

**PROJECT AGREEMENT
EXECUTION VERSION**

HIGHWAY 407 EAST EXTENSION

CONFIDENTIAL – ECONOMIC INTERESTS OF ONTARIO

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SCHEDULES

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Schedule 1	-	Definitions and Interpretation
Schedule 2	-	Completion Documents
Schedule 3	-	Custody Agreement
Schedule 4	-	Lenders' Direct Agreement
Schedule 5	-	Direct Agreements
Schedule 6	-	Independent Certifier Agreement
Schedule 7		[Intentionally Deleted]
Schedule 8		[Intentionally Deleted]
Schedule 9	-	Key Individuals
Schedule 10	-	Review Procedure
Schedule 11	-	Quality Management
Schedule 12		[Intentionally Deleted]
Schedule 13	-	Project Co Proposal Extracts
Schedule 14	-	Commissioning
Schedule 15	-	Output Specifications
Schedule 16	-	Title Encumbrances
Schedule 17	-	Environmental Obligations
Schedule 18	-	Communications Protocol
Schedule 19	-	Heritage Guidelines and Protocols
Schedule 20	-	Payment Mechanism
Schedule 21		[Intentionally Deleted]
Schedule 22	-	Variation Procedure
Schedule 23	-	Compensation on Termination
Schedule 24	-	Expiry Transition Procedure
Schedule 25	-	Insurance and Performance Security Requirements
Schedule 26	-	Record Provisions
Schedule 27	-	Dispute Resolution Procedure
Schedule 28	-	Refinancing
Schedule 29	-	Standby Letter of Credit
Schedule 30	-	Insurance Trust Agreement
Schedule 31	-	Project Co Information
Schedule 32	-	[REDACTED]
Schedule 33	-	Works Report Requirements
Schedule 34		[Intentionally Deleted]
Schedule 35		[Intentionally Deleted]
Schedule 36		Tolling Infrastructure

THIS PROJECT AGREEMENT is made as of the 15th day of May, 2012

BETWEEN:

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

AND:

407 EAST DEVELOPMENT GROUP GENERAL PARTNERSHIP, [REDACTED]
(**“Project Co”**)

WHEREAS:

- A. HMQ wishes to procure the Extension, being an easterly extension of Highway 407 ETR from the Brock Road Interchange Eastern Limit in Pickering to the Harmony Road Interchange Eastern Limit in Whitby/Oshawa (approximately 20.3 km). The Extension includes eleven interchanges, including two Freeway to Freeway interchanges at the West Durham Link Section connections to the Main Line Section and the Re-Aligned Highway 401.
- B. Project Co will provide the Project Operations, which Project Operations include the design, construction, financing and maintenance of the Extension (the **“Project”**).
- C. HMQ and Project Co wish to enter into this project agreement (the **“Project Agreement”**), which sets out the terms and conditions upon which Project Co shall perform the Project Operations.
- D. The construction of the Extension will have a positive impact on the Province of Ontario by (i) providing a new transportation corridor to address transportation capacity deficiencies, (ii) providing a comprehensive freeway network through the Durham Region to improve mobility, network flexibility and provide an alternative emergency/detour freeway route in Durham Region, (iii) offering relief to congestion on local roads traffic as the Extension will provide an alternative route for through traffic, (iv) meeting infrastructure needs to address continued population and employment growth in Durham Region and eastern GTA, and (v) allowing for better and more efficient transportation and flow of goods between Toronto and eastern Ontario.
- E. The Project will proceed as an alternative financing and procurement project and complies with the principles set out in MOI’s *Building a Better Tomorrow: An Infrastructure Planning, Financing and Procurement Framework for Ontario’s Public Sector* (the **“IPFP Framework”**).
- F. The IPFP Framework establishes 5 fundamental principles which guide the financing and procurement of public infrastructure projects in Ontario:
 1. The public interest is paramount.

2. Value for money must be demonstrable.
 3. Appropriate public control/ownership must be preserved.
 4. Accountability must be maintained.
 5. All processes must be fair, transparent and efficient.
- G. Public ownership and control of the Extension will be preserved.
- H. 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 HMQ and Project Co work collaboratively, responsibly and cooperatively throughout the Project Term.

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

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions and Interpretation

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

Schedule No.	Description
Schedule 1	- Definitions and Interpretation
Schedule 2	- Completion Documents
Schedule 3	- Custody Agreement
Schedule 4	- Lenders' Direct Agreement
Schedule 5	- Direct Agreements
Schedule 6	- Independent Certifier Agreement
Schedule 7	[Intentionally Deleted]
Schedule 8	[Intentionally Deleted]
Schedule 9	- Key Individuals
Schedule 10	- Review Procedure
Schedule 11	- Quality Management
Schedule 12	[Intentionally Deleted]
Schedule 13	- Project Co Proposal Extracts
Schedule 14	- Commissioning
Schedule 15	- Output Specifications
Schedule 16	- Title Encumbrances

Schedule 17	-	Environmental Obligations
Schedule 18	-	Communications Protocol
Schedule 19	-	Heritage Guidelines and Protocols
Schedule 20	-	Payment Mechanism
Schedule 21		[Intentionally Deleted]
Schedule 22	-	Variation Procedure
Schedule 23	-	Compensation on Termination
Schedule 24	-	Expiry Transition Procedure
Schedule 25	-	Insurance and Performance Security Requirements
Schedule 26	-	Record Provisions
Schedule 27	-	Dispute Resolution Procedure
Schedule 28	-	Refinancing
Schedule 29	-	Standby Letter of Credit
Schedule 30	-	Insurance Trust Agreement
Schedule 31	-	Project Co Information
Schedule 32	-	Financial Model Extracts
Schedule 33	-	Works Report Requirements
Schedule 34		[Intentionally Deleted]
Schedule 35		[Intentionally Deleted]
Schedule 36		Tolling Infrastructure

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

1.2 Conflict of Terms

- (a) In the event of ambiguities, conflicts or inconsistencies between or among any of the provisions of this Project Agreement, the provisions shall govern in the following order of precedence with each taking precedence over those listed subsequently:
- (i) the provisions of amendments in writing to this Project Agreement signed by the Parties and Variation Confirmations shall govern and take precedence only over those specific provisions of this Project Agreement expressly amended thereby;
 - (ii) any provision establishing a higher standard of safety, reliability, durability, performance or service shall take precedence over a provision establishing a lower standard of safety, reliability, durability, performance or service;
 - (iii) the body of this Project Agreement;
 - (iv) Schedule 1 Definitions and Interpretation;
 - (v) Schedule 27 Dispute Resolution Procedure;
 - (vi) Schedule 20 Payment Mechanism;
 - (vii) Schedule 15 Output Specifications;
 - (viii) Schedule 17 Environmental Obligations
 - (ix) Schedule 25 Insurance and Performance Security Requirements;
 - (x) Schedule 22 Variation Procedure;
 - (xi) Schedule 10 Review Procedure;
 - (xii) Schedule 14 Commissioning;
 - (xiii) Schedule 11 Quality Management;
 - (xiv) Schedule 28 Refinancing;
 - (xv) Schedule 23 Compensation on Termination;
 - (xvi) Schedule 26 Record Provisions;
 - (xvii) Schedule 24 Expiry Transition Procedure;
 - (xviii) the other Schedules in the order in which they are listed in Section 1.1(b); and
 - (xix) Schedule 13 Project Co Proposal Extracts.

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

1.3 Conflict of Documents

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

1.4 Joint and Several Liability

- (a) Each [REDACTED] hereby acknowledges and agrees to and in favour of HMQ that [REDACTED] are jointly and severally liable for the due and punctual payment of all indebtedness of, and performance and discharge of all covenants, obligations, agreements and undertakings (including indemnity obligations) of, Project Co under or pursuant to this Project Agreement now or hereafter existing.

2. COMMERCIAL CLOSE AND FINANCIAL CLOSE

2.1 Effective Date

- (a) The provisions of Sections 1 to 11, 13, 14.1 to 25, 28 to 30, 31, 35, 37 to 39 and 51 to 64, and Schedules 1 to 3, 9 to 11, 13, 16, 18, 19, 22, 25 to 27 and 29 will come into effect on Commercial Close. All other provisions of this Project Agreement will come into effect only on Financial Close. The provisions of this Project Agreement will terminate on the Termination Date.

