schedule 11 – Quality Management, the Non Conformance Tracking System shall record Construction Period Deductions pursuant to this Schedule 21.
- (b) In addition to the requirements of Section 7.2 of Schedule 11 – Quality Management, the Monthly Non-Conformance Report shall contain:
 - (i) the number of Construction Period Deductions in each Construction Period Failure Category accrued within the last month pursuant to this Schedule 21; and

- (ii) summary statistics and historic trends since Financial Close for the number of Construction Period Deductions in each Construction Period Failure Category each month pursuant to this Schedule 21.
- (c) Project Co shall track and set out the Total Construction Period Deduction in each monthly Works Report (both on a month by month basis and as a running total). Project Co shall report on the final Total Construction Period Deduction in the Substantial Completion Notice. If Contracting Authority disagrees with the Total Construction Period Deduction set out by Project Co in any Works Report or in the Substantial Completion Notice, then Contracting Authority shall notify Project Co and the Independent Certifier of such disagreement. In the event of a disagreement between the Parties over the Total Construction Period Deduction set out in the Substantial Completion Notice, the Parties shall seek to agree to any matter(s) in dispute with respect to the Total Construction Period Deduction. If the matter(s) cannot be resolved within 15 Business Days after Contracting Authority's notification of disagreement or Dispute (or such other period as may be otherwise agreed by the Parties), then such matter shall be dealt with in accordance with Schedule 27 – Dispute Resolution Procedure. For clarity, notwithstanding any disagreement or Dispute between the Parties with respect to the quantum of the Total Construction Period Deduction, the Total Construction Period Deduction as calculated and determined by Contracting Authority in accordance with this Section 5 shall be applied against and shall decrease the Substantial Completion Payment.

5.6 Disputing an NCR During the Works

- (a) In respect of the following circumstances, the Parties shall be subject to the binding determination of the Independent Certifier, and the Independent Certifier's decision shall be final and shall not be subject to resolution pursuant to Schedule 27 – Dispute Resolution Procedure:
 - (i) a Notice of objection to an NCR has not been resolved by mutual agreement between Contracting Authority and Project Co within five Business Days after the delivery of a Notice of the objection pursuant to Section 7.1(c) and Section 7.1(e) of Schedule 11 – Quality Management; and
 - (ii) the Non-Conformance Report referred to in Section 5.6(a)(i) would have been a Construction Period Quality Failure with a Construction Period Failure Category of “Minor” if the Notice of objection referred to in Section 5.6(a)(i) had not been issued.

5.7 Relief from Construction Period Deductions

- (a) Subject to Project Co meeting the obligations set out in Section 32.2 and Section 32.3 of the Project Agreement, if a Construction Period Quality Failure,
 - (i) has been assessed in accordance with this Schedule 21; and
 - (ii) has arisen from a Non-Conformance that has been directly caused by one or more of the events set out in Section 32.1(a) of the Project Agreement, whether or not such event constitutes a Delay Event,

such Construction Period Quality Failure shall not be applied as part of the Construction Period Deduction in accordance with this Section 5.

6. MAXIMUM LIABILITY

6.1 Maximum Liability for Liquidated Damages and Construction Enforcement Regime

- (a) The liquidated damages payable by Project Co,
- (i) in accordance with Sections 3 and 4.1; plus
 - (ii) the Total Construction Period Deduction calculated in accordance with Section 5,
- shall be limited to **[REDACTED]** on an aggregate basis.

**APPENDIX A
CONSTRUCTION PERIOD PERFORMANCE CRITERIA**

[REDACTED]

MT MTDOCS 41633408

SCHEDULE 22**VARIATION PROCEDURE****1. VARIATIONS****1.1 Definitions**

- (a) In this Schedule 22 – Variation Procedure, unless the context indicates a contrary intention, terms which are defined in the Project Agreement (and not otherwise defined in this Schedule 22 – Variation Procedure) shall have meanings given to them in the Project Agreement and the following terms shall have the following meanings:
- (i) “**Direct Cost**” has the meaning given in Appendix A of this Schedule 22.
 - (ii) “**Estimate**” has the meaning given in Section 1.4(a).
 - (iii) “**Overhead**” has the meaning given in Appendix C of this Schedule 22.
 - (iv) “**Overhead and Profit**” has the meaning given in Appendix B of this Schedule 22.
 - (v) “**Project Co Variation Notice**” has the meaning given in Section 2.1(a).
 - (vi) “**Variation**” means a variation, addition, reduction, substitution, omission, modification, deletion, removal or other change to the whole or any part of the Works.
 - (vii) “**Variation Confirmation**” has the meaning given in Section 1.7(a)(ii).
 - (viii) “**Variation Directive**” means a written instruction which is issued on a form designated as a “Variation Directive Form” and signed by the Contracting Authority Representative directing Project Co to immediately proceed with a Variation pending the finalization and issuance of a Variation Confirmation for that Variation.
 - (ix) “**Variation Enquiry**” has the meaning given in Section 1.3(a).

1.2 General

- (a) Contracting Authority has the right from time to time to propose and require Project Co to carry out and implement a Variation, and any such Variation shall be subject to the provisions of this Schedule 22, provided that Contracting Authority shall not be permitted to withdraw a Variation Enquiry (nor will a Variation Enquiry be deemed to have been withdrawn) with respect to those circumstances specified in the Project Agreement for which Contracting Authority is obligated to proceed with a Variation.
- (b) Contracting Authority shall be obligated to proceed with a Variation in certain circumstances specified in the Project Agreement, and any such Variation shall be subject to the provisions of this Schedule 22.

-
- (c) The only payment or compensation payable by Contracting Authority to Project Co in connection with any Variation shall be the sum of the following amounts:
- (i) the Direct Cost of such Variation; plus
 - (ii) Overhead and Profit, other than in the case of Pandemic and Epidemic Change in Law Compensation for which only Overhead shall be included.
- (d) Project Co will not be entitled to any payment, compensation or extension of time for a Variation except to the extent provided in a Variation Confirmation or Variation Directive in accordance with this Schedule 22.
- (e) Project Co shall attend and shall cause any relevant Subcontractors to attend any meetings requested by Contracting Authority from time to time to discuss the implementation of any Variation or Variations generally, including with respect to the administration and pricing of Variations.

1.3 Variation Enquiry

- (a) If Contracting Authority proposes or is obligated pursuant to the terms of the Project Agreement or Applicable Law to initiate a Variation it shall deliver to Project Co a written Notice of the proposed Variation (a “**Variation Enquiry**”).
- (b) A Variation Enquiry shall:
- (i) describe the proposed Variation with sufficient detail to enable Project Co to prepare a detailed Estimate;
 - (ii) in the event that the proposed Variation will require a Capital Expenditure, state whether Contracting Authority intends to pay for the Variation by way of lump sum payment or payments, adjustment to the Guaranteed Price (and, if applicable, with a request for Project Co to obtain financing for all or part of the Variation), or a combination thereof; and
 - (iii) provide a preliminary indication of any provisions of the Project Agreement (including the Output Specifications or the Project Co Proposal Extracts) that will be affected by the proposed Variation, as well as the amendments to the Project Agreement (including the Output Specifications or the Project Co Proposal Extracts) that may be necessary to accommodate the Variation.

1.4 Delivery of Estimate

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

1.5 Project Co Grounds for Objection

- (a) Project Co may only refuse to deliver an Estimate if Project Co can demonstrate to Contracting Authority's satisfaction, acting reasonably, within the period for delivery of an Estimate specified or agreed pursuant to Section 1.4(a), that:
- (i) the implementation of the Variation would materially and adversely affect the health and safety of any person;
 - (ii) the implementation of the Variation would:
 - (A) infringe Applicable Law;
 - (B) cause to be revoked any of the existing Permits, Licences, Approvals and Agreements required by Project Co to perform the Works, and any of such Permits, Licences, Approvals and Agreements is not, using commercially reasonable efforts, capable of amendment or renewal; or
 - (C) require any new Permits, Licences, Approvals and Agreements for Project Co to perform the Works, any of which will not, using commercially reasonable efforts by Project Co or Contracting Authority, as applicable, be obtainable;
 - (iii) the proposed Variation would have a material and adverse effect on performance of the Works (except those Works which have been specified as requiring amendment in the Variation Enquiry) in a manner not compensated pursuant to this Schedule 22;
 - (iv) the implementation of the Variation would be a departure from Good Industry Practice;
 - (v) Contracting Authority does not have the legal power or capacity to require the Variation to be implemented or to do anything envisaged by this Schedule 22 in respect of or in connection with the Variation;
 - (vi) the Variation would, if implemented, result in a change in the essential nature of the New Metrolinx Infrastructure and the New Third Party Infrastructure;
 - (vii) the Variation Enquiry does not comply with the requirements of Section 1.3 (including a failure to include adequate information therein to enable Project Co to prepare an Estimate in respect thereof); or
 - (viii) in the case of a Variation relating to the Works, the time specified for commencement and/or completion of such Variation cannot be achieved by Project Co despite commercially reasonable efforts.
- (b) If Project Co refuses to provide an Estimate on the grounds set out in Section 1.5(a), Project Co shall, within the period for delivery of an Estimate specified or agreed pursuant to Section 1.4(a), deliver to Contracting Authority a written Notice specifying the grounds upon which Project Co rejects the Variation and the details thereof.

1.6 Estimate Requirements

- (a) Unless Contracting Authority in a Variation Enquiry requires only specified limited information, each Estimate shall include the following information, sufficient to demonstrate to Contracting Authority's reasonable satisfaction:
- (i) the steps Project Co will take to implement the Variation, in such detail as is reasonable and appropriate in the circumstances, including a schedule, work breakdown structure, contact list, description of roles and responsibilities and an organizational structure chart;
 - (ii) any impact on any Scheduled Milestone Payment Completion Date or the Scheduled Substantial Completion Date, and any other schedule impact on the provision of the Works or the remainder of the New Metrolinx Infrastructure and the New Third Party Infrastructure and the completion of the Works (including for certainty, any impact of the proposed Variation after taking into consideration other Variations);
 - (iii) any impact on the performance of the Works and any other impact on the Project Agreement (including for certainty, any impact of the proposed Variation after taking into consideration other Variations);
 - (iv) any amendments to the Project Agreement or any Project Document required as a consequence of the Variation, the objective of such amendments being to ensure that (save for the obligation of Contracting Authority to make payments or altered payments in respect of the Variation) the Parties are in no better and no worse position in relation to the Project than they would have been in if the Variation had not been implemented and, in particular, that there will be no material adverse change to the risk profile of the Project as a result of the Variation;
 - (v) any impact on the Direct Cost to Project Co and each Subcontractor of the proposed Variation, including:
 - (A) any Capital Expenditure that will be incurred, reduced or avoided and the impact on Project Co's cash flows from incurring, reducing or avoiding such costs (whether financed by Project Co or Contracting Authority); and
 - (B) any other costs that will be incurred, reduced or avoided and the impact on Project Co's cash flows from incurring, reducing or avoiding such costs;
 - (vi) either, subject to Section 1.9:
 - (A) a confirmation that the proposed Variation will not affect Project Co's existing financing or that Project Co's existing financing is adequate to implement the Variation; or
 - (B) if new or additional financing is required to implement the Variation, an indication as to the availability of such new or additional financing and the cost and terms of such new or additional financing;

- (vii) Project Co's preliminary indication of the potential increase or decrease, if any, to the Guaranteed Price;
- (viii) any Permits, Licences, Approvals and Agreements that must be obtained or amended for the Variation to be implemented, and the latest date by which Project Co must receive a Variation Confirmation and Project Co or Contracting Authority, as applicable, must obtain or amend such Permits, Licences, Approvals and Agreements for the Estimate to remain valid; and
- (ix) the proposed methods of certification of any construction or operational aspect of the Works required by the Variation if not covered by the provisions of the Project Agreement,

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

- (b) In preparing its Estimate, Project Co shall include sufficient information to demonstrate to Contracting Authority's satisfaction, acting reasonably, that:
 - (i) subject to Sections 1.6(c) and 1.6(e), Project Co has used or has obliged each Subcontractor (or will oblige any Subcontractor not yet selected) to use commercially reasonable efforts, including the use of competitive quotes or tenders to minimize any increase in costs and to maximize any reduction in costs;
 - (ii) except as otherwise set out in this Schedule 22, all costs of Project Co and each Subcontractor are limited to the Direct Cost of the proposed Variation described in Appendix A of this Schedule 22;
 - (iii) Overhead has been calculated in accordance with Appendix C of this Schedule 22 in respect of Pandemic and Epidemic Change in Law Compensation and, in respect of all other Variations, Overhead and Profit has been calculated in accordance with Appendix B of this Schedule 22;
 - (iv) all costs of providing Works, including Capital Expenditures, reflect:
 - (A) labour and material rates applying in the open market to providers of services similar to those required by the Variation;
 - (B) any and all changes in the Output Specifications arising out of the proposed Variation; and
 - (C) any and all changes in risk allocation;
 - (v) the full amount of any and all expenditures that have been reduced or avoided (including any Capital Expenditure) and that all such expenditures, including all applicable amounts for overhead and profit anticipated to be incurred but for the Variation, have been taken into account and applied in total to reduce the amount of all costs; and

-
- (vi) Project Co has mitigated or will mitigate the impact of the Variation, including on the Project Works Schedules, the performance of the Works, the expected usage of utilities, and the Direct Cost of the proposed Variation to be incurred.
- (c) Project Co shall use commercially reasonable efforts to obtain the best value for money when procuring and/or delivering any work, services, supplies, materials or equipment required by the Variation, including, at the request of Contracting Authority, applying, using and comparing applicable industry benchmarks or benchmarking data for such purposes, and will comply with all Good Industry Practice in relation to any such procurement, to a standard no less than Project Co would apply if all costs incurred were to its own account without recourse to Contracting Authority, including using commercially reasonable efforts to mitigate such costs. Also, to the extent the procurement or delivery of any work, services, supplies, materials or equipment required by the Variation results in costs or expenses that are in excess of those costs or expenses established by industry benchmarks or benchmarking data, Project Co shall provide Contracting Authority sufficient information and analysis to demonstrate to Contracting Authority's satisfaction, acting reasonably, that such excess costs or expenses are reasonable and justified in the context of the subject Variation.
- (d) As soon as practicable, and in any event not more than 15 Business Days after Contracting Authority receives an Estimate, Project Co and Contracting Authority shall discuss and seek to agree on the Estimate, including any amendments to the Estimate agreed to by the Parties.
- (e) At the request of Contracting Authority, including if Contracting Authority is required by Applicable Law or any policy applicable to Contracting Authority, to competitively tender any contract in relation to the proposed Variation, Project Co shall seek and evaluate competitive tenders for the proposed Variation, including in accordance with such Applicable Law or policy.
- (f) Contracting Authority may modify a Variation Enquiry in writing at any time for any matter relating to the Estimate or the discussions in relation thereto, in which case Project Co shall, as soon as practicable and in any event not more than 10 Business Days after receipt of such modification, notify Contracting Authority in writing of any consequential changes to the Estimate.
- (g) If the Parties cannot agree on an Estimate pursuant to Section 1.6(d), then any Dispute will be determined in accordance with Schedule 27 – Dispute Resolution Procedure.

1.7 Variation Confirmation

- (a) As soon as practicable, and in any event within 15 Business Days after the later of the date the Estimate was delivered and the date the Estimate was either agreed to or any Dispute in respect thereof was determined in accordance with Schedule 27 – Dispute Resolution Procedure, Contracting Authority shall either:
- (i) subject to Section 1.2(b) and Section 1.7(f), withdraw the Variation Enquiry by written Notice to Project Co; or

-
- (ii) issue a written confirmation of the Estimate signed by Contracting Authority (the “**Variation Confirmation**”), including any agreed modifications thereto or any modifications resulting for the determination of a Dispute in respect thereof, which Variation Confirmation may be subject to Project Co obtaining financing pursuant to Section 1.8.
 - (b) Within five Business Days following Project Co’s receipt of a Variation Confirmation issued pursuant to Section 1.7(a)(ii), Project Co shall execute and deliver a copy of such executed Variation Confirmation to Contracting Authority.
 - (c) If Contracting Authority does not issue a Variation Confirmation within such 15 Business Days, then, subject to Section 1.2(b) and Section 1.7(f), the Variation Enquiry shall be deemed to have been withdrawn.
 - (d) Upon the Variation Confirmation being issued, and if applicable upon Project Co obtaining financing pursuant to Section 1.8:
 - (i) the Parties shall as soon as practicable thereafter do all acts and execute all documents to amend the Project Agreement necessary to implement the Variation, including in respect of any required extension of time and including provision for payment to Project Co as provided in Section 1.10;
 - (ii) Project Co shall implement the Variation as provided for in the Variation Confirmation, and subject to amendments pursuant to Section 1.7(d)(i), all provisions of the Project Agreement applicable to the Works shall apply to the Works as thereby changed and no additional claim with respect to the Variation or Variation Confirmation will be considered; and
 - (iii) payment in relation to the Variation shall be as provided for in Section 1.10 and pursuant to any amendments pursuant to Section 1.7(d)(i).
 - (e) If a Variation Confirmation is subject to Project Co obtaining financing pursuant to Section 1.8, then the Variation Confirmation shall not be effective until:
 - (i) Project Co obtains such financing acceptable to Contracting Authority in its sole discretion; or
 - (ii) Contracting Authority in its sole discretion waives such requirement.
 - (f) Except as hereinafter provided, until a Variation Confirmation has been issued:
 - (i) the determination of whether or not to proceed with a Variation shall at all times be at Contracting Authority’s sole discretion, despite any Dispute or any other matter in relation to a Variation being referred to or determined in accordance with Schedule 27 – Dispute Resolution Procedure; and

- (ii) Contracting Authority may at any time withdraw a Variation Enquiry and, subject to Section 1.7(g), Contracting Authority shall not be obligated to Project Co in respect of a Variation until such time as Contracting Authority in its sole discretion issues a Variation Confirmation and, if applicable, Project Co has obtained the financing requested by Contracting Authority or Contracting Authority has waived such requirement,

provided that Contracting Authority may not withdraw a Variation Enquiry in circumstances where Contracting Authority is obligated pursuant to the terms of the Project Agreement to proceed with a Variation. In such circumstances Schedule 27 – Dispute Resolution Procedure shall be employed to finalize any aspects of the Variation which cannot otherwise be agreed to in accordance with the terms of this Schedule 22.

- (g) If a Variation Confirmation is not issued for any Variation Enquiry in respect of which Project Co has used commercially reasonable efforts to produce a fair and accurate Estimate, Contracting Authority shall reimburse Project Co for the Direct Cost reasonably and properly incurred by Project Co in connection with preparing the Estimate.

1.8 Financing

- (a) Subject to Section 1.9, if Project Co in its Estimate confirms that existing financing is not available to pay for the proposed Variation and if Contracting Authority requests Project Co to obtain financing for a Variation, then a Variation Confirmation may be issued subject to Project Co obtaining financing. In such event, Project Co shall use commercially reasonable efforts to obtain the requested financing on terms satisfactory to Project Co and Contracting Authority, provided that, Project Co shall not be required to seek debt financing from any source other than the existing Lenders.
- (b) If Project Co has used commercially reasonable efforts to obtain the requested financing but has been unable to obtain an offer of financing on terms reasonably satisfactory to Project Co and Contracting Authority within 60 days following the date that Contracting Authority issues the Variation Confirmation, then Project Co shall have no further obligation to obtain financing for the Variation and any Variation Confirmation subject to financing shall no longer have any effect unless Contracting Authority, in its sole discretion, waives the requirement for financing or unless Contracting Authority is obligated to proceed with the Variation pursuant to the terms of the Project Agreement.
- (c) Subject to Section 1.9, if Project Co obtains an offer of financing on terms reasonably satisfactory to Project Co, Project Co shall provide Contracting Authority with details of such financing, and Contracting Authority shall, in its sole discretion, determine whether Project Co should proceed with such financing. If Contracting Authority determines that Project Co should not proceed with such financing, then Project Co shall have no further obligation to obtain financing for the Variation and any Variation Confirmation subject to financing shall no longer have any effect unless Contracting Authority, in its sole discretion, waives the requirement for financing or unless Contracting Authority is obligated to proceed with the Variation pursuant to the terms of the Project Agreement.

- (d) Subject to Section 1.9, Contracting Authority may at any time withdraw the requirement for Project Co to use commercially reasonable efforts to obtain financing, after which Project Co shall have no further obligation to obtain financing for the Variation and any Variation Confirmation subject to financing shall no longer have any effect unless Contracting Authority in its sole discretion waives the requirement for financing or unless Contracting Authority is obligated to proceed with the Variation pursuant to the terms of the Project Agreement.
- (e) If Contracting Authority waives the requirement for financing or if Project Co has no further obligation to obtain financing for the Variation pursuant to Sections 1.8(b), 1.8(c) or 1.8(d), then Project Co shall proceed with the Variation as set out in the Variation Confirmation and Contracting Authority shall pay for the Variation as provided for in Section 1.10(a)(ii).

1.9 Increase or Decrease in the Cost of the Financing

- (a) If there is an increase or a decrease in the Cost of the Financing as a result of a Variation, the Guaranteed Price shall be increased or decreased by the increase or decrease to the Cost of the Financing. Project Co shall provide the calculation of the increase or decrease in the Cost of the Financing, together with a certificate of the Lenders' Agent verifying such calculation. Where the increase in the Cost of the Financing includes breakage costs, but the impact of the Variation on the Cost of the Financing could also be accommodated without incurring breakage costs, calculations for both options shall be provided to Contracting Authority, together with a certificate of the Lenders' Agent addressed to Project Co (which will expressly provide that the certificate may be relied upon by Contracting Authority) verifying such calculations. Contracting Authority shall, in its sole discretion, within five Business Days after receiving such certificate from the Lenders' Agent, select its preferred option by providing written Notice to Project Co and the Lenders' Agent. For greater certainty, the increases or decreases in the Cost of the Financing shall be calculated in a commercially reasonable manner and in accordance with the Lending Agreements, and without regard to the identity of the party paying such costs and expenses and, with respect to any swap breakage costs or gains, such costs or gains shall be calculated in accordance with standard market practices.
- (b) If a Variation gives rise to a net benefit to Project Co through a reduction of the Cost of the Financing, then Project Co shall pay any net benefit received by Project Co to Contracting Authority.

1.10 Payment

- (a) If a Variation Confirmation has been issued and is not subject to financing, or if the requirement for financing has been satisfied by Project Co or has been waived by Contracting Authority, a price adjustment for the Variation, as set out in the Estimate and as adjusted and confirmed by the Variation Confirmation, shall be made as follows:
- (i) the Guaranteed Price shall be adjusted as set out in the Variation Confirmation; or
 - (ii) payment for Capital Expenditures as set out in the Variation Confirmation and not financed by Project Co shall be paid as follows:

- (A) Contracting Authority shall pay such Capital Expenditures in lump sum payments based on a payment schedule agreed by Contracting Authority and Project Co, acting reasonably, to reflect the amount and timing of the Capital Expenditures to be incurred by Project Co in carrying out the Variation to the extent borne by Contracting Authority; and
- (B) where payment for part of the Variation reflects the carrying out of, or specific progress towards, an element within the Variation, Project Co shall provide satisfactory evidence confirming that the part of the Variation corresponding to each occasion when payment is due under the payment schedule has been duly carried out.

In the event Contracting Authority and Project Co fail to agree as to the terms of the payment schedule, the payment schedule shall be determined in accordance with Schedule 27 - Dispute Resolution Procedure, provided that, where all or any part of the Variation is being carried out by a third party under a contract with Project Co, subject to the terms of any contract between Project Co and that third party in relation to the implementation of the Variation having been approved by Contracting Authority, the process under Schedule 27 - Dispute Resolution Procedure shall determine a payment schedule which would enable Project Co to be funded by Contracting Authority in time to make payments to that third party in accordance with its contract with Project Co.

For greater certainty, (I) the Milestone Payments and Substantial Completion Payment shall only be adjusted as a result of a Variation if the Guaranteed Price is adjusted pursuant to Section 1.10(a)(i), and (II) none of the Guaranteed Price, the Milestone Payments or the Substantial Completion Payment shall be adjusted as a result of the Variation if Project Co is paid for Capital Expenditures pursuant to Section 1.10(a)(ii).

- (b) Contracting Authority shall make payment to Project Co within 20 Business Days following receipt by Contracting Authority of invoices presented to Contracting Authority in accordance with the agreed payment schedule accompanied (where applicable) by the relevant evidence that the relevant part of the Variation has been carried out.
- (c) Payments by Contracting Authority in respect of a Variation shall be subject to applicable holdback provisions of the *Construction Act* (Ontario), as applicable.
- (d) Project Co shall not be entitled to any amount in excess of the amount of the Estimate confirmed in the Variation Confirmation.
- (e) Upon request by Project Co, Contracting Authority shall provide to Project Co copies of any consent or approval issued by Contracting Authority and/or Infrastructure Ontario's or Metrolinx's board of directors in connection with a proposed Variation.

1.11 Reduction in Works

- (a) If a Variation involves any reduction in the Works which results in savings in the Direct Cost to Project Co, such savings shall result in a reduction in the compensation payable to Project Co

under the Project Agreement in an amount equal to such reduction in the Direct Cost and the First Milestone Payment, the Second Milestone Payment, the Third Milestone Payment or the Substantial Completion Payment (as applicable, at Contracting Authority's discretion) shall be reduced accordingly.

1.12 Variation Directive

- (a) If an Estimate is not promptly agreed upon by Contracting Authority and Project Co or if there is a Dispute in relation thereto or if Contracting Authority, in its sole discretion, requires a Variation to be implemented prior to issuing a Variation Confirmation, then Contracting Authority may issue a Variation Directive and, following receipt of the Variation Directive, Project Co shall promptly proceed to implement the Variation.
- (b) Without limiting Project Co's obligation to promptly implement such Variation:
 - (i) the determination of the valuation and time extensions, if any, required in connection with such Variation, shall be made as soon as reasonably possible after commencement of the implementation of the Variation;
 - (ii) the Contracting Authority Representative shall initially determine the valuation of such Variation, acting reasonably and making the determination in accordance with Appendices A and B hereto, with any Dispute to be determined in accordance with Schedule 27 – Dispute Resolution Procedure; and
 - (iii) Contracting Authority shall fund all Variations implemented by way of a Variation Directive as provided for in Section 1.10(a)(ii).

2. PROJECT CO VARIATIONS

2.1 General

- (a) Project Co shall deliver to Contracting Authority a written Notice (a “**Project Co Variation Notice**”) for each Variation proposed by Project Co.

2.2 Project Co Variation Notice

- (a) A Project Co Variation Notice shall:
 - (i) set out details of the proposed Variation in sufficient detail to enable Contracting Authority to evaluate it in full;
 - (ii) specify Project Co's reasons for proposing the Variation;
 - (iii) indicate all reasonably foreseeable implications of the Variation, including whether there are any costs or cost savings to Contracting Authority; and
 - (iv) indicate the latest date by which a Variation Enquiry must be issued.

- (b) If Contracting Authority, in its sole discretion, elects to consider the Variation proposed by Project Co, Contracting Authority may issue to Project Co a Variation Enquiry and the procedure set out in Section 1 will apply.
- (c) Project Co shall, promptly upon demand, reimburse Contracting Authority for all out-of-pocket costs and expenses reasonably incurred by Contracting Authority in connection with Contracting Authority's consideration of any Variation proposed by Project Co pursuant to Section 2 of this Schedule 22, including legal and consulting fees and disbursements, regardless of whether (i) a Variation Enquiry or Estimate is issued in connection therewith or (ii) such Variation is implemented.

APPENDIX A**CALCULATION OF DIRECT COST****1. DIRECT COST**

- 1.1** Subject to Section 1.2 of this Appendix A, the term “Direct Cost” means the aggregate total, without duplication, of only the following amounts, as paid or incurred by Project Co or each Subcontractor, as applicable, to the extent that they specifically relate to, and are attributable to, the Variation under which Project Co is expressly entitled to its Direct Cost and would not otherwise have been incurred:
- (i) wages and benefits paid for labour in the direct employ of Project Co or each Subcontractor while performing that part of the Works on the Lands;
 - (ii) salaries, wages and benefits of Project Co’s or each Subcontractor’s personnel when stationed at the office on the Lands in whatever capacity employed, or personnel engaged at shops or on the road, in expediting the production or transportation of materials or equipment;
 - (iii) salaries, wages and benefits of Project Co’s or each Subcontractor’s office personnel engaged in a technical capacity;
 - (iv) without limiting Sections 1.1(i), 1.1(ii) and 1.1(iii) of this Appendix A, contributions, assessments or taxes incurred for such items as employment insurance, provincial health insurance, workers’ compensation, and Canada Pension Plan, insofar as such costs are based on the wages, salaries, or other remuneration paid for employees pursuant to Sections 1.1(i), 1.1(ii) and 1.1(iii) of this Appendix A, but excluding for certainty all income taxes on such wages, salaries and other remuneration;
 - (v) the cost of materials (including hand tools which have a retail value of **[REDACTED]** or less), products, supplies, equipment, temporary services and facilities, including transportation and maintenance thereof, which are consumed in the performance of the Variation;
 - (vi) the rental costs of all tools (excluding hand tools which have a retail value of **[REDACTED]** or less), machinery, and equipment used in the performance of the Variation, whether rented from or provided by Project Co or others, including installation, minor repair and replacement, dismantling, removal, transportation and delivery costs thereof;
 - (vii) deposits lost;
 - (viii) except as otherwise set out in the Project Agreement, a reasonable amount of profit consistent with prevailing market rates that is charged by any Subcontractor, other than the Construction Contractor and any entity not at arms-length from Project Co;

-
- (ix) the reasonable fees and disbursements of the Lenders' Consultant and the external technical consultants and external legal advisors of Project Co and its Subcontractors;
 - (x) the cost of third party quality assurance required by Contracting Authority, such as independent inspection and testing services;
 - (xi) charges levied by Governmental Authorities, but excluding fines or penalties not related to the implementation of the Variation;
 - (xii) subject to Section 1.1(iv) of this Appendix A, Taxes (and without limiting the obligation of Contracting Authority to pay HST payable by it under the Project Agreement), but excluding:
 - (A) HST;
 - (B) taxes imposed on Project Co or a Subcontractor based on or measured by income or profit or otherwise imposed under the Income Tax Act (Canada), the Income Tax Act (Ontario) or any similar statute in any other jurisdiction;
 - (C) capital taxes based on or measured by the capital of Project Co or a Subcontractor;
 - (D) taxes relating to withholdings on any payments by Project Co or a Subcontractor; and
 - (E) taxes relating to any business or activity other than the business or activities related to, and conducted for, the purposes of the Works;
 - (xiii) the cost of removal and disposal of contaminants, hazardous substances, waste products and debris for which Project Co is not responsible under the Project Agreement;
 - (xiv) termination payments which are required under Applicable Law to be made to employees of Project Co reasonably and properly incurred by Project Co arising as a direct result of any Variation reducing the scope of the Works, except to the extent that such termination payments are provided for in contracts of employment, agreements or arrangements that were not entered into in the ordinary course of business and on commercial arm's length terms;
 - (xv) the cost of debt financing provided by the Lenders, including all additional financing costs related to any delay caused by the implementation of the Variation;
 - (xvi) the cost of competitively tendering any contract in relation to the proposed Variation that is required by Contracting Authority, including as a result of any Applicable Law or any policy applicable to Contracting Authority;
 - (xvii) the cost of any additional insurance or performance security required or approved by Contracting Authority; and

(xviii) the cost of obtaining all Project Co Permits, Licences, Approvals and Agreements.

1.2 The Direct Cost otherwise payable shall be subject to and limited by the following:

- (i) the Direct Cost shall be net of all discounts, rebates and other price reductions and benefits, which relate to the Direct Cost incurred;
- (ii) the amount paid for materials, products, supplies and equipment incorporated into the Works as a result of the Variation shall not exceed commercially competitive rates available in the Province of Ontario for such materials, products, supplies and equipment from arms-length third party suppliers;
- (iii) the Direct Cost with respect to the per hour cost charged by Project Co or any Subcontractor for salaried personnel shall be calculated by dividing the annual salary (inclusive of all benefits, statutory remittances and holidays) by 2080 hours;
- (iv) the amount paid for machinery and equipment rental costs shall not exceed the prevailing competitive commercial rate for which such equipment or machinery can be obtained in the Greater Toronto Area;
- (v) any amounts paid in accordance with this Appendix A for fees, wages, salaries and benefits charged by Project Co or any Subcontractor shall be reasonable and shall not exceed commercially competitive rates available in the Greater Toronto Area;
- (vi) the Direct Cost shall not include:
 - (A) any cost incurred due to the failure on the part of Project Co or any Project Co Party to exercise reasonable care and diligence in its attention to the execution of that part of the Works (including any cost due to any negligence, improper work, deficiencies or breaches of contract by Project Co and/or any Subcontractor);
 - (B) the fees, costs or expenses, or any other form of compensation, paid or payable by Project Co or any Subcontractor to any person performing personnel services and/or similar, comparable or like services to or for the benefit of Project Co or any Subcontractor;
 - (C) the cost and expense of maintaining corporate offices, the cost and expense of office administration, estimation, accounting, payroll, printing, office supplies, phones and courier/postal service, the cost and expense of personnel not directly involved in the implementation of the Variation and any other overhead cost or expense;
 - (D) the cost of travel and subsistence expenses; or
 - (E) any costs or expenses associated with the participation of Project Co and any Subcontractor in the meetings described in Section 1.2(e) of this Schedule 22; and

- (vii) the Direct Cost must be quantifiable and supported by evidence and proper documentation, such as invoices, proof of payments, and detailed hourly rate information as required by Contracting Authority. Proper documentation shall include unit rates or prices and quantities for all items, including labour and materials that comprise the Direct Cost, including for all work completed by any Subcontractor. Any Direct Cost item claimed as a percentage of any other Direct Cost item, such as a “risk contingency”, will not be permissible, unless approved by Contracting Authority in writing.

APPENDIX B**CALCULATION OF OVERHEAD AND PROFIT**

- (a) “**Overhead and Profit**” means, for each of rows 1, 2 and 3 in Table A - Applicable Overhead and Profit, the product of:
- (i) the Direct Cost of, as applicable, the work or services within the category described in such row, multiplied by;
 - (ii) the percentage set out in such row as determined based on the Direct Cost of the Variation.
- (b) For greater certainty, the percentages applicable to Overhead and Profit shall not be determined based on any component or components of the subject Variation.
- (c) Project Co and the Construction Contractor shall charge no more than the amount of Overhead and Profit calculated in accordance with this Appendix B.
- (d) No amount for Overhead and Profit shall be charged on any other amount of Overhead and Profit.
- (e) No other methodology for the calculation of Overhead and Profit shall be permitted or apply.
- (f) Project Co acknowledges and agrees that the Overhead and Profit payable in accordance with this Schedule 22 is intended to compensate Project Co and the Construction Contractor for all costs and expenses incurred in connection with a Variation other than the Direct Cost, including all overhead, profit, office administration and the amounts expressly excluded from the Direct Cost pursuant to Section 1.2 of Appendix A of this Schedule 22.

TABLE A

APPLICABLE OVERHEAD AND PROFIT

[REDACTED]

APPENDIX C**CALCULATION OF OVERHEAD FOR PURPOSES OF PANDEMIC AND EPIDEMIC
CHANGE IN LAW COMPENSATION**

- (a) “**Overhead**” means, for each of rows 1, 2 and 3 in Table B – Applicable Overhead for purposes of Pandemic and Epidemic Change in Law Compensation, the product of:
- (i) the Direct Cost of, as applicable, the work or services within the category described in such row, multiplied by,
 - (ii) the percentage set out in such row as determined based on the Direct Cost of the Variation.
- (b) For greater certainty, the percentages applicable to Overhead shall not be determined based on any component or components of the subject Variation.
- (c) Project Co and the Construction Contractor shall charge no more than the amount of Overhead calculated in accordance with this Appendix C.
- (d) No amount for Overhead shall be charged on any other amount of Overhead.
- (e) No other methodology for the calculation of Overhead shall be permitted or apply.
- (f) Project Co acknowledges and agrees that the Overhead payable in accordance with this Schedule 22 is intended to compensate Project Co and the Construction Contractor for all costs and expenses incurred in connection with a Variation as a result of a Pandemic and Epidemic Change in Law other than the Direct Cost, including all overhead, office administration and the amounts expressly excluded from the Direct Cost pursuant to Section 1.2 of Appendix A of this Schedule 22, and excluding profit.

TABLE B

**APPLICABLE OVERHEAD FOR PURPOSES OF PANDEMIC AND EPIDEMIC CHANGE IN
LAW COMPENSATION**

[REDACTED]

MTDOCS 41633409v2

SCHEDULE 23

COMPENSATION ON TERMINATION

1. DEFINITIONS

1.1 Definitions

In this Schedule 23, unless the context indicates a contrary intention, terms which are defined in the Project Agreement (and not otherwise defined in this Schedule 23) shall have meanings given to them in the Project Agreement and the following terms shall have the following meanings:

- (a) **“Contracting Authority Default Termination Sum”** has the meaning given in Section 2.1(b) of this Schedule 23.
- (b) **“Employee Termination Payments”** means termination payments which are required under Applicable Law to be made to employees of Project Co or any Project Co Party as a direct result of terminating the Project Agreement (provided that Project Co or the relevant Project Co Party shall take commercially reasonable steps to mitigate its loss) and provided that, in calculating such amount, no account should be taken of any liabilities and obligations of Project Co or the relevant Project Co Party arising out of:
 - (i) contracts of employment or other agreements or arrangements entered into by Project Co or the relevant Project Co Party to the extent that such contracts of employment, agreements or arrangements were not entered into in connection with the Project; or
 - (ii) contracts of employment or other agreements or arrangements entered into by Project Co or the relevant Project Co Party other than in the ordinary course of business and on commercial arm’s length terms, save to the extent that amounts would have arisen if such contracts or other agreements or arrangements had been entered into in the ordinary course of business and on commercial arm’s length terms.
- (c) **“Invoice Date”** means the date that is the later of:
 - (i) the date on which Contracting Authority receives an invoice from Project Co for the relevant termination sum; and
 - (ii) the date on which Contracting Authority receives the supporting evidence required pursuant to Section 5.1(a) of this Schedule 23.
- (d) **“Non-Default Termination Sum”** has the meaning given in Section 4.1(b) of this Schedule 23.
- (e) **“Project Co Amount”** means any amount payable to Project Co as a return and/or profit to Project Co shown in the Financial Model, including for greater certainty any loans made or capital contributed to Project Co by any Affiliate of Project Co or a Project Co Party, prorated by a fraction, the numerator of which is the period between the date of commencement of the Works

and the Termination Date, and the denominator of which is the period between the date of commencement of the Works and the Scheduled Substantial Completion Date.

- (f) “**Project Co Default Termination Sum**” has the meaning given to it in Section 3.1(b) of this Schedule 23.
- (g) “**Subcontractor Losses**” means, subject to Project Co’s obligations under the Project Agreement to limit any compensation to Subcontractors, the amount reasonably and properly payable by Project Co to the Construction Contractor under the terms of the Design and Construction Contract as a direct result of the termination of the Project Agreement (including any commercially reasonable breakage fee), provided that such amount shall be reduced to the extent that Project Co or the Subcontractors fail to take commercially reasonable steps to mitigate such amount; provided that, no account should be taken of any liabilities and obligations of Project Co to the Subcontractors arising out of:
- (i) any loss of overhead or profit of such Subcontractor relating to any period or costs after the Termination Date (save to the extent the same are properly included in any commercially reasonable breakage fee set out in any of the Ancillary Documents);
 - (ii) agreements or arrangements entered into by Project Co or the Subcontractors to the extent that such agreements or arrangements were not entered into in connection with those parties’ obligations in relation to the Project; or
 - (iii) agreements or arrangements entered into by Project Co or the Subcontractors other than in the ordinary course of business and on commercial arm’s length terms, save to the extent that amounts would have arisen if such agreements or arrangements had been entered into in the ordinary course of business and on commercial arm’s length terms.