2.2 Standby Letter of Credit

- (a) On Commercial Close, Project Co shall deliver, or cause to be delivered, to HMQ one or more irrevocable standby letter(s) of credit (the "**Standby Letter of Credit**") in the aggregate amount of \$[REDACTED] substantially in the form of Schedule 29 - Standby Letter of Credit.
- (b) Unless the Standby Letter of Credit is drawn by HMQ in accordance with the provisions of this Project Agreement, HMQ shall release and deliver the Standby Letter of Credit to Project Co on Financial Close.

- (c) Project Co shall ensure that the Standby Letter 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.

2.3 Financial Close

- (a) No later than 30 days prior to the Financial Close Target Date, Project Co will deliver to HMQ drafts of all documents referred to in Section 1 of Schedule 2 - Completion Documents.
- (b) On or before the Financial Close Target Date:
 - (i) Project Co shall deliver to HMQ the documents referred to in Section 1 of Schedule 2 - Completion Documents; and
 - (ii) HMQ shall deliver to Project Co the documents referred to in Section 2 of Schedule 2 - Completion Documents.
- (c) If Project Co fails to deliver to HMQ any of the documents referred to in Section 1 of Schedule 2 - Completion Documents by the Financial Close Target Date (other than as a direct result of a breach by HMQ of its obligations under Section 2.3(b)(ii)) and HMQ does not waive such requirement, HMQ will be entitled to draw on the Standby Letter of Credit, in full or in part, to retain the proceeds thereof as liquidated damages and may terminate this Project Agreement in its entirety by written notice having immediate effect. The Parties agree that such liquidated damages are not a penalty but represent a genuine and reasonable pre-estimate of the damages that HMQ will suffer as a result of the happening of the specified event. Such payment shall constitute full and final settlement of any and all damages that may be claimed by HMQ as a result of Project Co not achieving Financial Close. The Parties agree that such liquidated damages shall be payable whether or not HMQ incurs or mitigates its damages, and that HMQ shall not have any obligation to mitigate any such damages.
- (d) As contemplated under Section 10.3.2 of the Request for Proposals, Project Co shall, no later than 10 days following written instructions from HMQ at Financial Close, pay an amount equal to the Design and Bid Fee plus, for clarity, any applicable HST to each of the eligible unsuccessful Proponents (as that term is defined in the Request for Proposals), as directed by HMQ. If Project Co is directed to pay the Design and Bid Fee to fewer than two Proponents, then Project Co shall revise the Financial Model prior to Financial Close to reflect such change.
- (e) If HMQ 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.

2.4 Disruption in Financial Markets

- (a) If Financial Close cannot be achieved by the Financial Close Target Date by reason solely of a Severe Market Disruption, subject to Project Co's obligation to renew the Standby Letter of Credit pursuant to Section 2.2, the Financial Close Target Date will be extended until the date

falling 10 Business Days (or such other period as the Parties agree, acting reasonably) after the date on which such Severe Market Disruption ceases.

- (b) If a Severe Market Disruption exists, then, at any time before such Severe Market Disruption ceases and prior to Financial Close, HMQ 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 HMQ and HMQ will assume:
 - (A) the Project Agreement, and all of Project Co's right, title and interest in the Project Data, the Intellectual Property Rights and the Project Co Permits, Licences and Approvals; and
 - (B) those contracts between Project Co and any Project Co Party which HMQ elects to be assigned.
- (c) If HMQ exercises its rights pursuant to Section 2.4(b), and, provided Project Co has, if directed, delivered the assignments provided for in (ii) (A) and (B) above, Project Co will be entitled to the return of its Standby Letter of Credit and to payment of an amount equal to the Design and Bid Fee plus any applicable HST pursuant to Section 10.3.2 of the Request for Proposals plus [REDACTED]% of such fee. HMQ'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 HMQ, that such fee represents full and final satisfaction of any obligation or liability of HMQ to Project Co and any Project Co Parties in connection with the Project Agreement and the Request for Proposals.

3. SCOPE OF AGREEMENT

3.1 Scope of Agreement

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

4. BUSINESS OPPORTUNITIES

4.1 Business Opportunities

- (a) Project Co acknowledges that HMQ: (i) may from time to time develop, or permit the development of, commercial and other opportunities on or associated with the Extension and on the Lands (including, for greater certainty, establishing, collecting and enforcing the payment of tolls or similar fees or charges with respect to the operation of vehicles or class of vehicles on the

Extension, the erection of billboards and other forms of advertising on the Extension and the granting of naming rights associated with the Extension) (“**Business Opportunities**”); (ii) reserves the right to all Business Opportunities; and (iii) may, as set out in this Project Agreement, grant rights in the Business Opportunities to Project Co.

- (b) To the extent that the development of a Business Opportunity materially adversely interferes with Project Co’s licence rights hereunder or materially adversely interferes with Project Co’s ability to perform the Project Operations, such development shall, subject to and in accordance with Schedule 22 - Variation Procedure, result in a Variation.
- (c) To encourage the development of Business Opportunities, Project Co may, from time to time, propose Business Opportunities for HMQ’s consideration. All such proposals shall describe the Business Opportunity in full with the expected financial and other advantages to both Parties. HMQ may accept any such proposal in its sole discretion and subject to such terms and conditions as HMQ may require.
- (d) Notwithstanding that Project Co has proposed a Business Opportunity to HMQ for its consideration, Project Co acknowledges and agrees that:
 - (i) HMQ reserves the right to proceed with such Business Opportunity or any similar Business Opportunity with Project Co or with any third party;
 - (ii) HMQ may initiate a separate procurement process for the development of such Business Opportunity; and
 - (iii) Project Co shall not be entitled to receive any payment or compensation from HMQ (in any form) on the basis that Project Co proposed such Business Opportunity to HMQ, even if HMQ proceeds with such Business Opportunity or any similar Business Opportunity with Project Co or with any third party.

5. REPRESENTATIONS AND WARRANTIES

5.1 Project Co Representations and Warranties

- (a) Project Co represents and warrants to HMQ that as of Commercial Close:
 - (i) Project Co is [REDACTED], and has all the requisite power and authority to own its properties and assets, to carry on its business as it is currently being conducted, and to enter into this Project Agreement and to perform its obligations hereunder;
 - (ii) each [REDACTED], is a corporation incorporated and validly existing under the laws of Canada, is in good standing with Industry Canada with respect to the filing of annual reports, and has all the requisite corporate power and authority to own its properties and assets, to carry on its business in its capacity as a partner of Project Co as it is currently being conducted, including the business as a general partner of Project Co, and to enter into this Project Agreement in its capacity as a partner of Project Co and to perform its and Project Co’s obligations hereunder;

- (iii) [REDACTED];
- (iv) all [REDACTED] interests in Project Co, all [REDACTED] in the [REDACTED] and the identity of the ultimate parent corporation of each [REDACTED] as of Commercial Close have been disclosed to HMQ;
- (v) Project Co and the Project Co Parties, collectively, have extensive experience and are knowledgeable in the design, construction, maintenance and rehabilitation of highway projects similar to the Project in scale, scope, type and complexity and have the required ability, experience, skill and capacity to perform the Project Operations in a timely and professional manner as set out in this Project Agreement;
- (vi) each [REDACTED] has the requisite power, authority and capacity to execute, deliver and perform this Project Agreement in its capacity as a partner of Project Co, 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;
- (vii) no steps or proceedings have been taken or are pending to supersede or amend the [REDACTED] or the constating documents, articles or by-laws of any of [REDACTED] in a manner that would impair or limit the ability of any [REDACTED] to perform its obligations under this Project Agreement or the obligations of Project Co under this Project Agreement;
- (viii) this Project Agreement has been duly authorized, executed, and delivered on behalf of Project Co and constitutes a legal, valid, and binding obligation of Project Co, enforceable against Project Co and each [REDACTED] in its capacity as a partner of 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;
- (ix) the execution, delivery, and performance by each [REDACTED] of this Project Agreement in its capacity as a [REDACTED] of Project Co does not and will not violate or conflict with, or constitute a default under:
 - (A) the [REDACTED];
 - (B) its constating, formation or organizational documents, including any by-laws;
 - (C) any Applicable Law; or

- (D) any covenant, contract, agreement, or understanding to which it or Project Co is a party or by which it or Project Co or any of its or Project Co's properties or assets is bound or affected;
- (x) no Project Co Event of Default has occurred and is continuing;
- (xi) all of the information regarding Project Co and each [REDACTED] set out in Schedule 31 - Project Co Information is true and correct in all material respects;
- (xii) there are no actions, suits, proceedings, or investigations pending or threatened against Project Co or any [REDACTED] 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 any [REDACTED] or in any impairment of Project Co's or any [REDACTED] ability to perform its obligations under this Project Agreement, and Project Co and [REDACTED] have no knowledge of any violation or default with respect to any order, writ, injunction, or decree of any Governmental Authority or arbitral body that could result in any such material adverse effect or impairment;
- (xiii) Project Co has carefully reviewed the whole of this Project Agreement, and all other documents made available to Project Co by or on behalf of HMQ, and, to Project Co's knowledge, nothing contained herein or therein inhibits or prevents Project Co from completing the Works or performing the Project Operations in accordance with this Project Agreement in a good and safe manner so as to achieve and satisfy the requirements of this Project Agreement;
- (xiv) Project Co and each [REDACTED] is able to meet its obligations as they generally become due;
- (xv) Project Co is registered under Division V of Part IX of the *Excise Tax Act* (Canada) and its registration number is [REDACTED];
- (xvi) the Scheduled Substantial Completion Date and each Scheduled Section Substantial Completion Date is a realistic date and is achievable by Project Co performing the Initial Works in accordance with this Project Agreement; and
- (xvii) Project Co is a Canadian [REDACTED] for purposes of the *Income Tax Act* (Canada) and each [REDACTED] is not a Non-Resident.

5.2 HMQ Representations and Warranties

- (a) HMQ represents and warrants to Project Co that as of Commercial Close:
 - (i) IO is a non-share capital corporation continued under the *Ontario Infrastructure and Lands Corporation Act, 2011*, S.O. 2011, c. 9, Schedule 32, as amended, and has all the requisite corporate power and authority to own its properties and assets, to carry on its

business as it is currently being conducted, and to enter into this Project Agreement as agent for HMQ;

- (ii) Subject to Section 5.2(a)(v)(C), (D), (E) and (F), IO is entering into this Project Agreement as agent for HMQ and has the requisite power, authority and capacity to execute and deliver this Project Agreement and to bind HMQ to this Project Agreement, and Project Co is entitled to rely upon IO's authority to bind HMQ in respect of all other agreements, instruments, undertakings and documents executed and delivered by IO as agent for HMQ that are required by this Project Agreement to be executed and delivered by HMQ;
- (iii) subject to Section 5.2(a)(v)(C), (D), (E) and (F), HMQ has the requisite power, authority and capacity to 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) IO has obtained all necessary approvals to enter into this Project Agreement as agent for HMQ;
- (v) this Project Agreement has been duly authorized, executed, and delivered by HMQ and constitutes a legal, valid, and binding obligation of HMQ, enforceable against HMQ in accordance with its terms, subject only to:
 - (A) limitations with respect to the enforcement of remedies by bankruptcy, insolvency, moratorium, winding-up, arrangement, reorganization, fraudulent preference and conveyance and other laws of general application affecting the enforcement of creditors' rights generally;
 - (B) general equitable principles and the fact that the availability of equitable remedies such as specific performance and injunction are not available against HMQ and that a court may stay proceedings or the execution of judgments;
 - (C) statutory limitations of general application respecting the enforceability of claims against HMQ or its property;
 - (D) Section 11.3 of the *Financial Administration Act* (Ontario);
 - (E) any terms and conditions set out in the approval that has been provided in connection with this Project Agreement for the purposes of Section 28 of the *Financial Administration Act*; 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);
- (vi) the execution, delivery, and performance by HMQ of this Project Agreement does not and will not violate or conflict with, or constitute a default under:

- (A) *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), R.S.O. 1990, c. E.25;
 - (C) any Applicable Law; or
 - (D) any covenant, contract, agreement, or understanding relating to the Project or the Lands to which it is a party or by which it or any of its properties or assets is bound or affected;
- (vii) no HMQ Event of Default has occurred and is continuing;
 - (viii) HMQ has rights of use and access to, on and over the Lands and the Extension or has the requisite power to obtain such rights that are sufficient to enable HMQ to grant or to cause to be granted to Project Co the licence rights contemplated in Section 14.1; and
 - (ix) Her Majesty the Queen in Right of Ontario is the registered owner of, and has good title in fee simple to, the Lands save and except for the Limited Access Lands.

6. BACKGROUND INFORMATION

6.1 No Liability

- (a) Except as expressly provided in Sections 6.4, 16.1, 16.2, 16.3 and 16.4, neither HMQ nor any Province Person shall be liable to Project Co or any Project Co Party for, and Project Co or any Project Co Party shall not seek to recover from HMQ or any Province Person, any damages, losses, costs, liabilities or expenses which may arise (whether in contract, tort or otherwise) from the adoption, use or application of the Background Information by, or on behalf of, Project Co or any Project Co Party.

6.2 No Warranty

- (a) Except as expressly provided in Sections 6.4, 16.1, 16.2, 16.3 and 16.4:
 - (i) neither HMQ nor any Province Person gives any warranty or undertaking of whatever nature in respect of the Background Information and, specifically (but without limitation), neither HMQ nor any Province Person warrants that the Background Information represents all of the information in its possession or power (either during the conduct of the procurement process for the Project or at the time of execution and delivery of this Project Agreement) relevant or material to or in connection with the Project or the obligations of Project Co under this Project Agreement or under any of the Project Documents; and
 - (ii) neither HMQ nor any Province Person shall be liable to Project Co or any Project Co Party in respect of any failure, whether before, on or after the execution and delivery of this Project Agreement:

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

6.3 No Claims

- (a) Project Co acknowledges and confirms that:
 - (i) it has conducted its own analysis and review of the Background Information and has, before the execution and delivery of this Project Agreement, satisfied itself as to the accuracy, completeness and fitness for purpose of any such Background Information upon which it places reliance; and
 - (ii) except as expressly provided in Sections 6.4, 16.1, 16.2, 16.3 and 16.4, it shall not be entitled to and shall not, and shall ensure that no Project Co Party shall, make any claim against HMQ or any Province Person (whether in contract, tort or otherwise), including, without limitation, any claim in damages, for extensions of time or for additional payments under this Project Agreement on the grounds:
 - (A) of any misunderstanding or misapprehension in respect of the Background Information; or
 - (B) that the Background Information was incorrect or insufficient,
- nor shall Project Co be relieved from any of its obligations under this Project Agreement on any such grounds.

6.4 Technical Reports

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

7. PROJECT DOCUMENTS

7.1 Project Documents

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

7.2 Ancillary Documents

- (a) Project Co shall not:
- (i) terminate or agree to the termination of all or part of any Ancillary Document, except pursuant to Sections 32.3, 45.5, 59.3 and 60.2 or except to prevent or to cure a Project Co Event of Default (provided that commercially reasonable alternative measures would not prevent or cure such Project Co Event of Default);
 - (ii) make or agree to any amendment, restatement or other modification of any Ancillary Document that materially adversely affects Project Co's ability to perform its obligations under this Project Agreement or that has the effect of increasing any liability of HMQ, whether actual or potential;
 - (iii) breach its obligations (or waive or allow to lapse any rights it may have) or permit others to breach their obligations (or waive or allow to lapse any rights they may have) under any Ancillary Document, that materially adversely affect Project Co's ability to perform its obligations under this Project Agreement or that have the effect of increasing any liability of HMQ, whether actual or potential; or
 - (iv) enter into, or permit the entry by any other person into, any agreement replacing all or part of any Ancillary Document, except in the circumstances referenced in Section 7.2(a)(i),

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

7.3 Changes to Lending Agreements and Refinancing

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

7.4 Compliance with Lending Agreements

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

8. HMQ RESPONSIBILITIES**8.1 General**

- (a) HMQ shall, at its own cost and risk:
- (i) perform all of its obligations under, and observe all provisions of, this Project Agreement in compliance with Applicable Law; and
 - (ii) cooperate with Project Co in the fulfillment of the purposes and intent of this Project Agreement, provided, however, that HMQ shall not be under any obligation to perform any of Project Co's obligations under this Project Agreement.
- (b) During the Operational Term, the predominant uses of the Extension to be permitted by HMQ shall be as a public roadway that may carry on Tolling Activities and for ancillary uses compatible therewith.
- (c) HMQ shall, and shall cause all HMQ Parties to, take reasonable steps to minimize undue interference with the provision of the Project Operations by Project Co or any Project Co Party.
- (d) HMQ shall, at the expense of Project Co, take such reasonable steps as Project Co may request to facilitate access for Project Co to lands not forming part of the Lands to the extent Project Co may reasonably require to perform the Project Operations, provided that Project Co has demonstrated, to the reasonable satisfaction of HMQ, that it has not been able to gain such access through the use of its own commercially reasonable efforts.