2. **COMPENSATION ON TERMINATION FOR CONTRACTING AUTHORITY DEFAULT OR CONVENIENCE**

2.1 **Compensation**

- (a) If Project Co terminates the Project Agreement pursuant to Section 37 of the Project Agreement or Contracting Authority terminates the Project Agreement pursuant to Section 38.3 of the Project Agreement, Contracting Authority shall pay to Project Co the Contracting Authority Default Termination Sum.
- (b) The “**Contracting Authority Default Termination Sum**” shall be an amount equal to the aggregate of:
- (i) the Senior Debt Amount and the Senior Debt Makewhole;
 - (ii) the Junior Debt Amount and the Junior Debt Makewhole;
 - (iii) any amount payable by Contracting Authority to Project Co in accordance with Sections 34.2(b) and 35.2(b) of the Project Agreement;

- (iv) the Employee Termination Payments and the Subcontractor Losses;
- (v) any reasonable costs properly incurred by Project Co to wind up its operations; and
- (vi) the Project Co Amount;

LESS, the aggregate (without double counting) of the following, to the extent it is a positive amount:

- (vii) all credit balances on any bank accounts held by or on behalf of Project Co on the Termination Date and the value of any insurance proceeds due to Project Co or to which Project Co would have been entitled had insurance been maintained in accordance with the requirements of the Project Agreement (save where such insurance proceeds are to be applied in reinstatement, restoration or replacement, or, in the case of third party legal liability, in satisfaction of the claim, demand, proceeding or liability or where Contracting Authority is required to procure insurances and to make proceeds available to Project Co under the Project Agreement and they have failed to do so) or sums due and payable from third parties other than sums wholly unrelated to the Works, the Project and the Project Agreement (but only when received from third parties) but excluding any claims under any Subcontracts or claims against other third parties which have not been determined or have been determined but not yet paid, provided that, in such case, Project Co shall assign any such rights and claims under the Subcontracts or claims against other third parties (other than claims against other third parties wholly unrelated to the Works, the Project and the Project Agreement) to Contracting Authority and, at no additional cost to Project Co, give Contracting Authority reasonable assistance in prosecuting such claims;
- (viii) to the extent realized before the Invoice Date, the market value of any other assets and rights of Project Co (other than those transferred to Contracting Authority pursuant to the Project Agreement) less liabilities of Project Co properly incurred in carrying out its obligations under the Project Agreement as at the Termination Date, provided that no account should be taken of any liabilities and obligations of Project Co arising out of:
 - (A) agreements or arrangements entered into by Project Co to the extent that such agreements or arrangements were not entered into in connection with Project Co's obligations in relation to the Project; or
 - (B) agreements or arrangements entered into by Project Co other than in the ordinary course of business and on commercial arm's length terms, save to the extent that liabilities and obligations would have arisen if such agreements or arrangements had been entered into in the ordinary course of business and on commercial arm's length terms; and
- (ix) amounts which Contracting Authority is entitled to set off pursuant to Section 4.11(a)(i) of the Project Agreement,

provided that the Contracting Authority Default Termination Sum shall never be less than the aggregate of the Senior Debt Amount, the Senior Debt Makewhole, the Junior Debt Amount and the Junior Debt Makewhole.

- (c) To the extent that such assets and rights referred to in Section 2.1(b)(viii) of this Schedule 23 are not realized and applied pursuant thereto, Project Co shall, on payment of the Contracting Authority Default Termination Sum, assign such assets and rights to Contracting Authority.
- (d) Contracting Authority shall pay the Contracting Authority Default Termination Sum in accordance with Section 5 of this Schedule 23.

3. COMPENSATION ON TERMINATION FOR PROJECT CO DEFAULT

3.1 Compensation

- (a) If Contracting Authority terminates the Project Agreement pursuant to Section 36 of the Project Agreement, Contracting Authority shall pay to Project Co the Project Co Default Termination Sum.
- (b) The “**Project Co Default Termination Sum**” shall be an amount equal to the Guaranteed Price, as adjusted in accordance with the terms of the Project Agreement as of the Termination Date, less the aggregate, without duplication, of each of the following:
 - (i) any amount of the First Milestone Payment, Second Milestone Payment, Third Milestone Payment, Substantial Completion Payment and any other amounts paid by Contracting Authority on or before the Termination Date;
 - (ii) Contracting Authority’s estimate of the cost to complete the Works, including the cost to remedy any defective or deficient Works determined on a reasonable basis in consultation with the Independent Certifier and Contracting Authority’s other consultants and including all reasonable and proper costs incurred by Contracting Authority in re-tendering the Works or any portion thereof;
 - (iii) Contracting Authority’s estimate of the aggregate of all Direct Losses suffered, sustained or incurred by Contracting Authority as a result of, in respect of, or arising out of the event or events which resulted in the termination of the Project Agreement and arising out of the termination together with all costs of entering into a new design and construction contract to complete the Works, including any warranty obligations for the Works in place and to be performed, on substantially the same terms and conditions as the Project Agreement;
 - (iv) the Completion Holdback, in each case as at the time the Project Co Default Termination Sum is required to be made;
 - (v) the Legislative Holdback required to be maintained by Contracting Authority as at the time the Project Co Default Termination Sum is required to be made, which amount will be paid by Contracting Authority in accordance with the *Construction Act* (Ontario); and

- (vi) amounts which Contracting Authority is entitled to set off pursuant to Section 4.11(a)(i) of the Project Agreement.
- (c) To the extent that any amounts that Contracting Authority has estimated or determined pursuant to Sections 3.1(b)(ii), 3.1(b)(iii) or 3.1(b)(iv) of this Schedule 23, are in excess of what is required by Contracting Authority to complete the Work or compensate for Direct Losses, the Completion Holdback or the Legislative Holdback, as applicable, Contracting Authority shall promptly return such excess amounts to Project Co.
- (d) Contracting Authority shall pay the Project Co Default Termination Sum in accordance with Section 5 of this Schedule 23.

4. CONSEQUENCES OF NON-DEFAULT TERMINATION AND TERMINATION FOR RELIEF EVENT

4.1 Consequences

- (a) If either Party terminates the Project Agreement pursuant to Section 38.1 of the Project Agreement or if either Party terminates the Project Agreement pursuant to Section 38.2 of the Project Agreement, or if Contracting Authority terminates the Project Agreement pursuant to Section 38.4 or Section 38.6 of the Project Agreement, Contracting Authority shall pay to Project Co the Non-Default Termination Sum.
- (b) The “**Non-Default Termination Sum**” shall be an amount equal to the aggregate of:
 - (i) the Senior Debt Amount and the Senior Debt Makewhole;
 - (ii) the Junior Debt Amount;
 - (iii) any amount payable by Contracting Authority to Project Co in accordance with Sections 34.2(b) and 35.2(b) of the Project Agreement; and
 - (iv) the Employee Termination Payments and the Subcontractor Losses (but excluding therefrom any claims for loss of profit);

LESS, the aggregate (without double counting) of the following, to the extent it is a positive amount:

- (v) all credit balances on any bank accounts held by or on behalf of Project Co on the Termination Date and the value of any insurance proceeds due to Project Co or to which Project Co would have been entitled had insurance been maintained in accordance with the requirements of the Project Agreement (save where such insurance proceeds are to be applied in reinstatement, restoration or replacement, or, in the case of third party legal liability, in satisfaction of the claim, demand, proceeding or liability or where Contracting Authority is required to procure insurances and to make proceeds available to Project Co under the Project Agreement and it has failed to do so) or sums due and payable from third parties other than sums wholly unrelated to the Works, the Project and

the Project Agreement (but only when received from third parties) but excluding any claims under any Subcontracts or claims against other third parties which have not been determined or have been determined but not yet paid, provided that, in such case, Project Co shall assign any such rights and claims under the Subcontracts or claims against other third parties (other than claims against other third parties wholly unrelated to the Works, the Project and the Project Agreement) to Contracting Authority and, at no additional cost to Project Co, give Contracting Authority reasonable assistance in prosecuting such claims; and

- (vi) to the extent realized before the Invoice Date, the market value of any other assets and rights of Project Co (other than those transferred to Contracting Authority pursuant to the Project Agreement) less liabilities of Project Co properly incurred in carrying out its obligations under the Project Agreement as at the Termination Date, provided that no account should be taken of any liabilities and obligations of Project Co arising out of:
 - (A) agreements or arrangements entered into by Project Co to the extent that such agreements or arrangements were not entered into in connection with Project Co's obligations in relation to the Project; or
 - (B) agreements or arrangements entered into by Project Co other than in the ordinary course of business and on commercial arm's length terms, save to the extent that liabilities and obligations would have arisen if such agreements or arrangements had been entered into in the ordinary course of business and on commercial arm's length terms; and
- (vii) amounts which Contracting Authority is entitled to set off pursuant to Section 4.11(a)(i) of the Project Agreement,

provided that the Non-Default Termination Sum shall never be less than the aggregate of the Senior Debt Amount, the Senior Debt Makewhole and the Junior Debt Amount.

- (c) To the extent that such assets and rights referred to in Section 4.1(b)(vi) of this Schedule 23 are not realized and applied pursuant thereto, Project Co shall, on payment of the Non-Default Termination Sum, assign such assets and rights to Contracting Authority.
- (d) Contracting Authority shall pay the Non-Default Termination Sum in accordance with Section 5 of this Schedule 23.

5. GENERAL

5.1 Payment and Interest Following Termination

- (a) In respect of the termination payments to be made pursuant to either Section 2 or 4 of this Schedule 23, as soon as practicable after, and, in any event, within 30 days after, the Termination Date, Project Co shall give to Contracting Authority an invoice for the relevant termination sum and sufficient supporting evidence, reasonably satisfactory to Contracting Authority, justifying

the amount of the relevant termination sum including a detailed breakdown of each of the individual items comprising such sum.

- (b) In respect of the termination payments to be made pursuant Section 3 of this Schedule 23, as soon as practicable, and in any event, within 120 days after the Termination Date, Contracting Authority shall calculate and notify Project Co of the Project Co Default Termination Sum under Section 3.1(b) of this Schedule 23, and shall deliver to Project Co sufficient supporting evidence reasonably satisfactory to Project Co.
- (c) Contracting Authority shall:
- (i) pay to Project Co the relevant termination sum within 60 days after the Invoice Date or the date of delivery of the Notice described in Section 5.1(b) of this Schedule 23, as applicable, and so long as all of demobilization of the Works has been completed; and
 - (ii) indemnify Project Co as provided in Section 46.2(d) of the Project Agreement in respect of any damages suffered or incurred as a result of the relevant termination sum (or any part of such sum that remains outstanding) not being received on the Termination Date:
 - (A) in an amount equivalent to the No Default Payment Compensation Amount for the period from (but excluding) the Termination Date to (and including) the date which is 60 days after the Invoice Date or the date of delivery of the Notice described in Section 5.1(b) of this Schedule 23, as applicable; and
 - (B) thereafter, in an amount equivalent to the Payment Compensation Amount until the date of payment.
- (d) In respect of the termination payments to be made pursuant to Section 3 of this Schedule 23, if the applicable termination sum is negative, Contracting Authority shall have no obligation to make any payment to Project Co and Project Co shall also thereafter indemnify Contracting Authority as provided in Section 46.1(e) of the Project Agreement in respect of any damages suffered or incurred on such amount on the basis that the due date for the payment of the negative termination sum amount was the date 60 days after the Invoice Date until the date of payment in an amount equivalent to the Payment Compensation Amount.

5.2 Costs

- (a) The costs and expenses to be taken into account in the calculation of all termination sums due pursuant to this Schedule 23 shall only be such costs and expenses to the extent that they are reasonable and proper in quantum and shall have been or will be reasonably and properly incurred.

5.3 Undisputed Amounts

- (a) If the calculation of any termination amount is disputed then any undisputed amount shall be paid in accordance with this Section 5 and the disputed amount shall be dealt with in accordance with Schedule 27 – Dispute Resolution Procedure.

5.4 Outstanding Debt Amounts

- (a) Contracting Authority shall be entitled to rely on a certificate of the Lenders' Agent as conclusive as to the Senior Debt Amount, the Senior Debt Makewhole, the Junior Debt Amount and the Junior Debt Makewhole, as applicable, outstanding or payable at any relevant time.
- (b) If a receipt or other acknowledgement is given by the Lenders' Agent acknowledging or otherwise confirming receipt of payment or payments in respect of the Senior Debt Amount, the Senior Debt Makewhole, the Junior Debt Amount and the Junior Debt Makewhole, as applicable, such receipt or other acknowledgement shall discharge Contracting Authority's obligation to pay such portion of compensation due to Project Co that is equal to the amount acknowledged or confirmed.

MT MTDPCS 41633410V2

SCHEDULE 24

INTELLECTUAL PROPERTY

1. INTERPRETATION

1.1 Definitions: In this Schedule 24, unless the context indicates a contrary intention, terms which are defined in the Project Agreement (and not otherwise defined in this Schedule 24) shall have meanings given to them in the Project Agreement and the following terms shall have the following meanings:

- (a) “**Assigned Intellectual Property**” has the meaning given in Section 2.5(a).
- (b) “**Assignee**” has the meaning given in Section 2.5(a).
- (c) “**Assignor**” has the meaning given in Section 2.5(a).
- (d) “**Contracting Authority Intellectual Property**” means:
 - (i) Intellectual Property that is Owned, created, developed or acquired by Contracting Authority or any Contracting Authority Personnel:
 - (A) prior to the Project Term;
 - (B) during the Project Term but outside the Project Scope; or
 - (C) during the Project Term and within the Project Scope, but which is not Project Co Intellectual Property, Subcontractor Intellectual Property or Third Party Intellectual Property;
 - (ii) the Developed Intellectual Property, excluding any Developed Intellectual Property that is specified in a Variation or by separate agreement of Contracting Authority and Project Co to be Owned by Project Co;
 - (iii) any other Project Data that is specified in a Variation or by separate agreement of Contracting Authority and Project Co to be Owned by Contracting Authority; and
 - (iv) subject to Section 41.4 of the Project Agreement, all Modifications to any of the foregoing, whether made by or on behalf of Project Co, Contracting Authority or any Subcontractor alone, jointly with each other or with any other person,

and which is used by Contracting Authority, or required to be used by Project Co or a Subcontractor, in the performance of their respective obligations in respect of the Project or under the Project Agreement.
- (e) “**Contracting Authority Personnel**” means persons acting on behalf of Contracting Authority or employed, engaged or retained by Contracting Authority in connection with the performance of Contracting Authority’s obligations in connection with the Project, including Contracting Authority’s consultants, contractors and subcontractors and the employees, officers, directors,

volunteers and agents of Contracting Authority and its direct and indirect consultants, contractors and subcontractors, excluding Project Co and any Subcontractor and their respective Personnel.

- (f) **“Contracting Authority Supplied Third Party Intellectual Property”** means Intellectual Property, Owned by a person other than Contracting Authority, Project Co, a Subcontractor or any of their respective Personnel that is delivered, supplied or otherwise provided by Contracting Authority to Project Co under the Project Agreement for the purpose of performing the Works and the Project, including any Background Information.
- (g) **“Contracting Authority Trade-Marks”** means the Trade-Marks Owned by Contracting Authority.
- (h) **“Copyleft Licence”** means any licence that requires, as a condition of use, modification and/or distribution of Copyleft Materials, that such Copyleft Materials, or other software or content incorporated into, derived from, used, or distributed with such Copyleft Materials: (i) in the case of software, be made available or distributed in a form other than binary (for example, source code form), (ii) be licenced for the purpose of preparing derivative works, (iii) be licenced under terms that allow the products or portions thereof or interfaces therefor to be reverse engineered, reverse assembled or disassembled (other than by operation of law), or (iv) be redistributable at no licence fee. Copyleft licences include the GNU General Public Licence, the GNU Lesser General Public Licence, the Mozilla Public Licence, the Common Development and Distribution Licence, the Eclipse Public Licence, and all Creative Commons “sharealike” licences.
- (i) **“Copyleft Materials”** means any software or content subject to a Copyleft Licence.
- (j) **“Deliverable”** means any item required to be supplied or delivered by Project Co to Contracting Authority within the Project Scope, including Equipment, Project Software, Project Data and all other deliverable requirements specified in Schedule 10 – Review Procedure.
- (k) **“Delivered”** means, with respect to any Intellectual Property, that such Intellectual Property is:
- (i) a Deliverable;
 - (ii) incorporated, embedded or otherwise included in any Deliverable, the New Metrolinx Infrastructure or any part of the work delivered as part of the Works;
 - (iii) necessary for the undertaking, completion and performance of the Works or any Equivalent Activity; or
 - (iv) necessary for the Use by Contracting Authority or a subsequent Licensee of any Deliverable, the New Metrolinx Infrastructure, or any part of the work delivered as part of the Works or any Intellectual Property in accordance with the rights granted to Contracting Authority hereunder,

or that the Use of such Intellectual Property for any of the purposes set out in clause (iii) or (iv) above would infringe the Intellectual Property rights of any person.

- (l) **“Developed Intellectual Property”** means Intellectual Property that is:

- (i) created or developed, or Ownership of which is acquired, by Project Co, any Subcontractor or any Project Co Personnel, or Subcontractor Personnel, whether alone or together with each other or any other person, during the Project Term and within the Project Scope;
- (ii) created, developed or Ownership of which is acquired for the purposes of the Project, the Works or the New Metrolinx Infrastructure; and
- (iii) created or designed based on functional, design and performance specifications provided by Contracting Authority, or Contracting Authority Personnel, or Contracting Authority Parties,

and, for greater certainty, Developed Intellectual Property does not include any Project Co Intellectual Property used to develop or create the Developed Intellectual Property.

- (m) **“Embedded Software”** means the Project Co Embedded Software, Subcontractor Embedded Software and Third Party Embedded Software.
- (n) **“Equipment”** means all electrical and mechanical equipment, machinery, computer hardware and systems comprising or used in the New Metrolinx Infrastructure.
- (o) **“Equivalent Activity”** means any activity, undertaking or operation relating to New Metrolinx Infrastructure done by Contracting Authority, any permitted assignee of Contracting Authority pursuant to Section 49.2 of the Project Agreement and/or any other person acting on behalf of or under the authority of Contracting Authority, which activity, undertaking or operation if done by Project Co would be within the Project Scope, including the Works.
- (p) **“Escrow Agent”** means a recognized provider of escrow services selected by Project Co and approved by Contracting Authority and having a location within the Province of Ontario with whom the Escrow Materials will be deposited in accordance with Section 3.11.
- (q) **“Escrow Agreement”** means an escrow agreement that meets the requirements of Section 3.11 and pursuant to which Escrow Materials are held by the Escrow Agent and Contracting Authority are designated as a beneficiary party.
- (r) **“Escrow Materials”** means:
 - (i) with respect to Software, the Source Materials for that Software; and
 - (ii) with respect to Embedded Software, the Source Materials for that Embedded Software.
- (s) **“Escrow Provider”** means:
 - (i) Project Co in respect of the Project Co Licenced Software;
 - (ii) the applicable Subcontractor in respect of any Subcontractor Licenced Software;
 - (iii) the applicable third party licensor in respect of any Third Party Licenced Software;

- (iv) Project Co in respect of the Project Co Embedded Software;
- (v) the applicable Subcontractor in respect of any Subcontractor Embedded Software; and
- (vi) the applicable third party licensor in respect of any Third Party Embedded Software.
- (t) **“Expanded Purposes”** means (i) the Permitted Purposes; and (ii) for any other purpose of Metrolinx.
- (u) **“Licence”** means a non-exclusive licence or sub-licence, as applicable, granting the rights and subject to the restrictions and limitations set out in this Schedule 24.
- (v) **“Licenced Intellectual Property”** means, with respect to any Licence, the Intellectual Property that is within the scope of that Licence as provided for in this Schedule 24.
- (w) **“Licensee”** means, in respect of any Licence granted or required to be granted by Project Co pursuant to this Schedule 24, Contracting Authority or any permitted assignee under Section 49.2 of the Project Agreement that is the holder of that Licence at the relevant time.
- (x) **“Licensor”** means Project Co in respect of the Project Co Licenced Software, the applicable Subcontractor in respect of any Subcontractor Licenced Software, or the applicable third party licensor in respect of any Third Party Licenced Software.
- (y) **“Limited Modification Rights”** in respect of a Software or an Embedded Software, means the right to configure, customize or modify such Software or Embedded Software, without access to the Source Materials thereto, in order to have complete and unrestricted access to, or otherwise Use, all the functionalities within such Software or Embedded Software that is licenced to Contracting Authority under this Schedule 24.
- (z) **“Modification”** means all corrections, modifications, changes, enhancements, improvements, supplements, customizations or derivative works, and includes the Limited Modification Rights, and **“Modify”** means to make a Modification.
- (aa) **“Open Source Licence”** means any licence meeting the Open Source Definition (as promulgated by the Open Source Initiative) or the Free Software Definition (as promulgated by the Free Software Foundation), or any substantially similar licence, including any licence approved by the Open Source Initiative, or any Creative Commons Licence. For the avoidance of doubt, Open Source Licences include Copyleft Licences.
- (bb) **“Open Source Materials”** means any software or content subject to an Open Source Licence.
- (cc) **“Ownership”** means, in respect of any Intellectual Property, ownership of all right, title and interest in and to that Intellectual Property and **“Own”**, **“Owned”** and **“Owner”** shall have corresponding meanings.

- (dd) **“Permitted Purposes”** means:
- (i) during the Project Term, performance of Contracting Authority’s obligations and the exercise of Contracting Authority’s rights under the Project Agreement and any other agreements relating to the Project;
 - (ii) during the Project Term, Contracting Authority’s participation in the Works and any activity, undertaking or operation within the Project Scope, including its participation in the design, construction, operation, maintenance, repair, correction and renovation of the New Metrolinx Infrastructure;
 - (iii) after the Project Term, any Equivalent Activity;
 - (iv) both during and after the Project Term, the use, integration and interoperation of the New Metrolinx Infrastructure with:
 - (A) any existing or other transit projects undertaken by or on behalf of Contracting Authority or interfacing with Contracting Authority projects; and
 - (B) any existing or after-acquired systems, software, technology or equipment related to the use, operation, maintenance, repair, correction, and renovation of the New Metrolinx Infrastructure,but, for clarity, not any infrastructure or system that is not included in the New Metrolinx Infrastructure;
 - (v) both during and after the Project Term, the integration and interoperation of the New Metrolinx Infrastructure with any existing or other transit projects undertaken by or on behalf of Contracting Authority or interfacing with Contracting Authority projects; and
 - (vi) both during and after the Project Term, and so long as the Licensee is Contracting Authority or other Governmental Authority:
 - (A) the provision of governmental services and the conduct of operations and activities provided in connection or otherwise associated with the New Metrolinx Infrastructure and the Lands by Contracting Authority or any Governmental Authority or any emergency service provider; and
 - (B) the development of transportation standards, policies and procedures.
- (ee) **“Personnel”** means (i) in reference to Project Co, the Project Co Personnel, (ii) in reference to Contracting Authority, Contracting Authority Personnel, and (iii) in reference to any Subcontractor, such Subcontractor’s Personnel.
- (ff) **“Project Co Embedded Software”** means computer software that is Owned by Project Co and that:
- (i) is included, embedded or otherwise incorporated in Equipment;

- (ii) is not licenced separately and apart from that Equipment; and
 - (iii) is not subject to a separate warranty, and is not subject to maintenance and repair separately from, that Equipment.
- (gg) **“Project Co Intellectual Property”** means:
- (i) Intellectual Property that is Owned, created, developed or acquired by Project Co or any Project Co Personnel:
 - (A) prior to the Project Term; or
 - (B) during the Project Term but outside the Project Scope; or
 - (C) during the Project Term and within the Project Scope, but which is not Contracting Authority Intellectual Property, Contracting Authority Supplied Third Party Intellectual Property, Subcontractor Intellectual Property, or Third Party Intellectual Property;
 - (ii) the Project Co Licenced Software;
 - (iii) the Project Co Embedded Software;
 - (iv) Project Co’s Technical Information;
 - (v) the Project Intellectual Property;
 - (vi) the Project Data, excluding any other Project Data that are specified in a Variation or by separate agreement of Contracting Authority and Project Co to be Owned by Contracting Authority;
 - (vii) any Developed Intellectual Property that is specified in a Variation or by separate agreement of Contracting Authority and Project Co to be Owned by Project Co; and
 - (viii) Subject to Section 41.4 of the Project Agreement, all Modifications to any of the foregoing, whether made by or on behalf of Project Co, Contracting Authority, Contracting Authority Parties, or any Subcontractor alone, jointly with each other or with any other person.
- (hh) **“Project Co Licenced Software”** means any computer software that is Owned by Project Co, is not Project Co Embedded Software and is delivered, supplied or otherwise provided by Project Co under the Project Agreement as or as part of any Deliverable.
- (ii) **“Project Co Personnel”** means persons acting on behalf of Project Co or employed, engaged or retained by Project Co in connection with the performance of Project Co’s obligations under the Project Agreement, including Project Co’s consultants, contractors and Subcontractors and the employees, officers, directors, volunteers and agents of Project Co and its direct and indirect consultants, contractors and Subcontractors.

-
- (jj) **“Project Data”** means:
- (i) all Design Data; and
 - (ii) any other materials, documents and/or data prepared by or on behalf of Project Co or Subcontractors in relation to the Works, the New Metrolinx Infrastructure or the Project Agreement, excluding the Jointly Developed Materials, the Background Information and any Developed Intellectual Property.
- (kk) **“Project Intellectual Property”** means Intellectual Property that is created or developed, or Ownership of which is acquired, by Project Co, any Subcontractor or any Project Co Personnel or Subcontractor Personnel, whether alone or together with each other or any other person, during the Project Term and within the Project Scope, and which is created, developed or acquired for the purposes of the Project or the New Metrolinx Infrastructure, but excluding Project Software, Embedded Software, Project Data, Developed Intellectual Property and Technical Information.
- (ll) **“Project Scope”** means the scope of the Project, including the performance of all Works, as defined by the terms of the Project Agreement.
- (mm) **“Project Software”** or **“Software”** means any Project Co Licenced Software, Subcontractor Licenced Software and Third Party Licenced Software, but does not include Embedded Software.
- (nn) **“Software Maintenance and Support”** means, with respect to any Software, the software maintenance and support services for that Software that are provided separately under a software maintenance and support agreement with the licensor of that Software.
- (oo) **“Software Tools”** means, with respect to any Software or Embedded Software, any routines, compilers, bootstraps, analyzers, monitors, toolkits and other software tools used by the licensor of such Software or Embedded Software in connection with the programming, compiling, maintenance, debugging, analysis, configuration, customization, verification or monitoring of such Software or Embedded Software.
- (pp) **“Source Materials”** means:
- (i) a complete source code version of the Software or Embedded Software, in machine-readable form which, when compiled, will produce the executable version of the Software or Embedded Software and in human-readable form with annotations in the English language or such other language as is acceptable to Contracting Authority, acting reasonably, in both cases on a storage medium suitable for long term archival storage;
 - (ii) a complete copy, in English or such other language as is acceptable to Contracting Authority, acting reasonably, in both electronic and paper form, suitable for long term archival storage, and appropriately labelled to describe the contents thereof, of all applicable documentation and other explanatory materials, including programmer’s notes, technical or otherwise, for the Software or Embedded Software as may be required for a person other than the licensor of the Software or Embedded Software, using a competent computer programmer possessing ordinary skills and experience, to further develop, maintain and operate the Software or Embedded Software without further recourse to the licensor, which will include, to the extent such items have been or are created for such

Software or Embedded Software, general flow charts, input and output layouts, field descriptions, volumes and sort sequence, data dictionary, file layouts, processing requirements and calculation formulae, circuit diagrams and the details of all algorithms and which shall be deemed to include those materials, as revised from time to time; and

- (iii) all Software Tools for such Software or Embedded Software, to the extent not previously delivered with the Software or Embedded Software.
- (qq) **“Subcontractor Embedded Software”** means computer software that is Owned by a Subcontractor and that:
- (i) is included, embedded or otherwise incorporated in Equipment;
 - (ii) is not licenced separately and apart from that Equipment; and
 - (iii) is not subject to a separate warranty, and is not subject to maintenance and repair separately from, that Equipment.
- (rr) **“Subcontractor Intellectual Property”** means, with respect to each Subcontractor:
- (i) Intellectual Property that is Owned, created, developed or acquired by that Subcontractor:
 - (A) prior to the Project Term;
 - (B) during the Project Term but outside the Project Scope; or
 - (C) during the Project Term and within the Project Scope, but which is not Contracting Authority Intellectual Property, Contracting Authority Supplied Third Party Intellectual Property, Project Co Intellectual Property, or Third Party Intellectual Property;
 - (ii) the Subcontractor Licenced Software;
 - (iii) the Subcontractor Embedded Software;
 - (iv) the Subcontractor’s Technical Information; and
 - (v) subject to Section 41.4 of the Project Agreement, all Modifications to any of the foregoing, whether made by or on behalf of Project Co, Contracting Authority, Contracting Authority Parties, or any Subcontractor alone, jointly with each other or with any other person.
- (ss) **“Subcontractor Licenced Software”** means any computer software that is Owned by a Subcontractor, is not Subcontractor Embedded Software and is delivered, supplied or otherwise provided by the Subcontractor under the Project Agreement, the Subcontract as or as part of any Deliverable.
- (tt) **“Subcontractor Personnel”** means, with respect to any Subcontractor, persons acting on behalf of that Subcontractor or employed, engaged or retained by that Subcontractor in connection with

the performance of that Subcontractor's obligations under the Project Agreement or the Subcontract, including the Subcontractor's consultants, contractors and subcontractors and the employees, officers, directors, volunteers and agents of the Subcontractor and its direct and indirect consultants, contractors and subcontractors.

- (uu) **“System Architecture and Look and Feel”** means any work product, including any Intellectual Property therein, Owned, created, developed, acquired or licenced whether by Project Co or any Subcontractor in respect of any aspect of the architecture or look and feel of the Works, including all designs, design details, drawings, specifications, prototypes, documentation, works and all instruments of architectural service that relate to the design identity, look and feel of any aspect of the architectural and landscape design whether in respect of the tunnel, landscape and urban design elements, fit and finish, or any other aspect of the Works.
- (vv) **“Technical Information”** means technical information relating to any Equipment supplied or Intellectual Property licenced under the Project Agreement, including software documentation, user and operating manuals, maintenance and repair manuals, parts lists and other materials relevant to the use, operation, maintenance or repair of such Equipment or Intellectual Property.
- (ww) **“Third Party Embedded Software”** means computer software that is not Owned by Contracting Authority, Project Co or a Subcontractor and that:
- (i) is included, embedded or otherwise incorporated in Equipment;
 - (ii) is not licenced separately and apart from that Equipment; and
 - (iii) is not subject to a separate warranty, and is not subject to maintenance and repair separately from, that Equipment.
- (xx) **“Third Party Intellectual Property”** means Intellectual Property Owned by a person other than Contracting Authority, Project Co, a Subcontractor or any of their respective Personnel that is delivered, supplied or otherwise provided by Project Co or a Subcontractor under the Project Agreement as or as part of any Deliverable, including Third Party Licenced Software and Third Party Embedded Software.
- (yy) **“Third Party Licenced Software”** means any computer software that is not Owned by Contracting Authority, Project Co or a Subcontractor, is not Third Party Embedded Software and is delivered, supplied or otherwise provided by Project Co or a Subcontractor under the Project Agreement as or as part of any Deliverable.
- (zz) **“Trade-Mark Licence Agreement”** means the trademark licence agreement entered into between Project Co and Contracting Authority providing for the licence by Contracting Authority of Contracting Authority Trade-Marks to Project Co, being substantially in the form of Appendix A attached to this Schedule 24.
- (aaa) **“Trust Rights”** has the meaning given in Section 2.5(b).
- (bbb) **“Use”** means, with respect to any Intellectual Property, to do any and all things with that Intellectual Property that the Owner of that Intellectual Property could do, including to load, transmit, access, execute, use, store, display, copy, adapt, translate, incorporate into other

materials, practice, make and have made, but specifically excluding the right to Modify and subject to any limitations in the provision of this Schedule 24 pursuant to which a Licence is granted.

2. OWNERSHIP

2.1 Project Co Intellectual Property: Project Co shall be and remain the sole and exclusive Owner of the Project Co Intellectual Property. For certainty, nothing in this Schedule 24 shall transfer to Project Co any Ownership of, or grant to Project Co any right in respect of, Contracting Authority Intellectual Property used in the creation or development of or that is embodied, incorporated, embedded, otherwise included or illustrated in any Project Co Intellectual Property, except for the Licence granted under Section 3.1.

2.2 Contracting Authority Intellectual Property: Contracting Authority shall be and remain the sole and exclusive Owner of Contracting Authority Intellectual Property. For certainty, nothing in this Schedule 24 shall transfer to Contracting Authority any Ownership of, or grant to Contracting Authority any right in respect of, the Project Co Intellectual Property used in the creation or development of or that is embodied, incorporated, embedded, otherwise included or illustrated in any Contracting Authority Intellectual Property, except for the Licence granted under Section 3.2.

For greater clarity and without limiting Contracting Authority's Ownership rights, Project Co acknowledges and agrees that Contracting Authority shall be entitled to Use and Modify the Developed Intellectual Property (other than any Developed Intellectual Property that is specified in a Variation or by separate agreement of Contracting Authority and Project Co to be Owned by Project Co) in any manner and for any purpose whatsoever, including in connection with the Expanded Purposes.

2.3 Subcontractor Intellectual Property: As between Contracting Authority and Project Co, but subject to any agreement to the contrary between Project Co and any Subcontractor, each Subcontractor shall be and remain the sole and exclusive Owner of its Subcontractor Intellectual Property.

2.4 Contracting Authority Supplied Third Party Intellectual Property: As between Contracting Authority and Project Co, but subject to any agreement to the contrary between Contracting Authority and the Owner of any Contracting Authority Supplied Third Party Intellectual Property, the Owner of any Contracting Authority Supplied Third Party Intellectual Property shall be and remain the sole and exclusive Owner of any Contracting Authority Supplied Third Party Intellectual Property. For certainty, nothing in this Schedule 24 shall transfer to Project Co or any Subcontractor any Ownership of, or grant to Project Co or any Subcontractor any right in respect of, Contracting Authority Supplied Third Party Intellectual Property used in the creation or development of or that is embodied, incorporated, embedded, otherwise included or illustrated in any Project Co Intellectual Property or any Contracting Authority Intellectual Property or any Subcontractor Intellectual Property, except for the Licence granted under Section 3.1.

2.5 Assignments

(a) If, notwithstanding Section 2.1, 2.2, 2.3, or 2.4 or Section 41.4 of the Project Agreement, either party (the "**Assignor**") retains, acquires or owns any right, title or interest in or to any Intellectual Property that is to be Owned by another person (the "**Assignee**") pursuant to Section 2.1, 2.2, 2.3,

or 2.4 or Section 41.4 of the Project Agreement as applicable, (the “**Assigned Intellectual Property**”), then the Assignor will assign, and for no further consideration and without any further act or formality does hereby irrevocably assign, to the Assignee all of the Assignor’s worldwide right, title and interest in and to the Assigned Intellectual Property free and clear of all liens, claims, charges or encumbrances, but subject to any Licences granted or required to be granted by the Assignee to the Assignor pursuant to this Schedule 24.

- (b) If and to the extent that the assignment pursuant to Section 2.5(a) is not effective on the date hereof or on any future date, either generally or pursuant to the laws of any jurisdiction, then any and all right, title and interest in and to the Assigned Intellectual Property that is retained, acquired or owned by the Assignor (collectively, the “**Trust Rights**”), will be held by the Assignor in trust for the exclusive benefit and use of the Assignee, except for any Licences granted or required to be granted by the Assignee to the Assignor pursuant to this Schedule 24, and the Assignor will execute and deliver to the Assignee such transfers, assignments, documents and instruments as may be necessary to transfer and assign to the Assignee the Trust Rights, free and clear of all liens, claims, charges or encumbrances, promptly upon receipt thereof from the Assignee, and will otherwise cooperate with the Assignee to give effect to, record and register the Assignee’s ownership of the Trust Rights.
- (c) Project Co will include in each Subcontract provisions equivalent to Sections 2.5(a) or 2.5(b) with respect to: (i) Contracting Authority Intellectual Property, Jointly Developed Materials, Developed Intellectual Property, Project Data and any Modifications thereto, and shall enforce those provisions against each Subcontractor to the extent necessary to ensure that Contracting Authority remains at all times the sole and exclusive Owner of all such property; and (ii) Contracting Authority Supplied Third Party Intellectual Property and any Modifications thereto, and shall enforce those provisions against each Subcontractor to the extent necessary to ensure that the Licensor, as applicable, remains at all times the sole and exclusive Owner of all such property.

2.6 Personnel

- (a) Contracting Authority and Project Co shall, and Project Co shall include in each Subcontract an obligation of each Subcontractor to, ensure that their respective Personnel shall:
 - (i) by duly executed written agreement or by operation of law, irrevocably and unconditionally sell, assign and transfer to that party all right, title and interest that its Personnel may have in or to any and all Intellectual Property referred to in this Schedule 24 and all Modifications thereto, such that agreements as to Ownership of Intellectual Property pursuant to Sections 2.1, 2.2, 2.3, or 2.4 and Section 41.4 of the Project Agreement and the assignment by that party pursuant to Section 2.5 include all right, title and interest of its Personnel; and
 - (ii) by duly executed written agreement, irrevocably waive all non-transferable rights, including moral rights, that they have or may have in any Intellectual Property assigned by such Personnel pursuant to Section 2.6(a)(i) in favour of the assignee and its successors, assigns and licensees.

3. LICENCES

3.1 Licence by Contracting Authority to Project Co

- (a) Subject to Section 3.1(d), Contracting Authority hereby grants to Project Co:
- (i) a royalty free, fully paid-up, limited Licence to Use and Modify Contracting Authority Intellectual Property for the sole purpose of and only to the extent necessary for the performance by Project Co of the Project Scope and its obligations under the Project Agreement; and
 - (ii) a limited Licence to Use Contracting Authority Supplied Third Party Intellectual Property for the sole purpose of and only to the extent necessary for the performance by Project Co of the Project Scope and its obligations under the Project Agreement.
- (b) Subject to Section 3.1(d), Project Co may sublicense its rights under the Licence granted in Section 3.1(a) to any Subcontractor for the sole purpose of and only to the extent necessary for the performance by that Subcontractor of its obligations under its Subcontract.
- (c) Except as provided in Section 3.1(b), Project Co may not transfer, assign, sublicense or otherwise dispose of the Licence granted under Section 3.1(a) without the prior written consent of Contracting Authority, which consent may be given or refused by Contracting Authority in its absolute and unfettered discretion.
- (d) The Licence of any Contracting Authority Supplied Third Party Intellectual Property pursuant to Section 3.1(a) shall be subject to the terms and conditions of the licence agreement between Contracting Authority and the licensor of Contracting Authority Supplied Third Party Intellectual Property. The Contracting Authority will provide to Project Co a copy of any such third party licence agreement (which may be redacted as to financial and other terms not relevant to use of Contracting Authority Supplied Third Party Intellectual Property by Project Co and Subcontractors), or where prohibited from doing so by obligations of confidentiality to the third party licensor, a summary of the obligations, limitations and restrictions applicable to use of Contracting Authority Supplied Third Party Intellectual Property by Project Co and Subcontractors. Project Co will comply, and will require any Subcontractor to comply, with the terms and conditions of such third party licence agreement (as set out in the copy of the third party licence agreement or summary thereof provided by Contracting Authority to Project Co) to the extent applicable to Project Co and any Subcontractor in the performance of their respective obligations under the Project Agreement and any Subcontract. If requested by Contracting Authority, Project Co will, and will require any Subcontractor to, execute and deliver to Contracting Authority and the third party licensor an agreement that includes reasonable terms for the protection of the confidentiality of Contracting Authority Supplied Third Party Intellectual Property and an acknowledgement of the third party licensor's ownership thereof, unless Project Co disputes such ownership.
- (e) The Licence granted to Project Co under: Section 3.1(a)(i), and any sublicense granted by Project Co to a Subcontractor thereunder, will terminate upon the expiry or termination of Project Co's services and other obligations under the Project Agreement; Section 3.1(a)(ii) and any sublicense granted by Project Co to a Subcontractor thereunder, will terminate upon the earlier of: (A) expiry or termination of Project Co's services and other obligations under the

Project Agreement; and (B) the termination of the contract in respect of the applicable Contracting Authority Supplied Third Party Intellectual Property or Contracting Authority's licence or sublicense rights thereunder.

- (f) The Licences granted to Project Co under Section 3 do not include licences to any Contracting Authority Trade-Marks. The use of any Contracting Authority Trade-Marks shall be governed by the terms of the Trade-Mark Licence Agreement.

3.2 Licence by Project Co to Contracting Authority

- (a) Project Co hereby grants to Contracting Authority a Licence to:
- (i) Use and Modify the Project Co Intellectual Property (excluding Project Co Licenced Software and Project Co Embedded Software) that is Delivered and the Subcontractor Intellectual Property (excluding the Subcontractor Licenced Software and the Subcontractor Embedded Software) that is Delivered;
 - (ii) Use, and have Limited Modification Rights to, the Project Co Licenced Software that is Delivered and the Subcontractor Licenced Software that is Delivered and only in respect of the modules that are Delivered; and
 - (iii) Use, and have Limited Modification Rights to, the Project Co Embedded Software and the Subcontractor Embedded Software as part of and for the Use of the Equipment in which such software is included, embedded or otherwise incorporated,

for the Permitted Purposes. Subject to Section 3.11, the Licences granted pursuant to this Section 3.2 in respect of Project Software and Embedded Software apply to only object code versions thereof and not the source code materials for any such Project Software or Embedded Software.

In addition and notwithstanding any other provision of this Schedule 24, Project Co hereby grants to Contracting Authority a Licence to Use and Modify any System Architecture and Look and Feel that is not owned by Contracting Authority pursuant to this Schedule 24, for the Expanded Purposes.

- (b) The Licence granted pursuant to this Section 3.2 will be irrevocable (except as provided in Section 3.2(d)), perpetual, royalty free, fully paid-up (upon payment of the fees specified in the Project Agreement for the Deliverable which consists of or incorporates the Licenced Intellectual Property in respect of which the Licence is granted), and permit Use by Contracting Authority on an enterprise basis without restriction or limitation as to users (whether by number, identity or otherwise), location, capacity, authorized system or otherwise, as part of or in connection with the New Metrolinx Infrastructure, or in the case of the System Architecture and Look and Feel, in connection with the Expanded Purposes.
- (c) The Licence granted pursuant to this Section 3.2 may be transferred, assigned, sublicensed and otherwise disposed of by Contracting Authority subject to and in accordance with Section 49.2 of the Project Agreement, provided that the Licence in respect of Project Co Embedded Software and Subcontractor Embedded Software may only be transferred together with the Equipment in which such software is included, embedded or otherwise incorporated.

- (d) The Licence granted pursuant to this Section 3.2 may not be terminated except in the event of the failure of the Licensee to pay the applicable fees as provided for in the Project Agreement for the specific Deliverable which consists of or incorporates the Licenced Intellectual Property, and such failure is not remedied by the Licensee within 60 days after notice by Project Co to the Licensee demanding that such failure be remedied, provided that any such termination shall apply only to the Licenced Intellectual Property to which such failure applied and not to any other Licenced Intellectual Property. Except as specifically provided in this Section 3.2(d), Project Co shall not be entitled to terminate or rescind the Licence granted under this Section 3.2, and if the Licensee commits any other breach of or default under this Schedule 24 or the Project Agreement, whether material or not and whether that breach or default is or is not capable of being remedied, Project Co's rights and remedies in respect of that breach or default shall be limited to such rights and remedies other than termination or rescission of the Licence granted under this Section 3.2 as may exist at law or in equity, it being acknowledged by Project Co that except as provided in this Section 3.2(d) the Licence granted under this Section 3.2 is perpetual and irrevocable. No breach of or default under this Schedule 24 by Contracting Authority shall constitute a repudiation of the Licence granted under this Section 3.2 by Contracting Authority.
- (e) The Licensee may provide and disclose the Licenced Intellectual Property to any employee, contractor, subcontractor, consultant, service provider, outsourcer or other person retained by the Licensee in connection with the Permitted Purposes, except in respect of the System Architecture and Look and Feel in connection with the Expanded Purposes, and any such employee, contractor, subcontractor, service provider, outsourcer or other person may exercise all rights to Use and Modify the Licenced Intellectual Property as may be granted by the Licensee to such person within the scope of the Licence granted by Project Co to the Licensee pursuant to this Schedule 24, provided that the Licensee shall be responsible for anything done or failed to be done by any employee, contractor, subcontractor, service provider, outsourcer or other person to whom the Licensee provides and discloses the Licenced Intellectual Property, including a breach by any such person of Contracting Authority's obligations of confidentiality in respect of any Confidential Information that is or is part of Licenced Intellectual Property.
- (f) The Licensee may Use Project Software that is licenced pursuant to this Section 3.2 in multiple environments or instances, including for training, development, testing, staging, and disaster recovery and in a live, production or operating environment.
- (g) The Licensee may make copies of the Licenced Intellectual Property as may be reasonably necessary for Use and Modification of the Licenced Intellectual Property in accordance with the Licence granted pursuant to this Section 3.2 or otherwise this Schedule 24. All such copies shall be Owned by Owner of the original Licenced Intellectual Property and licenced to the Licensee pursuant to this Section 3.2. Except as permitted by this Schedule 24, the Licensee will not copy, Modify, disassemble, reverse engineer, decompile, translate or otherwise obtain or create the source code for any Project Co Intellectual Property, Project Co Licenced Software, Project Co Embedded Software, Subcontractor Intellectual Property, Subcontractor Licenced Software or Subcontractor Embedded Software.
- (h) The Licensee will not remove from any Licenced Intellectual Property any markings or notices with respect to the ownership thereof, copyright therein or the confidentiality thereof.

- (i) Where Contracting Authority has the right to Modify any Licenced Intellectual Property, Project Co shall ensure that all authors of such Licenced Intellectual Property have waived all moral rights that such authors may have therein in favour of Contracting Authority and its successors, assigns and licensees.

3.3 Licences with Subcontractors

- (a) Project Co will be responsible to obtain from each Subcontractor the right to grant the Licence under Section 3.2 in respect of the Subcontractor Intellectual Property.
- (b) Project Co will be responsible to obtain from each Subcontractor the right to Use and Modify the Subcontractor Intellectual Property to the extent necessary for Project Co to perform its obligations under the Project Agreement, on such terms as are not in breach of or conflict with the Project Agreement.
- (c) Project Co will be responsible to grant to each Subcontractor the right to Use and Modify Contracting Authority Intellectual Property and Project Co Intellectual Property to the extent necessary for each Subcontractor to perform its obligations under its Subcontract, on such terms as are not in breach of or conflict with the Project Agreement.

3.4 Third Party Intellectual Property: Project Co will not, and will not permit any Project Co Personnel, Subcontractor or Subcontractor Personnel to, incorporate, embed or otherwise include in the New Metrolinx Infrastructure or any Deliverable any Third Party Intellectual Property unless:

- (a) for Third Party Intellectual Property other than Third Party Embedded Software, such Third Party Intellectual Property is provided by the Owner thereof pursuant to a licence agreement that:
- (i) grants to the Licensee rights equivalent to or better than the rights granted under the Licence in Section 3.2, including being assignable in accordance with Section 3.2(c), and, where the Third Party Intellectual Property is software or includes software, provides for the maintenance and support of that software on terms acceptable to Contracting Authority; or
- (ii) has been approved by Contracting Authority in writing, which approval may be given or refused by Contracting Authority in its absolute and unfettered discretion;

and such licence agreement, if not entered into with Contracting Authority directly, has been assigned or is freely assignable to Contracting Authority;

- (b) for Third Party Embedded Software, either (i) such Third Party Embedded Software is embedded in Equipment and is not provided by the Owner thereof pursuant to a licence agreement, but may be used by Contracting Authority or any subsequent owner of the machine or equipment as part of and for the intended purposes of such machine or equipment upon the purchase thereof, or (ii) such Third Party Embedded Software is subject to a licence agreement that complies with Section 3.4(a).
- (c) If Project Co, Project Co Personnel, Subcontractor or Subcontractor Personnel incorporates, embeds or includes any Third Party Intellectual Property in the New Metrolinx Infrastructure or

any Deliverable other than in compliance with this Section 3.4, then in addition to any other rights and remedies Contracting Authority may have against Project Co, Project Co will at its sole cost and expense take all necessary steps to comply with this Section 3.4 or, if Project Co is unable to do so, to remove such Third Party Intellectual Property and replace it with Project Co Intellectual Property that provides the same functionality and performance as such Third Party Intellectual Property and which will operate within the New Metrolinx Infrastructure without any degradation thereof or adverse effect thereon, and which will be included in the Project Co Intellectual Property for the purposes of the Licence granted pursuant to Section 3.2.

- 3.5 Non-Assertion:** Project Co agrees not to assert, and to cause its Subcontractors not to assert, any Intellectual Property right against Contracting Authority or any Licensee that would have the effect of diminishing the rights granted to Contracting Authority or any Licensee hereunder. Without limiting the generality of the foregoing, Project Co will not sue, and will cause its Subcontractors not to sue, Contracting Authority or any Licensee on the basis that any Equivalent Activity or the Ownership or Use of the New Metrolinx Infrastructure or any Deliverable within the scope of the Permitted Purposes infringes any Intellectual Property right of Project Co or any Subcontractor.
- 3.6 Deliveries:** Project Co will deliver to Contracting Authority all Licenced Intellectual Property at the times specified in the Project Agreement, or where no time is specified, on or before the Final Completion Date or the Termination Date, whichever is first to occur. The media on which Project Software is delivered and tangible copies or embodiments of any Licenced Intellectual Property other than Project Software and will be the property of Contracting Authority, notwithstanding Project Co's, a Subcontractor's or a third party's Ownership of the Licenced Intellectual Property. If any Licenced Intellectual Property requires software in order to Use that Licenced Intellectual Property, Project Co will ensure that such software will be commercially available to Contracting Authority at a reasonable licence fee, or if such software is not commercially available, Project Co will at its cost provide such software and a licence therefor to Contracting Authority and Contracting Authority Parties on terms and conditions that do not result in any impairment of Contracting Authority's Use of the Licenced Intellectual Property in accordance with the Licence therefor.
- 3.7 Pass Through Obligations:** Project Co is responsible to include in all contracts with Project Co Personnel and in all Subcontracts with Subcontractors such terms and conditions as may be necessary for Project Co to grant, or obtain for Contracting Authority, the Ownership, Licences, rights and benefits provided for in this Schedule 24.
- 3.8 Conflicting Software Licences:** All software referenced in this Schedule 24 will be licenced in accordance with this Schedule 24, and any form of software licence agreement used or provided by a licensor in association with any such software will be of no force or effect and will not be binding on Contracting Authority or any other Licensee, even if by its terms such software licence agreement is stated to be accepted by the installation or use of the software, and regardless of any acceptance of such software licence agreement that is required in order to install or use the software.
- 3.9 Trade-Marks and Names:** Except as expressly set forth: (a) in the Trade-Mark Licence Agreement; (b) the Project Agreement; or (c) otherwise in a writing executed by each of Contracting Authority and Project Co, neither Party shall use any Trade-Marks owned by the

other Party, or use the names or any identifying logos or otherwise of the other Party in any advertising or permit them so to be used.

3.10 Open Source. Project Co shall not, and shall cause the Subcontractor not to, incorporate, embed or include any Open Source Materials in any Deliverables, Contracting Authority Intellectual Property, Contracting Authority Supplied Third Party Intellectual Property without the prior written consent of Contracting Authority.

3.11 Escrow Agreements

- (a) If requested by Contracting Authority (which for the purposes of this Section 3.11 includes any permitted assignee under Section 49.2 of the Project Agreement), at any time during the Project Term, Project Co will, or will require the applicable Subcontractor or third party licensor to, enter into an Escrow Agreement for any Software or Embedded Software (an “**Escrowed Deliverable**”) on terms that comply with this Section 3.11, or amend its existing Escrow Agreement for such Software or Embedded Software to comply with this Section 3.11, and add Contracting Authority as a beneficiary under the Escrow Agreement.
- (b) The Escrow Provider will deposit with the Escrow Agent the Escrow Materials for the Escrowed Deliverable and all Modifications thereto provided by the Escrow Provider to Contracting Authority as part of the Works, Software Maintenance and Support (if purchased by or on behalf of Contracting Authority) or any other services performed by the Escrow Provider for Contracting Authority, and in the case of Software or the Embedded Software, the Escrow Provider will update the Escrow Materials to conform to the then-current version of the Software in use by Contracting Authority including all Modification thereto made for the benefit of Contracting Authority.
- (c) Contracting Authority will have the right, on reasonable notice to the Escrow Provider and the Escrow Agent, to verify that the Escrow Materials conform to the Escrowed Deliverable supplied to and in use by Contracting Authority to which the Escrow Materials relate. In addition, Contracting Authority may purchase such additional verification services as may be offered by the Escrow Agent and the Escrow Provider will cooperate with Contracting Authority and the Escrow Agent in the performance of those verification services.
- (d) Contracting Authority will have the right to obtain from the Escrow Agent a copy of the Escrow Materials upon any of the following events:
- (i) the Escrow Provider is bankrupt;
 - (ii) a trustee, receiver, manager, receiver-manager, custodian or person having similar authority is appointed for the Escrow Provider or its business and assets and is not released or removed within 30 days after the appointment;
 - (iii) the Escrow Provider seeks protection from its creditors or undertakes any reorganization for the purpose of obtaining relief from its creditors;
 - (iv) the Escrow Provider ceases to carry on business; or

- (v) in the case of Software, if Contracting Authority is purchasing Software Maintenance and Support for the Software in respect of which the Escrow Materials have been deposited, if the Escrow Provider has given Contracting Authority or any of its representatives notice that it will no longer provide Software Maintenance and Support or if the Escrow Provider defaults in the performance of Software Maintenance and Support and does not remedy that default within 30 days after receipt of notice from Contracting Authority demanding that the Escrow Provider do so.
- (e) Project Co shall ensure that the Escrow Agreement: (i) requires the Escrow Agent to release the Escrow Materials to Contracting Authority if any of the events listed in Section 3.11(d) occur; (ii) does not contain any provision placing any obligation on Contracting Authority, including any indemnity obligation; and (iii) complies with and does not contradict any provision of this Section 3.11. Where this Section 3.11 places an obligation on the Escrow Agent, Project Co shall cause the Escrow Agent to comply with all such obligations.
- (f) Project Co hereby grants, and Project Co shall ensure that all Escrow Providers grant to Contracting Authority as of the date the applicable Software or the applicable Embedded Software is used in connection with the Project Scope, a Licence to:
- (i) Use the Escrow Materials to enable Contracting Authority to Use the Escrowed Deliverable to which the Escrow Materials relate for the Permitted Purposes, and where the Escrowed Deliverable is or contains Licenced Intellectual Property in accordance with the Licence applicable thereto;
 - (ii) make Modifications to the Escrow Materials notwithstanding any contradictory term or condition in the Licence applicable to the Escrow Materials which Modifications are only used for the Permitted Purposes or the Expanded Purposes, as applicable, and are subject to confidentiality obligations under Section 3.11(f)(v);
 - (iii) recompile versions of the Software or Embedded Software from the Escrow Materials, which recompiled versions shall be deemed to form part of the Software or Embedded Software and be subject to the terms hereof;
 - (iv) make only those copies of the Escrow Materials that Contracting Authority reasonably requires for the purposes set out in Sections 3.11(f)(i), 3.11(f)(ii) and 3.11(f)(iii); and
 - (v) disclose the Escrow Materials, or any part thereof, only to agents, employees or contractors of Contracting Authority as reasonably required for the purposes set out in Sections 3.11(f)(i), 3.11(f)(ii) and 3.11(f)(iii), provided that such agents, employees and contractors are bound by obligations of confidentiality in respect of any Escrow Materials disclosed to them, the breach of which shall constitute a breach by Contracting Authority of its obligations of confidentiality in respect of the Escrow Materials.
- (g) The Licence granted pursuant to Section 3.11(f) will:
- (i) where the Escrow Provider is Project Co or a Subcontractor, form part of the Licence granted pursuant to Section 3.2; or

- (ii) where the Escrow Provider is a third party, form part of the licence granted by such third party to Contracting Authority;

and in either case remain in effect for so long as such licence remains in effect.

- (h) Except where Contracting Authority (i) terminates the Escrow Agreement, (ii) has a renewal right and fails to renew the Escrow Agreement, or (iii) fails to make payments as set out in Section 3.11(i), the Escrow Provider will not terminate or fail to renew the Escrow Agreement without entering into a new Escrow Agreement with a replacement escrow agent on terms and conditions substantially the same as the Escrow Agreement and this Section 3.11.
- (i) The Contracting Authority will pay all fees charged by the Escrow Agent in association with the deposit and maintenance of the Escrow Materials by the Escrow Agent under the Escrow Agreement for the benefit of Contracting Authority. The Escrow Provider shall have no responsibility or liability arising from any failure of Contracting Authority to pay fees when due in order to maintain the Escrow Materials with the Escrow Agent.
- (j) If Contracting Authority receives the Escrow Materials, then as between Contracting Authority and Project Co and notwithstanding any other provision of the Project Agreement, Contracting Authority will own all Modifications to the Escrow Materials made by or for Contracting Authority and all Intellectual Property in such Modifications.

3.12 Modifications: Notwithstanding the granting of any licence pursuant to this Schedule 24, where Contracting Authority has made any Modification to the Project Co Intellectual Property or the Subcontractor Intellectual Property other than (a) a Modification made by or on behalf of Project Co or a Subcontractor or otherwise authorized by Project Co or any Subcontractor, or (b) a Modification made through the Limited Modification Rights,

then,

- (i) any warranty provided by Project Co under the Project Agreement shall not apply solely in respect of such Modification;
- (ii) Project Co and the Subcontractors shall not be liable in respect of any Direct Losses arising in connection with such Modifications where such Modifications are the direct cause of such Direct Losses, and the Direct Losses would not have occurred but for the Modifications; and
- (iii) the indemnity obligations of Project Co set out in Section 46.1(f) of the Project Agreement shall not apply in respect of any such Modifications where the Modifications are the direct cause of such Direct Losses, and the Direct Losses would not have occurred but for the Modifications.

Appendix A**Form of Trade-Mark Licence Agreement**

TRADE-MARK LICENCE AGREEMENT

THIS TRADE-MARK LICENCE AGREEMENT, effective as of [DATE] (the “**Agreement**”), is between Contracting Authority (the “**Licensor**”), and [•] (the “**Licensee**”), and Licensor and Licensee are referred to herein individually as a “**Party**” and collectively as the “**Parties**”.

WHEREAS:

1. Licensor and Licensee are parties to a Project Agreement dated [DATE] (the “**Project Agreement**”);
2. Capitalized terms used but not defined herein have the meanings assigned to them in the Project Agreement and this Schedule 24 thereto;
3. Licensor owns the trade-marks shown on Exhibit A (the “**Marks**”);
4. Licensee proposes to use the Marks in [Ontario] (the “**Territory**”) for the Limited Purpose set forth below; and
5. Subject to the terms and conditions set forth herein, Licensor is willing to grant to Licensee, and Licensee is willing to accept, a non-exclusive licence to use the Marks pursuant to the terms of this Agreement.

NOW THEREFORE in consideration of the covenants contained herein, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

1. **Grant:** Licensor grants to Licensee, and Licensee accepts, a limited, non-transferable, non-exclusive, royalty-free right and licence to use the Marks in the Territory for the sole purpose of and only to the extent necessary for the performance by Licensee of the Project Scope and its obligations under the Project Agreement (the “**Limited Purpose**”).
2. **No Right to Sublicence:** Licensee acknowledges and agrees that it does not have the right to sublicense the use of the Marks to any party without the express written consent of Licensor.
3. **Ownership:** Licensee acknowledges Licensor’s ownership of the Marks, and agrees that its use of the Marks shall enure to Licensor’s benefit.
4. **Licensee Covenants:** Licensee acknowledges that Licensor is the owner of all rights in the Marks, and, except as otherwise expressly permitted by this Agreement, Licensee shall not at any time do or suffer to be done any act or thing that will in any way impair the rights of Licensor in and to the Marks. Nothing in this Agreement grants, nor shall Licensee acquire, any right, title or interest in or to the Marks or any goodwill associated with the Marks, other than those rights

expressly granted hereunder. Licensee shall affix to all materials that contain or bear one or more of the Marks such legends and notices as Licensor may reasonably require. At Licensor's request, Licensee shall publish a public notice in the following form, or in any other form prescribed by Licensor from time to time, in appropriate publications addressed to the general public:

“[MARK] is a trade-mark owned by [LICENSOR] used under licence by [LICENSEE]”.

Licensee undertakes to comply with all relevant laws and regulations pertaining to trade-marks and marking requirements. Licensee shall execute all documents and provide all assistance reasonably required by Licensor to apply for, obtain and maintain registrations for the Marks, and to enforce rights in, and defend any proceedings brought against applications or registrations for, the Marks.

5. **Restrictions On Use:** Notwithstanding anything contained in this Agreement or otherwise, Licensee shall use the Marks only in accordance with the design, description and/or appearance of the Marks as shown on Exhibit A. Licensee may not change or modify the Marks nor join the mark with any other words or designs. Licensee agrees to abide by any reasonable guidelines provided by Licensor from time to time in connection with the use of the Marks.
6. **Quality Standards and Control:** Licensee agrees that use of the Marks by Licensee in association with any products or services (the “Products” and “Services”) will meet or surpass the standards set by Licensor and conveyed to Licensee from time to time for the character and quality of such Products and Services.
7. **Inspection:** At the request of the Licensor, the Licensee shall provide to Licensor for Licensor's review, comment and approval samples of the any Products and sample copies of materials associated with the Products or Services or used to advertise/promote the Products or Services.
8. **Breach of Licence:** Licensor may notify the Licensee if it objects to any proposed or actual use of the Marks if in Licensor's sole judgment (acting reasonably) Licensor believes that the Marks is being used or proposed to be used in a manner that erodes the goodwill associated with the Marks or otherwise reduces the value of the Marks. If Licensee is so notified, the Parties shall attempt to settle any dispute and Licensee shall, if directed by Licensor to do so, cease using or cease from using the Marks until the time such dispute has been settled between the Parties or otherwise finally determined.
9. **Infringement:** Licensee shall promptly notify Licensor upon becoming aware of any infringement or dilution of the Marks and shall cooperate fully with Licensor to stop such infringement or dilution. Licensor, in its sole discretion, will take any action that it deems necessary to protect the validity of the Marks, and Licensee hereby waives any rights that it may have pursuant to Section 50(3) of the *Trademarks Act* R.S.C., 1985, c. T-13, as amended from time to time.
10. **Indemnification:** Licensor does not assume any liability to Licensee, or third parties, for Licensee's goods or services, including the Products and Services, and Licensee shall defend, indemnify and hold harmless Licensor and its affiliates, successors and assigns, and their respective officers, directors, employees, agents, lawyers and representatives from and against any and all claims, causes of action, suits, damages, losses, liabilities, costs and expenses (including reasonable lawyer fees and expenses), which may be sustained or suffered as a result of any such third party claims or arising from a breach of this Agreement by Licensee including

any act or omission, which causes or is alleged to cause harm or a violation of any of the rights of any third party.

11. **Breach/Use Outside Limited Purpose:** In the event that Licensee breaches any of the terms of this Agreement, including use of the Marks outside the Limited Purpose or Territory as determined by Licensor in its sole discretion, but acting reasonably, Licensor shall have the option to terminate this Agreement immediately, and if so terminated, all subsequent use by Licensee will be unauthorized and subject to legal action. Upon the termination of this Agreement for any reason, all rights in the Marks granted to Licensee hereunder shall automatically revert to Licensor, Licensee shall have no further rights in the Marks, and Licensee shall immediately change its use of the Marks to uses that do not consist of or include the Marks or any words similar to the Marks. In the event of an unauthorized use of the Marks by Licensee, Licensee consents to the immediate entry of a court injunction preventing Licensee's further use of the Marks.
12. **Termination:** This licence granted to Licensee will terminate upon the expiry or termination of Licensee's services and other obligations under the Project Agreement.
13. **No Agency:** The Parties hereto are independent contractors with respect to each other, and nothing herein shall create any association, partnership, joint venture or agency relationship between them.
14. **Assignment:** Licensee may not convey, sublicense, assign, transfer, pledge, hypothecate, encumber or otherwise dispose of this Agreement without the prior written consent of Licensor, which consent may be unreasonably withheld.
15. **Headings:** The headings contained in this Agreement are for purposes of convenience only and shall not affect the meaning or interpretation of this Agreement.
16. **Notices:** All notices, requests, demands and other communications made in connection with this Agreement shall be made in the manner set out in the Project Agreement.
17. **Entire Agreement:** This Agreement constitutes the entire agreement between Licensor and Licensee with respect to the subject matter hereof and supersedes all prior agreements and understandings, whether oral, written, express or implied, between Licensor and Licensee.
18. **No Waiver:**
 - (a) No waiver made or given by a Party under or in connection with this Agreement shall be binding or effective unless the waiver is in writing, signed by an authorized representative of the Party giving such waiver, and delivered by such Party to the other Party. No waiver made with respect to any right, power or remedy in one instance will be deemed to be a waiver with respect to any other instance involving the exercise of such right, power, or remedy or with respect to any other right, power, or remedy.
 - (b) Failure by either Party to exercise any of its rights, powers or remedies hereunder or its delay to do so shall not constitute a waiver of those rights, powers or remedies. The single or partial exercise of a right, power or remedy shall not prevent its subsequent exercise or the exercise of any other right, power or remedy.

19. **Successors:** This Agreement shall be binding upon and shall enure to the benefit of the Parties and their respective successors and permitted assigns.
20. **Severability:** Each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Agreement is declared invalid, unenforceable or illegal by the courts of a competent jurisdiction, such provision may be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Agreement. If any such provision of this Agreement is invalid, unenforceable or illegal, the Parties shall, acting in good faith, promptly negotiate new provisions to eliminate such invalidity, unenforceability or illegality and to restore this Agreement as near as possible to its original intent and effect.
21. **Governing Law:** This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract, without regard to conflict of laws principles. Each of the Parties attorn to the jurisdiction of the courts of the Province of Ontario and all courts competent to hear appeals therefrom.
22. **Counterparts:** The Project Agreement may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all the Parties shall constitute a full, original and binding agreement for all purposes. Counterparts may be executed either in original or faxed form provided that any Party providing its signature in faxed form shall promptly forward to the other Party an original signed copy of the Project Agreement which was so faxed.

[Remainder of page intentionally blank – Next page is the signature page.]

IN WITNESS WHEREOF, the Parties have signed this Agreement effective as of the date set forth above.

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

Per:

Name:

Title:

Per:

Name:

Title:

I/We have authority to bind the corporation.

METROLINX

Per:

Name:

Title:

I/We have authority to bind the corporation.

[LICENSEE]

Per:

Name:

Title:

Per:

Name:

Title:

I/We have authority to bind the corporation.

EXHIBIT A

Trade-marks

[To be completed once trade-marks identified.]

MT MTDOCS 41633411v2

SCHEDULE 25

INSURANCE AND PERFORMANCE SECURITY REQUIREMENTS

1. WORKS PHASE INSURANCE COVERAGE

1.1 Subject to Section 6, from and after execution of this Project Agreement and until the Substantial Completion Date, Project Co shall, at its own expense, obtain and maintain, or cause to be obtained and maintained, exclusively through the IO Construction Insurance Program (“**IOICIP**”) the following insurances as further described in Appendix A to this Schedule 25:

- (a) “All Risks” Course of Construction Property, including Boiler and Machinery;
- (b) “Wrap-Up” Commercial General Liability and Non-Owned Automobile Liability; and
- (c) Project Specific Pollution Liability (combined Contractors’ Pollution Liability and Pollution Legal Liability).

1.2 Subject to Section 6, from and after execution of this Project Agreement and until the Substantial Completion Date, Project Co shall, at its own expense, obtain and maintain, or cause to be obtained and maintained, the following insurances as further described in Appendix A to this Schedule 25:

- (a) Project Specific Professional Liability;
- (b) Automobile Liability;
- (c) Commercial General Liability and Non-Owned Automobile Liability (to be maintained by the Construction Contractor and each of the Subcontractors involved in the Works) with respect to off-Site/Lands operations and activities;
- (d) Aircraft and Watercraft Liability (if any exposure);
- (e) “All Risks” Marine Cargo (if any exposure);
- (f) “All Risks” Contractors’ Equipment;
- (g) Comprehensive Crime; and
- (h) WSIB.

2. NO LIMIT ON RECOVERY

2.1 Notwithstanding any other provision of this Project Agreement, it is hereby agreed that the limits of liability specified in this Schedule 25 for insurance policies, whether such policies are required to be obtained (or caused to be obtained) by Contracting Authority or by Project Co, shall in no way limit Project Co's liability or obligations to Contracting Authority or Contracting Authority's liability or obligations to Project Co, as applicable.

3. ADDITIONAL COVER

3.1 Without prejudice to the other provisions of this Schedule 25, Contracting Authority and Project Co shall, at all relevant times and at their own expense, obtain and maintain (or cause to be obtained and maintained) those insurances which they are required to obtain and maintain (or cause to be obtained and maintained) by Applicable Law, or that they consider necessary.

3.2 Contracting Authority reserves the right to require Project Co to purchase such additional insurance coverage as Contracting Authority may reasonably require. Contracting Authority also reserves the right to request such higher or lower limits of insurance or otherwise alter the types of coverage requirements, their minimum amounts and deductibles (taking into consideration such matters as the nature of the Works, contract value, industry standards and availability of insurance) as Contracting Authority may reasonably require from time to time. Any additional costs of such additional and/or amended insurance shall be borne by Contracting Authority and any cost savings resulting from the implementation of such additional and/or amended insurance shall be for the account of Contracting Authority.

4. RESPONSIBILITY FOR DEDUCTIBLES

4.1 The Party responsible for the matter giving rise to a claim, to the extent responsible therefor, shall be responsible and liable for the payment of deductibles under any policy of insurance under which it is an insured party or under any policy of insurance Project Co is required to maintain (or cause to be maintained) under this Schedule 25. In the event that responsibility for the matter giving rise to the claim is indeterminable, the First Named Insured under the policy of insurance is responsible and liable for the payment of deductibles.

5. COOPERATION WITH INSURER'S CONSULTANT

5.1 If an insurer or an insurer's appointed consultant, for underwriting purposes or as a term of an insurance policy, needs to review any part of the performance of this Project Agreement, then Contracting Authority and Project Co shall, and shall require the Contracting Authority Parties and the Project Co Parties, respectively, to:

- (a) cooperate with the insurer and its consultant, including providing them with such information and documentation as they may reasonably require; and
- (b) allow the insurer and its consultant to attend meetings between Project Co and Contracting Authority (or, as applicable, and if reasonably required by the insurer, between Project Co and those engaged by or through Project Co).

6. UNINSURABLE RISKS

6.1 The term “**Uninsurable Risk**” means a risk, or any component of a risk, against which Project Co is required to insure pursuant to this Schedule 25 and for which, at any time after the date of this Project Agreement, either:

- (a) the insurance required pursuant to this Schedule 25 (including the terms and conditions specified for such insurance herein) is not available in relation to that risk:
 - (i) where Applicable Laws require that the insurance be licenced in the Province of Ontario to insure such a risk, by insurers licenced in the Province of Ontario; or
 - (ii) where Applicable Laws do not require that the insurance be licenced in the Province of Ontario to insure such a risk, by any insurer otherwise permitted under the terms of the Project Agreement; or
- (b) the insurance premium payable or the terms and conditions for insuring that risk are such that the risk is not generally being insured against in the worldwide insurance market.

Project Co has the onus of demonstrating, to Contracting Authority’s reasonable satisfaction that the foregoing definition applies to a particular risk.

6.2 Project Co shall notify Contracting Authority as soon as possible and, in any event, within 15 Business Days after becoming aware of same, that a risk, or any component of a risk, has become an Uninsurable Risk, and shall provide Contracting Authority with all relevant details in relation to such risk, including a copy of the relevant insurance policy.

6.3 Project Co and Contracting Authority shall, as soon as possible following the provision of the notice referred to in Section 6.2, meet to discuss, in good faith, the appropriate means by which the Uninsurable Risk should be managed and, if Project Co and Contracting Authority are able to agree to alternative arrangements, the Uninsurable Risk shall be managed in accordance with such alternative arrangements.

- 6.4 In the event that Project Co and Contracting Authority, each acting in good faith, are unable to agree to alternative arrangements with respect to the management of an Uninsurable Risk within 15 Business Days following the expiry of the period referred to in Section 6.2, Contracting Authority may, in its absolute discretion, either:
- (a) elect to assume responsibility for the Uninsurable Risk and, in respect of the year in which the relevant risk becomes an Uninsurable Risk and every year thereafter, withhold, in equal instalments over the course of such year, from the payment or payments otherwise due to Project Co an amount equal to the annual premium (index linked) relating to the Uninsurable Risk as was current on the date immediately prior to the date on which the relevant risk became an Uninsurable Risk, in which case this Project Agreement shall continue in full force and effect; or
 - (b) terminate this Project Agreement in accordance with Section 38.2 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 38.2 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.
- 6.5 On the occurrence of an Uninsurable Risk, Contracting Authority may, in its absolute discretion, either:
- (a) pay to Project Co an amount equal to the insurance proceeds that would have been payable to Project Co in connection with such Uninsurable Risk had the relevant insurance continued to be available, in which case this Project Agreement shall continue in full force and effect; or
 - (b) terminate this Project Agreement in accordance with Section 38.2 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 38.2 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.
- 6.6 With respect to any Uninsurable Risk:
- (a) Project Co shall continue to approach the insurance market on a regular basis and, in any event, at intervals of not less than 180 days and use reasonable efforts to obtain (or cause to be obtained) insurance to cover as much or all of the Uninsurable Risk as can be insured in the available insurance market from time to time; and

(b) Subject to Section 6.6(a), Project Co shall be relieved of its obligation to maintain (or cause to be maintained) insurance in respect of the Uninsurable Risk.

6.7 Where a risk which was previously an Uninsurable Risk ceases to be so, Project Co shall, at its own expense, obtain and maintain (or cause to be obtained and maintained) insurance in accordance with the requirements of this Schedule 25 in respect of the risk and the provisions of this Section 6 shall no longer apply to such risk.

7. TOTAL OR SUBSTANTIAL DESTRUCTION

7.1 In the event of damage to, or destruction of, all or substantially all of the Works for which there is coverage under an insurance policy, any insurance proceeds received by Project Co shall first be applied so as to ensure the performance by Project Co of its obligations under this Project Agreement, including, where appropriate, the reinstatement, restoration or replacement of the Works, or any other assets, materials or goods necessary or desirable for the carrying out of the Works, all in accordance with the terms of the Insurance Trust Agreement.

8. SUBCONTRACTORS

8.1 Project Co shall require that all Subcontractors are covered by, or obtain, the insurance described in this Schedule 25, provided that Project Co shall determine the applicable limits to be obtained for such insurance. Project Co shall be solely responsible and liable for any damages which Contracting Authority may suffer as a direct result of Project Co's failure to comply with the foregoing.

8.2 If Project Co receives notice that any Subcontractor employed by or through Project Co is not covered by any insurance required by this Schedule 25 to be obtained (or cause to be obtained) by Project Co, Project Co shall:

- (a) ensure that such insurance coverage is put in place;
- (b) remove the Subcontractor from the Lands and ensure that such Subcontractor does not perform any further part of the Works until after such insurance coverage is put in place; or
- (c) if the Subcontractor cannot be covered by a particular policy as required by this Schedule 25, replace the Subcontractor with a new Subcontractor who can obtain the required insurance coverage; it being acknowledged by Project Co that the requirements and restrictions set forth in the Project Agreement regarding new and replaced Subcontractors shall be complied with.

9. RENEWAL

9.1 Project Co shall provide to Contracting Authority, at least five Business Days prior to the expiry date of any policy of insurance required to be obtained (or cause to be obtained) by Project Co pursuant to this Schedule 25, evidence of the renewal of each such policy satisfactory to Contracting Authority, acting reasonably.

10. NAMED AND ADDITIONAL INSUREDS AND WAIVER OF SUBROGATION

- 10.1 All insurance provided by Project Co, shall:
- (a) include Project Co, Project Co Parties, Contracting Authority, Contracting Authority Parties and City of Toronto and as Named Insureds to the extent specified in Appendix A of this Schedule 25;
 - (b) include Contracting Authority, Contracting Authority Parties, City of Toronto, Utility Companies, MTO, the Lenders and the Lenders' Agent or Her Majesty the Queen in right of Ontario, Her Ministers, agents, appointees and employees, as the case may be, as Additional Insureds, or loss payees to the extent of their respective insurable interests to the extent specified in Appendix A of this Schedule 25;
 - (c) except with respect to the Project Specific Professional Liability, Automobile Liability, Comprehensive Crime and WSIB specified in Appendix A to this Schedule 25, contain a waiver of subrogation as against Contracting Authority, Contracting Authority Parties and their respective shareholders, officials, directors, officers, employees, servants, consultants (other than design consultants) and agents, the Lenders and the Lenders' Agent;
 - (d) contain a breach of warranty provision whereby a breach of a condition by Project Co or Project Co Parties will not eliminate or reduce coverage for any other insured; and
 - (e) be primary insurance with respect to any similar coverage provided by any insurance obtained by or available to Contracting Authority or the Lenders without any right of contribution of any insurance carried by Contracting Authority or the Lenders.

11. CERTIFICATES OF INSURANCE AND CERTIFIED COPIES OF POLICIES

- 11.1 Prior to the execution of the Project Agreement, Project Co will provide Contracting Authority with certified copies of policies, confirming that the insurances specified in Section 1.1 have been obtained and are in full force and effect.
- 11.2 Prior to the execution of the Project Agreement, Project Co will provide Contracting Authority with certificates of insurance or certified copies of policies, confirming that the insurances specified in Section 1.2 have been obtained and are in full force and effect. If certificates of insurance are provided, certified copies of the entire contents of all relevant insurance policies will be subsequently provided to Contracting Authority no later than 90 days after execution of this Project Agreement.

12. FAILURE TO MEET INSURANCE REQUIREMENTS

- 12.1 If Project Co fails to obtain or maintain, or cause to be obtained and maintained, the insurance required by this Schedule 25, fails to furnish to Contracting Authority a certified copy of each policy required to be obtained by this Schedule 25 or if, after furnishing such certified copy, the policy lapses, is cancelled, or is materially altered, then Contracting Authority shall have the right, without obligation to do so, to obtain and maintain such insurance itself in the name of Project Co, and the cost thereof shall either, at Contracting Authority's option, be payable by Project Co to Contracting Authority on demand or be deducted by Contracting Authority from the next payment or payments otherwise due to Project Co.
- 12.2 If coverage under any insurance policy required to be obtained (or caused to be obtained) by Project Co should lapse, be terminated or be cancelled, then, if directed by Contracting Authority, all work by Project Co shall immediately cease until satisfactory evidence of renewal is produced.

13. MODIFICATION OR CANCELLATION OF POLICIES

- 13.1 Except as noted in Appendix A to this Schedule 25, all insurance provided by Project Co shall contain endorsements confirming that the policy will not be cancelled, adversely reduced, adversely materially altered or adversely materially amended without the insurer(s) giving at least 90 days prior written notice by registered mail, at the address specified, to Contracting Authority, the Lenders' Agent and IO. For greater certainty, the terms "adversely reduced", "adversely materially altered" and "adversely materially amended" as used in this provision shall mean any decrease or reduction in policy limits, aggregate limits or sub-limits (other than as a result of claims under the policy), any increase in any policy deductible or self-insured retention, any reduction in the policy coverage period, cancellation or suspension of coverage with respect to any insured parties from the time the policy was issued for that policy period, addition of any exclusions or restrictions from the time the policy was issued for that policy period and any reduction or restriction in the scope of coverage provided under the policy, in all cases when such adverse reduction, adverse material alteration or adverse material amendment is initiated by the insurer.
- 13.2 All insurance provided by Project Co shall contain endorsements confirming that, in the event of cancellation for non-payment of premium, the insurer(s) will give at least 15 days prior written notice by registered mail, at the address specified, to Contracting Authority, the Lenders' Agent and IO.
- 13.3 With respect to insurances described in Section 1.1(a), (b) and (c), and Section 1.2(d), breach of any of the terms or conditions of the policies required to be provided by Project Co, or any negligence or wilful act or omission or false representation by an Insured under these policies, shall not invalidate the insurance with respect to Contracting

Authority, the Lenders or any other Insured, but only to the extent that such breach is not known to these parties.

14. INSURERS

14.1 All policies of insurance to be obtained (or caused to be obtained) by Project Co in accordance with this Schedule 25 shall be issued by financially sound insurers acceptable to Contracting Authority and Lenders, acting reasonably, and, where required by statute, be licenced to insure such risk in the Province of Ontario.

14.2 To be eligible to provide insurance, an insurer must have the capacity to provide the particular insurance and shall have current ratings from time to time of either:

- (a) a Financial Strength Rating of not lower than “A-” for three out of the previous five 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 Contracting Authority and Lenders, acting reasonably, with respect to the insurances required by this Schedule 25.

15. POLICY TERMS AND CONDITIONS

15.1 All policies of insurance to be obtained (or caused to be obtained) by Project Co in accordance with this Schedule 25 shall be in form and substance satisfactory to Contracting Authority, its insurance advisors and Lenders, acting reasonably.

15.2 To achieve the minimum limits for any type of insurance required under Appendix A to this Schedule 25, it is permissible to arrange the insurance under a single policy, or by a combination of primary, umbrella and/or excess policies.

16. FAILURE TO COMPLY

16.1 Neither failure to comply nor full compliance by Project Co with the insurance provisions of this Schedule 25 shall relieve Project Co of its liabilities and obligations under this Project Agreement.

17. PERFORMANCE SECURITY REQUIREMENTS

17.1 [REDACTED].