- (e) Nothing in this Project Agreement shall in any way fetter the right, authority and discretion of HMQ or any Province Person in fulfilling its statutory or other functions under Applicable Law, and Project Co understands and agrees that nothing in this Project Agreement shall preclude IO, as agent for HMQ, (or any designate appointed pursuant to Section 63.1 of this Project Agreement) from performing, discharging or exercising its duties, responsibilities, and powers under Applicable Law. Project Co further agrees that it shall comply, and shall cause all relevant Project Co Parties to comply, with all written directions issued by or on behalf of IO, as agent for HMQ, (or any designate appointed pursuant to Section 63.1 of this Project Agreement) from time to time.

8.2 HMQ Permits, Licences and Approvals

- (a) HMQ shall, at its own cost and risk:
- (i) obtain on or before Financial Close (except for (A) the ESA Permits (other than the Letter of Advice) which shall be obtained on or before August 31, 2012 and (B) the road closures described in item 4 of Appendix 1 - HMQ Permits, Licences and Approvals to Schedule 1 - Definitions and Interpretation, which shall be obtained on or before May 31, 2012), maintain, and, as applicable, renew all HMQ Permits, Licences and Approvals which may be required for the performance of the Project Operations; and
 - (ii) comply with all Permits, Licences and Approvals in accordance with their terms.
- (b) HMQ shall, at its own cost, provide or cause to be provided such information, documentation, and administrative assistance as Project Co may request and as HMQ may reasonably be able to provide, and shall execute such applications as are required to be in its name, to enable Project Co to obtain, maintain or renew any Project Co Permits, Licences and Approvals or to demonstrate compliance with any Permits, Licences and Approvals, provided that HMQ shall not be responsible for obtaining or for any delay in obtaining or for the failure of Project Co to obtain any Project Co Permit, Licence or Approval, unless such delay or failure is caused by any act or omission of HMQ or any HMQ Party. For greater certainty, HMQ shall not be obligated to:
- (i) invoke Crown immunity or exercise any other of its legal rights in order to avoid or eliminate the requirement to obtain any Permits, Licences and Approvals; and
 - (ii) automatically grant Project Co Permits, Licences and Approvals for which it is the authorizing entity and will apply its usual procedures and criteria in considering applications from Project Co for such Project Co Permits, Licences and Approvals.
- (c) Notwithstanding the provisions of Section 9.4(a)(i), HMQ shall be responsible for all designations, assumptions, road closures, transfers and any other applicable requirements relating to the Extension which can only be effected by HMQ pursuant to the *Public Transportation and Highway Improvement Act* (Ontario) or the *Highway Traffic Act* (Ontario), provided that Project Co shall, at its own cost, provide or cause to be provided such information, documentation, and technical or administrative assistance as HMQ may request and as Project Co may reasonably be able to provide to enable HMQ to effect such requirements.

9. PROJECT CO RESPONSIBILITIES**9.1 Other Business**

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

9.2 General

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

9.3 Project Co Parties

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

9.4 Project Co Permits, Licences and Approvals

- (a) Project Co shall, at its own cost and risk:
 - (i) obtain, maintain, and, as applicable, renew all Project Co Permits, Licences and Approvals which may be required for the performance of the Project Operations; and
 - (ii) comply with all Permits, Licences and Approvals in accordance with their terms.
- (b) Where Project Co Permits, Licences and Approvals have requirements that may impose any conditions, liabilities or obligations on HMQ or any Province Person, Project Co shall not obtain, amend or renew (other than upon the same terms and conditions) such Project Co Permits, Licences and Approvals without the prior written consent of HMQ, provided that neither HMQ nor any Province Person shall be responsible for obtaining or for the failure of Project Co to obtain any Project Co Permit, Licence or Approval. HMQ shall comply, or shall require compliance, with any conditions, liabilities or obligations as are imposed on HMQ or any Province Person by the requirements of any Project Co Permit, Licence or Approval obtained with HMQ's consent under this Section 9.4(b).
- (c) Project Co shall, at its own cost, provide or cause to be provided such information, documentation, and administrative assistance as HMQ may request and as Project Co may reasonably be able to provide, and shall execute such applications as are required to be in its name, to enable HMQ to obtain, maintain or renew any HMQ Permits, Licences and Approvals or to demonstrate compliance with any Permits, Licences and Approvals, provided that Project Co shall not be responsible for obtaining or for any delay in obtaining or for the failure of HMQ to obtain any HMQ Permit, Licence or Approval, unless such delay or failure is caused by any act or omission of Project Co, any Project Co Party or any other person for whom Project Co is responsible at law.

9.5 Safety and Security

- (a) Project Co shall:
 - (i) comply with the Safety Management Plan;
 - (ii) keep the Lands in a safe and orderly state, as appropriate in accordance with Good Industry Practice, to avoid danger to persons on the Lands and in the immediate vicinity of the Lands;

- (iii) take such measures as are reasonable in accordance with Good Industry Practice to maintain and secure the Lands and the Site to prevent access prior to Substantial Completion to the Lands, and following Substantial Completion to the Site, of any persons or creatures not entitled to be there;
- (iv) comply, and cause each Project Co Party to comply, with Applicable Law relating to health and safety, including without limitation the *Occupational Health and Safety Act* (Ontario) and all regulations thereto;
- (v) with respect to the Works, perform, or cause a Project Co Party to perform, all of the obligations of the “constructor”, and indemnify HMQ and each other Province Person against any and all of the liabilities of the “constructor”, under the *Occupational Health and Safety Act* (Ontario) and all regulations thereto; and
- (vi) provide HMQ with a certificate of good standing from WSIB or any successor thereto once every 90 days from Financial Close until Final Completion, and from Final Completion until the Termination Date, at the request of the HMQ Representative from time to time.

9.6 Protest and Trespass

- (a) Except as otherwise provided in this Project Agreement, HMQ shall not be responsible for the presence on or around the Site, or any other interference affecting the Site, the Extension Infrastructure or the Project Operations, of any persons participating in civil disobedience, demonstration or protest action (“**Protesters**”) or any other persons otherwise not entitled to be on or around the Site (“**Trespassers**”). For greater certainty, the presence of, or interference by, any Protesters or Trespassers on or around the Site shall not be a breach of the obligation of HMQ to grant licence rights of use and access to Project Co on and over the Lands pursuant to Section 14, 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 throughout the Project Term (to the extent same is not otherwise the responsibility of the Police Service). If at any time during the Project Term any part of the Site is occupied, or access to the Site is prevented or interfered with, by Protesters or Trespassers, Project Co shall use all appropriate measures reasonable in the circumstances to manage such Protesters or Trespassers and promptly notify the HMQ Representative of such occurrence and of the action which Project Co proposes to take in respect thereof. Project Co may exercise any legal remedy available to it to remove Protesters or Trespassers from the Site, provided that if Project Co does so elect to exercise any such legal remedy, Project Co shall give the HMQ Representative not less than 24 hours notice prior to commencing any legal proceeding for that purpose (except in a case of emergency, danger to persons or material destruction or material damage to property where, in such circumstances, such notice may be given to HMQ less than 24 hours prior to the commencement of such legal proceeding) and shall continually update the HMQ Representative as to the status of any such proceeding in reasonable detail and at reasonable intervals, and provided further that:
 - (i) Project Co shall not give directly or indirectly to any Protester or Trespasser any inducement, monetary or otherwise, with a view to avoiding, limiting or influencing the

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

- (ii) Project Co shall not by virtue of this Section 9.6(b) 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.
- (c) Project Co may request the assistance of HMQ (at the cost of Project Co) to remove Protesters or Trespassers where Project Co demonstrates to HMQ's reasonable satisfaction that:
 - (i) it is pursuing legal remedies available to it to remove the Protesters or Trespassers (provided that for this purpose Project Co may but shall not be obligated to prosecute injunctive or other judicial remedies beyond the court of first instance); and
 - (ii) the continued presence of the Protesters or Trespassers is having a material adverse effect on the conduct of the Works that Project Co is unable to mitigate.