18. INSURANCE TRUST AGREEMENT

18.1 All losses under the “All Risks” Course of Construction Property Insurance policy, including Boiler & Machinery Insurance carried by Project Co prior to Substantial Completion which relate to equipment purchased or owned by Contracting Authority shall be payable solely to Contracting Authority and shall not be payable to the Account Trustee or distributed pursuant to the Insurance Trust Agreement.

19. INCIDENT REPORTING AND CLAIM SETTLEMENT

19.1 Project Co shall:

- (a) maintain a written register of all damages, events, losses, circumstances, situations, claims or occurrences, including but not limited to incidents which might result in a claim under any of the policies of insurance required under this Schedule and of all claims made by third parties involving bodily injury, illness, death, personal injury or property damage in respect of the Project (each such incident, an “**Incident**”). Such register shall indicate the date of the Incident, the date reported to Project Co, the type of Incident, and the circumstances giving rise to the Incident. Such register shall indicate the date of the Incident, and monthly and/or quarterly updates reflecting developments in such Incident until each such Incident is resolved, completed and designated as closed;
- (b) allow Contracting Authority to inspect such register at any time and provide a copy of such register to the Contracting Authority monthly and/or quarterly and on the Contracting Authority’s reasonable request. Participate in monthly and/or quarterly update meetings to review developments in such Incidents as may be requested by Contracting Authority;
- (c) in collaboration with Contracting Authority appoint a claims adjuster (“Control Adjuster”) to investigate and adjudicate Incidents falling or likely to fall within the insurance deductibles. Control Adjuster’s fees to be paid by Project Co;
- (d) arrange and attend quarterly claims meetings with Contracting Authority representatives, Control Adjuster, the Insurance Claims Adjuster and insurers’

- representatives to review the status of all such Incidents, including but not limited to any disputed or denied Incidents or claims arising therefrom;
- (e) meet with Contracting Authority at Contracting Authority’s reasonable request to discuss any such Incident;
 - (f) promptly upon becoming aware of an Incident, but in any event no later than 5 days after Project Co becomes aware of such Incident, notify Contracting Authority’s claims and insurance group, Control Adjuster and the insurers’ claim representatives assigned to the Project of the full particulars of such Incident; Project Co shall be solely responsible and liable for any claims denied by Insurers, or any deductibles and self-insured retentions which Contracting Authority may suffer or become responsible for as a direct result of Project Co’s failure to comply with the foregoing;
 - (g) for all claims below the deductible involving Third Parties and reported to Project Co (either directly or via Contracting Authority), Project Co will acknowledge the claim within 10 days to the claimant and provide contact details for claimants to follow up on claim status with Project Co;
 - (h) provide reasonable access, support, documents and information to Contracting Authority representatives, including Contracting Authority claims and insurance personnel, and Control Adjuster in respect of any Incident;
 - (i) as soon as practicable but no later than 7 days after becoming aware of the Incident, provide reasonable access, support, documents and information to the Control Adjuster and any adjuster assigned by the insurer(s) (“**Insurance Claims Adjuster**”); to investigate any Incident;
 - (j) comply with Contracting Authority’s reasonable requests regarding the investigation, negotiation and settlement of any such Incident or claim arising therefrom;
 - (k) without prejudice to the provisions of this Agreement, including but not limited to Schedule 18 – Communications and Public Engagement Protocol, comply with Contracting Authority’s reasonable requests regarding communication, including but not limited to communication with claimant(s) and members of the public, in respect of any such Incident and claim arising therefrom;
 - (l) upon receiving recommendations on liability and quantum from the Control Adjuster or Insurance Claims Adjuster, settle any claims (subject to Contracting Authority’s consent, not to be unreasonably withheld) falling within the deductibles, self-insured retentions or waiting periods of the policies of insurance

required under this Agreement, using a release on terms reasonably required by Contracting Authority, and including Project Co, Contracting Authority and any parties reasonably required by Contracting Authority, as releasees thereunder; and

- (m) ensure that Insurance Claims Adjuster or Control Adjuster, as applicable, shall provide recommendations on liability and quantum in respect of such Incidents to Project Co, the insurers (for losses in excess of the policy deductible) and to Contracting Authority representatives assigned in accordance with this Section 19. For clarity, Contracting Authority shall have no responsibility for the costs of any such adjuster, which shall be borne by Project Co or the insurer(s).

19.2 Wherever the requirements of this Section 19 are at variance with the terms and conditions of the actual insurance policy(ies), the terms and conditions of the actual insurance policy(ies) will prevail.

19.3 The address for provision of notice of Incidents to the Contracting Authority's Claims and Insurance group is as follows:

[REDACTED]

**APPENDIX A TO SCHEDULE 25
INSURANCE REQUIREMENTS**

[REDACTED]

**APPENDIX B TO SCHEDULE 25
PERFORMANCE BOND**

[REDACTED]

**APPENDIX C TO SCHEDULE 25
FORM OF LABOUR AND MATERIAL PAYMENT BOND**

[REDACTED]

SCHEDULE 26**RECORD PROVISIONS****1. General Requirements**

- 1.1 Project Co shall prepare, retain and maintain at its own expense, all the records (including superseded records) referred to in Section 2.1, as follows:
- (a) in accordance with this Section 1;
 - (b) in accordance with the Project Agreement;
 - (c) in accordance with the requirements of Good Industry Practice;
 - (d) having due regard to the guidelines and policies of the Office of the Information and Privacy Commissioner of Ontario;
 - (e) in accordance with the most stringent of Project Co's and the Construction Contractor's normal business practices;
 - (f) in accordance with Canadian GAAP;
 - (g) in chronological order;
 - (h) in electronic format in accordance with Contracting Authority's designated record keeping system;
 - (i) in sufficient detail, in appropriate categories and generally in such a manner as to enable Project Co to comply with Project Co's obligations under Section 28 of the Project Agreement; and
 - (j) in a form that is capable of audit.
- 1.2 Project Co shall retain and maintain all records at the New Metrolinx Infrastructure or otherwise on the Metrolinx Lands, in addition to retaining and maintaining records referred to in Section 2.1 in electronic format on Contracting Authority's designated record keeping system.
- 1.3 Wherever practical, original records shall be retained and maintained in a hard copy and electronic form. Project Co may retain true copies of original records where it is not practical to retain original records.
- 1.4 Any drawings (including the As Built Drawings) required to be made or supplied pursuant to the Project Agreement shall be on the most updated version of the applicable software and editable in updated base software format, and when printed, be of a size appropriate to show the detail to be depicted clearly without magnifying aids, shall be consistent in size and format to drawings previously submitted by Project Co to Contracting Authority, and shall conform to the Output Specifications, Good Industry Practice, and the CAD Standards. All drawings are to be submitted

- via Contracting Authority's electronic control management system, with one hard copy provided to Contracting Authority. Project Co shall make or supply drawings and other documents in such form as has been agreed by the Parties and shall include secure back up facilities. Contracting Authority shall provide Project Co access to Contracting Authority's electronic control management system.
- 1.5 Records shall be stored in electronic format within Contracting Authority's electronic control management system where Project Co shall have access thereto and will continue to have access thereto, such that Contracting Authority will be able to read, copy, download, and search same without licence or payment.
- 1.6 Subject to Sections 1.7 and 1.8, Project Co shall retain and maintain in safe storage, at its expense, all records referred to in Section 2.1 for a minimum period of at least seven years or such longer period as required by Applicable Law.
- 1.7 Project Co shall provide Notice to Contracting Authority if Project Co wishes to destroy any records referred to in this Schedule 26, or in respect of which the required period under Section 1.6 or under Applicable Law for their retention has expired. The Parties agree that:
- (a) within 60 days following such Notice, Contracting Authority may elect to require Project Co to deliver such records to Contracting Authority, in which case Project Co shall, at the expense of Contracting Authority, deliver such records (with the exception of Sensitive Information) to Contracting Authority in the manner and to the location as Contracting Authority shall specify; or
 - (b) if Contracting Authority fails to notify Project Co of its election pursuant to Section 1.7(a) within such 60 day period, Project Co may, at its expense, destroy such records.
- 1.8 In the event of termination of the Project Agreement in accordance with its terms, Project Co shall deliver all records that Project Co retains and maintains pursuant to this Schedule 26 to Contracting Authority in the manner and to the location that Contracting Authority shall reasonably specify. Contracting Authority shall make available to Project Co all the records Project Co delivers pursuant to this Section 1.8 subject to prior reasonable Notice. Project Co may deliver true copies of original records required by:
- (a) statute to remain with Project Co;
 - (b) Project Co in connection with its fulfilment of any outstanding obligations under the Project Agreement; or
 - (c) Project Co in connection with its fulfilment of any outstanding obligations under the Lending Agreements.
- 1.9 Where the termination of the Project Agreement arises:
- (a) as a result of a Contracting Authority Event of Default or pursuant to Section 38.3 of the Project Agreement, then the costs of delivering the records and the costs for retaining such records in safe storage will be borne by Contracting Authority; or

- (b) for any other cause, then the costs of delivering the records and the costs for retaining such records in safe storage for a period of at least six years following the Termination Date (unless a longer period is required by Applicable Law), shall be borne by Project Co.
- 1.10 Within 30 days after the end of each year or partial year of the Project Term, Project Co shall deliver to Contracting Authority a report, as reasonably requested by Contracting Authority in connection with Contracting Authority's financial reporting, detailing to the best of Project Co's knowledge at the time of any such report any and all liabilities, claims and demands, including contingent liabilities, claims and demands, that Project Co has or may have against Contracting Authority or that may be owing by Contracting Authority to Project Co. The Parties acknowledge and agree that the contents of any such report or the failure to mention any matter in any such report shall not limit either Party's rights or remedies against the other Party as contemplated by the Project Agreement.
- 1.11 Project Co shall provide to Contracting Authority:
- (a) not later than 45 days after the end of the first three fiscal quarters of Project Co in each fiscal year, part or all of which falls in a year of the Project Term, a copy of Project Co's unaudited financial statements in respect of that period, including an unaudited balance sheet and an unaudited statement of income, all prepared in accordance with GAAP (as defined in the Lending Agreements), and
- (b) not later than 120 days after the end of each fiscal year, a copy of Project Co's annual audited financial statements, in respect of that period, prepared in accordance with Applicable Law and GAAP (as defined in the Lending Agreements), together with a certificate of the auditors of Project Co setting forth that they have examined such statements and have conducted a general review of accounting procedures and such tests of accounting records and other supporting evidence as they consider necessary or advisable and confirming that in their opinion such statements present fairly the financial position of Project Co and the results of its operations for the fiscal year reported on and have been defined in accordance with GAAP (as defined in the Lending Agreements),

all of which documents, whether or not marked or identified as confidential or proprietary but subject to the exceptions contained in Section 42 of the Project Agreement, shall be treated by Contracting Authority as Confidential Information of Project Co.

[Note to Proponents: To be conformed to the requirements of Project Co's Lenders.]

2. Records To Be Kept

- 2.1 Without limiting any other requirement of the Project Agreement, Project Co shall prepare, retain and maintain at its own expense:
- (a) the Project Agreement, its Schedules and the Ancillary Documents, including all amendments to such agreements;

- (b) all records relating to the appointment and replacement of the Contracting Authority Representative and the Project Co Representative;
- (c) any documents, drawings (including the As Built Drawings) or submissions in accordance with Schedule 10 – Review Procedure;
- (d) any documents relating to Development Approvals and other Project Co Permits, Licences, Approvals and Agreements, including any refusals and appeals relating to any applications;
- (e) a complete record of construction, recorded as data referenced within the BIM model, including:
 - (i) all records generated by the Geotechnical Instrumentation and Monitoring Plan (as described in Schedule 15 – Output Specifications), instrument locations, baseline readings, routine monitoring records, and tunnel construction monitoring records;
 - (ii) records of all tunnel boring machine data and its integration with movement monitoring data in real time (as described in Schedule 15 – Output Specifications);
 - (iii) all records of Pre-Cast Tunnel Liner manufacturing and installation;
 - (iv) all records of Bored Tunnels alignment periodic surveys (as described in Schedule 15 – Output Specifications);
 - (v) as-built locational surveys of the Bored Tunnels alignments, Shafts, permanent infrastructure and Headwalls;
 - (vi) records of all support of excavation performed by Project Co (as described in Schedule 15 – Output Specifications), including (but not limited to) records pertaining to the strength of the structural elements and verticality control during installation;
 - (vii) records of water ingress testing;
 - (viii) records of all dewatering pumped volumes and timing;
 - (ix) records of all pre-construction condition surveys and post-construction condition surveys (as described in Schedule 15 – Output Specifications), including a log identifying corrective actions;
 - (x) records of all geotechnical and environmental investigations performed by Project Co (as described in Schedule 15 – Output Specifications), including records pertaining to the decommissioning of any monitoring wells and the location of any well casings;

- (xi) Works progress photography;
 - (xii) construction notices or other communications with adjacent businesses, property owners or tenants;
 - (xiii) planned and unplanned interruptions of Utility Infrastructure;
 - (xiv) a complaints log including responses and any corrective action; and
 - (xv) any other items as requested by Contracting Authority from time to time.
- (f) all records relating to any statutory inspections of the New Metrolinx Infrastructure, the New Third Party Infrastructure, or the Metrolinx Lands, including any roadways and tracks, recorded as data referenced within the BIM model;
- (g) any notices, reports, results and certificates relating to any Milestone Payment Completion, Substantial Completion, Final Completion and Project Co Commissioning;
- (h) all operation and maintenance manuals, recorded as data referenced within the BIM model;
- (i) any documents relating to events of Force Majeure, Delay Events, Compensation Events and Relief Events;
- (j) all documents submitted in accordance with Schedule 22 – Variation Procedure;
- (k) any documents related to decisions resulting from the Dispute Resolution Procedure;
- (l) any documents related to a Project Co Change in Ownership or Change in Control;
- (m) any documents relating to any Refinancing;
- (n) all accounts for Taxes and transactions relating to Taxes, including in relation to HST applicable to the Project, but excluding any records for:
- (i) Project Co's liabilities or payments under the *Income Tax Act* (Canada), the *Income Tax Act* (Ontario) or any similar statute in any other jurisdiction;
 - (ii) Project Co's liabilities or payments for capital taxes based on or measured by the capital of Project Co;
 - (iii) the withholdings of any payments by Project Co; or
 - (iv) any business or activity in addition to the business or activities related to, and conducted for, the purpose of the Project;
- (o) the financial accounts of Project Co referred to in Section 1.11;

- (p) all records required by Applicable Law (including in relation to health and safety matters) to be maintained by Project Co with respect to the Works;
- (q) any documents relating to insurance and insurance claims;
- (r) all Jointly Developed Materials; and
- (s) all other records, documents, information, notices or certificates expressly required to be produced or maintained by Project Co pursuant to the Project Agreement recorded as data referenced within the BIM model.

2.2 Either Party may review the documents required to be prepared, retained and maintained by Project Co pursuant to Section 2.1.

MT MTDOCS 20634294

SCHEDULE 27**DISPUTE RESOLUTION PROCEDURE****1. GENERAL****1.1 Definitions**

- (a) The following terms shall have the following meanings in the Project Agreement:
- (i) “**Adjudication**” means construction dispute interim binding adjudication as defined in Section 5.1(a).
 - (ii) “**Adjudication Dispute**” has the meaning given in Section 5.1(a)(ii).
 - (iii) “**Adjudicator**” has the meaning given in Section 5.1(a).
 - (iv) “**ADRIC Rules**” has the meaning given in Section 8.1(b).
 - (v) “**Appointment or Challenge Dispute**” has the meaning given in Section 7.3(a)(iii).
 - (vi) “**Arbitration Act, 1991 (Ontario)**” means the *Arbitration Act, 1991*, S.O. 1991, c. 17, as amended from time to time.
 - (vii) “**Award**” has the meaning given in Appendix “C” to this Schedule 27.
 - (viii) “**CDB**” means the Combined Dispute Board as defined in Section 6.1(a).
 - (ix) “**CDB Chair**” has the meaning given in Section 6.1(c).
 - (x) “**CDB Member Agreement**” has the meaning given in Section 6.1(a).
 - (xi) “**CDB Member Statement**” has the meaning given in Section 6.3(a).
 - (xii) “**Date of Commencement**” has the meaning given in Section 6.7(b).
 - (xiii) “**Dispute**” means all disagreements, disputes, or controversies arising during the Project Term in relation to or arising out of the interpretation, enforceability, performance, breach, or validity of the Project Agreement or any provision of the Project Agreement, the rights or obligations of the Parties under the Project Agreement, or the exercise or failure to exercise a discretion or power given to a Party under the Project Agreement.
 - (xiv) “**Guarantor**” has the meaning given in Appendix “C” to this Schedule 27.
 - (xv) “**Institute**” means the ADR Institute of Canada or its successor.
 - (xvi) “**Member**” has the meaning given in Section 6.1(a).
 - (xvii) “**Notice of Adjudication**” has the meaning given in Section 5.1(b).

- (xviii) “**Notice of Arbitration**” has the meaning given in Section 7.2(a).
- (xix) “**Notice of Dispute**” has the meaning given in Section 1.6(a).
- (xx) “**Party Executive**” has the meaning given in Section 3(a).
- (xxi) “**Party Representative**” has the meaning given in Section 2(a).
- (xxii) “**Project Agreement Arbitration**” has the meaning given in Section 11(a).
- (xxiii) “**Public Interest Disputes**” are Disputes which the below Party, acting reasonably, determines involve alleged breaches of the Project Agreement by the other Party or any act or omission on the part of the other Party or any party with whom the other Party is legally affiliated or for whom the other Party is legally responsible (including a Project Co Party or a Contracting Authority Party, as applicable), which:
- (A) as determined by Contracting Authority alone, has or could have a significant adverse effect on the public interest;
 - (B) as determined by Contracting Authority or Project Co, creates 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 Project or to the environment; or
 - (C) as determined by Contracting Authority alone, may potentially compromise the reputation or integrity of Contracting Authority or any Governmental Authority, the performance of Governmental Activities or the Province of Ontario’s transportation system, so as to negatively affect public confidence in Contracting Authority, any Governmental Authority, or the transportation system.
- (xxiv) “**Reply**” has the meaning given in Section 6.8(a).
- (xxv) “**Rules of Civil Procedure**” means R.R.O. 1990, Reg. 194: Rules of Civil Procedure under the *Courts of Justice Act*, R.S.O. 1990, c. C.43 as amended from time to time.
- (xxvi) “**Statement of Case**” has the meaning given in Section 6.7(a).
- (xxvii) “**Technical Member**” has the meaning given in Section 6.1(c).
- (xxviii) “**Third Party Arbitration**” has the meaning given in Section 11(a).
- (xxix) “**Third Party Litigation**” has the meaning given in Section 11(b).

1.2 Applicability of this Schedule 27

- (a) All Disputes shall be resolved in accordance with the provisions of this Schedule 27.

1.3 Limitation Periods

- (a) All Disputes remain subject to the statutory limitation periods set out in the *Limitations Act, 2002*, S.O. 2002, c. 24, Sched. B, as amended from time to time, and section 52(1) of the *Arbitration Act, 1991* (Ontario), except as modified herein.
- (b) The limitation period applicable to a given Dispute (including the associated claim and any related counterclaims) shall be tolled when an effective Notice of Dispute is provided by a Party in respect of the Dispute.
- (c) The period during which the Dispute was tolled shall not be counted for the purpose of determining the expiry of the applicable limitation period.
- (d) Any tolling of a limitation period applicable to a given Dispute shall end, and the limitation period begin running again, as of the first date upon which the Dispute may be referred to arbitration pursuant to Section 7.2(b)(ii).

1.4 Project Co's Obligation to Continue Performance During Dispute Resolution

- (a) Project Co and Contracting Authority shall diligently carry out their respective obligations under the Project Agreement during the pendency of any Disputes, including CDB proceedings for a recommendation or decision, arbitration proceedings or litigation proceedings. If during the pendency of any Dispute it is considered necessary by either Party to proceed in respect of a matter that is in Dispute, then subject to Section 1.4(b), either Party may proceed without prejudice to Project Co or Contracting Authority's rights in respect of the Dispute (including in respect of entitlement to Delay Events, Compensation Events and Variations).
- (b) Contracting Authority may give such written instructions as in Contracting Authority's opinion are necessary in respect of the matter that is in Dispute or for the proper performance of the Works, including to proceed with Works which are the subject of the Dispute, and Project Co shall comply with such instructions forthwith while a Dispute is pending. A pending Dispute will not justify Project Co's failure or refusal to comply with written instructions issued by Contracting Authority.
- (c) Any claims for time and/or cost consequences of complying with this Section 1.4 shall be addressed as part of the Dispute.

1.5 Mutual Resolution Efforts

- (a) The Parties agree that at all times, each of them will make reasonable efforts to:
 - (i) resolve in the ordinary course in accordance with the Project Agreement any and all Disputes arising between them starting with the Project teams of the Parties;
 - (ii) following issuance of a Notice of Dispute, resolve by amicable negotiations any and all Disputes arising between them on a without prejudice basis starting with the Project teams of the Parties; and

- (iii) at all times provide full, frank, candid and timely disclosure of relevant facts, information and documents (except documents subject to legal privilege) as may be required or reasonably requested by the other Party to facilitate the resolution of any Disputes.
- (b) Subject to Sections 2(b) and 3(d), a Party may communicate facts, documents or information at any time on an expressly without prejudice basis to facilitate resolution of a Dispute on the merits.
- (c) The communication of facts, documents, or information by a Party on a without prejudice basis does not relieve that Party of any obligation to deliver any facts, documents or information required under the Project Agreement. Delivery of any facts, documents or information required under the Project Agreement in connection with a Dispute is required as a precondition to the Parties proceeding with any further steps contemplated in Sections 2 to 9. A Party may refuse to proceed with any further dispute resolution steps contemplated in Sections 2 to 9 in relation to a Dispute if the Party initiating a Dispute fails to deliver all such facts, documents or information as required under the Project Agreement in relation to the Dispute.

1.6 Notice of Dispute

- (a) If the Parties are unable to resolve a Dispute in the ordinary course in accordance with the Project Agreement, either Party may deliver to the Contracting Authority Representative or the Project Co Representative, as applicable, a written notice of dispute (the “**Notice of Dispute**”) which must meet the requirements of Section 1.6(b) in order to be effective, and which shall not be delivered on a without prejudice basis, nor shall any amendments or supplements be delivered on a without prejudice basis.
- (b) To be effective, the Notice of Dispute must:
 - (i) expressly state that it is a contractual Notice of Dispute;
 - (ii) set out reasonably detailed particulars of the Dispute, including the specific events or circumstances giving rise to the Dispute and the basis for any entitlement or relief sought, with reference to the relevant provisions of the Project Agreement;
 - (iii) not be a part of a Dispute that has been divided into multiple smaller Disputes in order for the Party issuing the Notice of Dispute to ensure that the value of the Dispute is less than **[REDACTED]** for the purpose of referring it to the CDB for a final and binding decision in accordance with Section 6.6(d);
 - (iv) describe the remedy, relief or resolution sought by the Party issuing the Notice of Dispute, including the duration of any extension of time and/or additional compensation claimed (or estimated duration or compensation, if the events that are the subject of the Dispute are continuing);
 - (v) attach supporting documents relevant to the Dispute, including documents relevant to establishing entitlement to any claimed relief and substantiating the quantum of the relief sought (including in relation to any extensions of time or compensation requested, or set out the basis for the estimate, if an estimate is provided pursuant to Section 1.6(b)(iii)), and any other facts, documents or information required to be provided under the

applicable provisions of the Project Agreement in connection with the matter giving rise to the Dispute; and

- (vi) be signed by the Contracting Authority Representative, if given by Contracting Authority, or by the Project Co Representative, if given by Project Co.
- (c) The Notice of Dispute shall initiate the dispute resolution procedure described in Sections 2 to 9. An effective Notice of Dispute must be delivered as a precondition to the Parties proceeding with any further steps contemplated in Sections 2 to 9 and a Party may refuse to proceed with any further dispute resolution steps contemplated in Sections 2 to 9 in relation to a Dispute if the Party initiating the Dispute fails to deliver an effective Notice of Dispute in relation to that Dispute, subject to the *Construction Act* (Ontario). A dispute regarding the effectiveness of the Notice of Dispute may be referred to the CDB for a decision.
- (d) The requirement to deliver an effective Notice of Dispute cannot be waived or amended except as expressly agreed to by the Parties pursuant to Section 14(b).

2. AMICABLE RESOLUTION BY PARTY REPRESENTATIVES

- (a) Within 15 Business Days from the date of delivery of an effective Notice of Dispute in accordance with Section 1.6(a) or receipt of a decision from the CDB confirming the effectiveness of a challenged Notice of Dispute, the Contracting Authority Representative and the Project Co Representative (individually a “**Party Representative**” and collectively “**Party Representatives**”) shall meet for the express purpose of attempting to resolve the Dispute.
- (b) All discussions and negotiations held and all communications exchanged between the Parties in connection with the Party Representative negotiations shall be considered to be on a without prejudice basis to facilitate the resolution of the Dispute.
- (c) Either Party may terminate negotiations between Party Representatives by providing Notice of termination of the Party Representative negotiations any time after:
 - (i) the expiry of the period of time referenced in Section 2(a), if a negotiation meeting has not been scheduled by the Parties, acting reasonably; or
 - (ii) the day after the last attendance of the Party Representatives at a negotiation meeting scheduled by agreement of the Parties for the express purpose of attempting to resolve the Dispute,whichever is later.
- (d) The requirements of this Section 2 cannot be waived or amended except as expressly agreed to by the Parties pursuant to Section 14(b).

3. AMICABLE RESOLUTION BY PARTY EXECUTIVES

- (a) Upon termination of the Party Representative negotiations in accordance with Section 2(c), either Party may, by Notice, escalate a Dispute for amicable resolution by an executive of each Party (each a “**Party Executive**” and collectively the “**Party Executives**”).

-
- (b) The selected Party Executive for each Party shall be:
- (i) in a position of authority above that of the Contracting Authority Representative or the Project Co Representative, as the case may be; and
 - (ii) shall have or be delegated full authority to resolve and settle the Dispute subject only to approval of the Chief Executive Officer and board of directors or similar governing or regulatory body of the Party (as applicable).
- (c) Once a Dispute is referred to them, the Party Executives shall promptly and diligently meet and make reasonable efforts to resolve the Dispute.
- (d) All discussions and negotiations held, and all communications exchanged, between the Parties in connection with the Party Executive negotiations shall be considered to be on a without prejudice basis to facilitate the resolution of the Dispute.
- (e) Either Party may terminate negotiations between Party Executives after 15 Business Days following the last attendance of the Party Executives at a negotiation meeting scheduled by agreement of the Parties, acting reasonably, for the express purpose of attempting to resolve the Dispute by providing Notice of termination of the Party Executive negotiations.
- (f) The requirements of this Section 3 cannot be waived or amended except as expressly agreed to by the Parties pursuant to Section 14(b).

4. MEDIATION

4.1 Referral to Mediation

- (a) The Parties may agree to refer any Dispute to without prejudice facilitative mediation (being non-binding, interest-based mediation conducted by a neutral third party) at any time following delivery of an effective Notice of Dispute.
- (b) The Parties may agree to mediate Disputes individually or to consolidate multiple Disputes for mediation purposes.

4.2 Appointment of Mediator

- (a) The mediation shall be conducted by a mediator appointed by agreement of the Parties.
- (b) The mediator shall be an independent, impartial, and skilled mediator experienced in mediating disputes of a type, complexity and value commensurate with the Dispute(s) to be mediated by the mediator.

4.3 Termination of Mediation

- (a) Either Party may terminate the mediation at any time by providing Notice to the other Party and the mediator. Any costs of the mediation incurred prior to termination (including in relation to the costs of the mediator already incurred, the mediation venue, and cancellation fees and costs) shall be borne equally by the Parties, unless otherwise agreed.

4.4 Cost of Mediation

- (a) The reasonable fees and disbursements of the mediator and any reasonable joint disbursements incurred during the mediation (such as the cost of third party facility rentals) shall be shared equally by the Parties, unless otherwise agreed.
- (b) Unless otherwise agreed, the Parties shall bear their own expenses for preparation for and attendance at mediation, including any expenses incurred in relation to the retainer of legal counsel, consultants and experts, and such costs shall not be included in any costs sought as part of this Dispute Resolution Procedure.

5. ADJUDICATION

5.1 Referral to Adjudication

- (a) Either Party may refer a Dispute to a qualified and independent representative of the Independent Certifier for determination by adjudication, or otherwise to a qualified and independent listed adjudicator (in either case, the “**Adjudicator**”) in accordance with the process and timelines set out in this Section 5 (“**Adjudication**”) and the *Construction Act* (Ontario), provided that the Dispute:
 - (i) relates to the Works and arises prior to Final Completion; and
 - (ii) relates to any of the following matters but only to the extent that there is a statutory right to submit such matters to adjudication in accordance with the *Construction Act* (Ontario) (each an “**Adjudication Dispute**”):
 - (A) any matters expressly referred to adjudication pursuant to any provision of the Project Agreement;
 - (B) the valuation of services or materials provided under the Project Agreement;
 - (C) payment under the Project Agreement, including in respect of a Variation, whether approved or not, or a proposed Variation;
 - (D) disputes that are the subject of a notice of non-payment under the *Construction Act* (Ontario);
 - (E) amounts retained by a Party by way of set-off against trust funds in accordance with the *Construction Act* (Ontario) or as a result of notices of lien or liens in accordance with the *Construction Act* (Ontario); or
 - (F) payment or non-payment of a statutory holdback under the *Construction Act* (Ontario),and which do not involve any claim for delay, disruption, or acceleration.
- (b) The Party referring an Adjudication Dispute for Adjudication by the Adjudicator shall deliver to the Adjudicator and the other Party a “**Notice of Adjudication**” which shall include at a minimum:

- (i) the name and address of the Party;
 - (ii) the nature and a clear and concise description of the Dispute, including details respecting how and when it arose;
 - (iii) the nature of the redress sought;
 - (iv) a copy of the Notice(s) of Dispute and attachments (if available); and
 - (v) any other documents the referring Party intends to rely on during the Adjudication.
- (c) The responding Party may deliver to the Adjudicator and the other Party a response to the Notice of Adjudication. The Parties agree that the responding Party shall have at least 21 days within which to deliver its response, or such further time specified by the Adjudicator giving consideration to the Notice of Adjudication and attachments, and the principles of fairness.

5.2 Scope of the Adjudication

- (a) The scope of the Adjudication shall be the Adjudication Dispute identified in the Notice of Adjudication, together with any further matters which the Parties agree should be within the scope of the Adjudication as a consolidated adjudication, or which may be consolidated pursuant to the *Construction Act* (Ontario).
- (b) No Party may refer a Dispute to an Adjudicator for Adjudication that is the same or substantially the same as one that has already been determined by an Adjudicator in an Adjudication, or has been the subject of a dispositive determination by way of a court action or an arbitration under the *Arbitration Act, 1991* (Ontario).

5.3 Powers of the Adjudicator During Adjudication

- (a) The parties to the Adjudication shall cooperate with the Adjudicator conducting the Adjudication and provide to the Adjudicator and all other parties such information, records and documents as may be reasonably requested by the Adjudicator to make its determination. The Adjudicator shall confirm in writing the last date of receipt of all requested documents.
- (b) In conducting an Adjudication, the Adjudicator:
- (i) shall act impartially;
 - (ii) may conduct the Adjudication in the manner he or she determines appropriate in the circumstances, subject to the obligation to conduct the Adjudication in an impartial manner and subject to any joint procedural directions delivered jointly by Project Co and Contracting Authority;
 - (iii) may issue directions respecting the conduct of the Adjudication, including refusing to hear the Adjudication if the preconditions to bringing an Adjudication Dispute to Adjudication have not yet been met;
 - (iv) may issue directions respecting the disclosure of documents which a party intends to rely on or that a party has requested from another party in the Adjudication in a manner that

ensures that each party to the Adjudication has an opportunity to review such documents, and with regard to principles of proportionality and the desire of the parties for a cost-effective process;

- (v) may take the initiative in ascertaining the relevant facts and law;
- (vi) may draw inferences based on the conduct of the parties to the Adjudication and may proceed if one party does not participate or co-operate;
- (vii) may conduct an on-site inspection of the Project that is the subject of the Adjudication (subject to the prior consent of any person who is not a party to the Adjudication and who has the legal authority to exclude others from the premises);
- (viii) may obtain the assistance of a merchant, accountant, actuary, building contractor, architect, engineer or other person in such a way as the Adjudicator considers fit, as is reasonably necessary to enable him or her to determine better any matter of fact in question;
- (ix) may fix the remuneration of the person assisting pursuant to Section 5.3(b)(viii) as is reasonable and proportionate to the Dispute and direct payment of the remuneration by any or all parties to the Adjudication; and
- (x) may make a determination in the Adjudication.

5.4 Adjudication Determination

- (a) An Adjudicator shall make a determination of the matter that is the subject of an Adjudication no later than 30 days after the deadline for receiving the documents and submissions required by 5.1(c), subject to Section 5.1(b). The Adjudicator's determination shall be in writing and shall include reasons for the determination. The determination shall be delivered electronically to the parties to the Adjudication, with a signed and commissioned copy to follow within 14 days.
- (b) The deadline for an Adjudicator's determination may be extended at any time before its expiry and after the provision of documents to the Adjudicator:
 - (i) on the Adjudicator's request, with the written consent of the parties to the Adjudication, for a period of no more than 14 days; or
 - (ii) on the written agreement of the parties to the Adjudication, subject to the Adjudicator's consent, for the period specified in the written agreement.
- (c) An Adjudicator who makes a determination may, before delivery of the signed and commissioned copies, on the written request of a party or on his or her own initiative, make such changes to the determination as may be necessary to correct an error that is of a typographical, arithmetic or similar minor nature. No substantive changes to the Adjudicator's determination may be requested by the parties.
- (d) Subject to Section 5.5(b), the Parties agree that the determination of a matter by an Adjudicator is interim binding on the parties to the Adjudication until an interim binding or final and binding

determination of the matter by the CDB or a determination of the matter is made by way of litigation or arbitration, in accordance with this Schedule 27.

- (e) A party who is required by an Adjudicator's determination to pay an amount to another party shall pay the amount no later than 10 days after the determination has been communicated to the parties to the Adjudication. A requirement to pay an amount in accordance with this section is subject to any requirement to retain a holdback pursuant to the *Construction Act* (Ontario).

5.5 Review of Adjudicator's Determination

- (a) Any party that is dissatisfied with an Adjudication determination shall, within 15 Business Days of receipt, give written notice expressing its dissatisfaction to the other parties and the Adjudicator. A notice of dissatisfaction must specify the reasons for the party's dissatisfaction.
- (b) Failure to provide a notice of dissatisfaction within the time required by Section 5.5(a) shall render the determination final and binding on the parties on the 16th Business Day following receipt of the Adjudication determination.
- (c) If a notice of dissatisfaction has been delivered in accordance with Section 5.5(a), the matter may be heard *de novo* by the CDB as follows:
- (i) Disputes valued at less than [REDACTED] shall be referred to the CDB for a final and binding decision; and
 - (ii) Disputes valued at [REDACTED] or greater, or which are Public Interest Disputes of any value shall, be referred to the CDB for an interim binding decision.
- (d) The Parties agree that this Schedule 27 constitutes a written agreement between them within the meaning of Section 13.15(1) of the *Construction Act* (Ontario) in respect of a Dispute referred to the CDB in accordance with this Schedule 27 following receipt of an Adjudication determination.

5.6 Issuance of Notices and Certificates

- (a) Notwithstanding Section 5.4(d), the Independent Certifier's decision to issue or not to issue,
- (i) the notice that the requirements for Milestone Payment Completion for the First Milestone Payment, the Second Milestone Payment or the Third Milestone Payment, as applicable, have been met shall be final and binding on the Parties solely in respect of determining the applicable Milestone Payment Completion Date, and no Dispute in relation to a Milestone Payment Completion Date shall be subject to resolution pursuant to this Schedule 27;
 - (ii) an Incentive Payment Completion Certificate shall be final and binding on the Parties solely in respect of determining whether Incentive Payment Completion for the subject Incentive Payment Event was in fact achieved on or prior to the Incentive Payment Target Date applicable thereto and a Dispute in this regard shall not be subject to resolution pursuant to this Schedule 27;
 - (iii) the Substantial Completion Certificate shall be final and binding on the Parties solely in respect of determining the Substantial Completion Payment Date and a Dispute in

relation to the Substantial Completion Payment Date shall not be subject to resolution pursuant to the Dispute Resolution Procedure; and

- (iv) Save and except as aforesaid, the Independent Certifier's decisions and determinations which are not Adjudication determinations within the meaning of the *Construction Act* (Ontario) are not binding on the Parties, and all Disputes in relation to the Independent Certifier's decisions and determinations shall be resolved pursuant to this Schedule 27.

5.7 Cost of Adjudication

- (a) Subject to an alternative determination pursuant to Section 5.7(c), the parties to an Adjudication shall split payment of the Adjudicator's fee and any disbursements of the Adjudicator equally.
- (b) Each party shall bear its own costs of the Adjudication, including legal costs and the costs and expenses of any witnesses or experts retained by that party.
- (c) Notwithstanding Section 5.7(b), if an Adjudicator determines that a party to the Adjudication has acted in respect of the Project in a manner that is frivolous, vexatious, an abuse of process or other than in good faith, the Adjudicator may provide, as part of his or her determination of the matter, that the party be required to pay some portion or all of the other party's costs, the Adjudicator's fee, and/or the Adjudicator's disbursements that would otherwise be payable by the other party.

6. COMBINED DISPUTE BOARD

6.1 Appointment of the CDB

- (a) The Combined Dispute Board (“**CDB**”) shall be a standing body composed of three independent and impartial members appointed in accordance with this Schedule 27 (each a “**Member**”). The CDB shall be constituted by a written agreement between the Parties and each of the Members executed and delivered on or prior to the Financial Close Target Date in the form set out in Appendix “B” to this Schedule 27 and in accordance with Schedule 2 of the Project Agreement – Completion Documents (each is a “**CDB Member Agreement**”).
- (b) The three member CDB shall remain constituted until the achievement of Final Completion. The Parties may agree to extend the term of the CDB, and shall agree to any extensions necessary in order to obtain recommendations or decisions in relation to Disputes referred to that form of CDB (i.e. one member or three member) which remain outstanding upon the scheduled reduction of the number of CDB members or the end of the CDB term, as applicable.
- (c) Two Members shall have technical and/or senior managerial expertise relevant to the Project (including geotechnical engineering experience) and at least one Member shall be a Professional Engineer (each a “**Technical Member**”) and one Member, who shall be the chair, shall be a lawyer with significant experience in construction law and who is licensed to practice law in Ontario (the “**CDB Chair**”), unless otherwise agreed by the Parties.
- (d) Each Member shall be an independent, impartial, and skilled adjudicator or arbitrator experienced in resolving or deciding disputes of a type, complexity and value commensurate with the Dispute(s) likely to be referred to the CDB, having regard to the value, scope and other relevant characteristics of the Project, unless otherwise agreed by the Parties.

- (e) Each Party shall appoint a Technical Member of its choice on or prior to the Financial Close Target Date, and shall deliver to the other Party a CDB Member Statement for that Member upon appointment in accordance with Schedule 2 of the Project Agreement – Completion Documents.
- (f) The Parties shall jointly appoint the CDB Chair on or prior to the Financial Close Target Date, and deliver a CDB Member Statement for the CDB Chair upon appointment in accordance with Schedule 2 of the Project Agreement – Completion Documents.
- (g) Before commencing CDB activities, each Member shall sign with the Parties a CDB Member Agreement. The CDB Member Agreement may be terminated in accordance with the CDB Member Agreement. If a Member is successfully challenged and removed, any CDB Member Agreement between that Member and the Parties shall be automatically terminated upon removal.

6.2 Replacement of a Member

- (a) When a Member must be replaced due to death, incapacity, resignation, termination or removal, the new Member shall be appointed within 30 days of the need for replacement arising, in the same manner as the Member being replaced was originally selected in accordance with this Schedule 27, unless otherwise agreed by the Parties. All actions taken by the CDB prior to the replacement of a Member shall remain valid. When one Member is to be replaced, the other Members shall continue to be Members, but shall not hold hearings or issue recommendations or decisions without the agreement of all of the Parties prior to the replacement of the Member.
- (b) If a Party fails to appoint a replacement Technical Member or the other Party reasonably objects to the appointment of a replacement Technical Member and the Parties cannot agree on an alternative Technical Member within the period of time set out in Section 6.2(a), either Party may refer the appointment of that Technical Member or the alternative Technical Member for a determination pursuant to Section 7.3.
- (c) If the Parties are unable to appoint a replacement CDB Chair within the period of time set out in Section 6.2(a), either Party may refer the appointment of the replacement CDB Chair for a determination pursuant to Section 7.3.

6.3 Impartiality of the Members

- (a) Every prospective Member shall sign a statement of acceptance, availability, impartiality and independence and disclose in writing to the Parties and the other Members, any facts or circumstances which might call into question the Member's independence in the eyes of the Parties or give rise to reasonable doubts as to the prospective Member's impartiality, in the form set out in Appendix "A" to this Schedule 27 (the "CDB Member Statement").
- (b) A Member shall immediately disclose in writing to the Parties any facts or circumstances concerning the Member's impartiality or independence which may arise in the course of such Member's tenure.
- (c) Should any Party wish to challenge a prospective or current Member on the basis of an alleged lack of impartiality, independence or qualifications, it may, within 14 days of learning of the facts upon which the challenge is based, submit to the CDB and the other Party a request for a decision upon the challenge including a written statement of such facts. If the challenged prospective or current Member does not withdraw, and the other Party does not agree to the challenge, the

challenge shall be determined in accordance with Section 7.3. No Party shall challenge a current Member on the basis of an alleged lack of impartiality or independence as a result of the Member carrying out its duties under the CDB Member Agreement, including the provision of without prejudice dispute resolution assistance.

- (d) If a prospective or current Member is successfully challenged, the prospective Member shall not be appointed, or the current Member shall be removed forthwith and the CDB Member Agreement, if any, between that Member and the Parties shall be automatically terminated.

6.4 Ongoing Project Monitoring by the CDB

- (a) The Parties shall fully cooperate with the CDB and communicate information to it in a timely manner.
- (b) The Parties shall ensure that the CDB is kept informed of the performance of the Project Agreement and of any Disputes arising in the course thereof by such means as Works Reports, meetings and participation in site visits. In particular, the CDB shall receive copies of Works Reports, Proceeding at Risk Notices, Notices of Delay Events, Compensation Events, Relief Events, or event of Force Majeure and any Notices of Dispute (with any attachments) when they are delivered by Project Co or Contracting Authority in accordance with the Project Agreement, from the Party that is delivering the document.
- (c) The CDB shall, in consultation with the Parties, establish a schedule of meetings and site visits (which may be conducted via teleconference). The frequency of scheduled meetings and site visits shall be sufficient to keep the CDB informed of the performance of the Project Agreement and of any Disputes, but shall be no less frequent than once per quarter unless otherwise agreed by the Parties and the CDB. The Parties and the CDB shall attend all such meetings and site visits. In the event that a Party fails to attend, the CDB may nevertheless decide to proceed.
- (d) The CDB shall, after consultation with the Parties, inform them in writing of the nature, format and frequency of any further documents that the Parties shall send to the CDB.
- (e) During scheduled meetings and site visits the CDB shall review the performance of the Project Agreement with the Parties and may provide informal assistance to the Parties in avoiding or addressing Disputes. The Parties may request such informal assistance at any time by agreement, or the CDB may take the initiative to suggest that the Parties obtain such assistance at any time, subject to Section 6.4(f). Any such assistance is provided on a without prejudice basis and shall not be considered or referred to if the Dispute is later submitted for a recommendation or decision.
- (f) Any Party may formally refer a Dispute to the CDB for a recommendation or decision in accordance with this Section 6. During the formal referral there shall be no informal conversations and no separate meetings between any Member and any Party with respect to any of the issues covered by the formal referral.

6.5 Formal Referral for a Recommendation

- (a) A Dispute may be referred to the CDB for a non-binding recommendation before Final Completion if the Dispute is not already the subject of an Adjudication determination or a

decision of the CDB and if the Parties agree to refer the Dispute to the CDB for a recommendation.

6.6 Formal Referral for a Decision

- (a) A Party may refer a Dispute to the CDB for a decision before Final Completion if the Parties fail to resolve the Dispute through the negotiation process referred to in Sections 2 and 3, subject to Section 6.6(b).
- (b) Notwithstanding any other provision of this Schedule 27, either Party may refer a procedural question regarding this Dispute Resolution Procedure (including with respect to the effectiveness of a Notice of Dispute, the failure of a Party initiating a Dispute to deliver any facts, documents or information as required under the Project Agreement in relation to the Dispute, or the completion of any steps required under this Dispute Resolution Procedure) to the CDB at any time after the delivery of a Notice of Dispute, or by agreement with the other Party. The CDB shall determine the procedural question in accordance with the abbreviated procedure set out in Section 6.6(e).
- (c) The CDB's decision will be interim binding if the Dispute referred is:
- (i) valued at [REDACTED] or more;
 - (ii) a Public Interest Dispute of any value; or
 - (iii) the Parties agree to refer the Dispute for an interim binding decision.
- (d) The CDB's decision will be final and binding if the Dispute referred is:
- (i) in respect of a procedural question referred pursuant to Section 6.6(b);
 - (ii) valued at less than [REDACTED] and not a Public Interest Dispute; or
 - (iii) the Parties agree to refer the Dispute for a final and binding decision.
- (e) Either Party may refer to the CDB for a final and binding determination:
- (i) an objection to a request by the other Party for an interim binding or final and binding decision; or
 - (ii) a procedural question regarding the interpretation of, or compliance with, this Schedule 27, pursuant to Section 6.6(b).

and the CDB shall set a timetable, giving consideration to the volume and complexity of the referring Party's submissions and the principles of fairness, for receipt of the Parties' brief submissions on the type of decision to be rendered, or the procedural question, and shall issue a final and binding decision within seven Business Days of receipt of the final submission from the Parties. The responding Party shall have no less than 10 Business Days to respond to the referring Party's submissions for a procedural dispute.

- (f) In making a decision pursuant to Section 6.6(e), the CDB shall consider the requirements of this Schedule 27, including whether an interim binding Adjudication determination has already been issued, and whether a CDB recommendation has already been issued.

6.7 Statement of Case

- (a) Any Party shall refer an eligible Dispute to the CDB for a recommendation or decision by submitting a concise written statement of its case (the “**Statement of Case**”) to the other Party and the CDB. The Statement of Case shall include:
- (i) a copy of the relevant Notice of Dispute and Notice of Adjudication if applicable;
 - (ii) a clear and concise description of the nature and circumstances of the Dispute;
 - (iii) a list of the issues submitted to the CDB for a recommendation or decision and a statement of the referring Party’s position thereon, including any relevant facts and law;
 - (iv) relevant support for the referring Party’s position such as documents, drawings, schedules, expert reports, and correspondence;
 - (v) the relief sought, together with the amounts of any quantified claims and, to the extent possible, an estimate of the monetary value of any other claims; and
 - (vi) any request for urgent interim measures or relief, including security measures.
- (b) The date on which the Statement of Case is received by the CDB Chair shall, for all purposes, be deemed to be the date of the commencement of the CDB proceeding (the “**Date of Commencement**”).

6.8 Reply to Statement of Case

- (a) Unless the Parties agree otherwise or the CDB orders otherwise (giving consideration to the volume and complexity of the referring Party’s submissions and the principles of fairness), within 30 days of the Date of Commencement the responding Party shall respond in writing (the “**Reply**”) to the CDB and the referring Party. The Reply shall include:
- (i) a clear and concise statement of the responding Party’s position with respect to the Dispute;
 - (ii) relevant support for its position such as documents, drawings, schedules and correspondence; and
 - (iii) a statement of the issues on which the responding Party requests the CDB’s recommendation or decision, including any request for urgent interim measures or relief.
- (b) The CDB may at any time request a Party to submit additional written statements or documentation to assist the CDB in preparing its recommendation or decision. Each such request shall be communicated in writing by the CDB to the Parties, and any written statements or documents submitted in response shall be submitted to the CDB and the other Party.

6.9 Powers of the CDB

- (a) The CDB shall have the power, *inter alia*, to:
- (i) decide on its jurisdiction;
 - (ii) require the Parties to produce any documents that the CDB deems necessary in order to fulfil its function, or to limit production by any party to only documents that the CDB deems necessary in order to fulfil its function;
 - (iii) convene meetings, site visits and hearings;
 - (iv) decide on all procedural matters, including those arising during any meeting, site visit or hearing;
 - (v) question the Parties, their representatives (including legal counsel or consultants retained in relation to the Dispute, subject to the laws of privilege) and with respect to the hearing of a Dispute referred to the CDB pursuant to Sections 6.5 or 6.6, any witnesses the Parties may convene, in the sequence the convening Party chooses;
 - (vi) with respect to a Dispute referred to the CDB pursuant to Sections 6.5 or 6.6, appoint one or more experts, considering the positions of the Parties on such appointment;
 - (vii) with respect to a Dispute referred to the CDB pursuant to Sections 6.5 or 6.6, issue a recommendation or decision even if a Party fails to comply with a request of the CDB;
 - (viii) decide upon any provisional relief such as interim or conservatory measures; and
 - (ix) take any measures necessary for it to fulfil its function as a CDB.

6.10 Organization and Conduct of Hearings

- (a) The CDB may order that a hearing regarding the Dispute take place if rendering a recommendation, and shall order that a hearing take place if rendering a decision unless the Parties and CDB agree that a hearing is not required.
- (b) The hearing shall be conducted in Toronto, Ontario or by teleconference or videoconference by agreement of the Parties and the CDB, and with regard to the Parties' mutual desire to achieve an expeditious and cost-effective resolution.
- (c) The Parties shall appear through duly authorized representatives. In addition, they may be assisted or represented by advisers and legal counsel. If any Party refuses or fails to take part in the CDB hearing or in any preceding steps, the CDB may proceed notwithstanding such refusal or failure.
- (d) The CDB may request the Parties to provide and exchange copies or written summaries of their presentations in advance of a hearing. Unless the CDB decides otherwise, the hearing shall proceed as follows:
- (i) presentation of the case, first by the referring Party and then by the responding Party;

- (ii) identification by the CDB of any matters that need further clarification;
- (iii) clarification by the Parties concerning the matters identified by the CDB; then
- (iv) responses by each Party to clarifications made by the other Party, to the extent that new issues have been raised in such clarifications.

6.11 Issuance of Recommendation or Decision

- (a) The CDB shall make a recommendation or decision by a majority of the Members. Any Member who disagrees with the recommendation or decision shall give the reasons for such disagreement in a separate written document that shall form part of the recommendation or decision but which separate document shall not be binding on the Parties. The CDB shall issue its recommendation or decision promptly and, in any event, within 30 days following the completion of a hearing. The CDB may extend the time limit with the agreement of the Parties. In the absence of such agreement, the CDB may, after consulting the Parties, extend the time limit by the shortest time it considers necessary. Failure to issue a recommendation or decision within the time allowed does not invalidate the recommendation or decision issued.
- (b) A recommendation or decision shall indicate the date on which it is issued (and revised, if applicable) and shall state the findings of the CDB as well as the reasons upon which they are based. A recommendation or decision shall also include, and not necessarily in the following order:
 - (i) a summary of the Dispute, the respective positions of the Parties and the recommendation or decision requested;
 - (ii) a summary of the relevant provisions of the Project Agreement and the relevant facts and law considered by the CDB;
 - (iii) a chronology of relevant events;
 - (iv) a summary of the procedure followed by the CDB; and
 - (v) a list of the submissions and documents produced by the Parties in the course of the procedure.

6.12 Enforceability of Decision

- (a) The Parties shall comply with a decision without delay and in any event, within 30 days of receipt or within such other time provided for in the decision, notwithstanding any notice of dissatisfaction being issued in respect of a decision.
- (b) Notwithstanding any other provision of this Schedule 27, if any Party fails to comply with a decision within 30 days of receipt or such other time provided for in the decision, the other Party may refer the failure itself, without being required to refer the Dispute or any Dispute regarding the failure itself, either to arbitration, or to the court for enforcement in accordance with Section 9.2(b). A Party that has failed to comply with a decision when required to do so, shall not raise any issue as to the merits of the decision or any other issues as defences to its failure to comply

with the decision (including with respect to any rights of set-off or counterclaim under the Project Agreement or at law).

6.13 Review of CDB's Decisions

- (a) A recommendation is not binding on the Parties and is not admissible in any subsequent proceedings. There is no appeal or *de novo* review from a recommendation.
- (b) The Parties agree that a decision is interim binding or final and binding on the Parties, as the case may be, upon receipt of the CDB's decision and subject to the review process preserved by this Section 6.13 or the CDB's interpretation and correction process set out in Section 6.14.
- (c) Any Party that is dissatisfied with an interim binding decision shall, within 30 days of receipt, give written notice expressing its dissatisfaction to the other Party and the CDB. A notice of dissatisfaction must specify the reasons for the Party's dissatisfaction.
- (d) If no Party has given written notice to the other Party and the CDB expressing its dissatisfaction with an interim binding decision within 30 days of receipt, the decision shall remain binding and shall become final.
- (e) The Parties agree that an interim binding decision for which a timely notice of dissatisfaction has been delivered may be reviewed *de novo* in accordance with Section 7.
- (f) The Parties agree that no right of appeal, review or *de novo* consideration of a Dispute for which a decision has been received exists beyond the process preserved by this Section 6.13 or the CDB's interpretation and correction process set out in Section 6.14. No right of *de novo* consideration exists regarding a Dispute valued at less than [REDACTED] which is not a Public Interest Dispute, and the decision of the CDB shall be final and binding for such Disputes subject only to any interpretations or corrections issued in accordance with Section 6.14.

6.14 Interpretations and Corrections

- (a) Any Party may apply to the CDB for the correction of an error or for the interpretation of a decision. Such application shall be made to the CDB within five Business Days of the receipt of the decision by such Party. After receipt of the application by CDB, the CDB shall grant the other Party five Business Days from the receipt of the application to submit any comments thereon. Any correction or interpretation made by the CDB shall be issued within 10 days following the expiration of the time limit for the receipt of any comments from the other Party. However, the Parties may agree to extend the time limit for issuing any correction or interpretation.
- (b) On its own initiative or at the request of a Party, the CDB may correct a clerical, computational or typographical error, or any errors of a similar nature contained in a recommendation or decision within 15 days of delivery of the recommendation or decision.
- (c) Should the CDB issue a correction or interpretation of a decision, all time limits associated with the decision, including those set out in Sections 6.12, 6.13 and 7.2(b)(ii), shall start to run again upon receipt of the corrected decision or the interpretation.

6.15 Costs of the CDB

- (a) All Member fees and expenses and any other costs associated with the establishment and activities of the CDB (including in relation to obtaining recommendations or decisions) shall be shared equally by the Parties, unless otherwise agreed by the Parties or ordered by the CDB.
- (b) Member fees shall consist of a monthly management fee and an ad-hoc fee as described in the CDB Member Agreement.

7. REFERRAL OF DISPUTES TO ARBITRATION OR LITIGATION**7.1 Referral to Further Proceedings**

- (a) Where the Parties fail to resolve a Dispute through the process set out in Sections 2, 3, 4, 5 and 6 (as applicable), and where no final and binding Adjudication determination or final and binding CDB decision has been made in respect of the Dispute, either Party may refer the Dispute for determination by further proceedings in accordance with this Section 7.

7.2 Referral to Arbitration

- (a) Either Party may, by written notice signed by their Party Representative (a “**Notice of Arbitration**”), request that a Dispute be resolved by arbitration pursuant to Section 8.
- (b) A Notice of Arbitration will not be effective unless it:
 - (i) indicates it is a Notice of Arbitration pursuant to this Section 7.2(b)(i), expressly identifies the specific Dispute to be arbitrated, and is signed by the Party Representative; and
 - (ii) is delivered to the other Party Representative within 30 days of delivery of the applicable notice of dissatisfaction in response to an interim binding decision of the CDB, subject to Section 6.14(c), unless the Parties otherwise agree to refer a dispute directly to arbitration.
- (c) The right of a Party to refer a Dispute to arbitration remains subject to the stay and consolidation of proceedings mechanisms pursuant to Section 10 and Section 11.

7.3 Resolution of CDB Member or Arbitrator Appointment Disputes

- (a) A Dispute which arises because of a Party’s:
 - (i) failure or refusal to nominate a proposed Member or arbitrator for appointment where nomination is required by this Schedule 27;
 - (ii) failure or refusal to agree to the appointment of a proposed Member or arbitrator where agreement is required by this Schedule 27; or
 - (iii) challenge to the appointment of a prospective or current Member or arbitrator, where the challenged Member or arbitrator does not withdraw, and/or all other Parties do not agree

to the challenge (each of which is referred to as an “**Appointment or Challenge Dispute**”),

shall be resolved in accordance with this Section 7.3.

- (b) In the case of a CDB or arbitral tribunal which has only one current Member or arbitrator who is not challenged, that Member or arbitrator shall decide the Appointment or Challenge Dispute at first instance notwithstanding any other provisions in this Schedule 27 regarding quorum (including Section 6.2(a)).
- (c) In the case of a CDB or arbitral tribunal which has an appointed Chair, and the Chair is not challenged, the Chair decides the Appointment or Challenge Dispute at first instance.
- (d) In the case of a CDB or arbitral tribunal which has more than one appointed Member or arbitrator but no Chair or a Chair who has been challenged, all of the Members or arbitrators (including the Chair) decide the Appointment or Challenge Dispute at first instance.
- (e) If there is a tie, or no Members or arbitrators have been successfully appointed who may determine a challenge or make an appointment, or if a Party disputes the determination at first instance of a challenge made under this Section 7.3 the matter may be resolved pursuant to Section 9.3.
- (f) The appointing Member(s), arbitrator(s) or court making an appointment pursuant to Section 9.3 shall make reasonable efforts to appoint a Member or arbitrator having the attributes, if any, that have been agreed upon by all of the Parties.

7.4 Referral to Litigation

- (a) The Parties shall refer a Dispute to litigation only in the circumstances provided for under Section 9, specifically in order to:
 - (i) seek interim protection pursuant to Section 9.1;
 - (ii) enforce an interim binding or final and binding Adjudication determination, CDB decision or arbitral award pursuant to Section 9.2; or
 - (iii) bring an application to resolve a Member or arbitrator Appointment or Challenge Dispute pursuant to Section 9.3.

8. RESOLUTION BY ARBITRATION

8.1 Referral to Arbitration

- (a) A Dispute referred to arbitration in accordance with Section 7, is to be arbitrated in accordance with the *Arbitration Act, 1991* (Ontario), except that this Schedule 27 shall take precedence in the event of any conflict or inconsistency between the *Arbitration Act, 1991* (Ontario) and Schedule 27, except to the extent not permitted by the *Arbitration Act, 1991* (Ontario).
- (b) All Disputes which are referred to arbitration shall be finally resolved by arbitration under the Arbitration Rules of the ADR Institute of Canada, Inc. (the “**ADRIC Rules**”), as modified or

superseded by the Project Agreement or this Schedule 27. Arbitrations which would be considered international arbitrations shall also be resolved by arbitration under the ADRIC Rules, as modified or superseded by this Schedule 27. This Schedule 27 shall take precedence, in the event of any conflict or inconsistency between the ADRIC Rules and this Schedule 27, and the ADRIC Rules shall take precedence in the event of any conflict or inconsistency between the ADRIC Rules and the *Arbitration Act, 1991* (Ontario), except to the extent not permitted by the *Arbitration Act, 1991* (Ontario).

- (c) The ADRIC Rules are further modified to add the following:
- (i) The Parties shall not have Disputes administered by the ADR Institute of Canada unless otherwise agreed by the Parties. If a Dispute is not being administered by the ADR Institute of Canada, the ADRIC Rules are deemed to be amended *mutatis mutandis*.
 - (ii) Where a party objects to producing some or all of the Documents (as defined in the ADRIC Rules) requested in a Request to Produce (as defined in the ADRIC Rules) on the basis of loss or destruction of Document(s), the arbitral tribunal may consider the circumstances of loss or destruction and may draw an adverse inference.
 - (iii) Urgent interim measures applications under the ADRIC Rules (as defined in the ADRIC Rules) shall not be permitted except for a Party seeking to enforce a CDB determination pursuant to Section 6.12(b), or unless otherwise agreed by the Parties.
- (d) A Dispute referred to arbitration shall be resolved by a single arbitrator unless:
- (i) the Parties agree otherwise; or
 - (ii) one of the Parties, by Notice delivered to the other Party within seven days after delivery of a Notice of Arbitration pursuant to Section 7.2, requires that the Dispute that is the subject of that Notice of Arbitration be resolved by a three person arbitral tribunal, in which case the Dispute and any consolidated Disputes shall be resolved by a three person arbitral tribunal.
- (e) The Project Agreement, including this Schedule 27, constitutes an agreement to arbitrate that shall be specifically enforceable.

8.2 Appointment of the Arbitrator(s)

- (a) If the arbitral tribunal is comprised of a single arbitrator, the arbitrator shall be appointed as follows:
- (i) if the Parties agree on the arbitrator, the Parties shall jointly appoint the arbitrator as soon as possible and in any event within 30 days after delivery of the Notice of Arbitration in accordance with Section 7.2; and
 - (ii) if the Parties fail to agree or jointly appoint the arbitrator within the time required by Section 8.2(a), either Party may apply for a determination pursuant to Section 7.3.
- (b) If the arbitral tribunal is comprised of three arbitrators, the arbitrators shall be appointed as follows:

-
- (i) each Party shall appoint one arbitrator no later than 30 days after delivery of the Notice of Arbitration;
 - (ii) if a Party fails to appoint an arbitrator within 30 days after delivery of the Notice of Arbitration, or a Party reasonably objects to the appointment of a particular arbitrator and the Parties cannot agree on an alternative arbitrator, either Party may refer the appointment of that arbitrator or an alternative arbitrator for a determination pursuant to Section 7.3;
 - (iii) the arbitrators appointed in accordance with Section 8.2(b)(i) shall jointly appoint a third arbitrator, having regard to any submissions of the Parties regarding potential third arbitrators. The third arbitrator shall act as the Chair of the arbitral tribunal and shall have, in addition to all other required qualifications, experience in arbitration or judicial processes and procedures; and
 - (iv) if the two arbitrators appointed by the Parties fail to appoint a Chair within the required time, the Parties shall request a list of three proposed Chairs and any submissions from each appointed arbitrator, and the Parties may agree to appoint a Chair acceptable to the appointed arbitrators or either Party may apply for an appointment of a proposed Chair pursuant to Section 7.3.
- (c) All arbitrators must be skilled commercial arbitrators and have qualifications and experience relevant to the issues in the Dispute and commensurate with the nature, complexity and value of the Dispute(s) to be arbitrated.

8.3 Impartiality of the Arbitrator(s)

- (a) 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. No one shall be nominated or appointed to act as an arbitrator who is or was within the past five years in any way interested, financially or otherwise, in the conduct of the Works or in the business affairs of Contracting Authority, Project Co, or any consultant, subconsultant or subcontractor of any of them who may be involved or implicated in the Dispute.
- (b) Every prospective arbitrator shall sign a statement of acceptance, availability, impartiality and independence and disclose in writing to the Parties and the other arbitrators, any facts or circumstances which might be of such a nature as to call into question the arbitrator's independence in the eyes of the Parties, as well as any circumstances that could give rise to reasonable doubts as to the arbitrator's impartiality, in a form substantially similar to the form set out in Appendix "A" to this Schedule 27.
- (c) Should any Party wish to challenge a prospective or current arbitrator on the basis of an alleged lack of impartiality, independence or qualifications, it may, within 14 days of learning of the facts upon which the challenge is based, submit to the arbitral tribunal and the other parties a request for a decision upon the challenge including a written statement of such facts. If the challenged prospective or current arbitrator does not withdraw, and the other parties do not agree to the challenge, the challenge shall be determined in accordance with Section 7.3.

- (d) If a prospective or current arbitrator is successfully challenged, the prospective arbitrator shall not be appointed or the current arbitrator shall be removed forthwith and the arbitrator agreement, if any, between that arbitrator and the Parties shall be terminated.

8.4 Power and Jurisdiction of the Arbitrators

- (a) The arbitrator(s) shall have the jurisdiction and power to:
- (i) reconsider *de novo* any Adjudication determination or CDB decision which is not final and binding;
 - (ii) amend or vary the application of any and all rules which can be amended or varied under the *Arbitration Act, 1991* (Ontario) or the ADRIC Rules, 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;
 - (iii) require some or all of the evidence to be provided by affidavit;
 - (iv) hold a hearing (which may be conducted by videoconference, by agreement of the Parties) at which evidence and submissions are presented by the Parties;
 - (v) 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 reasonably require to assist them in the resolution of the Dispute and rendering of an award;
 - (vi) 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 reasonably necessary;
 - (vii) inspect the Works, giving reasonable notice to each Party of the time when, and the place where, the arbitrator(s) intend(s) to conduct any inspections;
 - (viii) award any remedy or relief that a court or judge of the Ontario Superior Court of Justice could order or grant subject to and in accordance with the Project Agreement, including, interim orders, interim and permanent injunctions, and specific performance; and
 - (ix) 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.
- (b) A Party is not limited in the arbitration to the information, evidence or arguments previously put before the Adjudicator or the CDB.
- (c) The Parties agree to 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(s) to be arbitrated.

8.5 Arbitration Decision

- (a) The arbitral tribunal shall render a decision as soon as possible and, in any event, shall use all reasonable efforts to render a decision no later than 60 days after the date of the closure of the hearing, or such other period of time as agreed to by the Parties and accepted by the arbitral tribunal.
- (b) If the arbitral tribunal is comprised of three arbitrators, the decision of a majority of the arbitral tribunal shall be deemed to be the decision of the arbitral tribunal, and where there is no majority decision, the decision of the Chair of the arbitral tribunal shall be deemed to be the decision of the arbitral tribunal.

8.6 Seat and Language of Arbitration

- (a) The seat of the arbitration shall be Toronto, Ontario. The language of the arbitration shall be English.

8.7 Costs of Arbitration

- (a) The costs of an arbitration are within the discretion of the arbitral tribunal which, 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:
 - (i) the Party entitled to costs;
 - (ii) the Party who must pay the costs;
 - (iii) the amount of the costs or how that amount is to be determined; and
 - (iv) how all or part of the costs must be paid.
- (b) In exercising discretion to award costs, the arbitrator(s) will take into account the desire of the Parties that costs should generally be awarded to each Party in proportion to the relative success that each Party has in the arbitration.
- (c) The award of the arbitral tribunal shall be final and binding upon both Parties, and both Parties expressly waive all rights of appeal in connection with the award of the arbitral tribunal. Judgment may be entered upon the award in accordance with Applicable Law in any court having jurisdiction.

9. LITIGATION**9.1 Interim Protection of the Courts**

- (a) If necessary to prevent irreparable harm to the public interests at issue in connection with a Public Interest Dispute, 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. However, the Parties agree that no irreparable harm shall occur if the Project

Agreement is terminated and that any termination of the Project Agreement by either Party, if found to be wrongful, would be adequately compensated for by an award of damages.

9.2 Court Enforcement of Adjudication Determinations, CDB Decisions and Arbitral Awards

- (a) A party who is required under the determination of an Adjudicator or under a decision of the CDB to pay an amount to another person or to provide security to another person shall pay the amount or provide the security no later than 10 days after the determination has been communicated to the parties by the Adjudicator or 30 days after the decision has been communicated to the parties by the CDB, or within such other time provided for in the determination or decision.
- (b) A party may file a signed and commissioned copy of a binding determination of the Adjudicator in accordance with the *Construction Act* (Ontario) or bring an application or motion to enforce a decision of the CDB with the Ontario Superior Court of Justice after the period set out in Section 9.2(a) has elapsed.
- (c) A party may enforce an award of an arbitrator or the arbitral tribunal in accordance with the *Arbitration Act, 1991* (Ontario).

9.3 Member or Arbitrator Appointment Disputes

- (a) If a Member or arbitrator appointment or challenge cannot be resolved in accordance with Sections 7.3(a), 7.3(b), 7.3(c) and 7.3(d), either Party may bring an application or motion directly to the Ontario Superior Court of Justice for a determination regarding the appointment of the challenged or a proposed alternative Member or arbitrator.

9.4 Attornment

- (a) All litigation permitted pursuant this Schedule 27 shall be resolved in the Ontario Superior Court of Justice. Both Parties irrevocably attorn to the exclusive jurisdiction of the courts of the Province of Ontario in respect of any Disputes or matters which arise under the Project Agreement or in connection with the Project and which are to be resolved by litigation.

10. STAY AND CONSOLIDATION

10.1 Stay and Consolidation of Arbitration and Litigation

- (a) For all Disputes that arise prior to Substantial Completion, unless:
 - (i) both Parties otherwise agree;
 - (ii) the proceeding is commenced to seek interim protection pursuant to Section 9.1, enforce an Adjudication decision or a CDB determination pursuant to Section 6.12 or Section 9.2, or determine an appointment dispute pursuant to Section 9.3; or
 - (iii) 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,

all arbitration and litigation proceedings between the Parties prior to Substantial Completion shall be stayed and consolidated into, to the extent applicable, a single arbitration proceeding, with the arbitration proceeding promptly and expeditiously after Substantial Completion.

- (b) Any time periods required or specified in relation to arbitration of a Dispute which apply following delivery of a Notice of Arbitration shall be stayed until any applicable stays of the arbitration are lifted.

11. STAY AND CONSOLIDATION WITH THIRD PARTY DISPUTES

- (a) Subject to Section 11(c), if either Party is involved in an arbitration in the Province of Ontario with a third party (“**Third Party Arbitration**”), and if such Third Party Arbitration involves common factual or legal issues (including common issues of damages) which are also the subject of a Dispute between the Parties for which a Notice of Dispute has been given, then any arbitration of the Dispute between the Parties which includes those common factual, legal or damages issues (“**Project Agreement Arbitration**”) shall be stayed, consolidated or joined with the Third Party Arbitration(s) but only if each of Contracting Authority, Project Co, and the other parties all agree.
- (b) Subject to Section 11(c), if either Party is involved in litigation in the Province of Ontario with a third party (“**Third Party Litigation**”) and if:
 - (i) such Third Party Litigation involves common factual or legal issues (including common issues of damages) which are the subject of a Project Agreement Arbitration; and
 - (ii) 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 the Third Party Litigation.

- (c) Sections 11(a) and 11(b) only apply:
 - (i) if the Dispute between the Parties includes a claim by one Party against the other for contribution or indemnity for that Party’s liability or potential liability to the third party where such liability results or will result from an award in the Third Party Arbitration or a judgment in the Third Party Litigation; and
 - (ii) to those specific issues that are common issues in the Project Agreement Arbitration and (A) the Third Party Arbitration, or (B) 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. CONFIDENTIALITY

12.1 Confidentiality and Non-Disclosure

- (a) Unless otherwise agreed by the Parties or required by Applicable Law, no party shall rely on or introduce as evidence in any subsequent proceeding or investigation, and shall treat as

confidential and inadmissible in any arbitration or litigation proceeding or other investigation or proceeding, any information, data, statements, submissions, admissions, settlement proposals, recommendations, discussions, opinions, or any other documents within the meaning of the *Rules of Civil Procedure*, other than documents which would otherwise be admissible pursuant to the *Rules of Civil Procedure*, which were obtained, exchanged or delivered:

- (i) on a without prejudice basis, including through the Party Representative or Party Executive negotiation processes;
 - (ii) through the mediation process by any party or the mediator;
 - (iii) through the Adjudication process by any party or the Adjudicator, except in relation to the determination and reasons of the Adjudicator, which may be introduced in any subsequent dispute resolution processes or proceedings regarding the same Dispute(s); or
 - (iv) through the CDB recommendation or decision process by any party or the CDB or any Member, except for a decision and reasons of the CDB (but not a recommendation), which may be introduced in any subsequent dispute resolution processes or proceedings regarding the same Dispute(s).
- (b) Any Member or arbitrator appointed pursuant this Schedule 27 shall keep all information about any Dispute(s) referred to the CDB or for arbitration confidential and shall not disclose such information to anyone other than the Parties.
- (c) Any Adjudicator, mediator, Member(s) of the CDB, and arbitrators shall execute non-disclosure agreements in a form satisfactory to the Parties, providing that, among other things, material delivered by a party in connection with mediation, Adjudication, a recommendation or decision shall not be disclosed to any person or used for any other purpose, in accordance with this Section 12.1, and all such material shall remain the property of the party disclosing or delivering same.

13. DISPUTE AWARD PAYMENT GUARANTEE OF GUARANTOR

- (a) As a precondition to the payment of any amount by Contracting Authority to Project Co as a result of any interim binding award, and within five Business Days of receipt of a written request from Contracting Authority, Project Co shall cause a Guarantor satisfactory to Contracting Authority to execute and deliver to Contracting Authority a Dispute Award Payment Guarantee of Guarantor in the form set out at Appendix “C” to this Schedule 27. Notwithstanding the foregoing and anything to the contrary in this Schedule 27, the Parties agree that in lieu of Project Co providing to Contracting Authority such Dispute Award Payment Guarantee of Guarantor, Project Co may, before the expiry of such time period, deliver a Notice to Contracting Authority directing Contracting Authority not to pay to Project Co any amount as a result of an interim binding award pending and conditional upon the outcome of a subsequent final and binding proceeding described in this Schedule 27.
- (b) If Contracting Authority is ordered to make payment of any amount to Project Co as a result of any interim binding award, and if Contracting Authority is subsequently successful in obtaining a final and binding award, Contracting Authority may recover such amount together with any additional interest and costs awarded in respect thereof that are owed and not paid by Project Co in accordance with the award or Applicable Law, from the Dispute Award Payment Guarantee of Guarantor, in accordance with the terms of the Guarantee.

14. MISCELLANEOUS

- (a) The Parties shall indemnify each other in respect of any damages suffered or incurred in relation to amounts agreed to be paid pursuant to resolution of a Dispute by the Party Representatives or by the executives of the Parties pursuant to Sections 2 and 3, and on the amount of any award or judgment as follows:
- (i) for amounts payable by Project Co to Contracting Authority, Project Co shall indemnify Contracting Authority in accordance with Section 46.1(e) of the Project Agreement from and against any damages suffered or incurred resulting from any overpayment to Project Co or, as applicable, any underpayment or non-payment by Project Co from the date of any overpayment to Project Co or, as applicable, from the date on which payment was due under the Project Agreement to Contracting Authority until the date of payment; and
 - (ii) for amounts payable by Contracting Authority to Project Co, Contracting Authority shall indemnify Project Co in accordance with Section 46.2(d) of the Project Agreement from and against any damages suffered or incurred resulting from any overpayment to Contracting Authority or, as applicable, any underpayment or non-payment by Contracting Authority from the date of any overpayment to Contracting Authority or, as applicable, from the date on which payment was due under the Project Agreement to Project Co until the date of payment.
- (b) The Parties can, by written agreement on a Dispute by Dispute basis:
- (i) extend any or all timelines set out in this Schedule 27;
 - (ii) agree to waive or by-pass any one or more of the Dispute resolution processes in Sections 2, 3, 4, 5 and 6 (to the extent they are required by this Schedule 27) and, instead, proceed directly to resolution of the Dispute by arbitration or litigation pursuant to Sections 7, 8 and 9; or
 - (iii) agree to a different process for mediation than the one contemplated in this Schedule 27.

APPENDIX “A”

FORM OF CDB MEMBER STATEMENT OF ACCEPTANCE, AVAILABILITY,
IMPARTIALITY AND INDEPENDENCE**1. GENERAL****1.1 Name and Position**

- (a) Family Name(s):
- (b) Given Name(s):
- (c) Member Position (circle one): **Technical** **Chair**
- (d) Please attach a current copy of your CV.

1.2 Definitions and Interpretation

- (a) This Statement shall be interpreted in accordance with Schedule 27 – Dispute Resolution Procedure to the Project Agreement, dated [●] for the Advance Tunnel for Scarborough Subway Extension (the “**Project**”). Please initial below all relevant statements.

1.3 Acceptance

- (a) I accept to serve as a Member in accordance with the Project Agreement.

Initial: _____

- (b) I decline to serve as a Member in accordance with the Project Agreement. *(If you tick here, simply date and sign the form without completing any other sections).*

Initial: _____

1.4 Availability

- (a) I confirm, on the basis of the information presently available to me that I have received and reviewed a copy of Schedule 27 – Dispute Resolution Procedure to the Project Agreement and can devote the time necessary to discharge the duties of a Member throughout the entire duration of the CDB’s anticipated activities as diligently, efficiently and expeditiously as possible in accordance with the timelines and procedures set out in Schedule 27 – Dispute Resolution Procedure to the Project Agreement.

Initial: _____

- (b) I understand that it is important to discharge the duties of a Member set out in Schedule 27 – Dispute Resolution Procedure to the Project Agreement as promptly as reasonably practicable. My current and anticipated professional roles and significant engagements are set out below for the information of the Parties (anonymized as necessary to remain compliant with my professional obligations).

Initial: _____

Number of currently pending matters or roles in which I am involved (*i.e. arbitrations and dispute board activities pending now, not previous experience; additional details you wish to make known to the Parties in relation to these matters can be provided on a separate sheet*):

	As tribunal or dispute board chair / sole arbitrator / sole DB member	As co-arbitrator / co-dispute board member	As counsel	As other
Standing dispute boards				
Ad-hoc dispute boards				
Arbitrations				
Court litigation (e.g. international commercial courts)				
Other (attach separate sheet if necessary)				

I have attached a calendar showing for the next 24 months all currently scheduled hearings and other existing commitments (anonymized as necessary) that would prevent me from attending meetings or sitting in a hearing on this Project.

I have further marked in the box below or on a separate sheet any other relevant information regarding my availability.

- (c) I shall make best efforts to maintain the availability necessary to discharge the duties of a Member throughout the entire duration of the CDB’s anticipated activities which require my involvement, and shall immediately disclose in writing to the Parties and the other Members any additional significant matters that I may become involved in and any other relevant information regarding my availability which may arise in the course of my tenure as a Member and which may materially affect my ability to discharge my duties as a Member.

Initial: _____

1.5 Independence and Impartiality

(a) In deciding which disclosure method applies to you, you should take into account, whether there exists any past, present or future, anticipated or planned relationship, direct or indirect, whether financial, professional or of any other kind, between you and any of the Parties, their lawyers or other representatives, or related entities and individuals. You are also required to disclose all recent, professional or personal, relationships with all key members of all Parties. Any doubt must be resolved in favour of disclosure. Any disclosure should be complete and specific, identifying inter alia relevant dates (both start and end dates), financial arrangements, details of companies and individuals, and all other relevant information.

(i) **Nothing to disclose:** I am impartial and independent of the Parties and intend to remain so. To the best of my knowledge, and having made due enquiry, there are no facts or circumstances, past or present, that I should disclose because they might be of such a nature as to call into question my independence in the eyes of any of the Parties and no circumstances that could give rise to reasonable doubts as to my impartiality.

Initial: _____

(ii) **Acceptance with disclosure:** I am impartial and independent and intend to remain so. However, mindful of my obligation to disclose any facts or circumstances which might be of such a nature as to call into question my independence in the eyes of any of the Parties or that could give rise to reasonable doubts as to my impartiality, I draw attention to the matters below and/or on the attached sheet.

I confirm that the matters disclosed above represent full and complete disclosure with respect to any facts or circumstances which might be of such a nature as to call into question my independence in the eyes of any of the Parties or that could give rise to reasonable doubts as to my impartiality.

Initial: _____

(b) I shall make best efforts to maintain the independence and impartiality necessary to discharge the duties of a Member throughout the entire duration of the CDB's anticipated activities, but shall immediately disclose in writing to the Parties and the other Members any facts or circumstances concerning my impartiality or independence which may arise in the course of my tenure as a Member.

Initial: _____

(c) In accordance with Schedule 27 – Dispute Resolution Procedure of the Project Agreement, I understand that the Parties may exercise their right to challenge me on the basis of an alleged lack of impartiality, independence or qualifications. In the event that I do not withdraw and the other Party does not agree to the challenge, I understand that the challenge shall be determined in accordance with Schedule 27 – Dispute Resolution Procedure of the Project Agreement.

Initial: _____

- (d) In the event that I am successfully challenged, I understand that I will be removed from the CDB forthwith and that my CDB Member Agreement shall be terminated.

Initial: _____

Date:

Signature:

APPENDIX “B”

FORM OF CDB MEMBER AGREEMENT

This Agreement is entered into between:

- (a) CDB Member: *[Note: Full name and title (sole Member, Technical Member or Chair)]* hereinafter the “**Member**”;
- (b) Party 1: Ontario Infrastructure and Lands Corporation, a Crown agent, continued under the Ontario Infrastructure and Lands Corporation Act, 2011 and Metrolinx, a non-share capital corporation continued under the Metrolinx Act, 2006, S.O. 2006, c. 16 and a Crown agency within the meaning of the Crown Agency Act, R.S.O. 1990, c. 48, as amended in accordance with section 3 of the Metrolinx Act, 2006 (Ontario) (collectively, “**Contracting Authority**”);
- (c) Party 2: STRABAG Scarborough Project Inc. (“**Project Co**”),

hereinafter collectively referred to as the “**Undersigned Parties**”.