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

9.7 Additional Works and Third Party Works

- (a) HMQ reserves the right to carry out Additional Works and to issue permissions, consents, approvals, certificates, permits, licences, agreements and authorizations in respect of Third Party Works. HMQ may assign the methods and manner of construction (where applicable) of the Additional Works, the coordination and scheduling of the Additional Works and the Third Party Works and the safety training in respect of the Additional Works and the Third Party Works to Project Co.
- (b) In connection with the Additional Works, HMQ shall:
 - (i) cause Additional Contractors to comply with the instructions of Project Co relating to matters of health and safety on the Site, methods and manner of construction (where applicable), and coordination and scheduling of the Additional Works with (A) the Initial Works during the performance of the Initial Works, and (B) at the request of HMQ, with the OM&R Work during the performance of the OM&R Work as HMQ considers appropriate taking into account the nature of the Additional Works and the potential for impact on the OM&R Work;
 - (ii) enter into separate contracts with Additional Contractors under conditions of contract which are compatible with the conditions of this Project Agreement and provide for compliance by Additional Contractors with Section 9.7(d) and all directions of Project Co in respect of any matter regarding health and safety on the Site, methods and manner of construction (where applicable), and coordination and scheduling of the Additional

Works during the performance of the Works in those cases where HMQ has requested Project Co to proceed in accordance with Section 9.7(d);

- (iii) ensure that insurance coverage is provided 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]; and
 - (iv) take all necessary steps to avoid labour disputes or other disputes on the Project arising from the Additional Works.
- (c) In connection with the Third Party Works, HMQ shall:
- (i) cause Third Party Contractors to comply with the instructions of Project Co relating to matters of health and safety on the Site and coordination and scheduling of the Third Party Works with (A) the Initial Works during the performance of the Initial Works, and (B) at the request of HMQ, with the OM&R Work during the performance of the OM&R Work as HMQ considers appropriate taking into account the nature of the Third Party Works and the potential for impact on the OM&R Work;
 - (ii) issue encroachment permits to Third Party Contractors containing conditions which are compatible with the conditions of this Project Agreement and provide for compliance by Third Party Contractors with Section 9.7(d) and all directions of Project Co in respect of any matter regarding health and safety on the Site and coordination and scheduling of the Third Party Works during the performance of the Works in those cases where HMQ has requested Project Co to proceed in accordance with Section 9.7(d); and
 - (iii) require (A) that insurance coverage is provided as would be required by a prudent owner similarly situated and (B) that such insurance is coordinated with the insurance coverage of Project Co as it affects the Works and in any event, such insurance shall provide for liability insurance of not less than \$[REDACTED].
- (d) In connection with the Additional Works and the Third Party Works, Project Co shall, during the performance of the Initial Works, and at the request of HMQ, during the performance of the OM&R Work as HMQ considers appropriate taking into account the nature of the Additional Works or the Third Party Works, as applicable, and the potential for impact on the OM&R Work:
- (i) where HMQ has assigned to Project Co the matters referred to in Section 9.7(a) and subject to the performance by HMQ of its obligations under Sections 9.7(b)(i) and (ii) or Sections 9.7(c)(i) and (ii), as applicable,
 - (A) provide for the methods and manner of construction (where applicable) of the Additional Works and the coordination and scheduling of the Additional Works and the Third Party Works with the Works to be performed under this Project Agreement; and
 - (B) for the Additional Contractors and in respect to such Additional Works and for the Third Party Contractors and in respect to such Third Party Works, in respect

of each Section, assume overall responsibility for compliance with all aspects of Applicable Law relating to health and safety at the Site, including all the responsibilities of the 'constructor' under the *Occupational Health and Safety Act* (Ontario), prior to Section Substantial Completion of the relevant Section and, at the request of HMQ exercised in a manner consistent with the said Act, at any time that Project Co is acting as a 'constructor' on the Site following Section Substantial Completion of the relevant Section;

- (ii) afford Additional Contractors and Third Party Contractors reasonable opportunity to introduce and store their products and use their construction machinery and equipment to execute the Additional Works and the Third Party Works, as applicable;
 - (iii) participate with HMQ, Additional Contractors and Third Party Contractors, as applicable, in reviewing their construction schedules when directed to do so by HMQ; and
 - (iv) where part of the Works is affected by or depends upon, for its proper execution, the Additional Works or the Third Party Works, promptly report to HMQ in writing and prior to proceeding with that part of the Works any readily apparent deficiencies in the Additional Works or the Third Party Works. Failure by Project Co to so report shall invalidate any claims against HMQ by reason of such readily apparent deficiencies.
- (e) In the case of Additional Works (other than Early Works) and Third Party Works carried out on any Section prior to Section Substantial Completion of the relevant Section at the Site, if:
- (i) any Additional Contractors or Third Party Contractors cause any damage to the Initial Works;
 - (ii) Project Co incurs any additional costs or there is any delay in the Works Schedule as a result of any Additional Contractors or Third Party 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 Section 9.7(d), if Project Co incurs any additional costs or there is any delay in the Works Schedule as a result of any such Additional Works (other than Additional Work that is required to meet the Output Specifications and provided such Additional Work is performed by such Additional Contractors in accordance with Good Industry Practice and in accordance with the terms of their respective contracts or engagements with HMQ), or any such Third Party Works,
- then any such delay in the Works Schedule or additional costs in respect of the Initial Works shall, subject to and in accordance with Section 40, be treated as a Delay Event and, subject to and in accordance with Section 41, be treated as a Compensation Event.
- (f) Claims, disputes, and other matters in question between Project Co and Additional Contractors or Third Party Contractors shall be dealt with in substantially the same manner as contemplated in Schedule 27 - Dispute Resolution Procedure, provided the Additional Contractors and Third Party Contractors have reciprocal obligations and HMQ has made commercially reasonable efforts to ensure that such provisions are included in the contracts with the Additional Contractors and the

permissions, consents, approvals, certificates, permits, licences, agreements and authorizations with the Third Party Contractors. Project Co shall be deemed to have consented to arbitration of any dispute with any Other Contractor whose contract with HMQ or permissions, consents, approvals, certificates, permits, licences, agreements or authorizations, as applicable, contains a similar agreement to arbitrate.

- (g) In connection with the Additional Works (other than Early Works), Project Co may request a Variation as follows:
- (i) Project Co shall have a period of 10 Business Days following notice from HMQ of HMQ'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 a warranty made in favour of Project Co from a Project Co Party or equipment supplier and given in accordance with Good Industry Practice, void or (B) reasonably expected to have a material negative consequence on Project Co's ability to perform any of the Project Operations;
 - (ii) if Project Co has made a request for a Variation in accordance with Section 9.7(g)(i), HMQ shall, within 10 Business Days of such request, either issue a Variation Enquiry or give notice to Project Co that it does not agree that a Variation is required;
 - (iii) either Party may refer the question of whether a Variation is required as the result of a warranty risk or risk in the performance of the Project Operations for resolution in accordance with Schedule 27 - Dispute Resolution Procedure; and
 - (iv) where HMQ has, under Section 9.7(g)(ii), given notice to Project Co that it does not agree that a Variation is required, HMQ shall, within 10 Business Days of a subsequent agreement or of a determination that a Variation is required, issue a Variation Enquiry and the relevant provisions of Schedule 22 - Variation Procedure shall apply except that:
 - (A) HMQ shall not be entitled to withdraw any such Variation Enquiry unless HMQ 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 (as contemplated in Section 9.7(g)(i)) or will not result in any material negative consequence on Project Co's ability to perform any of the Project Operations and Project Co has agreed with such conclusion, or the Parties otherwise agree; and
 - (B) the Parties shall, without prejudice to their respective general obligations to comply with the terms of this Project Agreement, use commercially reasonable efforts to mitigate the adverse effects with respect to any void or voidable warranty and take commercially reasonable steps to minimize any increase in costs arising from any void warranty.
- (h) Placing, installing, applying or connecting the Additional Works performed by Additional Contractors and the Third Party Works performed by Third Party Contractors on and to the Works performed by Project Co will not relieve Project Co from its obligations under the Project Agreement with respect to the Works, except to the extent expressly described in any Variation Confirmation.