WHEREAS:

- A. Contracting Authority and Project Co have entered into an agreement dated **[date of the Project Agreement]** (the “**Project Agreement**”) for the Advance Tunnel for Scarborough Subway Extension (the “**Project**”);
- B. Schedule 27 – Dispute Resolution Procedure of the Project Agreement provides for the appointment of a Combined Dispute Board (the “**CDB**”), and that the CDB shall, inter alia, establish a schedule of meetings and site visits, issue decisions and/or recommendations, review the performance of the Project Agreement, and perform other tasks in accordance with Schedule 27 – Dispute Resolution Procedure to the Project Agreement (the “**CDB Services**”);
- C. Certain Disputes may be referred to the CDB for determination in accordance with Schedule 27 – Dispute Resolution Procedure of the Project Agreement; and
- D. The undersigned individual has been appointed to serve on the CDB as a Member.

The Member and the Parties therefore agree as follows:

1.1 Definitions and Interpretation

- (a) This Agreement shall be interpreted in accordance with Schedule 27 – Dispute Resolution Procedure to the Project Agreement and defined terms shall have the same meaning as in the Project Agreement, unless otherwise specified here.
- (b) If there is any conflict between this CDB Member Agreement and Schedule 27 – Dispute Resolution Procedure to the Project Agreement, this CDB Member Agreement will take precedence to the extent of the conflict.

1.2 Undertaking

- (a) The Member shall act as a **[sole Member/Technical Member/Chair]** and hereby agrees to perform the duties of a Member and provide the CDB Services in accordance with the terms of the Project Agreement and the terms of this Agreement.
- (b) The Member confirms that he or she is and shall remain impartial and independent of the Parties.
- (c) The Member further confirms that he or she has executed and will comply with the terms of the CDB Member Statement.

1.3 Composition of the CDB and Contact Details

- (a) The CDB shall be composed of **[one/three]** independent and impartial member(s) in accordance with Section 6 of Schedule 27 – Dispute Resolution Procedure to the Project Agreement.

- (b) The Member can be contacted as follows:

Member: *[Note: Include name, address, telephone, email and any other contact details]*

- (c) The **[CDB Chair]** (if applicable) is listed below and can be contacted as follows:

CDB Chair: *[Note: Include name, address, telephone, email and any other contact details]*

- (d) The **[other Technical Member]** (if applicable) is listed below and can be contacted as follows:

Technical Member: *[Note: Include name, address, telephone, email and any other contact details]*

- (e) The Parties to the Project Agreement are those indicated above with the following contact details:

- (i) Party 1: *[Note: Include contact information]*

- (ii) Party 2: *[Note: Include contact information]*

- (f) Any changes in these contact details shall be immediately communicated to all other Undersigned Parties.

1.4 Qualifications

- (a) The Parties recognise that the Member is **[a Professional Engineer / a lawyer licensed to practice in Ontario / a suitably qualified technical and/or senior managerial expert in relation to the Project/agreed by the parties to be suitably qualified to serve as a Member/a Technical Member/a Chair of the CDB]**.
- (b) The Parties recognise that the Member is an independent, impartial and skilled adjudicator and/or arbitrator experienced in resolving disputes of a type, complexity and value commensurate with the Dispute(s) likely to be referred to the CDB.

1.5 Fees

- (a) The Member shall be entitled to a monthly management fee and an ad-hoc hourly fee for work performed, as described below.
- (b) The monthly management fee shall be **[CAD \$● per month]** and shall be payable from the date of the achievement of Financial Close until the Substantial Completion Date.
- (c) The Member's monthly management fee shall cover: becoming and remaining familiar with the Project Agreement; reviewing progress reports, correspondence from the Parties, and other documents which the CDB is required to review pursuant to Schedule 27 – Dispute Resolution Procedure to the Project Agreement or which the CDB requests for its review; attending internal CDB meetings, and attending ordinary course scheduled meetings and/or site visits (at least quarterly and up to monthly); providing informal assistance with Disputes or potential Disputes; managing and coordinating the operation of the CDB; and any overhead or office expenses.
- (d) The Member's ad-hoc management fee shall be **[CAD \$● per hour]** and shall be billed in hourly increments for certain work performed. The ad-hoc fee shall cover: preparation for and attendance at ad-hoc meetings/site visits with the Parties; any work carried out in connection with referrals for a recommendation and or decision of the CDB, including preparation, attendance at hearings, review of the Parties' submissions, delivery of the decision or recommendation, and revisions to same; and, following the Substantial Completion Date, any of the work described in Section 1.5(c).
- (e) Non-productive ad-hoc travel (i.e. travel not covered as part of the Member's monthly management fee) shall be reimbursed at half the Member's hourly rate.
- (f) Reasonable Member expenses and disbursements relating to flight (at economy class rates), hotel (to a maximum of **[REDACTED]** per night), and the cost of retaining any experts shall be reimbursed at cost. All other costs and disbursements shall be included in the monthly and hourly fees. The Member shall retain all receipts and proof of payment of claimed disbursements and expenses, and shall provide them to the Parties or either Party upon request. The Parties shall have no obligation to reimburse the Member if the Member fails to produce receipts and proof of payment upon request.

1.6 Payment of Fees and Expenses

- (a) All fees and expenses shall be invoiced to Project Co with copies to Contracting Authority and shall be paid to the Member by Project Co. Project Co shall then invoice half of each Member invoice as part of its standard invoicing. While each Party is responsible for paying half of the Members' fees and expenses, this obligation is several and not joint. If one Party fails to make payment, the other Party may make payment of the amounts owed by the non-paying Party and recover the costs of doing so from the non-paying Party, but has no obligation to do so.
- (b) All payments to the Member shall be made to the following account: **[name of bank, account number, SWIFT code, etc.]**.
- (c) All payments shall be made within 30 days of receipt by Project Co of the invoice from the Member.

1.7 Duration and Termination of the Agreement

- (a) Subject to Section 6 of Schedule 27 – Dispute Resolution Procedure to the Project Agreement, the Member agrees to serve for the duration of the CDB to the extent reasonably possible.
- (b) The Parties may at any time, without cause and with immediate effect, jointly terminate the Member Agreement of any Member but shall pay the monthly management fee to such Member for a minimum of one month following the termination, unless otherwise agreed by the Parties and the Member concerned.
- (c) The Member may terminate the CDB Member Agreement at any time by giving a minimum of three months' written notice to the Parties, unless otherwise agreed by the Parties and the Member concerned.
- (d) If the Member is successfully challenged in accordance with Section 6.3 of Schedule 27 – Dispute Resolution Procedure to the Project Agreement, the Member shall be removed from the CDB forthwith and this Agreement shall be terminated. The Member shall be entitled to claim payment for work performed to the date of termination in accordance with the CDB Member Agreement, but shall not be entitled to claim any further payment.

1.8 Indemnity

- (a) The Parties shall jointly and severally indemnify and hold harmless every Member from any claims of third parties for anything done or omitted to be done in the discharge or purported discharge of the Member's activities unless the act or omission is shown to have been in bad faith.

1.9 Confidentiality

- (a) The Member and all of the member's affiliates, employees, servants and agents shall keep all information about the Project, the Member's involvement on the Project, any CDB Services performed by the CDB, and any Dispute(s) referred for a recommendation or decision strictly confidential and shall not disclose such information to anyone other than the Parties.
- (b) The Member shall treat as confidential any information, data, statements, submissions, admissions, settlement proposals, recommendations, discussions, opinions, or any other documents within the meaning of the *Rules of Civil Procedure*, other than documents which would otherwise be admissible pursuant to the *Rules of Civil Procedure*, which were obtained, exchanged or delivered on a without prejudice basis or through the recommendation or decision process by any other Party or the CDB or any Member, except in relation to a binding decision and reasons of the CDB which shall be admissible in subsequent proceedings regarding the same Dispute(s).
- (c) Material delivered by a Party in connection with a recommendation or decision shall not be disclosed to any person or used, copied, supplied or reproduced for any other purpose other than for the performance of the CDB Services, and all such material shall remain the property of the Party disclosing or delivering same.
- (d) The Member shall be bound by and shall comply with the confidentiality and communication provisions set out in Section 42 of the Project Agreement.

- (e) The Parties may at any time require the Member to give and to arrange for its officers, directors, members, employees, servants and agents engaged in the performance of the CDB Services to give written undertakings, in the form of confidentiality agreements on terms required by the Parties, relating to the non disclosure of confidential information, in which case the Member must promptly arrange for such agreements to be made.

1.10 Disputes and Applicable Law

- (a) All disputes arising out of this Agreement which are not subject to resolution pursuant to Section 7.3 of Schedule 27 – Dispute Resolution Procedure to the Project Agreement shall be finally settled by arbitration by one arbitrator agreed by the Undersigned Parties or appointed in accordance with the ADRIIC Rules. This Agreement shall be governed by the laws of Ontario, without regard to conflict of laws provisions. The place of arbitration shall be Toronto, Ontario. The language of the arbitration shall be English.

[Remainder of page intentionally left blank]

This Agreement is entered into on **[specify date]** at **[specify place]**.

[signature]

Member

[signature]

Project Co

[signature]

Contracting Authority

APPENDIX “C”

[REDACTED]

SCHEDULE 28**REFINANCING****1. DEFINITIONS**

1.1 In this Schedule 28, unless the context indicates a contrary intention, terms which are defined in the Project Agreement (and not otherwise defined in this Schedule 28) shall have meanings given to them in the Project Agreement and the following terms shall have the following meanings:

(a) **“Exempt Refinancing”** means:

- (i) a change in taxation or change in accounting treatment pursuant to a Change in Law or change in Canadian GAAP;
- (ii) the exercise of any right, the grant of any amendment, waiver or consent or any similar action under the Lending Agreements by the Lenders that does not provide for a financial benefit to Project Co under those agreements;
- (iii) any Qualifying Bank Transaction;
- (iv) any Rescue Refinancing;
- (v) any Refinancing that was approved by Contracting Authority prior to the execution of the Project Agreement and occurs during the first six months following the date of the Project Agreement;
- (vi) any amendment, variation or supplement of any Lending Agreement approved by Contracting Authority as part of any Variation under the Project Agreement; or
- (vii) any Permitted Borrowing.

(b) **“Qualifying Bank”** means a lending institution that is:

- (i) a bank listed in Schedule I, II or III of the *Bank Act* (Canada); or
- (ii) a bank, life insurance company, pension fund or fund managed by a professional fund manager that, in each case, controls, either directly or through its affiliates, funds in excess of [REDACTED],

provided such institution is not a Restricted Person.

(c) **“Qualifying Bank Transaction”** means:

- (i) the disposition by a Lender of any of its rights or interests in the Lending Agreements to a Qualifying Bank;

- (ii) the grant by a Lender to a Qualifying Bank of any rights of participation in respect of the Lending Agreements; or
 - (iii) the disposition or grant by a Lender to a Qualifying Bank of any other form of benefit or interest in either the Lending Agreements or the revenues or assets of Project Co, whether by way of security or otherwise.
- (d) **“Qualifying Refinancing”** means any Refinancing that will give rise to a Refinancing Gain that is not an Exempt Refinancing.
- (e) **“Refinancing”** means:
- (i) any amendment, variation, novation, supplement or replacement of any Lending Agreement;
 - (ii) entering into any new Lending Agreement;
 - (iii) the exercise of any right, or the grant of any waiver or consent, under any Lending Agreement;
 - (iv) the disposition of any rights or interests in, or the creation of any rights of participation in respect of, the Lending Agreements or the creation or granting of any other form of benefit or interest in either the Lending Agreements or the contracts, revenues or assets of Project Co whether by way of security or otherwise; or
 - (v) any other arrangement put in place by Project Co or another person which has an effect which is similar to any of the foregoing provisions of this definition above or which has the effect of limiting Project Co’s ability to carry out any of the foregoing provisions of this definition.
- (f) **“Refinancing Financial Model”** means a comprehensive and detailed financial model satisfactory to Contracting Authority, acting reasonably, prepared for the purpose of Section 2 of this Schedule 28, which financial model shall be similar in form and content to the Financial Model, suitable for the purposes for which it will be used in this Schedule 28, and shall take into account:
- (i) cash flows for the entire remaining Project Term;
 - (ii) any changes in structure and funding since the date of the Project Agreement;
 - (iii) the performance of the Works to the date of the Refinancing;
 - (iv) macroeconomic assumptions; and
 - (v) all other relevant factors.
- (g) **“Refinancing Gain”** means an amount equal to the greater of zero and $(A - B)$, where:

A = the sum of the Senior Debt Amount and Junior Debt Amount as projected to be outstanding at Substantial Completion immediately prior to the Refinancing (using the Refinancing Financial Model but without taking into account the effect of the Refinancing); and

B = the sum of the Senior Debt Amount and Junior Debt Amount as projected to be outstanding at Substantial Completion immediately prior to the Refinancing (using the Refinancing Financial Model and taking into account the effect of the Refinancing).

- (h) “**Rescue Refinancing**” means any Refinancing which takes place due to the failure or prospective failure of Project Co to comply with any material financial obligation under the Lending Agreements, or any of them, which does not increase any liability of Contracting Authority, whether actual or potential.

2. REFINANCING

2.1 Project Co shall not carry out:

- (a) any Qualifying Refinancing unless Project Co has obtained the prior written consent of Contracting Authority, subject to Section 2.2; or
- (b) any Exempt Refinancing or any other Refinancing which does not result in a Refinancing Gain unless Project Co has delivered Notice of such Refinancing to Contracting Authority at least 10 Business Days before such Refinancing, except that such Notice shall not be required for a disposition by a Lender of its rights or participation in the Lending Agreements where such disposition is a trade of bonds issued as provided under a book-based system of a depository and pursuant to a trust indenture that comprises a portion of the Financing.

2.2 Contracting Authority may withhold its consent to any Qualifying Refinancing, in its sole discretion:

- (a) where any person with whom Project Co proposes to carry out a Qualifying Refinancing is a Restricted Person;
- (b) if, at the time the Qualifying Refinancing is contemplated and effected, the Qualifying Refinancing will materially adversely affect the ability of Project Co to perform its obligations under the Project Documents or the Project Agreement; or
- (c) if, at the time the Qualifying Refinancing is contemplated and effected, the Qualifying Refinancing will have the effect of increasing any liability of Contracting Authority, whether actual or contingent, present or future, known or unknown.

2.3 Contracting Authority shall be entitled to receive:

- (a) a [REDACTED] share of any Refinancing Gain arising from a Qualifying Refinancing, in respect of any Refinancing Gain up to (when considered in aggregate with all previous Qualifying Refinancings) a Refinancing Gain of [REDACTED];

- (b) a [REDACTED] share of any further Refinancing Gain arising from a Qualifying Refinancing, in respect of any Refinancing Gain in excess of [REDACTED] and up to (when considered in aggregate with all previous Qualifying Refinancings) a Refinancing Gain of [REDACTED]; and
 - (c) a [REDACTED] share of any further Refinancing Gain arising from a Qualifying Refinancing.
- 2.4 Project Co shall promptly provide Contracting Authority with full details of any proposed Qualifying Refinancing, including a copy of the proposed Refinancing Financial Model and the basis for the assumptions used in the proposed Refinancing Financial Model. Contracting Authority shall (before, during and at any time after any Refinancing) have unrestricted rights of audit over the Refinancing Financial Model and any documentation (including any aspect of the calculation of the Refinancing Gain) used in connection with such Refinancing (whether or not such Refinancing is determined to be a Qualifying Refinancing). Project Co shall promptly, and, in any event, within five Business Days after receiving a written request from Contracting Authority, provide any information in relation to a proposed Refinancing as Contracting Authority may reasonably require. Project Co shall keep Contracting Authority informed as to any changes to the terms of the Refinancing. Both Contracting Authority and Project Co shall at all times act in good faith with respect to any Refinancing.
- 2.5 Contracting Authority's share of the Refinancing Gain shall be received as a reduction in the amount of the Substantial Completion Payment.
- 2.6 Contracting Authority and Project Co will negotiate in good faith to agree upon the basis and method of calculation of the Refinancing Gain. If the parties fail to agree upon the basis and method of calculation of the Refinancing Gain or the payment of Contracting Authority's share, the Dispute shall be determined in accordance with Schedule 27 – Dispute Resolution Procedure. Both Contracting Authority and Project Co shall work collaboratively to establish the rate setting process required to complete the Refinancing.
- 2.7 The Refinancing Gain shall be calculated after taking into account the reasonable out-of-pocket costs that each Party directly incurs in relation to the Qualifying Refinancing and on the basis that, within 15 Business Days following any Qualifying Refinancing, Project Co will reimburse Contracting Authority for all such reasonable out-of-pocket costs incurred by Contracting Authority.

MT MTDOCS 41633418

SCHEDULE 29

FORM OF PERFORMANCE GUARANTEE OF CONSTRUCTION GUARANTOR

[REDACTED]

SCHEDULE 30

INSURANCE TRUST AGREEMENT

THIS AGREEMENT is made as of the ____ day of _____, 2021

AMONG:

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

AND:

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

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

AND:

NATIONAL BANK FINANCIAL INC., acting as agent for and on behalf of the Lenders

(the “**Lenders’ Agent**”)

AND:

STRABAG SCARBOROUGH PROJECT INC., [REDACTED]

(“**Project Co**”)

AND:

AST TRUST COMPANY (CANADA), a trust company existing under the laws of Canada

(the “**Account Trustee**”)

WHEREAS:

- A. Contracting Authority and Project Co have entered into the Project Agreement.
- B. Contracting Authority, the Lenders’ Agent and Project Co have entered into the Lenders’ Direct Agreement.
- C. Contracting Authority, the Lenders’ Agent and Project Co have agreed that all amounts from time to time contained in the Insurance Trust Account are to be held in trust by the Account Trustee in accordance with the terms of this Insurance Trust Agreement, and that no releases, distributions

or transfers of any funds from the Insurance Trust Account shall be made other than in accordance with the terms of this Insurance Trust Agreement.

- D. IO, as Crown agent and Metrolinx, as Crown agency, intend to enter into this Insurance Trust Agreement in accordance with Applicable Law, and to be liable, on a joint and several basis, for all of the obligations of Contracting Authority pursuant to this Insurance Trust Agreement, save and except as provided for in this Insurance Trust Agreement.

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

1. DEFINITIONS

In this Insurance Trust Agreement, unless the context otherwise requires:

- (a) “**Account Trustee**” has the meaning given in the introductory paragraph of this Insurance Trust Agreement.
- (b) “**Applicable Law**” has the meaning given in the Project Agreement.
- (c) “**Appointed Representative**” has the meaning given in the Lenders’ Direct Agreement.
- (d) “**Bank**” means [REDACTED].
- (e) “**Bonds**” means a sealed digital performance bond issued by Liberty Mutual Insurance Company, in favour of Project Co, in the form attached to the Project Agreement as Appendix B to Schedule 25 – Insurance and Performance Security Requirements and a sealed digital labour and material payment bond issued by Liberty Mutual Insurance Company in favour of Project Co, in the form attached to the Project Agreement as Appendix C to Schedule 25 – Insurance and Performance Security Requirements.
- (f) “**Business Day**” has the meaning given in the Project Agreement.
- (g) “**Change of Authorization Event**” has the meaning given in Section 9(a) of this Insurance Trust Agreement.
- (h) “**Change of Authorization Notice**” has the meaning given in Section 9(b)(ii) of this Insurance Trust Agreement.
- (i) “**Contracting Authority**” has the meaning given in the introductory paragraph of this Insurance Trust Agreement.
- (j) “**Contracting Authority Representative**” has the meaning given in the Project Agreement.
- (k) “**Default Notice**” means a written notice given by the Lenders’ Agent to the Account Trustee and Contracting Authority that an event of default under the Lending Agreements has occurred and is continuing.

- (l) “**Default Period**” means the period commencing on the date upon which the Account Trustee and Contracting Authority receives a Default Notice and ending on the date upon which the Account Trustee and Contracting Authority receives written notice from the Lenders’ Agent that the event of default which was the subject matter of the applicable Default Notice has been cured.
- (m) “**Governmental Authority**” has the meaning given in the Project Agreement.
- (n) “**Insurance Policies**” has the meaning given in Section 4 of this Insurance Trust Agreement.
- (o) “**Insurance Proceeds**” has the meaning given in Section 6(a) of this Insurance Trust Agreement.
- (p) “**Insurance Trust Account**” means the account bearing [REDACTED] at [REDACTED], in the name of the Account Trustee. The following information is to be used to make a wire transfer payment into the insurance trust account:

[REDACTED]
- (q) “**Insurance Trust Agreement**” means this Insurance Trust Agreement.
- (r) “**IO**” has the meaning given in the introductory paragraph of this Insurance Trust Agreement.
- (s) “**Lenders**” has the meaning given in the Project Agreement.
- (t) “**Lenders’ Agent**” has the meaning given in the introductory paragraph of this Insurance Trust Agreement.
- (u) “**Lenders’ Direct Agreement**” means the Lenders’ Direct Agreement made on or about the date hereof between Contracting Authority, Project Co and the Lenders’ Agent.
- (v) “**Lending Agreements**” has the meaning given in the Project Agreement.
- (w) “**Multiple Obligee**” means a multiple obligee under the applicable Bond.
- (x) “**Multiple Obligee Rider(s)**” means the multiple obligee rider(s) applicable to the Bonds pursuant to which Project Co, Contracting Authority and the Lenders’ Agent are multiple obligees under the Bonds.
- (y) “**New Metrolinx Infrastructure**” has the meaning given in the Project Agreement.
- (z) “**New Third Party Infrastructure**” has the meaning given in the Project Agreement.
- (aa) “**Notice Period**” has the meaning given in the Lenders’ Direct Agreement.
- (bb) “**Order**” has the meaning given in Section 8(k) of this Insurance Trust Agreement.

- (cc) “**Party**” means any of Contracting Authority, Project Co, the Lenders’ Agent or the Account Trustee, and “**Parties**” means all of Contracting Authority, Project Co, the Lenders’ Agent and the Account Trustee.
- (dd) “**Project**” has the meaning given in the Project Agreement.
- (ee) “**Project Agreement**” means the project agreement made on or about the date hereof between Contracting Authority and Project Co.
- (ff) “**Project Co**” has the meaning given in the introductory paragraph of this Insurance Trust Agreement.
- (gg) “**Project Co Event of Default**” has the meaning given in the Project Agreement.
- (hh) “**Replacement Project Agreement**” has the meaning given in the Lenders’ Direct Agreement.
- (ii) “**Replacement Project Co**” has the meaning given in the Lenders’ Direct Agreement.
- (jj) “**Step-In Notice**” has the meaning given in the Lenders’ Direct Agreement.
- (kk) “**Step-In Period**” has the meaning given in the Lenders’ Direct Agreement.
- (ll) “**Surety**” has the meaning given in the Project Agreement.
- (mm) “**Trust Property**” means all of the property held in trust by the Account Trustee pursuant to this Insurance Trust Agreement, including the Bonds, the Insurance Trust Account, and all amounts from time to time contained therein, the Insurance Policies and the Insurance Proceeds.
- (nn) “**Works**” has the meaning given in the Project Agreement.

2. INTERPRETATION

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

- (a) The headings in this Insurance Trust Agreement are for convenience of reference only and shall not constitute a part of this Insurance Trust Agreement, and shall not be taken into consideration in the interpretation of, or affect the meaning of, this Insurance Trust Agreement.
- (b) Unless the context otherwise requires, references to specific Sections, Clauses, Paragraphs, Subparagraphs, and other divisions are references to such Sections, Clauses, Paragraphs, Subparagraphs, or divisions of this Insurance Trust Agreement and the terms “Section” and “Clause” are used interchangeably and are synonymous.
- (c) Words importing persons or parties are to be broadly interpreted and include an individual, corporation, limited liability company, joint stock company, firm, partnership,

joint venture, trust, unincorporated organization, Governmental Authority, unincorporated body of persons or association and any other entity having legal capacity, and the heirs, beneficiaries, executors, administrators or other legal representatives of a person in such capacity.

- (d) Unless the context otherwise requires, wherever used herein the plural includes the singular, the singular includes the plural, and each of the masculine, feminine and neuter genders include all other genders.
- (e) References to any standard, principle, agreement or document include (subject to all relevant approvals and any other provisions of this Insurance Trust Agreement concerning amendments) a reference to that standard, principle, agreement or document as amended, supplemented, restated, substituted, replaced, novated or assigned.
- (f) The words in this Insurance Trust Agreement shall bear their natural meaning.
- (g) References containing terms such as:
 - (i) “hereof”, “herein”, “hereto”, “hereinafter”, and other terms of like import are not limited in applicability to the specific provision within which such references are set forth but instead refer to this Insurance Trust Agreement taken as a whole; and
 - (ii) “includes” and “including”, whether or not used with the words “without limitation” or “but not limited to”, shall not be deemed limited by the specific enumeration of items but shall, in all cases, be deemed to be without limitation and construed and interpreted to mean “includes without limitation” and “including without limitation”.
- (h) In construing this Insurance Trust Agreement, the rule known as the ejusdem generis rule shall not apply nor shall any similar rule or approach to the construction of this Insurance Trust Agreement and, accordingly, general words introduced or followed by the word “other” or “including” or “in particular” shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words.
- (i) Where this Insurance Trust Agreement states that an obligation shall be performed “no later than” or “within” or “by” a stipulated date or event which is a prescribed number of days after a stipulated date or event, the latest time for performance shall be 5:00 p.m. on the last day for performance of the obligation concerned, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- (j) Where this Insurance Trust Agreement states that an obligation shall be performed “on” a stipulated date, the latest time for performance shall be 5:00 p.m. on that day, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- (k) Any reference to time of day or date means the local time or date in Toronto, Ontario.

- (l) Unless otherwise indicated, time periods will be strictly construed and time shall be of the essence hereof.
- (m) Whenever the terms “will” or “shall” are used in this Insurance Trust Agreement they shall be construed and interpreted as synonymous and to read “shall”.

3. BONDS AND INSURANCE TRUST ACCOUNT

- (a) Prior to the commencement of a Default Period, the Bonds, the Insurance Trust Account and all amounts from time to time contained therein, including interest thereon, shall be held in trust by the Account Trustee for the benefit of Project Co. During a Default Period, the Bonds and the Insurance Trust Account, and all amounts from time to time contained therein, shall be held in trust by the Account Trustee for the benefit of the Lenders’ Agent and the Lenders, provided that, upon receipt by the Account Trustee of a Change of Authorization Notice, the Bonds, the Insurance Trust Account, and all amounts from time to time contained therein, shall be held in trust by the Account Trustee for the benefit of Contracting Authority.
- (b) The Account Trustee shall not release the Bonds or release, distribute or transfer any funds from the Insurance Trust Account other than in accordance with the terms of this Insurance Trust Agreement.
- (c) Notwithstanding any other provision of this Insurance Trust Agreement and subject to Section 3(d), the Lenders’ Agent, Contracting Authority, and Project Co agree that (x) if Project Co or the Lenders’ Agent receives the Bonds, then the Bonds will be enforced for the purpose of completion of the Project, and (y) if any of them either receives any Insurance Proceeds from the Insurance Trust Account or has the right to direct the Account Trustee to advance funds in respect of any Insurance Proceeds from the Insurance Trust Account to third parties, such funds shall be directed, used or advanced only for one of the following purposes:
 - (i) the repair, reinstatement, restoration or replacement of the New Metrolinx Infrastructure or New Third Party Infrastructure or any other assets, materials or goods necessary or desirable for the carrying out of the Works in respect of which such Insurance Proceeds have been paid;
 - (ii) the completion of the Project; or
 - (iii) indemnification for any Contracting Authority loss for which the subject Insurance Proceeds were paid under the Insurance Policies (as defined below).

For greater certainty, use of any Insurance Proceeds received in respect of a claim by Project Co for delay in start-up, soft costs or business interruption may be applied in accordance with the terms of the Lending Agreements so as to enable Project Co to carry out the Works.

- (d) Notwithstanding anything in this Insurance Trust Agreement, if Contracting Authority is entitled to indemnification under the Insurance Policies in respect of any loss incurred by Contracting Authority, such related insurance proceeds are to be paid directly to

Contracting Authority by the insurer or the Account Trustee and shall not be Insurance Proceeds subject to Section 3(c)(i) or (ii) of this Insurance Trust Agreement. For greater certainty it is understood and agreed that Contracting Authority shall be required to use such proceeds for carrying out the purposes referred to in Sections 3(c)(i) and (ii) in respect of which such proceeds have been paid.

4. DELIVERY OF BONDS AND INSURANCE POLICIES

Project Co shall deliver, or cause to be delivered, the Bonds to the Account Trustee, Project Co is required to obtain under the Project Agreement and certified copies or originals of all insurance policies that Project Co is required to maintain under the Project Agreement (collectively, the “**Insurance Policies**”), and the Account Trustee shall hold the Bonds and Insurance Policies in trust for the benefit of each of the beneficiaries and loss payees, as the case may be, thereunder.

5. BONDS

- (a) If the Account Trustee and Contracting Authority have received a Default Notice, and if Lenders’ Agent presents to the Account Trustee (and the other parties to this Insurance Trust Agreement) a declaration that it or any person Lenders’ Agent designates requires possession of the Bonds for the purpose of establishing and/or enforcing the rights of any Multiple Obligee thereunder, and the Account Trustee has received written authorization from Contracting Authority confirming Lenders’ Agent’s right to receive the Bonds, the Account Trustee shall provide the Bonds to Lenders’ Agent or such designated party, without the need for further investigation or inquiry by the Account Trustee, provided that, if at any time prior to the release of the Bonds to Lenders’ Agent or a person designated by it, pursuant to the foregoing, the Account Trustee receives a Change of Authorization Notice and Contracting Authority presents to the Account Trustee a declaration that it or any person designated by it requires possession of the Bonds for the purpose of establishing and/or enforcing the rights of any Multiple Obligee thereunder, the Account Trustee shall provide the same to Contracting Authority or such designated party, without the need for further investigation or inquiry by the Account Trustee that Contracting Authority or the designated party presenting the declaration is entitled to receive the Bonds. Contracting Authority shall provide, no later than five Business Days following receipt by Contracting Authority of a request by the Lenders’ Agent, either: (i) the written authorization referred to in this Section 5(a); or (ii) written justification detailing Contracting Authority’s rationale for refusing to provide such authorization.
- (b) Project Co agrees to obtain or cause to be obtained from the Surety any required amendment to the Bonds to provide for the foregoing provisions by way of amendment or replacement of the Multiple Obligee Rider now attached to and forming part of the Bonds.
- (c) Contracting Authority, Lenders’ Agent and Project Co covenant and agree to observe and perform their respective covenants, agreements and obligations under the provisions of the Lender’s Direct Agreement and further covenant and agree as between them, that if there is any conflict or inconsistency between the provisions of Lender’s Direct Agreement and this Insurance Trust Agreement, the provisions of the Lender’s Direct Agreement shall govern and prevail to the extent of such conflict or inconsistency.

6. INSURANCE PROCEEDS

- (a) Subject to Section 3(d), the Account Trustee shall distribute any proceeds of any Insurance Policy that are paid over to it by any insurer, Project Co, the Lenders' Agent or Contracting Authority (the "**Insurance Proceeds**") as follows:
- (i) in the case of third party legal liability or employer's liability insurance, to the relevant claimant in satisfaction of the claim, demand, proceeding or liability in respect of which such Insurance Proceeds are payable;
 - (ii) in the case of any property builders' risk "All Risk" insurance, boiler and machinery insurance or property insurance policies that Project Co is required to maintain under the Project Agreement:
 - (A) if the Account Trustee has not received a Default Notice and:
 - (1) if the amount of such Insurance Proceeds, together with the aggregate of all Insurance Proceeds in respect of the assets in respect of which such Insurance Proceeds have been paid in the same calendar month, is less than [REDACTED], to Project Co to repair, restore or replace the assets in respect of which such Insurance Proceeds have been paid; or
 - (2) if the amount of such Insurance Proceeds, together with the aggregate of all Insurance Proceeds in respect of the assets in respect of which such Insurance Proceeds have been paid in the same calendar month, is equal to or greater than [REDACTED], to the Lenders' Agent to reimburse Project Co for the costs of repairing, restoring or replacing the assets in respect of which such Insurance Proceeds have been paid; or
 - (B) if the Account Trustee has received a Default Notice, to the Insurance Trust Account to be distributed by the Account Trustee in such amounts and to such persons as the Lenders' Agent may at any time or from time to time direct in writing, provided that, if the Account Trustee has received a Change of Authorization Notice, the Account Trustee shall release such Insurance Proceeds from the Insurance Trust Account in such amounts and to such parties as Contracting Authority may at any time or from time to time direct in writing, in each case, to repair, restore or replace the assets in respect of which such Insurance Proceeds have been paid; and
 - (iii) in the case of any other Insurance Policies, to the Lenders' Agent, or, following receipt by the Account Trustee of a Change of Authorization Notice, to Contracting Authority, to be distributed to the parties entitled thereto.
- (b) The Account Trustee shall distribute any excess Insurance Proceeds remaining after the distributions contemplated in Section 6(a) have been made, including any Insurance Proceeds held in the Insurance Trust Account:

- (i) if the Account Trustee has not received a Default Notice, to Project Co; and
 - (ii) if the Account Trustee has received a Default Notice, to such persons as the Lenders' Agent, or, following receipt by the Account Trustee of a Change of Authorization Notice, Contracting Authority, may at any time or from time to time direct in writing.
- (c) Each of Project Co, the Lenders' Agent and Contracting Authority shall forthwith deliver, or cause to be delivered, to the Account Trustee, any and all Insurance Proceeds it received from time to time and is not otherwise entitled to in accordance with the terms of this Insurance Trust Agreement.
- (d) The Account Trustee shall deposit to the Insurance Trust Account all amounts that are paid over to it pursuant to the Insurance Policies or otherwise by Project Co, Contracting Authority or the Lenders' Agent and shall not transfer, release or distribute any such proceeds other than in accordance with this Insurance Trust Agreement.

7. ACCOUNT AGREEMENT

- (a) The Account Trustee hereby agrees to promptly provide to the Lenders' Agent all monthly statements and other information with respect to the Insurance Trust Account provided to the Account Trustee by the Bank pursuant to the relevant account agreement. The Account Trustee further agrees that it shall make such requests to the Bank for additional information with respect to the Insurance Trust Account as the Lenders' Agent may from time to time request in writing.
- (b) The Account Trustee hereby agrees to promptly provide to Contracting Authority all monthly statements and other information with respect to the Insurance Trust Account provided to the Account Trustee by the Bank pursuant to the relevant account agreement. The Account Trustee further agrees that it shall make such requests to the Bank for additional information with respect to the Insurance Trust Account as Contracting Authority may from time to time request in writing.

8. THE ACCOUNT TRUSTEE

- (a) The Account Trustee shall not have any duty or obligation to manage, control, use, make any payment in respect of, register, record, insure, inspect, sell, dispose of or otherwise deal with any part of the Trust Property except as expressly provided by the terms of this Insurance Trust Agreement. The Account Trustee shall carry out all written directions given by the Lenders' Agent, Contracting Authority or Project Co, as applicable, in accordance with this Insurance Trust Agreement and shall not be required to exercise any discretion in exercising any of its duties under this Insurance Trust Agreement in pursuance of such written directions. The Account Trustee shall not be bound to do or take any act, action or proceeding by virtue of the powers conferred on it hereby unless and until it shall have been required to do so under the terms hereof and has received instruction, advice or direction from the Lenders' Agent, Contracting Authority or Project Co, as applicable, as to the action to be taken (except with respect to actions specifically set out herein to be performed by the Account Trustee).

- (b) The Account Trustee will exercise its powers and carry out its obligations hereunder as account trustee honestly, in good faith and in the best interests of the beneficiaries hereunder and in connection therewith will exercise that degree of care, diligence, and skill that a reasonably prudent professional trustee would exercise in comparable circumstances. Unless otherwise required by law, the Account Trustee will not be required to give bond surety or security in any jurisdiction for the performance of any duties or obligations hereunder. No provision of this Insurance Trust Agreement shall be construed to relieve the Account Trustee from liability for its own dishonesty, fraud, negligence (including negligence in the handling of funds), willful misconduct, bad faith or reckless disregard of any duty hereunder.
- (c) The Account Trustee will not be subject to any liability whatsoever, in tort, contract or otherwise in connection with the Trust Property or the carrying out of its duties under this Insurance Trust Agreement to the Lenders' Agent, the Lenders, Contracting Authority, Project Co or any other person for any action taken or permitted by it to be taken, or for its failure to take any action, or for not performing any act or fulfilling any duty, obligation or responsibility hereunder by reason of any occurrence beyond the control of the Account Trustee (including, but not limited to, any act or provision of any present or future law or of any Governmental Authority, any act of God or war, or the unavailability of any wire or communication facility), provided that the foregoing limitation will not apply in respect of any action or failure to act arising from or in connection with wilful misconduct, negligence or reckless disregard of duty by the Account Trustee. The Account Trustee in doing anything or permitting anything to be done in respect of the Trust Property or the carrying out of its duties under this Insurance Trust Agreement is, and will be conclusively deemed to be, acting as trustee for the beneficiaries hereunder and not in any other capacity. Except to the extent provided in this Section 8(c), the Account Trustee will not be subject to any liability for debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses against or with respect to the Trust Property, arising out of anything done or permitted by it to be done or its failure to take any action in respect of the execution of its duties hereunder and resort will be had solely to the Trust Property for the payment or performance thereof, and no other property or assets of the Account Trustee, whether owned in its personal capacity or otherwise, will be subject to levy, execution or other enforcement procedure with regard to any obligation under this Insurance Trust Agreement.
- (d) The Account Trustee shall not be required to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers hereunder, or in acting at the request or direction of the Lenders' Agent on behalf of the Lenders or of Contracting Authority or of Project Co, unless it shall have received adequate indemnity or security against such risk or liability satisfactory to it.
- (e) Notwithstanding the foregoing, the Account Trustee shall be liable for any action or failure to act arising from or in connection with the dishonesty, fraud, negligence (including negligence in the handling of funds), wilful misconduct, bad faith or reckless disregard of any duty hereunder by the Account Trustee or any of its directors, officers or employees, or the failure to comply with the standard of care referred to in Section 8(b).

- (f) Except as otherwise provided in Sections 8(c), 8(d) and 8(e):
- (i) the Account Trustee may rely and shall be protected in acting or refraining from acting upon any signature, resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order or other paper or document reasonably believed by it in good faith to be genuine and to have been signed or presented by the proper party or parties; and
 - (ii) the Account Trustee may exercise its powers and perform its duties by or through such attorneys, representatives, agents and employees as it shall appoint; and may consult with counsel, accountants and other skilled persons selected and employed or retained by it, and the Account Trustee shall not be liable for anything done, suffered or omitted in good faith by it in accordance with the written advice of such counsel, accountants or other skilled persons (provided that such advice pertains to such matters as the Account Trustee may reasonably presume to be within the scope of such person's area of competency) and not contrary to any express provision in this Insurance Trust Agreement.
- (g) Project Co hereby agrees to pay, indemnify and hold harmless the Account Trustee from and against any and all loss, liability, cost, claim and expense incurred by the Account Trustee with respect to the performance of this Insurance Trust Agreement by the Account Trustee or any of the Account Trustee's directors, officers or employees, unless arising from its or their own dishonesty, fraud, negligence (including negligence in the handling of funds), wilful misconduct, bad faith or reckless disregard of any duty hereunder.
- (h) Subject to the terms and conditions set forth in the Account Trustee fee letter, the Account Trustee shall receive from the Trust Property reasonable compensation for its services hereunder and shall be reimbursed by Project Co for its reasonable fees and expenses (including the disbursements and reasonable fees of counsel).
- (i) The Account Trustee agrees to look solely to Project Co, and not, except as expressly set forth herein, to the Lenders' Agent, the Lenders or Contracting Authority for any claim for indemnification which may arise under this Insurance Trust Agreement.
- (j) The Account Trustee shall be responsible for keeping all appropriate books and records relating to the receipt and disbursement of all money which it receives hereunder.
- (k) If at any time the Account Trustee is served with any judicial or administrative order, judgment, decree, writ or other form of judicial or administrative process which in any way affects the Trust Property held by it hereunder (including, but not limited to, orders of attachment or garnishment or other forms of levies or injunctions or stays relating to the transfer of Trust Property) (each, an "**Order**"), the Account Trustee is authorized to comply therewith in any manner as it or legal counsel of its own choosing deems appropriate. The Account Trustee shall in no way be bound to call for further evidence (whether as to due execution validity or effectiveness, or the jurisdiction of any court, or as to the truth of any fact), and shall not be responsible for any loss that may be occasioned by its failing to do so. If the Account Trustee complies with any Order, the Account Trustee shall not be liable to any of the parties hereto or to any other person or

entity even though such Order may be subsequently modified or vacated or otherwise determined to have been without legal force or effect. If the Account Trustee is served with any Order, it shall forthwith and, in any event, within three Business Days, deliver a copy of such Order to each of the Lenders' Agent, Contracting Authority and Project Co.

- (l) Unless otherwise specifically set forth herein, the Account Trustee shall proceed as soon as practicable to collect any cheques or other collection items at any time deposited hereunder. All such collections shall be subject to the Account Trustee's usual collection practices or terms regarding items received by the Account Trustee for deposit or collection. Except and to the extent provided herein, the Account Trustee shall not be required, or have any duty, to notify any person of any payment or maturity under the terms of any instrument deposited hereunder, nor to take any legal action to enforce payment of any cheque, note or security deposited hereunder, or to exercise any right or privilege which may be afforded to the holder of any such security.
- (m) In the event that the Account Trustee determines that any direction, instruction, notice or other communication given under this Insurance Trust Agreement by the Lenders' Agent or, where the Account Trustee has received a Change of Authorization Notice, Contracting Authority, is ambiguous or uncertain, the Account Trustee may, in its sole discretion, refrain from taking any action other than retaining possession of the Trust Property, unless the Account Trustee has received written instructions, signed by the Lenders' Agent or, if the Account Trustee has received a Change of Authorization Notice, Contracting Authority, which resolve such ambiguity or uncertainty, provided that the Account Trustee shall, forthwith upon determining that such direction, instruction, notice or other communication is ambiguous or uncertain, seek clarification from the Lenders' Agent, or where the Account Trustee has received a Change of Authorization Notice, Contracting Authority, to resolve such ambiguity or uncertainty.
- (n) Prior to receipt of a Change of Authorization Notice by the Account Trustee, any instruction, notice or other communication delivered to the Account Trustee by the Lenders' Agent shall be paramount to and supersede any direction, instruction, notice or other communication from any other party to this Insurance Trust Agreement, and the Account Trustee shall comply with such direction, instruction, notice or other communication from the Lenders' Agent. After the Account Trustee has received a Change of Authorization Notice, any instruction, notice or other communication delivered to the Account Trustee by Contracting Authority shall be paramount to and supersede any direction, instruction, notice or other communication from any other party to this Insurance Trust Agreement, and the Account Trustee shall comply with such direction, instruction, notice or other communication from Contracting Authority.
- (o) Each of the Lenders' Agent and Contracting Authority shall provide to the Account Trustee an incumbency certificate setting out the names and sample signatures of individuals authorized to give instructions to the Account Trustee hereunder. The Account Trustee shall be entitled to rely on each such incumbency certificate until a revised or replacement incumbency certificate is provided to the Account Trustee by the Lenders' Agent or Contracting Authority, as applicable. The Account Trustee shall refuse to act upon any instruction given by the Lenders' Agent or Contracting Authority which is signed by any person other than an individual named in the incumbency

certificate provided to the Account Trustee by the Lenders' Agent or Contracting Authority, as applicable, pursuant to this Section 8(o), as any such incumbency certificate may be amended, supplemented or replaced from time to time.

- (p) The Account Trustee shall be entitled to rely on, and act upon, any direction, instruction, notice or other communication provided to it hereunder which is sent to it by electronic submission, provided that any such direction, instruction, notice or other communication is signed by an individual named in the incumbency certificate delivered to the Account Trustee by the Lenders' Agent or Contracting Authority, as applicable, pursuant to Section 8(o).
- (q) The Account Trustee shall retain the right not to act and shall not be liable for refusing to act if, due to a lack of information or for any other reason whatsoever, the Account Trustee, in its sole judgment, determines that such act might cause it to be in non-compliance with any applicable anti-money laundering or anti-terrorist legislation, regulation or guideline. Further, should the Account Trustee, in its sole judgment, determine at any time that its acting under this Insurance Trust Agreement has resulted in its being in non-compliance with any applicable anti-money laundering or anti-terrorist legislation, regulation or guideline, then it shall have the right to resign on 10 days' written notice to Project Co and Contracting Authority, or any shorter period of time as agreed to by Project Co and Contracting Authority, notwithstanding the provisions of Section 8(a) of this Insurance Trust Agreement, provided that (i) the Account Trustee's written notice shall describe the circumstances of such non-compliance; 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.

9. LENDERS' AGENT AND CONTRACTING AUTHORITY'S RIGHTS TO DIRECT

- (a) Until the first to occur of:
 - (i) the expiry of the Notice Period under the Lenders' Direct Agreement where no Step-In Notice has been delivered thereunder;
 - (ii) the expiry of the Step-In Period under the Lenders' Direct Agreement where:
 - (A) there has been no assignment to a Replacement Project Co;
 - (B) no Replacement Project Agreement has been entered into; or
 - (C) the Appointed Representative has not cured the Project Co Event of Default,

(each, a "**Change of Authorization Event**"), the Lenders' Agent shall, subject to Sections 3 and 4 of this Insurance Trust Agreement, have the exclusive right to direct the Account Trustee with respect to the Insurance Trust Account, the Insurance Policies, the Bonds and the Insurance Proceeds.

- (b) Upon the occurrence of a Change of Authorization Event:
- (i) the Lenders' Agent shall cease to be entitled, and Contracting Authority shall thenceforth be entitled, to direct the Account Trustee with respect to the Insurance Trust Account, the Insurance Policies, the Bonds and the Insurance Proceeds; and
 - (ii) the Lenders' Agent and Contracting Authority shall jointly provide notice to the Account Trustee (a "**Change of Authorization Notice**") that Contracting Authority shall, as of the date of such Change of Authorization Event, have the exclusive right to direct the Account Trustee with respect to the Insurance Trust Account, the Insurance Policies, the Bonds and the Insurance Proceeds.

10. TERMINATION

- (a) Subject to the provisions of Section 10(b), this Insurance Trust Agreement shall remain in full force and effect and be binding in accordance with and to the extent of its terms until:
- (i) the obligations of Project Co to the Lenders' Agent and the Lenders under the Lending Agreements have been paid and performed in full and the Lenders have no further obligation to make any further advances or other credit accommodations under the Lending Agreements; and
 - (ii) the obligations of Project Co to Contracting Authority have been paid and performed in full.
- (b) The Account Trustee may terminate this Insurance Trust Agreement at any time upon 60 days prior written notice to the other parties hereto, provided that no termination of this Insurance Trust Agreement by the Account Trustee shall be effective until such time as the Lenders' Agent, Contracting Authority, and Project Co have entered into a replacement Insurance Trust Agreement on the same terms and conditions as this Insurance Trust Agreement with a replacement account trustee satisfactory to the Lenders' Agent, the Lenders and Contracting Authority.

11. ASSIGNMENT

The Account Trustee shall not assign, transfer or otherwise dispose of any of its rights or obligations under this Insurance Trust Agreement without the prior written consent of the Lenders' Agent, Contracting Authority and Project Co.

12. NOTICES

- (a) All notices, requests, demands, instructions, certificates, consents and other communications required or permitted under this Insurance Trust Agreement shall be in writing (whether or not "written notice" or "notice in writing" is specifically required by the applicable provision of this Insurance Trust Agreement) and served by sending the same by registered mail, by hand (in each case with a copy by electronic submission to the Contracting Authority Representative), or by electronic submission as follows:

If to Contracting Authority:

[REDACTED]

If to the Lenders' Agent:

[REDACTED]

If to Project Co:

[REDACTED]

If to the Account Trustee:

[REDACTED]

- (b) Where any notice is provided or submitted to a Party via electronic submission, an original of the notice sent via electronic submission shall promptly be sent by regular mail or registered mail. For greater certainty, a notice given via electronic submission shall not be invalid by reason only of a Party's failure to comply with this Section 12(b).
- (c) Any Party to this Insurance Trust Agreement may, from time to time, change any of its contact information set forth in Section 12(a) by prior notice to the other Parties, and such change shall be effective on the Business Day that next follows the recipient Party's receipt of such notice unless a later effective date is given in such notice.
- (d) Subject to Sections 12(e), 12(f) and 12(g):
 - (i) a notice given by registered mail shall be deemed to have been received on the third Business Day after mailing;
 - (ii) a notice given by hand delivery shall be deemed to have been received on the day it is delivered; and
 - (iii) a notice given by electronic submission shall be deemed to have been received on the day it is transmitted by electronic submission.
- (e) If the Party giving the notice knows or ought reasonably to know of difficulties with the postal system which might affect negatively the delivery of mail, any such notice shall not be mailed but shall be made or given by personal delivery or by electronic submission in accordance with this Section 12.
- (f) If any notice delivered by hand or transmitted by electronic submission is so delivered or transmitted, as the case may be, either on a day that is not a Business Day or on a Business Day after 4:00 p.m. (recipient's local time), then such notice shall be deemed to have been received by such recipient on the next Business Day.

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

13. AMENDMENTS

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

14. WAIVER

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

15. RELATIONSHIP BETWEEN THE PARTIES

The Parties are independent contractors. This Insurance Trust Agreement is not intended to and does not create or establish between the Parties any relationship as partners, joint venturers, employer and employee, master and servant, or, except as provided in this Insurance Trust Agreement, of principal and agent.

16. ENTIRE AGREEMENT

Except where provided otherwise in this Insurance Trust Agreement, this Insurance Trust Agreement constitutes the entire agreement between the Parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings, whether oral, written, express or implied, concerning the subject matter of this Insurance Trust Agreement.

17. SEVERABILITY

Each provision of this Insurance Trust Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Insurance Trust Agreement is declared invalid, unenforceable or illegal by the courts of a competent jurisdiction, such provision may be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Insurance Trust Agreement. If any such provision of this Insurance Trust Agreement is invalid, unenforceable or illegal, the Parties

shall, acting in good faith, promptly negotiate new provisions to eliminate such invalidity, unenforceability or illegality and to restore this Insurance Trust Agreement as near as possible to its original intent and effect.

18. ENUREMENT

This Insurance Trust Agreement shall enure to the benefit of, and be binding on, each of the Parties and their respective successors and permitted transferees and assigns.

19. GOVERNING LAW AND JURISDICTION

- (a) This Insurance Trust Agreement shall be governed by and construed in accordance with the laws of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract, without regard to conflict of laws principles.
- (b) The Parties agree that the courts of the Province of Ontario and all courts competent to hear appeals therefrom shall have exclusive jurisdiction to hear and settle any action, suit, proceeding or dispute in connection with this Insurance Trust Agreement and hereby irrevocably attorn to the exclusive jurisdiction of such courts.
- (c) Nothing in this Insurance Trust Agreement affects the rights, protections and immunities of the Crown under the *Proceedings Against the Crown Act* (Ontario).

20. CONTRACTING AUTHORITY DESIGNATE

At any time and from time to time, the Crown may designate any ministry, branch, agency, division, department or office of the Government of Ontario to carry out administrative responsibility for the rights and obligations of Contracting Authority under this Insurance Trust Agreement and Project Co, the Lenders' Agent and the Account Trustee may deal exclusively with the designated person in respect of all such matters and is entitled to rely on the actions, directions, requests, notices, consents, approvals, waivers, comments relating to the review of documentation and other administrative matters and decisions determined by such designated person from time to time, until the Crown has notified Project Co, the Lenders' Agent and the Account Trustee in writing that such designated person is no longer the person designated by the Crown hereunder and such notice shall have effect on the later of the date of delivery of such notice and the date specified in the written notice. The Crown shall advise Project Co, the Lenders' Agent and the Account Trustee in writing of any designation hereunder. The rights and obligations of the parties to this Insurance Trust Agreement shall be in no way affected by reason of any such designation. Project Co, the Lenders' Agent and the Account Trustee acknowledge the right of the Crown to delegate administrative responsibilities hereunder as set forth in this Section 20.

21. FURTHER ASSURANCE

Each Party shall do all things, from time to time, and execute all reasonable further documents necessary to give full effect to this Insurance Trust Agreement.

22. LANGUAGE OF AGREEMENT

Each Party acknowledges having requested and being satisfied that this Insurance Trust Agreement and related documents be drawn in English. Chacune des parties reconnaît avoir demandé que ce document et ses annexes soient rédigés en anglais et s'en déclare satisfaite.

23. COUNTERPARTS

This Insurance Trust Agreement may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all of the Parties shall constitute a full, original and binding agreement for all purposes. Delivery of an executed counterpart by sending a copy by electronic mail or other electronic transmission shall be as effective as the manual delivery of an executed counterpart.

24. JOINT AND SEVERAL

IO, as Crown agent and Metrolinx, as Crown agency, shall be liable, on a joint and several basis, for all of the obligations of Contracting Authority under this Insurance Trust Agreement and for each covenant of the other under this Insurance Trust Agreement.

25. COPYRIGHT NOTICE

The Parties acknowledge that Queen's Printer for Ontario is the exclusive owner of the copyright in the Project Agreement and this Insurance Trust Agreement.

[SIGNATURE PAGES IMMEDIATELY FOLLOW]

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

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

Per:

[REDACTED]

I have authority to bind the corporation.

METROLINX

Per:

[REDACTED]

Per:

[REDACTED]

We have authority to bind the corporation.

[REDACTED]

Per:

_____ **[REDACTED]**

I have authority to bind the corporation

STRABAG SCARBOROUGH PROJECT INC.

Per:

[REDACTED]

Per:

[REDACTED]

We have authority to bind the corporation.

AST TRUST COMPANY (CANADA)

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have authority to bind the corporation

MT MTDPCS 41633421

SCHEDULE 31

PROJECT CO INFORMATION

[REDACTED]

MTDOCS 20634301

SCHEDULE 32
FINANCIAL MODEL

[REDACTED]

SCHEDULE 33**WORKS REPORT REQUIREMENTS**

1. The Works Report prepared by Project Co, as “constructor” of the Works and Site, under the *Occupational Health and Safety Act* (Ontario) and this Project Agreement, shall include the following:
 - (a) an executive summary, describing the general status of the Works;
 - (b) detailed status of the Works, including,
 - (i) a narrative detailing the progress of the:
 - (A) Project Co Design;
 - (B) Project Co Permits, Licences, Approvals and Agreements;
 - (C) Project Co procurement of materials and equipment;
 - (D) construction of the Bored Tunnel and Shafts;
 - (E) construction of the other Structures and connection to existing services;
 - (F) Utility Works;
 - (G) demolition and utility relocation;
 - (H) traffic management; and
 - (I) Pre-construction and post-construction activities;
 - (ii) a narrative detailing the implementation and status of the Geotechnical Instrumentation and Monitoring Plan, including (but not limited to) any instances when the Review Level and/or the Alert Level (as described in Schedule 15 – Output Specifications) may have been reached and all corrective actions implemented in response;
 - (iii) a description of contemplated innovations, where applicable;
 - (iv) a description of progress and issues for communication and public engagement;
 - (v) a narrative detailing progress and issues for construction progress related to overall phasing of the Site (including a Site map illustrating progress);
 - (vi) a narrative describing health and safety items, including,
 - (A) the total number of hours worked for all persons on Site;

- (B) the total number of critical injuries (defined under section 1(1) of the *Occupational Health and Safety Act* (Ontario)) or fatalities;
 - (C) the total number of injuries to any member of the public;
 - (D) the total number of incidents involving medical aid or health care (as defined by the *Workplace Safety and Insurance Act* (Ontario));
 - (E) the total number of incidents involving first aid (as defined by the *Workplace Safety and Insurance Act* (Ontario));
 - (F) the total number of incidents involving damage to property, infrastructure and/or mobile equipment owned by Metrolinx, MTO, the City of Toronto, or other third parties, and adjacent property;
 - (G) the total number of near misses (no damage to property or persons);
 - (H) the total number of incidents resulting in lost time;
 - (I) the total number of incidents with no lost time; and
 - (J) details of MOL and MECP enquiries;
- (vii) environmental monitoring and compliance status;
 - (viii) all commissioning and completion, including,
 - (A) deficiency review/rectification status;
 - (B) handover status;
 - (C) commissioning status; and
 - (D) completion status;
- (c) plans for Works scheduled in the forthcoming reporting period;
 - (d) goals for next reporting period (such as progress on activities, resolution of issues);
 - (e) progress photos;
 - (f) contractual outstanding decisions and description of any Disputes related to the Works and action taken place over the last month to resolve such Disputes;
 - (g) quality assurance and quality control including,
 - (i) status of the Design Quality Management Plan, the Construction Quality Management Plan, the Traffic Quality Management Plan and the Environmental Quality Management Plan;

-
- (ii) a table setting out and responding to items of Non-Conformance and deficiencies in ongoing Works as identified by Contracting Authority or Project Co or both;
 - (iii) status of Design Certificates and Construction Certificates;
 - (iv) update of quality control and quality assurance activities and personnel responsible;
 - (v) monthly Quality Management System reports, Quality Audit reports and summary information from the Non-Conformance Tracking System (all as described in Schedule 11 – Quality Management); and
 - (vi) status of Internal Quality Audits and External Quality Audits;
 - (h) organization and staffing changes, deletions and additions for Project Co and all Project Co Parties;
 - (i) status of all Works Submittals pursuant to the requirements of the Project Agreement;
 - (j) Subcontract status, including,
 - (i) consultants;
 - (ii) Subcontracts awarded;
 - (iii) tenders;
 - (iv) apprenticeships; and
 - (v) labour report (average workforce), including number of direct jobs created overall;
 - (k) financial status, including,
 - (i) progress and Variations status;
 - (ii) insurance summary;
 - (iii) Construction Contractor default status;
 - (iv) current cash flow status (capital cost components) for both actual and projected expenditure (capital cost components), from Financial Close represented monthly, quarterly and annually and excluding Variations;
 - (v) 12-month (minimum) financial forecast including all Project Co costs;
 - (vi) for each Category 1 Utility Company, a summary of Eligible Utilities Costs (both invoiced and paid amounts) and any Ineligible Cost Increase; and

-
- (vii) the Construction Period Deduction information (pursuant to Schedule 21 – Liquidated Damages and Construction Enforcement Regime);
- (l) risk management, including,
 - (i) updated risk register, identifying changes (increase, decrease, no change) in respect to the likelihood of each risk, the assessments of impacts and the overall risk level;
 - (ii) risk response plans requiring action from Contracting Authority;
 - (iii) claims;
 - (iv) liens;
 - (v) environmental issues;
 - (vi) labour;
 - (vii) market conditions;
 - (viii) outstanding disputes;
 - (ix) safety and security;
 - (x) operational risks;
 - (xi) Stakeholder risks; and
 - (xii) other risks.
 - (m) cash allowances financials, including:
 - (i) total contract cash allowance;
 - (ii) cash allowance approved to date;
 - (iii) cash allowance spent to date;
 - (iv) cash allowance remaining; and
 - (v) the reconciliation described in Section 11.36(b)(iii) of the Project Agreement.
2. Project Co, as “constructor” of the Works and Site, under the *Occupational Health and Safety Act* (Ontario) and this Project Agreement, shall address comments from Contracting Authority on each previous month’s reporting in subsequent reports, and will be required to provide a resolution table to illustrate how Contracting Authority comments have been addressed. Project Co as “constructor” shall remain responsible for determining the way and means of resolution and correction of all matters.

MT MTDOS 41633428

SCHEDULE 34

CONSTRUCTION SAFETY

1. SAFETY REPORTING REQUIREMENTS

1.1 Project Co, as “constructor” of the Works and the Site, under the *Occupational Health and Safety Act* (Ontario) (“**OHSA**”) and the Project Agreement shall immediately notify Contracting Authority by telephone if any of the following types of events occurs in respect of the Project:

- (a) any notification of emergency services (i.e. 911 is called);
- (b) any critical injury (as defined under R.R.O. 1990, Regulation 834 to the OHSA, as amended from time to time) or death, notifiable under section 51(1) of the OHSA;
- (c) any exposure by a worker to a hazardous material or designated substance (as defined under the OHSA) at any Site;
- (d) any notification or report to the Ministry of Labour, Training and Skills Development (“**MOLTSD**”), MECP, or the WSIB;
- (e) any visit to the Site by an inspector or other official from the MOLTSD, MECP, or the WSIB;
- (f) any injury to a member of the public or to a passenger;
- (g) any event with the potential to affect, or that actually affects, bus operations;
- (h) any property damage (including to Metrolinx’s property or to any other existing property, infrastructure, adjacent property, motor vehicles, and/or mobile equipment); and
- (i) any incident, including any near miss with high potential for irreversible injury, as well as, any tunneling related incidents such as collapse of overburden, structure failure and others of such nature.

1.2 Subject to Section 1.5, Project Co shall submit reports for incidents listed in Section 1.1 (including the identification of all root cause(s) and corrective action(s)) to the Contracting Authority Representative as follows:

- (a) no later than one hour following any incident, Project Co shall make an initial phone call to the Contracting Authority Representative;
- (b) no later than 24 hours following the incident, Project Co shall provide a written status update to the Contracting Authority Representative that includes a description of,
 - (i) all details of the incident, including immediate causes, that are known by Project Co;
 - (ii) all implemented corrective actions that Project Co has taken or plans to take; and

- (iii) all other time sensitive information, including names of all persons directly or indirectly involved in the incident, witness statements from all persons involved in the incident, video and photographic evidence and toxicology results for employees involved in the incident;
 - (c) no later than 72 hours following the incident (or such longer period of time as the Parties may agree), Project Co shall provide a written final incident report that includes,
 - (i) all investigative information, including root causes;
 - (ii) a corrective action plan;
 - (iii) training records;
 - (iv) applicable drawings;
 - (v) all applicable field level risk assessments and work plans;
 - (vi) regulatory body documentation;
 - (vii) inspection reports;
 - (viii) maintenance records;
 - (ix) third party reports;
 - (x) equipment testing reports; and
 - (xi) any other relevant documentation or evidence related to the incident (such as witness statements),

(the “**Final Incident Report**”);
 - (d) no later than five Business Days following receipt of the Final Incident Report (or such other time frame as the Parties may agree), Contracting Authority shall provide comments to Project Co;
 - (e) Project Co shall respond to Contracting Authority’s comments no later than five Business Days after receipt of Contracting Authority’s comments (or such other time frame as the Parties may agree); and
 - (f) following resolution of any comments provided by Contracting Authority, to Contracting Authority’s satisfaction, the Project Co Representative shall sign-off on the Final Incident Report and provide a final copy to Contracting Authority.
- 1.3 Each Final Incident Report shall either be in a form satisfactory to Contracting Authority, in its sole discretion, or in a form provided by Contracting Authority to Project Co from time to time.

- 1.4 Project Co, as “constructor” of the Works and the Site under the OHSA and the Project Agreement, shall at all times remain responsible for the ways and means of any remedial actions in respect of incidents set out in Section 1.1 and reports set out in Section 1.2, including remedial actions that arise in response to, or resolve, any comments provided by Contracting Authority in accordance with Sections 1.2(e) and 1.2(f).
- 1.5 Unless otherwise directed by Contracting Authority, Sections 1.2(c), 1.2(d), 1.2(e) and 1.2(f) shall not apply to the visits set out in Section 1.1(e).

2. MONTHLY REPORTING REQUIREMENTS

- 2.1 Without limiting the requirements of the Project Agreement with respect to each Works Report, Project Co shall provide a written monthly summary to Contracting Authority no later than five Business Days after the last day of each month containing the information described in Section 1(b)(vi) of Schedule 33 – Works Report Requirements. Each such written monthly summary shall be in a form satisfactory to Contracting Authority, in its sole discretion, or in a form provided by Contracting Authority to Project Co from time to time. Project Co, as “constructor” of the Works and the Site under the OHSA and the Project Agreement, shall at all times remain responsible for any ways and means of any remedial actions included in any such summaries.

3. CONTRACTOR SITE SPECIFIC SAFETY MANUAL - GENERAL REQUIREMENTS

- 3.1 The Contractor Site Specific Safety Manual, prepared by Project Co, as “constructor” of the Works and the Site under the OHSA and the Project Agreement, for purposes of overall control and management of health and safety of the Site, shall, at a minimum:
- (a) comply in all respects with:
 - (i) all applicable requirements of the *Occupational Health and Safety Act* (Ontario), including all regulations thereto;
 - (ii) industry best practices;
 - (iii) all health and safety requirements set by Project Co and by the Construction Contractor with respect to the Project and the Site;
 - (iv) all health and safety requirements of the Project Agreement;
 - (v) all Certificate of Recognition requirements; and
 - (vi) subject to Section 3.2, meet or exceed the requirements of the current Metrolinx Construction Safety Management Program (“CSMP”) as provided to Project Co from time to time.
- 3.2 Project Co acknowledges and agrees that,
- (a) the CSMP is provided to Project Co solely to allow Project Co to incorporate any relevant requirements into its Contractor Site Specific Safety Manual given Project Co’s

role as “constructor” of the Works and the Site under the OHS Act and the Project Agreement;

- (b) provision of the CSMP to Project Co does not constitute provision of a “safety manual” for the Site or control or direction of safety in respect of the Works or at the Site by Contracting Authority; and
- (c) the terms of the CSMP that are applicable to work for which Metrolinx or a third party is responsible for control and direction of safety are not applicable to Project Co under the Project Agreement.

3.3 Project Co shall consider, in the preparation of the Contractor Site Specific Safety Manual, the applicability of the requirements of the CSMP, including those that apply to access control methods, hazardous operations, health and safety enforcement and internal incident reporting.

4. CONTRACTOR SITE SPECIFIC SAFETY MANUAL - MINIMUM CATEGORIES

4.1 The Contractor Site Specific Safety Manual prepared by Project Co shall, at a minimum, contain narratives addressing the categories and sub-categories as set out below.

0.0	<p>Overview and Scope</p> <p>The manual shall have an introduction that shall set out an overview and scope of the Project.</p>
1.0	<p>Health and Safety Policy and Goals</p> <p>The policy shall:</p> <ul style="list-style-type: none"> • state Project Co’s health and safety mandate and occupational health and safety policy; • refer to the safety goals and lifesaving rules of the Project and the culture of safety planned to be implemented by the Construction Contractor; • include a “statement of commitment” by an officer of the Construction Contractor, which must specifically refer to the manual itself and be executed by an officer of the Construction Contractor who has authority to bind the Construction Contractor; and • include a statement of commitment with respect to keeping Subcontractors responsible for matters related to health and safety.

2.0	<p>Safety Leadership</p> <p>The manual shall:</p> <ul style="list-style-type: none"> • include Project Co’s and the Construction Contractor’s approach, actions and continuous improvement regarding the safety leadership of each of its employees and subcontracted workforces; and • include examples of proactive measures and efforts taken in maintaining and improving the safety culture of the organization at all levels, including documented safety inspections.
3.0	<p>Project Health and Safety Objectives and Performance Measurement</p>
	<p>The manual shall:</p> <ul style="list-style-type: none"> • describe the methodology for measuring health and safety performance, including key performance indicators to assess whether objectives are being met; • indicate how measures of lagging and leading indicators will be used to track health and safety performance and which entity(s) will be accountable for its implementation and communication to Contracting Authority; and • provide details on Project Co’s proactive safety awards program that supports outstanding safety performance and the health and safety culture of the Project.
4.0	<p>Roles and Responsibilities</p> <p>Describe the specific roles and responsibilities of the following persons in relation to meeting the health and safety objectives and the requirements of the Project Agreement:</p> <ul style="list-style-type: none"> • Project Co; • Project director; • construction health and safety manager; • construction manager; • safety coordinator; • joint occupational health and safety committee/trades committee; • Subcontractor; • Subcontractor supervisor; • workers; • visitors; and • external parties.

5.0	<p>Subcontractor Health and Safety Management Plan</p> <p>Describe how Subcontractors will be managed and measures that will be implemented to ensure competent Subcontractor supervision related to the Project. Include in the plan Project Co's approach to reviewing the Subcontractor's health and safety performance history.</p>
6.0	<p>Hazard Assessment, Analysis and Control</p> <p>Describe the Construction Contractor's plan for how work scopes will be assessed and analysed, and how mitigation controls will be put in place to ensure work is performed in a healthy and safe manner. The plan shall include:</p> <ul style="list-style-type: none"> • techniques that focus on scopes of work broken down into steps, identifying potential hazards and potential preventative steps; • daily field level risk assessment, task level hazard identification and control; • means to measure workers' understanding and compliance with safe work practices and safe job procedures through training and correction of unsafe performance; and • how hazard awareness and mitigation controls are communicated to workers.
	<p>Designated Substances and Hazardous Materials</p>
	<p>Hazard Identification</p>
	<p>Risk Assessment</p> <p>Describe the Construction Contractor's risk assessment methodology, and provide a Project-specific health and safety risk register that details any unique safety requirements of the Project that will be provided and maintained over the duration of the Project. A risk register is required to be completed prior to any work commencement.</p>
	<p>Job Hazard Analysis</p> <p>Provide an analysis to detail a technique that focuses on job tasks as a way to identify hazards before they occur. The analysis shall focus on the relationship between the worker, the task, the tools and the work environment. The analysis shall break down the job in smaller steps to examine potential hazards and potential preventative steps.</p>
	<p>Daily Hazard Identification and Control</p>
	<p>Safe Work Practices and Safe Job Procedures</p> <p>Describe the process to develop and implement safe work practices/safe job procedures to address the identification, assessment, control, prevention and communication of hazards specific to individual tasks or jobs.</p> <p>Provide means to ensure employees understand and comply with safe work practices and safe job procedures through training, correction of unsafe performance and, if necessary, enforcement through a clearly communicated disciplinary system.</p>
7.0	<p>Company Rules - Rules of Conduct and Disciplinary Action</p> <p>Describe the company rules and the disciplinary actions to be taken in the case of health and safety infractions or non-compliance with established procedures and policies.</p>

	<p>Fit for Duty Policy</p> <p>The policy shall:</p> <ul style="list-style-type: none"> • explain how Project Co will ensure that workers are fit for duty at all times while performing the Works or at the Site; and • meet or exceed the requirements of the Metrolinx Fit for Duty Policy to ensure that all workers are fit for duty while performing the Works or at the Site. <p>Project Co acknowledges and agrees that Metrolinx Fit for Duty Policy is provided solely for the purpose of incorporating any relevant matters into its Contractor Site Specific Safety Manual and that provision of the Metrolinx Fit for Duty Policy to Project Co does not constitute control or direction of safety of the Works or at the Site by Contracting Authority.</p>
	<p>Workplace Violence and Harassment</p>
	<p>Disciplinary Action</p> <p>Describe the company rules and the disciplinary actions to be taken in the case of health and safety infractions or non-compliance with established procedures and policies.</p>
	<p>Worker Rights</p>
8.0	<p>Health and Safety Training and Competency</p> <p>Describe the training program to be implemented to ensure that all persons who will be entering and/or working on the Site are appropriately trained. At a minimum, the training program shall include:</p> <ul style="list-style-type: none"> • demonstration of the individual’s competency for the assigned role; • description and associated documentation of safety and security; and • competency training. <p>The training program should include a description and associated documentation of safety and security competency training programs, either online or in person, for field personnel, including the type of training provided and how it specifically targets health and safety. Training may include task-specific safety training or general awareness training.</p>
	<p>Project Specific Orientation</p> <p>Describe how the health and safety training program will be facilitated with all individuals before they are given access to any areas within the Site or any portion of the Lands. This will include worker education and training on specific Site hazards and controls including safe work practices and safe job procedures.</p>
	<p>Site Specific Orientation</p> <p>If work activities are to be performed on multiple Sites under one project scope, provide a narrative of how a site-specific safety orientation will be created and facilitated to all affected parties to address the hazards specific to the Site. This category is in addition to the Project Specific Orientation.</p>

	<p>Visitor/Short Duration Work Orientation</p> <p>Narrative shall include health and safety training to be provided for all visitors who are not performing work on the Site or any portion of the Lands and will be escorted by a member of Project Co while on the Site or any portion of the Lands before being given authorization to enter the Site or any portion of the Lands.</p>
	<p>Delivery Driver/ Supplier Orientation</p> <p>Narrative shall include health and safety training to be facilitated with all delivery drivers and suppliers before being given authorization to enter the Site or any portion of the Lands, including those who are not performing Construction Activities on the Site or any portion of the Lands but may be granted access to the Site or any portion of the Lands to perform their job functions.</p>
	<p>Worker Training to Specific Site Hazards</p> <p>Includes safe work practices and safe job procedures.</p>
	<p>Personal Protective Equipment (“PPE”)</p> <p>Such narrative shall incorporate the requirements of Section 5.1.</p> <p>Identify the minimum PPE that will be required onsite, selection criteria of specialty PPE, and the use and maintenance of PPE.</p>
	<p>Worker/Supervisor Competency Evaluation</p> <p>Describe how the competency of workers and supervisors will be identified, met and evaluated on an ongoing basis.</p>
9.0	<p>Meetings and Communication Plan</p> <p>Describe the frequency of meetings relating to health and safety, how meetings will be documented and how agreed outcomes will be communicated to the appropriate parties.</p>
10.0	<p>Workplace Inspections</p> <p>Describe the Construction Contractor’s strategy for implementing an inspection regime in relation to health and safety on the Site.</p>
	<p>Informal Inspections</p>
	<p>Formal Inspections</p>
	<p>Audits</p>
	<p>Inspection and Audit Schedule</p>
	<p>Inspection Follow-up/Corrective Action Plan</p> <p>Describe the development and maintenance of a health and safety issues log, derived from inspections, audits and incidents with follow-up and corrective action plans necessary to mitigate issues.</p>

	Maintenance of Records
11.0	<p>Construction Emergency Response Plan</p> <p>Describe the policies and procedures pertaining to incident and emergency planning, response (including the safety of the workforce/public), mitigation and recovery.</p> <p>Project Co shall establish procedures to achieve, at a minimum, the following:</p> <ul style="list-style-type: none"> • maintain communication for the exchange of information between Project Co, Contracting Authority, the Municipalities and other involved agencies; • develop coordinated support through interaction with local, provincial and federal governmental entities, as well as other entities, for safe and efficient construction; • coordinate emergency response, traffic control, security and operational issues affecting construction of the Project, and associated system feeders and exits; and • update Emergency Service Providers regarding the status of construction of the Project, and associated system feeders and exits, to ensure safe and timely response to Emergency events. At a minimum, this shall include off-site and on-site traffic routing changes, and changes to job site access, fire suppression system modifications and in-service availability of standpipes or fire suppression water supply, and changes in the Works that may create a greater likelihood of occurrence of a particular type of Emergency.
	Emergency Response Procedure
	Property, Equipment and Environmental Damage Procedure
	Emergency Evacuation Plan
	Emergency Contacts and Roles
	<p>First Aid and CPR</p> <p>Include documentation that indicates that Subcontractors have a proactive injury management system that supports efficient, effective and timely treatment of their employees who become injured on the Site.</p>
	Drills and Exercises
12.0	<p>Incident Reporting and Investigations Procedure</p> <p>Describe the procedures for reporting incidents, performing proactive investigations intended to prevent future incidents, identifying root causes and implementing measures to prevent a reoccurrence.</p> <p>The Construction Contractor shall demonstrate that an incident review process has been implemented which involves all levels of management to validate corrective measures to minimize future injuries and incidents on the Site.</p>

13.0	<p>Statistics and Records</p> <p>Describe how safety records are to be maintained to verify conformity to Project Co’s Contractor Site Specific Safety Manual requirements.</p> <p>Describe how the safety records shall be in electronic format, legible, electronically searchable, readily identifiable and retrievable, and available to Contracting Authority upon request.</p> <p>Project Co shall create and maintain a corrective action database. Project Co shall ensure all Subcontractor incidents are recorded in said database. The database shall be kept up to date and made available to Contracting Authority upon request. The database shall be maintained to verify conformity to the Contractor Site Specific Safety Manual requirements.</p> <p>Provide Contracting Authority with the documents and other information described in Section 11.11 of the Project Agreement.</p>
14.0	<p>Security Plan</p> <p>Provide a plan that details guidelines for implementing security on the Site.</p> <p>Provide a methodology for securing the site and restricting trespassers.</p> <p>Describe how Project Co shall comply with its obligation to take every reasonable precaution to protect the public’s health and safety during the execution of the Works.</p>
15.0	<p>Traffic Management and Control Plan</p> <p>Include how activities performed by Project Co and Project Co Parties will protect workers, the public, passengers, transit infrastructure, transit operations and other parties.</p>
16.0	<p>Security Plan</p> <p>Provide a plan that details guidelines for implementing security on the Site. The plan shall include:</p> <ul style="list-style-type: none"> • a methodology for securing the Site and restricting trespassers; and • a description of how Project Co shall comply with its obligation to take every reasonable precaution to protect the public’s health and safety during the execution of the Works.
17.0	<p>Site Plot Plan</p> <p>Plan shall include an illustration of the overall Site and highlight specific locations where high risk Construction Activities will take place or identify Construction Activities that have the potential to impact transit operations and/or affect members of the public.</p>
18.0	<p>Tunneling Safety Plan</p> <p>Provide a tunneling safety plan that describes the management of tunnel-specific risks, meets or exceeds the regulatory requirements in O.Reg.213/91, as amended from time to time, and encompasses the following requirements, at a minimum:</p> <ul style="list-style-type: none"> • a risk assessment and mitigation of tunnel-specific hazards;

	<ul style="list-style-type: none"> • provisions and instructions for accessing shafts and tunnels (i.e. brass tags, photo ID’s etc.); • procedures for the following: <ul style="list-style-type: none"> ○ safe hoisting into shaft; ○ derailment of locomotives (where applicable); ○ gas monitoring inside shafts and tunnels; ○ lock-out, tag-out inside shafts and tunnels; ○ Tunnel Boring Machine (TBM) cutter head entry and service; ○ laying track; ○ pipe installation, conveyor belt operation; and ○ other procedures related to safe shaft and tunnel operations; • provisions for maintaining optimal air quality inside shafts and tunnels during hot work operations and/or any other work of such nature (i.e., saw cutting, shotcrete, painting, and other such work) that could emit fumes, dust or a noxious gas; • training and orientation specific to shafts and tunnel operation for all personnel entering the shafts and tunnels; and • emergency evacuation plan related to shafts and tunnels (i.e. medical aids, fires, chemical spill, oxygen deficiency, toxic atmospheres, and other emergency circumstances), including, <ul style="list-style-type: none"> ○ use of self-rescuer (such as Draeger Oxy-k or Ocenco systems); ○ use of approved man-basket and/or Davit Arm system (where applicable); ○ notification system for emergencies; ○ use of stretchers inside shafts and tunnels; ○ summoning of the tunnel rescue team (where applicable); ○ provide fire protection plan for shafts and tunnel(s); and ○ provide a communication plan for shafts and tunnel(s).
19.0	Continuous Improvement Plan
20.0	Others

5. METROLINX SITE SPECIFIC REQUIREMENTS

5.1 Personal Protective Equipment

- (a) With respect to Works performed at a Site, Project Co shall ensure that it meets or exceeds the requirements of the then current Metrolinx Personal Protective Equipment (PPE) Standard. Project Co acknowledges and agrees that the Metrolinx Personal

Protective Equipment (PPE) Standard is provided solely for the purpose of incorporating any relevant matters into its Contractor Site Specific Safety Manual and that provision of the Metrolinx Personal Protective Equipment (PPE) Standard to Project Co does not constitute control or direction of safety of the Works or at the Site by Contracting Authority.

5.2 Beacons

- (a) With respect to Works performed at a Site, Project Co shall ensure that all Project Co Parties' vehicles and equipment meet or exceed the requirements of the Metrolinx Beacon Safety Performance Standard. Project Co Parties' vehicles and equipment shall be identifiable with company logo(s). Project Co acknowledges and agrees that the Metrolinx Beacon Safety Performance Standard is provided solely for the purpose of incorporating any relevant matters into its Contractor Site Specific Safety Manual and that provision of the Metrolinx Beacon Safety Performance Standard to Project Co does not constitute control or direction of safety of the Works or at the Site by Contracting Authority.

5.3 Training Requirements

- (a) All persons who:
 - (i) work on a piece of Metrolinx owned infrastructure, such as bridges and tunnels;
 - (ii) work within Metrolinx right-of-way (ROW); or
 - (iii) work under a form of rail protection on a Metrolinx site,

shall be trained and current in the Metrolinx provided Personal Track Safety (PTS) training program.

- (b) All persons who operate high-rail equipment within a Metrolinx rail right-of-way must hold Metrolinx approved Canadian Railway Operating Rules (CROR) and any other applicable Metrolinx policies and standards, as may be amended from time to time.
- (c) The Construction Contractor shall maintain an up-to-date list of all such trained employees at the Site and ensure all such trained employees carry the wallet card issued upon successful completion of the course at all times when within the Metrolinx rail right-of-way.