9.7A TOLLING INFRASTRUCTURE

9.7A.1 Overall Responsibility

- (a) Project Co shall comply with the provisions of Schedule 36 – Tolling Infrastructure.

9.7A.2 Acknowledgements and Agreements

- (a) Project Co acknowledges, confirms and agrees:
- (i) that the development, construction, maintenance and operation of the Tolling Infrastructure does not interfere with the Project Co's licence rights set forth in Section 14;
 - (ii) that no part of the Works is affected by, or depends upon, for its proper execution, the Tolling Civil Infrastructure;
 - (iii) that, subject to Sections 9.7, 40.1(a)(vii) and 42.1(a)(ix), the development, construction, maintenance and operation of the Tolling Infrastructure does not interfere with the Project Co's ability to perform any of the Project Operations; and
 - (iv) that:
 - (A) the testing and commissioning of the Tolling Civil Infrastructure; and
 - (B) the delivery, transfer, replacement, installation, testing, commissioning, decommissioning and reinstallation of the Tolling Systems Infrastructure at any time prior to the Expiry Date,

are Additional Works and are subject to the provisions of Section 9.7 of the Project Agreement.

10. REPRESENTATIVES

10.1 The HMQ Representative

- (a) The HMQ Representative shall exercise the functions and powers identified in this Project Agreement as functions or powers to be performed by the HMQ Representative and such other functions and powers of HMQ under this Project Agreement as HMQ may notify Project Co from time to time.
- (b) HMQ may, from time to time by written notice to Project Co, change the HMQ Representative. Such change shall have effect on the later of the date of delivery of such notice and the date specified in such notice.
- (c) During any period when no HMQ Representative has been appointed, or when the HMQ Representative is unable, through illness, incapacity or any other reason whatsoever, to perform the HMQ Representative's functions under this Project Agreement, HMQ shall perform or may, by written notice to Project Co, promptly appoint an alternative HMQ Representative to perform

the functions which would otherwise be performed by the HMQ Representative. Upon receipt of such written notice, Project Co and the Project Co Representative shall be entitled to treat any act of such alternative HMQ Representative which is permitted by this Project Agreement as being authorized by HMQ, and Project Co and the Project Co Representative shall not be required to determine whether authority has in fact been given.

- (d) The HMQ Representative shall not, except as otherwise provided in this Project Agreement, be entitled to modify or waive any provision of this Project Agreement or to authorize a Variation.
- (e) Subject to the limitations set out in Sections 10.1(a) and 10.1(d), unless otherwise notified in writing, Project Co and the Project Co Representative shall be entitled to treat any act of the HMQ Representative which is authorized by this Project Agreement as being authorized by HMQ, and Project Co and the Project Co Representative shall not be required to determine whether authority has in fact been given.

10.2 The Project Co Representative

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

10.3 Communications to Representatives

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

10.4 Key Individuals

- (a) The individuals who are critical to the performance of the Initial Works are identified in Schedule 9 - Key Individuals. Project Co shall use commercially reasonable efforts to ensure that such persons remain involved in the Initial Works in the capacity set out in Schedule 9 - Key Individuals and, in particular, will not, for the duration of the Initial Works, require or request any such person to be involved in any other project on behalf of Project Co or any Project Co Party if, in the reasonable opinion of HMQ such involvement would have a material adverse effect on the Initial Works.
- (b) The individuals who are critical to the performance of the OM&R Work are identified in Schedule 9 - Key Individuals. Project Co shall use commercially reasonable efforts to ensure that such persons remain involved in the OM&R Work in the capacity set out in Schedule 9 - Key Individuals and, in particular, will not, for the duration of the OM&R Work, require or request any such person to be involved in any other project on behalf of Project Co or any Project Co Party if, in the reasonable opinion of HMQ, such involvement would have a material adverse effect on the OM&R Work.
- (c) If Project Co considers it necessary to replace any individual identified in Schedule 9 - Key Individuals, Project Co shall provide HMQ with relevant information on the proposed replacement and shall consult with HMQ before finalizing the appointment of such replacement. Project Co shall not replace any of the individuals identified in Schedule 9 - Key Individuals without the prior written consent of HMQ, which consent shall not be withheld or delayed where the proposed replacement is suitably qualified and experienced.
- (d) If HMQ determines, acting reasonably, that it is in the best interests of HMQ that any individual identified in Schedule 9 - Key Individuals be replaced, HMQ shall notify Project Co (including a detailed explanation of the reasons for such determination), and, within 30 days of receipt by Project Co of such notice, Project Co shall provide HMQ with relevant information on the proposed replacement and shall consult with HMQ before finalizing the appointment of such replacement. Project Co shall not replace any of the individuals identified in Schedule 9 - Key Individuals without the prior written consent of HMQ, which consent shall not be withheld or delayed where the proposed replacement is suitably qualified and experienced.

11. WORKS COMMITTEE

11.1 Establishment

- (a) The Parties shall, within 30 days following Financial Close, establish a committee (the “**Works Committee**”) consisting of:
 - (i) the HMQ Representative;
 - (ii) 3 representatives appointed by HMQ from time to time; and
 - (iii) the following 2 representatives appointed by Project Co:
 - (A) the Project Co Representative; and

(B) 1 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. Members of the Works Committee may invite, on prior notice to all members, such advisors and consultants as they require from time to time to attend meetings and provide briefings to the Works Committee.
- (c) 1 of the representatives of HMQ shall be the chairperson of the Works Committee.

11.2 Function and Role

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

11.3 Term of Works Committee

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

11.4 Replacement of Committee Members

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

11.5 Procedures and Practices

- (a) The members of the Works Committee may:
 - (i) adopt such procedures and practices for the conduct of the activities of the Works Committee as they consider appropriate from time to time;
 - (ii) invite to any meeting of the Works Committee such other persons as the members of the Works Committee may agree;
 - (iii) exclude from any meeting of the Works Committee such persons as the members of the Works Committee may agree; and
 - (iv) receive and review reports from any person or organization agreed to by the members of the Works Committee.
- (b) Once established, the Works Committee shall meet at least once each month from Financial Close until the Final Completion Date, unless otherwise agreed by the members of the Works Committee or the Parties.
- (c) Any one of the Project Co Representative and any of HMQ's representatives on the Works Committee may convene a special meeting of the Works Committee at any time. Special meetings of the Works Committee may be convened on not less than 5 Business Days notice to all members of the Works Committee identifying the agenda items to be discussed at the special

meeting, provided that, in an Emergency, a meeting may be called at any time on such notice as may be reasonable in the circumstances.

- (d) Unless otherwise agreed by the members of the Works Committee, the Works Committee shall meet at the Site, the Extension, in the GTA or in any other location in Ontario. Meetings of the Works Committee may be held by means of such telephonic, electronic or other communication facilities as permit all persons participating in the meeting to communicate with each other simultaneously and instantaneously. A person participating in a meeting by such means will be deemed to be present at such meeting, provided that each member of the Works Committee must attend in person at least once each calendar quarter.
- (e) 2 representatives of HMQ, the HMQ Representative and the Project Co Representative shall constitute a quorum at any meeting of the Works Committee. A quorum of members may exercise all the powers of the Works Committee. The members shall not transact business at a meeting of the Works Committee unless a quorum is present.
- (f) Minutes of all meetings, recommendations and decisions of the Works Committee, including those made by telephone or other form of communication, shall be recorded and maintained by Project Co. Project Co shall circulate copies of such minutes within 5 Business Days of the holding of the meeting or the making of the recommendation or decision. Unless HMQ notifies Project Co within 5 Business Days of receipt of the minutes that HMQ disagrees with the contents of the minutes, HMQ and Project Co shall be deemed to have approved such minutes. Project Co shall maintain a complete set of all minutes of the meetings of the Works Committee and shall make such minutes available for inspection by HMQ during regular business hours.