6. SAFETY STAND DOWN MEETING

- 6.1 No later than 90 days after Financial Close, and once every 90 days thereafter until Final Completion, or on a date or at a frequency otherwise agreed between Project Co and Contracting Authority until Final Completion, Project Co shall convene a safety meeting (the "**Safety Stand Down Meeting**") with Contracting Authority that will be up to two hours in length and based on an agenda jointly developed by the Parties in accordance with this Section 6. Contracting Authority may, in its sole discretion, invite additional participants to any Safety Stand Down Meeting.

- 6.2 Project Co, as “constructor” of the Works and the Site under the OHS Act and the Project Agreement, shall convene each Safety Stand Down Meeting at a location on the Metrolinx Lands, or at an alternate location approved by Contracting Authority, in its sole discretion.
- 6.3 Project Co, as “constructor” of the Works and the Site under the OHS Act and the Project Agreement, shall provide at least 30 days’ Notice to the Contracting Authority Representative for each Safety Stand Down Meeting, which shall include the particulars for such meeting, including its location, date, time and number of attendees. Upon receiving Notice of any such Safety Stand Down Meeting, Contracting Authority shall have the right to:
- (a) request that one or more safety topics be presented at the Safety Stand Down Meeting and may, in its sole discretion, choose to provide certain presentation materials to be used by Project Co in connection therewith; and
 - (b) request the attendance of specific representatives of Project Co and any Project Co Party working at the Lands at such meeting and, if requested, Project Co shall use reasonable commercial efforts to ensure all such individuals attend.
- 6.4 Project Co, as “constructor” of the Works and the Site under the OHS Act and the Project Agreement, shall prepare for and participate in, and shall cause all relevant Project Co Parties working at the Site to prepare for and participate in, each Safety Stand Down Meeting, including:
- (a) if such preparation for and participation in the Safety Stand Down Meeting requires Project Co or any Project Co Party to demobilize any part of the Construction Activities, delays the starting of any Works or causes or contributes to any other interruption or stoppage of the Works;
 - (b) preparing and delivering presentations on any safety topics requested by Contracting Authority and, if and as applicable, delivering any presentation materials provided by Contracting Authority in connection therewith; and
 - (c) preparing and delivering presentations on one or more safety topics if Contracting Authority has not requested that a particular safety topic be presented.
- 6.5 Project Co shall provide all labour and materials required for each Safety Stand Down Meeting, including all equipment, furnishings and presentation materials.
- 6.6 Project Co acknowledges that it could experience a delay, interruption or stoppage of the Works as a result of each Safety Stand Down Meeting, and Project Co agrees that it shall not be eligible for a Delay Event, Compensation Event or any other relief or additional compensation under the Project Agreement as a result of any such meeting.
- 6.7 No later than five Business Days after the Safety Stand Down Meeting, Project Co, as “constructor” of the Works and the Site under the OHS Act and the Project Agreement, shall provide the written minutes and a summary of the meeting (the “SSDM Summary Report”) to Contracting Authority for review in accordance with Schedule 10 – Review Procedure. The SSDM Summary Report shall include:
- (a) the date of the meeting;

- (b) a list of all attendees at the meeting;
- (c) topics discussed at the meeting;
- (d) a copy of any presentations delivered at, or materials distributed as part of, the Safety Stand Down Meeting in both native file formats and .pdf format; and
- (e) a copy of evaluation forms provided by Contracting Authority to Project Co as part of the Safety Stand Down Meeting materials that have been filled out by the meeting participants.

7. SAFETY WORK PLANS

7.1 If Project Co plans to carry out one or more of the following activities with respect to the Works, then Project Co, as “constructor” of the Works and the Site under the OHS Act and the Project Agreement, shall prepare and submit separate safety work plan(s) to Contracting Authority in accordance with this Section 7, setting out Project Co’s plan for management and safety of the Works and the Site for each of the following categories of activities:

- (a) mobilization, demobilization or travel through active and in-service operational facilities or spaces available for public use or access;
- (b) activities that take place outside of Project Co’s enclosed (i.e. hoarded or fenced) space, phase or stage of construction; or
- (c) activities that occur in the area immediately adjacent to Existing Metrolinx Infrastructure, or any area where the public may use to access, or pass by, Existing Metrolinx Infrastructure or a Metrolinx project site,

(each, a “**Safety Work Plan**”). For clarity, Project Co shall submit a separate Safety Work Plan for each category of activities set out in Sections 7.1(a), 7.1(b), and 7.1(c).

7.2 Project Co shall submit each Safety Work Plan to Contracting Authority in accordance with Schedule 10 – Review Procedure no later than 15 Business Days prior to the commencement of any activity set out in Section 7.1.

7.3 All Safety Work Plans shall be submitted using the Site Specific Work Plan Submittal Template as provided to Project Co by Contracting Authority and shall include all details, attachments and other documents contemplated in the Work Plan Methodology Template. A Safety Work Plan shall be returned Project Co with the comment “RE-SUBMIT” if Contracting Authority determines that it is missing any such details, attachments or other documents.

7.4 For clarity, Project Co shall not be entitled to any Delay Event or Compensation Event with respect to the review of the Safety Work Plan if the Safety Work Plan does not comply with any of the requirements set out in this Section 7.

8. SAFETY IMPROVEMENT PLAN

- 8.1 Contracting Authority may perform inspections of the Site on a weekly basis or at such other frequency as Contracting Authority may, in its sole discretion, elect. Such inspections are solely for the purpose of Contracting Authority ensuring that Project Co is meeting its health and safety obligations under the Project Agreement, and its role as “constructor” of the Works and the Site under the OHSA and the Project Agreement, and shall not be for purposes of Contracting Authority controlling the Site, the Works, or health and safety at the Site.
- 8.2 Contracting Authority may, in its sole discretion, deem Project Co to be at “high risk” if, after inspections,
- (a) ongoing indicators of poor safety performance are identified;
 - (b) any severe safety incidents or accidents have occurred; or
 - (c) any safety incidents or accidents are occurring at a high frequency.
- 8.3 If Contracting Authority makes a determination pursuant to Section 8.2 that Project Co is “high risk” at the Site, Contracting Authority may commence a review of Project Co’s Contractor Site Specific Safety Manual, practices, circumstances leading to the “high risk” determination, poor safety performance, safety incidents and accidents. Project Co shall fully cooperate in such review by Contracting Authority.
- 8.4 If Contracting Authority continues to determine, acting reasonably, after the review set out in Section 8.3, that Project Co is “high risk”, and that after review of the Contractor Site Specific Safety Manual and circumstances, Project Co is failing to meet its obligations as “constructor” of the Works and the Site under the OHSA and the Project Agreement, Contracting Authority may then require Project Co to create and implement improved safety measures to be set out in an appropriate safety improvement plan (the “**Safety Improvement Plan**”).
- 8.5 If required by Contracting Authority, Project Co shall develop the Safety Improvement Plan and submit it to Contracting Authority for review no later than 20 Business Days following Contracting Authority’s request (or such longer period of time as the Parties may agree), in accordance with Schedule 10 – Review Procedure. Contracting Authority’s review, and any revisions by Project Co to the Safety Improvement Plan, shall be performed in accordance with Schedule 10 – Review Procedure. Project Co, as “constructor” of the Works and the Site under the OHSA and the Project Agreement, shall at all times remain responsible for developing the Safety Improvement Plan and any ways and means of any remedial actions set out therein or performed pursuant thereto, including those which arise in response to, or resolve, any of Contracting Authority’s comments.
- 8.6 For clarity, Project Co shall not be entitled to a Variation, Delay Event, Compensation Event or any other form of claim or relief whatsoever arising from any “high risk” determination by Contracting Authority or Project Co’s resulting obligations to prepare and implement the Safety Improvement Plan or otherwise comply with this Section 8.

SCHEDULE 35

INCENTIVE PAYMENTS

1.1 Definitions

- (a) In this Schedule 35, unless the context indicates a contrary intention, terms which are defined in the Project Agreement (and not otherwise defined in this Schedule 35) shall have the meanings given to them in the Project Agreement and the following terms shall have the following meanings:
- (i) **“20m Tunneling Incentive Event”** means the completion of all of the following in accordance with the requirements of the Project Agreement together with the following representations and warranties by Project Co:
 - (A) completion of installed tunnel lining in one (1) tunnel from one (1) launch shaft, which shall be no less than a continuous twenty (20) metres in length, measured from the inside face of the launch Shaft Headwall to the leading edge of the last-installed lining ring of installed tunnel lining ring; and
 - (B) Project Co has represented and warranted to Contracting Authority that neither it nor any Project Co Party has committed a material breach of its obligations under Section 11.13 of the Project Agreement in achieving the 20m Tunneling Incentive Event.
 - (ii) **“20m Tunneling Incentive Expiry Date”** means [REDACTED].
 - (iii) **“Incentive Payment”** means, with respect to the:
 - (A) TBM Completion Incentive Event, [REDACTED]; and
 - (B) 20m Tunneling Incentive Event, the amount set forth in the column entitled “20m Tunneling Incentive Payment Amount” opposite the date listed in the column entitled “Date of Incentive Payment Completion” in the table set out in Appendix A.
 - (iv) **“Incentive Payment Date”** means, with respect to each Incentive Payment Event, the date that is 30 days after the Incentive Payment Completion Date applicable thereto.
 - (v) **“Incentive Payment Event”** means each of the following:
 - (A) the TBM Completion Incentive Event; and
 - (B) the 20m Tunneling Incentive Event.
 - (vi) **“Incentive Payment Completion”** means, with respect to each Incentive Payment Event, the point at which all requirements for that Incentive Payment Event have been achieved.

- (vii) **“Incentive Payment Completion Certificate”** means, in respect of each Incentive Payment Event, the certificate to be issued by the Independent Certifier in respect thereof in accordance with Section 2.2(f).
- (viii) **“Incentive Payment Completion Date”** means, with respect to each Incentive Payment Event, the date upon which Incentive Payment Completion applicable thereto has been achieved, as evidenced by an Incentive Payment Completion Certificate issued in respect thereof, as such date shall be stated therein.
- (ix) **“Incentive Payment Completion Notice”** has the meaning given in Section 2.2(c).
- (x) **“Incentive Payment Target Date”** means, with respect to the:
- (A) TBM Completion Incentive Event, [REDACTED]; and
 - (B) 20m Tunneling Incentive Event, [REDACTED].
- (xi) **“TBM Completion Incentive Event”** means the completion of all of the following for one (1) tunnel boring machine in one (1) launch shaft, all in accordance with the requirements of the Project Agreement together with the following representations and warranties by Project Co:
- (A) full assembly of the cutting head, including cutting tools;
 - (B) the following elements of the forward shield completed:
 - (I) full assembly of the outer skin;
 - (II) full assembly of the bulkhead;
 - (III) full assembly of the main bearing assemblage, including bearing and seals;
 - (IV) the bull gear and motor plate in place, including drive motors;
 - (C) the following elements of the main shield completed:
 - (I) full assembly of the outer skin;
 - (II) attachment to forward shields in place, with articulation cylinders;
 - (D) full assembly of the outer skin of the tail shield; and
 - (E) Project Co has represented and warranted to Contracting Authority that neither it nor any Project Co Party has committed a material breach of its obligations under Section 11.13 of the Project Agreement in achieving the TBM Completion Incentive Event.

2. INCENTIVE PAYMENTS

2.1 Incentive Payment Events

- (a) Except as expressly provided herein, nothing in this Schedule 35 shall restrict, limit, prejudice or in any other way impair the rights or remedies of the Parties under any other provision of this Project Agreement.
- (b) In the event that Project Co achieves Incentive Payment Completion for an Incentive Payment Event on or prior to the Incentive Payment Target Date applicable thereto, Contracting Authority covenants and agrees to pay to Project Co (or as Project Co may direct) the Incentive Payment applicable to the subject Incentive Payment Event, plus any HST applicable thereon, by the Incentive Payment Date. For certainty, if, for any reason, Project Co fails to achieve Incentive Payment Completion in respect of a given Incentive Payment Event on or prior to the Incentive Payment Target Date for that Incentive Payment Event, Contracting Authority shall have no obligation to pay to Project Co the Incentive Payment in respect of that Incentive Payment Event.
- (c) The Parties acknowledge and agree that the failure by Project Co to achieve Incentive Payment Completion for any Incentive Payment Event by the Incentive Payment Target Date applicable thereto shall not constitute a breach by Project Co of its obligations under the Project Agreement and shall not give rise to a Project Co Event of Default nor shall the Contracting Authority (or any Person acting through the Contracting Authority) have any other right or remedy as against Project Co or a Project Co Party for any such failure.

2.2 Incentive Payment Completion

- (a) Project Co shall give the Independent Certifier and the Contracting Authority Representative at least 60 days Notice prior to the date upon which Project Co anticipates delivering the Notice contemplated in Section 2.2(b) in respect of each Incentive Payment Completion for each Incentive Payment Event.
- (b) Project Co shall give the Independent Certifier and the Contracting Authority Representative at least 10 Business Days' Notice prior to the date upon which Project Co anticipates all requirements for Incentive Payment Completion for a given Incentive Payment Event shall be satisfied.
- (c) Project Co shall give the Independent Certifier and the Contracting Authority Representative notice (the "**Incentive Payment Completion Notice**") upon the satisfaction of all requirements for Incentive Payment Completion for a given Incentive Payment Event, which Incentive Payment Completion Notice shall describe, in reasonable detail, the satisfaction of the requirements for Incentive Payment Completion for that Incentive Payment Event, together with Project Co's opinion as to whether the conditions and requirements for issuance of the Incentive Payment Completion Certificate for that Incentive Payment Event have been achieved.
- (d) In the event that the Incentive Payment Target Date in respect of a given Incentive Payment Event has passed and Project Co has not delivered the Incentive Payment Completion Notice for that Incentive Payment Event in accordance with Section 2.2(c), Contracting Authority shall have no obligation to pay to Project Co any amount in respect of the Incentive Payment applicable to that Incentive Payment Event.

-
- (e) Contracting Authority shall, within 5 Business Days after receipt of an Incentive Payment Completion Notice in respect of a given Incentive Payment Event, provide the Independent Certifier and Project Co with Contracting Authority's opinion as to whether the conditions and requirements for issuance of the Incentive Payment Completion Certificate for that Incentive Payment Event have been achieved and, if applicable, any reasons as to why it considers that the Incentive Payment Completion Certificate for that Incentive Payment Event should not be issued.
- (f) Within 3 Business Days after Project Co's receipt of Contracting Authority's opinion pursuant to Section 2.2(d), the Parties shall cause the Independent Certifier to determine whether conditions and requirements for issuance of the Incentive Payment Completion Certificate in respect of the Incentive Payment Event have been achieved, having regard for the opinions of both Project Co and Contracting Authority and to issue to Contracting Authority and Project Co, either:
- (i) the Incentive Payment Completion Certificate setting out in such certificate the Incentive Payment Completion Date for the Incentive Payment Event; 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 Incentive Payment Completion Certificate for the given Incentive Payment Event.
- (g) If the Independent Certifier provides a report to Project Co and Contracting Authority pursuant to Section 2.2(f)(ii), then Project Co shall be permitted to subsequently submit a new and replacement version of the subject Incentive Payment Completion Notice, and the process described in Sections 2.2(c), 2.2(d), 2.2(e), 2.2(f) and 2.2(g), shall be repeated.
- (h) Subject to Section 5.6(a)(ii) of Schedule 27 – Dispute Resolution Procedure, any Dispute as to whether Incentive Payment Completion for the subject Incentive Payment Event was in fact achieved on or prior to the Incentive Payment Target Date applicable thereto shall be subject to resolution pursuant to the Dispute Resolution Procedure.
- (i) In the event that Project Co provides an Incentive Payment Completion Notice in respect of a given Incentive Payment Event prior to the Incentive Payment Completion Date for that Incentive Payment Event, and as a result of following the process described in this Section 2.2, the Incentive Payment Completion Certificate for that Incentive Payment Event is not issued on or prior to the applicable Incentive Payment Target Date, but it is finally determined pursuant to the Dispute Resolution Procedure that Incentive Payment Completion for that Incentive Payment Event was in fact achieved on or prior to the applicable Incentive Payment Target Date, Project Co shall be entitled to receive the Incentive Payment for that Incentive Payment Event pursuant to the provisions of this Schedule 35, on a day that is no later than 30 days following such final determination.

3. GENERAL

- (a) Project Co acknowledges and agrees that:
- (i) Project Co achieving Incentive Payment Completion for an Incentive Payment Event by the Incentive Payment Target Date applicable thereto shall be at Project Co's sole cost and

risk and shall be without recourse to Contracting Authority, and that Project Co shall not be eligible for a Delay Event, Compensation Event or any relief or additional compensation under the Project Agreement in the event that Project Co fails to achieve Incentive Payment Completion for any Incentive Payment Event by the Incentive Payment Target Date applicable thereto. For greater certainty:

- (A) the Incentive Payment Target Date for each Incentive Payment Event is fixed and shall not be extended under any circumstances, including as a result of a Delay Event, and that Project Co shall not have the benefit of Section 32 of the Project Agreement in the event that Project Co fails to achieve Incentive Payment Completion for any Incentive Payment Event by the Incentive Payment Target Date applicable thereto due to the occurrence of one or more Delay Events;
 - (B) the failure by Project Co to achieve Incentive Payment Completion for any Incentive Payment Event by the Incentive Payment Target Date applicable thereto shall not be subject to the provisions of Sections 30, 31, 33, 34, 35 or 38 of the Project Agreement; and
 - (C) Project Co shall have no right or remedy as against Contracting Authority in the event that Project Co fails to achieve Incentive Payment Completion for any Incentive Payment Event by the Incentive Payment Target Date applicable thereto due to any act or omission of Contracting Authority, including Contracting Authority committing a breach of any of its obligations under the Project Agreement;
- (ii) any and all efforts undertaken and/or extra costs incurred by Project Co specifically for the purpose of achieving Incentive Payment Completion for any Incentive Payment Event by the Incentive Payment Target Date applicable thereto are undertaken and/or incurred entirely at Project Co's risk, without recourse to Contracting Authority;
 - (iii) no part of any Incentive Payment shall form part of the Cost of the Works or the Cost of the Financing; and
 - (iv) the issuance of an Incentive Payment Completion Certificate shall in no way:
 - (A) limit the obligations Project Co under this Project Agreement including in respect of any defects, deficiencies or items of outstanding works existing or discovered prior to or after the date of such Incentive Payment Completion Certificate;
 - (B) be construed as an approval by Contracting Authority of the Works or the manner in which they have been carried out or completed; or
 - (C) be construed as determinative with respect to whether or not any of those elements of the Works in respect of which such Incentive Payment Event Completion Certificate was issued, do or do not satisfy the requirements for Substantial Completion.

- (b) The provisions of Sections 4.1, 4.8 and 4.10 to 4.20, inclusive, of the Project Agreement shall apply to the rights and obligations of the Parties set forth in this Schedule 35.

Appendix A

[REDACTED]

MT MTDOCS 20634351

SCHEDULE 36

[INTENTIONALLY DELETED]

MT MTDOCS 20634354

SCHEDULE 37

GEOTECHNICAL BASELINE REPORT

1. DEFINITIONS

In this Schedule 37, unless the context indicates a contrary intention, terms which are defined in the Project Agreement (and not otherwise defined in this Schedule 37) shall have meanings given to them in the Project Agreement and the following terms shall have the following meanings:

- 1.1 “**Borehole Testing Depth**” means a depth that is equal to:
- (a) the elevation at the underside of the Tunnel Boring Machine
plus
 - (b) an additional depth equal to 0.5 times the diameter of the tunnel.
- 1.2 “**Geotechnical Baseline Statements**” means, subject to Section 2.2(a), the statements embedded in the Project GBR that are identified in bold and italics typeface within square brackets.
- 1.3 “**Geotechnical Testing**” has the meaning given in Section 2.3(a)(iii);
- 1.4 “**Geotechnical Testing Requirements**” has the meaning given in Section 2.4(a);
- 1.5 “**Geotechnical Testing Results**” has the meaning given in Section 2.3(a)(iv);
- 1.6 “**Project GBR**” has the meaning given in Section 2.1;
- 1.7 “**Required Geotechnical Testing**” has the meaning given in Section 2.3(a)(iii);
- 1.8 “**Required Geotechnical Testing Boreholes**” has the meaning given in Section 2.4(b)(ii);
- 1.9 “**Required Geotechnical Testing Requirements**” has the meaning given in Section 2.4(b); and
- 1.10 “**Required Geotechnical Testing Zone**” has the meaning given in Section 2.4(b).

2. GEOTECHNICAL BASELINE REPORT AND GEOTECHNICAL BASELINE STATEMENTS

2.1 Project GBR

- (a) For the purposes of the Project Agreement “**Project GBR**” shall mean the report entitled [REDACTED] attached as Appendix A to this Schedule 37.
- (b) Project Co acknowledges and agrees that, except in respect of the Geotechnical Baseline Statements, the Project GBR is Background Information only. For clarity, notwithstanding that the Project GBR is a Schedule to the Project Agreement, only the

Geotechnical Baseline Statements contained in the Project GBR are intended to be contractually binding pursuant to Section 18 of the Project Agreement.

2.2 Geotechnical Baseline Statements

- (a) The Parties acknowledge and agree that the Geotechnical Baseline Statements shall be interpreted in accordance with the following:
- (i) Geotechnical Baseline Statements are standalone and independent statements and do not rely upon the remaining portions of the Project GBR to either interpret, support, or provide context to a Geotechnical Baseline Statement;
 - (ii) if a table, figure or footnote is referenced in the Geotechnical Baseline Statement, the referenced table, figure or footnote is considered to be part of the Geotechnical Baseline Statement;
 - (iii) any reference to the stratigraphic profile in a Geotechnical Baseline Statement is considered to be a reference to the computer aided design and drafting (CADD) version of the stratigraphic profile; and
 - (iv) in the event of ambiguities, conflicts or inconsistencies between or among one or more of the Geotechnical Baseline Statements, or between or among any Geotechnical Baseline Statement and any other information set out in the Project GBR or other Background Information, the following shall apply:
 - (A) any Geotechnical Baseline Statement(s) establishing a higher risk or level of variability in the applicable Site Condition shall govern and take precedence over all Geotechnical Baseline Statement(s) that establish a lower risk or variability in the applicable Site Conditions; and
 - (B) the Geotechnical Baseline Statements shall govern and take precedence over any other information set out in the Project GBR or other Background Information.

2.3 Evidence for Differing Geotechnical Site Condition and Contamination Claims

- (a) In order to establish whether:
- (i) a Geotechnical Site Condition experienced by Project Co is a Differing Geotechnical Site Condition pursuant to Section 18.2 of the Project Agreement; or
 - (ii) whether Contamination encountered by Project Co is Contracting Authority Contamination pursuant to Section 18.3 of the Project Agreement on the basis that it is Contamination that was not described in a Geotechnical Baseline Statement;

for the purposes of a claim for a Delay Event or Compensation Event pursuant to Section 18.2(c) and Section 18.3(f) of the Project Agreement, respectively, Project Co shall provide Contracting Authority with the following information:

- (iii) written evidence of all testing (including all applicable field, in situ and laboratory tests), investigations and subsurface explorations conducted by Project Co for the purposes described in this Section 2.3 of Schedule 37 (the “**Geotechnical Testing**”) which shall, at a minimum include the testing described in Section 2.4 (the “**Required Geotechnical Testing**”);
 - (iv) written results and values derived from Geotechnical Testing that are of a quantity capable of forming reasonable basis for statistical comparisons to the applicable Geotechnical Baseline Statement (the “**Geotechnical Testing Results**”);
 - (v) analytical, graphic (including stratigraphic profiles as applicable) and statistical comparisons of the Geotechnical Testing Results in respect of the claimed Site Condition against the applicable Geotechnical Baseline Statement on a “like for like” basis;
 - (vi) identification and description of the alleged Differing Geotechnical Site Condition or Contracting Authority Contamination, as applicable, on production rates, materials, equipment use, labour requirements and other cost and schedule expectations (including as may have been based on the applicable Geotechnical Baseline Statement); and
 - (vii) any other information required by the Project Agreement (including pursuant to Section 32 of the Project Agreement and Section 33 of the Project Agreement.
- (b) For greater certainty, nothing in this Section 2.3 shall prevent Project Co from conducting, and providing results from, Geotechnical Testing other than the Required Geotechnical Testing for the purposes described in Sections 2.3(a)(i) and 2.3(a)(ii).
 - (c) Despite Section 2.3(a)(iii), Project Co shall not be required to conduct the Required Geotechnical Testing for the purposes described in Sections 2.3(a)(i) and 2.3(a)(ii) where the relevant Geotechnical Baseline Statement is in respect of the Works in connection with the Shaft.

2.4 Geotechnical Testing Standards

- (a) Any Geotechnical Testing shall be conducted in accordance with the following requirements (collectively, the “**Geotechnical Testing Requirements**”):
 - (i) Project Co shall notify Contracting Authority at least twenty-four hours in advance of any Geotechnical Testing and Contracting Authority shall have the right to be present at and observe any such Geotechnical Testing.

-
- (ii) Project Co shall ensure that Contracting Authority is provided the opportunity to obtain split or duplicate samples or testing measurements as Project Co obtains from such Geotechnical Testing.
 - (iii) All Geotechnical Testing shall be conducted by Project Co in accordance with:
 - (A) Good Industry Practice;
 - (B) the applicable ASTM International, CSA Group, or other standards as are applicable and used to produce data of the same type as reported in the Project GBR, as such standards are amended from time to time; and
 - (C) the most current version of the Toronto Transit Commission guidance document titled “*Geotechnical Standards, Direction for Conducting Site Investigations*” as of the Financial Submission Deadline.
 - (b) All Required Geotechnical Testing shall be conducted in accordance with the following requirements (collectively, the “**Required Geotechnical Testing Requirements**”):
 - (i) The minimum investigation zone for any Required Geotechnical Testing (each such zone a “**Required Geotechnical Testing Zone**”) shall be:
 - (A) longitudinally, a line from 50m behind the location of the face of the Tunnel Boring Machine to 100m ahead of the face of the Tunnel Boring Machine, measured in the direction of the tunnelling; and
 - (B) transversely, a horizontal distance from the centreline of the Bored Tunnel alignment equal to the depth of the Bored Tunnel or Shaft inverts, as applicable;

but, for certainty, reference to the Tunnel Boring Machine is included only for the purposes of determining the boundaries of the Required Geotechnical Testing Zone and nothing in this Section 2.4(b) shall prevent Project Co from conducting such testing after the Tunnel Boring Machine is outside of the applicable Required Geotechnical Testing Zone.
 - (ii) Project Co shall place boreholes in the Required Geotechnical Testing Zone (the “**Required Geotechnical Testing Boreholes**”). The distance between Required Geotechnical Testing Boreholes shall not exceed 50m. Required Geotechnical Testing Boreholes shall be advanced to a minimum depth equal to the Borehole Testing Depth.
 - (iii) Project Co shall collect soil samples at intervals of no greater than 1.5m from the top of the Bored Tunnel elevation to the bottom of the Bored Tunnel elevation.
 - (iv) Project Co shall, at its own cost, carry out in situ and laboratory testing on a minimum of 25 per cent of soil samples collected in accordance with these

Required Geotechnical Testing standards to verify soil strata boundaries. Such laboratory testing shall include, at a minimum, an analysis of:

- (A) natural water limits;
 - (B) Atterberg Limits; and
 - (C) grain size distribution.
- (v) Project Co shall create and decommission all Required Geotechnical Testing Boreholes in accordance with Good Industry Practice and Applicable Law including, in the case of decommissioning of Geotechnical Testing Boreholes, *O. Reg 903* (as amended).

2.5 Testing at Project Co Risk.

- (a) Project Co acknowledges and agrees that it shall be responsible for any delays or additional costs in respect of the Works caused by any Geotechnical Testing (except to the extent such additional costs or delays are caused or contributed to by Contracting Authority).

**APPENDIX A
PROJECT GBR**

See attached.

SCHEDULE 38**PAYMENT PROCEDURES****1. DEFINITIONS****1.1 Definitions**

The following terms shall have the following meanings:

- (a) “**Adjusted Finishing Holdback Amount**” has the meaning given in Section 5.2(e).
- (b) “**Adjusted Legislative Holdback Amount**” has the meaning given in Section 5.1(e).
- (c) “**Finishing Holdback Payment Certificate**” has the meaning given in Section 5.2(e).
- (d) “**Legislative Holdback Payment Certificate**” has the meaning given in Section 5.1(e).
- (e) “**Notice of Non-Payment of Finishing Holdback**” has the meaning given in Section 5.2(c).
- (f) “**Notice of Non-Payment of Legislative Holdback**” has the meaning given in Section 5.1(c).
- (g) “**Proper Invoice**” has the meaning given to it in the *Construction Act* (Ontario), and must also comply with the requirements set forth in Sections 3.1 to 3.3.
- (h) “**Proper Invoice Delivery Date**” has the meaning given in Section 3.2(a).

2. GENERAL**2.1 Electronic Payment**

- (a) Notwithstanding any other provision of the Project Agreement, for the purpose of this Project Agreement, payments made by electronic transfer shall be deemed to have been made on the day and at the time the electronic transfer is initiated, as confirmed by the initiating bank by a confirmation setting out the transfer number and the other details of the transfer.

3. PAYMENT OF PROPER INVOICE**3.1 Proper Invoice**

- (a) A Proper Invoice shall mean a written bill or other request for payment issued by Project Co for services or materials in respect of the Works performed under this Agreement and must contain the following:
 - (i) the information set out in Section 6.1 of the *Construction Act* (Ontario);
 - (ii) the amounts certified for payment by the Independent Certifier and allocation of any applicable holdbacks;

- (iii) the direction of Project Co regarding payment pursuant to Section 4.4 of the Project Agreement, including any electronic payment information, and any consent of the Lender's Agent for redirection pursuant to Section 4.4 of the Project Agreement as applicable;
- (iv) evidence of compliance with workers' compensation insurance requirements for the Works performed, including a WSIB Clearance Certificate;
- (v) a CCDC-9A statutory declaration as of the date of the Proper Invoice declaring that payments in connection with the Works have been made; and
- (vi) where the Proper Invoice includes final payment under any Subcontract for which lien rights or rights in respect of the holdback may be claimed under the *Construction Act* (Ontario), a certificate of completion and statutory declarations or other assurances from the relevant Subcontractor confirming that all those engaged by the Subcontractor have been paid in accordance with Applicable Law.

3.2 Delivery of a Proper Invoice

- (a) The earliest date that a given Proper Invoice is eligible to be delivered to the Contracting Authority (the "**Proper Invoice Delivery Date**") is set out below, and any invoice submitted earlier than permitted below may be subject to a notice of non-payment as a result, at Contracting Authority's election:
 - (i) for payment of the Substantial Completion Payment, no earlier than the Substantial Completion Date;
 - (ii) for payment of the Completion Holdback, no earlier than the Minor Deficiencies Completion Date where Seasonal Minor Deficiencies remain to be resolved and otherwise no earlier than the Final Completion Date; and
 - (iii) for payment of the Seasonal Works Holdback, no earlier than the Final Completion Date,

and the amount of any such Proper Invoice must be no greater than the amount certified for payment by the Independent Certifier pursuant to Section 3.3(a)(iii), below, and shall list and have deducted any applicable deductions or holdbacks applied pursuant to the Project Agreement.

3.3 Review of a Proper Invoice

- (a) Prior to delivery of each Proper Invoice, the following process shall be followed:
 - (i) No later than thirty days prior to the anticipated Proper Invoice Delivery Date, Project Co shall submit a draft payment application to the Independent Certifier and Contracting Authority containing the breakdown of amounts intended to be included in the Proper Invoice, holdback accounting, tax information and all supporting documentation required by the Project Agreement or reasonably requested by the Independent Certifier or Contracting Authority.

- (ii) From the fifteenth day to the fifth day prior to the Proper Invoice Delivery Date, Project Co shall meet with the Contracting Authority and Independent Certifier in order to review the information and documentation provided, and any additional information or documentation reasonably requested by the Independent Certifier or Contracting Authority, in order to assist Project Co with the preparation of the Proper Invoice.
 - (iii) At least three days prior to the Proper Invoice Delivery Date, if the documents and information submitted are satisfactory to the Independent Certifier, the Independent Certifier shall issue a certificate of payment in the amount applied for or in such other amount determined by the Independent Certifier to be properly due.
- (b) Project Co shall not make material changes to the information to be submitted by way of the resulting Proper Invoice on or after the fourth day prior to the Proper Invoice Delivery Date.

3.4 Compliance with Prompt Payment Requirements

- (a) Subject to the giving of a notice of non-payment in the prescribed form and manner, and to any requirement or entitlement to retain a holdback pursuant to the *Construction Act* (Ontario), Contracting Authority shall pay the amount payable under a Proper Invoice as Project Co may direct no later than 28 days after receiving the Proper Invoice from Project Co.
- (b) Project Co shall comply with, and shall cause the Project Co Parties to comply with any applicable timelines for prompt payment contained in the Project Agreement or required by the *Construction Act* (Ontario), and shall indemnify Contracting Authority for any costs incurred by Contracting Authority (including legal and consulting costs) as a result of Project Co's failure or the failure of those for whom Project Co is responsible to comply with such timelines, except to the extent caused solely by Contracting Authority.

4. NOTICE OF NON-PAYMENT

4.1 Notice of Non-Payment

- (a) If Contracting Authority disputes payment of a Proper Invoice in whole or in part, Contracting Authority may refuse to pay all or any portion of the Proper Invoice if Contracting Authority delivers a notice of non-payment no later than 14 days after receiving the Proper Invoice from Project Co, subject to the separate requirements governing Delivery of a Notice of Non-Payment of Legislative Holdback or a Notice of Non-Payment of Finishing Holdback.

5. PAYMENT OF LEGISLATIVE HOLDBACK

5.1 Payment of Legislative Holdback

- (a) Contracting Authority covenants and agrees with Project Co to pay to Project Co the Legislative Holdback in accordance with this Section 5.1 and the *Construction Act* (Ontario) or pay to such party as otherwise directed by Project Co and shall not accept any redirection without the consent of the person to whom payment is directed. Contracting Authority agrees to pay the Legislative Holdback as Project Co may direct in accordance with any such direction. Project Co acknowledges and agrees that payment by Contracting Authority of the Legislative Holdback in accordance with this Section 5.1 as Project Co may direct, constitutes payment by Contracting

Authority to Project Co in satisfaction of Contracting Authority's obligation to pay the Legislative Holdback to Project Co under this Project Agreement and in satisfaction of any trust obligation of Contracting Authority with respect to such payments under the *Construction Act* (Ontario).

- (b) Prior to release of the Legislative Holdback, Project Co shall:
- (i) submit a written request for release of the Legislative Holdback;
 - (ii) submit a CCDC 9A (2018) Statutory Declaration;
 - (iii) submit a declaration that there are no liens registered or written notices of lien given pursuant to the *Construction Act* (Ontario), or provide proof that all liens and written notices of lien have been satisfied, vacated, discharged, withdrawn or otherwise provided for in accordance with Sections 17.2 and 17.3 of the Project Agreement; and
 - (iv) submit an original WSIB Clearance Certificate.
- (c) If Contracting Authority determines that Project Co is not entitled to some or all of the Legislative Holdback, then no later than 40 days after the publication of the applicable certification or declaration of substantial performance or if no certification or declaration is published, the date the Project Agreement is completed, abandoned or terminated, Contracting Authority shall publish in the form and manner prescribed, a notice specifying the amount of the Legislative Holdback that the Contracting Authority will not pay (the “**Notice of Non-Payment of Legislative Holdback**”).
- (d) No later than 3 days following the publication of the Notice of Non-Payment of Legislative Holdback, Contracting Authority shall notify Project Co of the publication of the Notice of Non-Payment of Legislative Holdback.
- (e) Within 40 days from the date of publication of the certificate of substantial performance pursuant to the *Construction Act* (Ontario), the Independent Certifier shall issue a certificate for payment of the Legislative Holdback (the “**Legislative Holdback Payment Certificate**”) in an amount equal to the Legislative Holdback less the amount specified in the Notice of Non-Payment of Legislative Holdback, if any (the “**Adjusted Legislative Holdback Amount**”).
- (f) Subject to any liens registered or written notices of lien being addressed, the Adjusted Holdback Amount set out in the Legislative Holdback Payment Certificate is due and payable within 60 days from the date of publication of the certificate of substantial performance pursuant to the *Construction Act* (Ontario), or such other time required or permitted by the *Construction Act* (Ontario).
- (g) If Project Co disagrees with Contracting Authority regarding Project's entitlement to Legislative Holdback or any or all of the amount specified in the Notice of Non-Payment of Legislative Holdback it may refer the matter for resolution in accordance with Schedule 27 – Dispute Resolution Procedure.
- (h) Prior to the date of the release of the Legislative Holdback, Project Co shall have removed from the Lands, the New Metrolinx Infrastructure, the New Third Party Infrastructure and the Existing

Infrastructure all supplies, waste materials, rubbish and temporary facilities and all personnel except as required to achieve Final Completion or to correct any remaining Minor Deficiencies.

5.2 Payment of Finishing Holdback

- (a) Contracting Authority covenants and agrees with Project Co to pay to Project Co the Finishing Holdback in accordance with this Section 5.2 and the *Construction Act* (Ontario) or pay to such party as otherwise directed by Project Co and shall not accept any redirection without the consent of the person to whom payment is directed. Contracting Authority agrees to pay the Finishing Holdback as Project Co may direct in accordance with any such direction. Project Co acknowledges and agrees that payment by Contracting Authority of the Finishing Holdback in accordance with this Section 5.2 as Project Co may direct, constitutes payment by Contracting Authority to Project Co in satisfaction of Contracting Authority's obligation to pay the Finishing Holdback to Project Co under this Project Agreement and in satisfaction of any trust obligation of Contracting Authority with respect to such payment under the *Construction Act* (Ontario).
- (b) Prior to the release of the Finishing Holdback, Project Co shall:
- (i) submit a written request for release of the Finishing Holdback;
 - (ii) submit a CCDC 9A (2018) Statutory Declaration;
 - (iii) a declaration that there are no liens registered or written notices of lien given pursuant to the *Construction Act* (Ontario), or provide proof that all liens and written notices of lien have been satisfied, vacated, discharged, withdrawn or otherwise provided for in accordance with Sections 17.2 and 17.3 of the Project Agreement; and
 - (iv) submit an original WSIB Clearance Certificate.
- (c) If Contracting Authority determines that Project Co is not entitled to some or all of the Finishing Holdback, then no later than 40 days after the date the Project Agreement is completed, abandoned or terminated, Contracting Authority shall publish, a notice specifying the amount of the Finishing Holdback that Contracting Authority will not pay (the “**Notice of Non-Payment of Finishing Holdback**”).
- (d) No later than 3 days following the publication of the Notice of Non-Payment of Finishing Holdback, the Contracting Authority shall notify Project Co of the publication of the Notice of Non-Payment of Finishing Holdback.
- (e) Within 40 days after the date the Project Agreement is completed, abandoned or terminated, the Independent Certifier shall issue a certificate for payment of the Finishing Holdback (the “**Finishing Holdback Payment Certificate**”) in an amount equal to the Finishing Holdback less the amount specified in the Notice of Non-Payment of Legislative Holdback, if any (the “**Adjusted Finishing Holdback Amount**”).
- (f) Subject to any liens registered or written notices of lien being addressed pursuant to Section 17.2 and 17.3 of the Project Agreement, the Adjusted Finishing Holdback Amount is due and payable by Contracting Authority within 60 days from the date the Project Agreement is completed,

abandoned or terminated, or such other time required or permitted by the *Construction Act* (Ontario).

- (g) If Project Co disagrees with Contracting Authority regarding Project Co's entitlement to Finishing Holdback or any or all of the amount specified in the Notice of Non-Payment of Finishing Holdback it may refer the matter for resolution in accordance with Schedule 27 – Dispute Resolution Procedure.

5.3 Payment of Completion Holdback and Seasonal Works Holdback

- (a) Contracting Authority covenants and agrees with Project Co to pay to Project Co (or to such other person as Project Co otherwise directs) the following holdbacks, as applicable, together with all interest accrued thereon and applicable HST, and to not accept any redirection without the consent of any such other person to whom payment is directed:
 - (i) the Completion Holdback in accordance with and on the dates set out in Section 25.10(b) and Section 25.10(c) of the Project Agreement; and
 - (ii) the Seasonal Works Holdback in accordance with and on the date set out in Section 25.10(c) of the Project Agreement.
- (b) Project Co acknowledges and agrees that payment by Contracting Authority of the Completion Holdback and Seasonal Works Holdback, as applicable, in accordance with Section 5.3(a) of this Schedule 38, constitutes payment by Contracting Authority to Project Co in satisfaction of Contracting Authority's obligation to pay the Completion Holdback and Seasonal Works Holdback, as applicable, to Project Co under this Project Agreement and in satisfaction of any trust obligation of Contracting Authority with respect to such payments under the *Construction Act* (Ontario).

MT MTDOCS 20663641