12. EXTENSION MANAGEMENT COMMITTEE

12.1 Establishment

- (a) The Parties shall, not later than 18 months prior to the first Scheduled Section Substantial Completion Date, establish a committee (the “**Extension Management Committee**”) to serve until the Termination Date consisting of:
 - (i) 3 representatives appointed by HMQ from time to time; and
 - (ii) 2 senior representatives of Project Co, one of whom shall be the Project Co Representative and the other shall be appointed by Project Co from time to time.
- (b) Members of the Extension Management Committee may invite, on prior notice to all members, such advisors and consultants as they require from time to time to attend meetings and provide briefings to the Extension Management Committee.
- (c) 1 of the representatives of HMQ shall be the chairperson of the Extension Management Committee.

12.2 Function and Role

- (a) The Extension Management Committee shall assist the Parties by promoting cooperative and effective communication with respect to matters related to the Project Operations, both prior to and during the Operational Term. The Extension Management Committee shall interface with the Works Committee as and when required.
- (b) The Extension Management Committee shall be responsible for receiving and reviewing all matters related to the Project Operations (excluding the Initial Works), both prior to and during the Operational Term, including:
 - (i) any joint review of the OM&R Work and the Output Specifications;
 - (ii) any performance issues;
 - (iii) any special matter referred to the Extension Management Committee by HMQ or Project Co;
 - (iv) any community and media relations issues in accordance with Schedule 18 - Communications Protocol; and
 - (v) any other issues pertaining to the Project Operations (excluding the Initial Works).
- (c) Subject to Section 12.2(d), any unanimous decision of the Extension Management Committee shall be final and binding on the Parties. If the Extension Management Committee is unable to reach a unanimous decision, either Party may refer the matter for resolution in accordance with Schedule 27 - Dispute Resolution Procedure.
- (d) The Extension Management Committee shall not have authority to make decisions with respect to or approve:
 - (i) any amendment to or waiver of any provision of this Project Agreement;
 - (ii) any Variation;
 - (iii) any change that may materially adversely affect Project Co's ability to perform the OM&R Work or the performance by the relevant parties of any Governmental Activities; or
 - (iv) any matter with respect to which HMQ has a right of consent or in respect of which HMQ may have discretion pursuant to this Project Agreement.

12.3 Replacement of Committee Members

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

12.4 Procedures and Practices

- (a) The members of the Extension Management Committee may:
- (i) adopt such procedures and practices for the conduct of the activities of the Extension Management Committee as they consider appropriate from time to time;
 - (ii) invite to any meeting of the Extension Management Committee such other persons as the members of the Extension Management Committee may agree;
 - (iii) exclude from any meeting of the Extension Management Committee such persons as the members of the Extension Management Committee may agree; and
 - (iv) receive and review reports from any person or organization agreed to by the members of the Extension Management Committee.
- (b) Once established, the Extension Management Committee shall meet at least once each month during the Operational Term, unless otherwise agreed by the members of the Extension Management Committee or the Parties.
- (c) Any member of the Extension Management Committee may convene a special meeting of the Extension Management Committee at any time. Special meetings of the Extension Management Committee may be convened on not less than 5 Business Days notice to all members of the Extension Management Committee identifying the agenda items to be discussed at the special meeting, provided that, in an Emergency, a meeting may be called at any time on such notice as may be reasonable in the circumstances.
- (d) Unless otherwise agreed by the members of the Extension Management Committee, the Extension Management Committee shall meet at the Site, the Extension, in the GTA or in any other location in Ontario. Meetings of the Extension Management Committee may be held by means of such telephonic, electronic or other communication facilities as permit all persons participating in the meeting to communicate with each other simultaneously and instantaneously. A person participating in a meeting by such means will be deemed to be present at such meeting, provided that each member of the Extension Management Committee must attend in person at least once each calendar quarter.
- (e) 2 representatives of HMQ and 1 representative of Project Co shall constitute a quorum at any meeting of the Extension Management Committee. A quorum of members may exercise all the powers of the Extension Management Committee. The members shall not transact business at a meeting of the Extension Management Committee unless a quorum is present.
- (f) Minutes of all meetings, recommendations and decisions of the Extension Management Committee, including those made by telephone or other form of communication, shall be recorded and maintained by HMQ. HMQ shall circulate copies of such minutes within 5 Business Days of the holding of the meeting or the making of the recommendation or decision. Unless Project Co notifies HMQ within 5 Business Days of receipt of the minutes that Project Co disagrees with the contents of the minutes, HMQ and Project Co shall be deemed to have approved such minutes. HMQ shall maintain a complete set of all minutes of the meetings of the

Extension Management Committee and shall make such minutes available for inspection by Project Co during regular business hours.

13. QUALITY ASSURANCE

- (a) Project Co shall comply with the provisions of Schedule 11 - Quality Management.

14. LICENCE

14.1 Licence to Lands

- (a) Effective from the date of Financial Close and other subsequent dates set forth below and until the Termination Date, and subject to this Section 14, HMQ hereby grants or has caused to be granted, and shall continuously grant or cause to be granted, to Project Co and all Project Co Parties a non-exclusive licence rights of use and access to, on and over the Lands and the Extension as are required by Project Co and such Project Co Parties sufficient (subject to Project Co performing its obligations described in the Project Co Permits, Licences and Approvals) to allow Project Co and such Project Co Parties to perform the Project Operations including to perform Project Co's obligations pursuant to Sections 9.5 and 9.6:

- (i) from Financial Close until the Termination Date in respect of the Owned Available Lands;
- (ii) from October 31, 2012 until the Termination Date in respect of the Owned Non-Available Lands or, solely with respect to any Owned Non-Available Lands made available by HMQ to Project Co prior to October 31, 2012, from the date such Owned Non-Available Lands are made available by HMQ to Project Co until the Termination Date; and
- (iii) from Financial Close until December 31, 2016 in respect of the Limited Access Lands.

Notwithstanding the previous sentence, if: (A) any Early Works have not been completed as of Financial Close, Project Co's and the Project Co Parties' licence rights and access contemplated by this Section 14.1 in respect of the portion of the Lands on which such Early Works are being performed shall not begin until such Early Works have been completed and HMQ grants or causes to be granted to Project Co and the Project Co Parties licence rights and access in respect of the relevant portion of the Lands, which grant shall occur by no later than January 1, 2013 (save and except for the relevant portion of the Lands relating to the project described in clause (a) of the definition of Early Works which shall not be made available until November 30, 2013); and (B) any ESA Permits have not been obtained as of Financial Close, Project Co's and the Project Co Parties' licence rights and access contemplated by this Section 14.1 in respect of the portion of the Lands to which such ESA Permits apply shall be limited to the access and scope of activities permitted by the Letter of Advice, until such ESA Permits have been obtained, which ESA Permits shall be obtained by HMQ no later than August 31, 2012.

- (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 licence granted pursuant to Section 14.1(a), Project Co shall provide the Project Operations subject to and in accordance with this Project Agreement.
- (d) Without derogating from any of HMQ's rights hereunder, HMQ acknowledges that, in respect of the Project Operations, Project Co and the Project Co Parties require, and HMQ shall provide, access to the Lands without material interference by HMQ or any Province Person for such period of time identified in Section 14.1(a) applicable thereto.
- (e) None of the rights granted pursuant to this Section 14.1 shall extend beyond the boundaries of the Lands, or to any lands other than the Lands, other than easements and similar interests of HMQ which benefit the Lands, obtained after Commercial Close, to the extent the same are necessary for the Project Operations.
- (f) The licence provided in this Section 14.1 shall automatically terminate as of the Termination Date, save and except for the Limited Access Lands in respect of which the licence shall automatically terminate on December 31, 2016.
- (g) For greater certainty, the licence provided in this Section 14.1 shall not entitle Project Co or any Project Co Party to extract any mineral from the Lands for use in the Project Operations.

14.2 Non-exclusive Licence/Development of Lands

- (a) Project Co acknowledges and agrees that the rights granted to Project Co and the Project Co Parties hereunder shall be non-exclusive and that HMQ and any person authorized by HMQ may occupy and possess the Lands and the Extension without the prior consent of Project Co, including for the purposes of carrying out the Governmental Activities and the Other Works. In exercising such rights Project Co shall not, and shall require that the Project Co Parties shall not, except as permitted under this Project Agreement, disrupt the performance of the Governmental Activities or the Other Works.
- (b) Without limiting Section 14.2(a), Project Co acknowledges that HMQ may from time to time use or develop (including by way of subdivision), or permit the use or development of, or dispose of, portions of the Lands other than those portions of the Lands necessary for the performance of the Project Operations. To the extent that such use, development or disposition materially adversely interferes with Project Co's licence rights hereunder or materially adversely interferes with Project Co's ability to perform the Project Operations, such use, development or disposition shall, subject to and in accordance with Schedule 22 - Variation Procedure, result in a Variation. For greater certainty, but without limiting the generality of the foregoing, the Lands described in Schedule 1, Appendix 2, Part 2 shall only be available for use by Project Co during the Initial Works.

14.3 Naming and Signage

- (a) Project Co acknowledges that HMQ reserves and retains (i) all rights to designate the name for the Extension and any part of the Extension; (ii) all rights to signage in relation to the Lands and

the Extension; and (iii) all rights, Trade-Marks, naming or branding regarding the Extension or any part of the Extension. It is agreed, however, that, with the prior written consent of HMQ, which may take into consideration any applicable governmental guidelines, including guidelines set out in Schedule 18 - Communications Protocol, Project Co, the Project Co Parties and the Senior Lenders may, for the period prior to Substantial Completion, erect and maintain signage (which may include such parties' logos and trade names) identifying their respective roles in connection with the development and construction of the Project.

14.4 No Interest in Land

- (a) Project Co agrees that it acquires no estate, right, title or ownership interest in the Lands or the Extension or any other interest in land pursuant to this Project Agreement or otherwise.

14.5 Non-Disturbance Agreement

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

14.6 Municipal Conveyed Lands

- (a) HMQ shall cause the Municipal Conveyed Lands to be conveyed to the applicable municipal Governmental Authority within 12 months after the Final Completion Date.

15. TITLE ENCUMBRANCES

15.1 Title Encumbrances

- (a) Project Co shall perform all obligations under all Encumbrances and Title Encumbrances for or on behalf of HMQ, other than:
 - (i) obligations which Project Co is not legally capable of performing for or on behalf of HMQ;
 - (ii) obligations under any Encumbrance (which is not a Title Encumbrance) added after the date of this Project Agreement unless
 - (A) such obligations are provided in the Output Specifications as obligations of Project Co;
 - (B) the Parties agree that such obligations are obligations of Project Co; or

- (C) such Encumbrances are necessary or desirable for HMQ's purposes and do not materially interfere with the use of the Lands for purposes of the Project Operations; and
- (iii) obligations under any Encumbrance or Title Encumbrance which Durham Region, the Town of Ajax, the City of Oshawa, the Town of Whitby and the City of Pickering may formally relieve or waive, with the consent of HMQ, with respect to any Development Approval.
- (b) All Project Operations performed by or on behalf of Project Co, whether before, during or after the completion of the Initial Works, shall be performed in a manner which does not breach the Encumbrances, Title Encumbrances or any Development Approval.
- (c) Subject to Encumbrances that Project Co shall remove pursuant to Section 15.2, no act or omission by Project Co or any Project Co Party shall give rise to a right for any person to obtain title to or any interest in the Lands or any part of it, except in accordance with the terms of this Project Agreement.

15.2 No Site Encumbrances

- (a) Project Co shall not create, incur, permit or suffer to exist any Encumbrance to be filed, issued or registered upon or against the Lands or any part thereof or any interest therein due to an act or omission of Project Co or any Project Co Party.
- (b) Project Co shall promptly notify HMQ of any Encumbrance which is not a Title Encumbrance as soon as it becomes aware thereof.
- (c) In the event that the Lands or any part thereof or any interest therein becomes subject to any Encumbrance due to an act or omission of Project Co or any Project Co Party which has not been consented to in writing by HMQ, Project Co shall immediately take all steps necessary to remove, vacate or discharge such Encumbrance. If such Encumbrance is not removed, vacated or discharged within 10 Business Days of the filing, issuance or registration of such Encumbrance then, without prejudice to any other rights or remedies it may have, HMQ will be at liberty to take whatever steps it deems necessary and appropriate to remove, vacate or discharge the Encumbrance, including payment of any amount owing or claimed thereunder, and seek immediate recovery from Project Co of the amount of any such payment and any associated costs, including legal costs (on a full indemnity basis), all of which shall be payable on demand.
- (d) In the event that the Lands or any part thereof or any interest therein is or becomes subject to any Encumbrance which is not a Title Encumbrance and which is not due to an act or omission of Project Co or any Project Co Party, prior to performing obligations under any such Encumbrance, Project Co shall notify HMQ of any such Encumbrance and HMQ shall:
 - (i) cause the Encumbrance to be removed, vacated or discharged;
 - (ii) perform the required obligations thereunder; or
 - (iii) instruct Project Co to perform the required obligations thereunder.

- (e) If Section 15.2(d) requires Project Co to perform obligations under an Encumbrance which performance imposes costs or delays on performance of the Project Operations, such performance:
 - (i) prior to Section Substantial Completion of any relevant Section shall, subject to and in accordance with Section 40, be treated as a Delay Event and, subject to and in accordance with Section 41, be treated as a Compensation Event; and
 - (ii) following Section Substantial Completion of any relevant Section shall, subject to and in accordance with Schedule 22 - Variation Procedure, result in a Variation.

15.3 Construction Lien Act (Ontario)

- (a) The Parties acknowledge that the foregoing provisions of Section 15.2 shall apply to claims for lien made against the Lands pursuant to the CLA and shall also apply to claims made against HMQ or the holdback under the CLA as though such a claim were an Encumbrance against the Lands as referred to therein.
- (b) Project Co shall withhold from each Subcontractor the holdbacks required under the CLA and shall deal with such holdbacks in accordance with the CLA.
- (c) Project Co shall, as a condition of final payment under any Subcontract for which lien rights or rights in respect of the holdback may be claimed under the CLA, require that a certificate of completion under Section 33(1) of the CLA for such Subcontract be issued and the relevant Subcontractor provide statutory declarations or other assurances confirming that all those engaged by the Subcontractor have been paid in accordance with Applicable Law.
- (d) Project Co shall follow the requirements of the CLA and Good Industry Practice for posting and advertising certificates of completion when issued.
- (e) Project Co shall promptly provide HMQ with a copy of any materials which are provided to the Lenders to evidence compliance with the CLA.
- (f) Upon request by HMQ, Project Co shall perform and deliver to HMQ a subsearch of title on the Lands or any part thereof. HMQ 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 the Lands.

16. SITE CONDITION

16.1 Acceptance of Site Condition

- (a) Subject to Sections 6.4, 16.2, 16.3, and 16.4, Project Co acknowledges and agrees that it has investigated the Lands and the Other Existing Infrastructure, including the Background Information, prior to executing this Project Agreement and agrees to accept the Lands, the Other

Existing Infrastructure and the Site Conditions on an “as is, where is” basis. Without limiting the generality of the foregoing, but subject to Sections 6.4, 16.2, 16.3, and 16.4, Project Co shall not be entitled to make any claim of any nature whatsoever against HMQ or any Province Person on any grounds relating to the Lands or the Other Existing Infrastructure, including the fact that incorrect or insufficient information on any matter relating to the Lands or the Other Existing Infrastructure was given to it by any person, whether or not a Province Person, unless the relevant person has given Project Co an express written entitlement to rely on information relating to the Lands provided by such person to Project Co.

- (b) Subject to Sections 6.4, 16.2, 16.3, and 16.4, Project Co acknowledges and agrees that it has and shall be deemed to have:
 - (i) performed all necessary due diligence and investigation on the Lands and examined the Lands and their surroundings and any Other Existing Infrastructure, including having received all design data, warranties and all other applicable information relating to the Early Works (to the extent such information is available as of Commercial Close);
 - (ii) performed all necessary due diligence and investigation on the Other Existing Infrastructure and satisfied itself prior to executing this Project Agreement as to the structural, environmental and general condition of such Other Existing Infrastructure;
 - (iii) satisfied itself as to the presence of any Contamination on, in or under the Lands or migrating to or from the Lands;
 - (iv) satisfied itself as to the adequacy of the rights of access to, from and through the Lands and any accommodation it may require for the purposes of fulfilling its obligations under this Project Agreement;
 - (v) satisfied itself as to the possibility of interference by persons of any description whatsoever with access to or use of, or rights in respect of, the Lands;
 - (vi) satisfied itself as to the precautions, times and methods of working necessary to prevent any nuisance or interference, whether public or private, being caused to any third parties; and
 - (vii) satisfied itself as to the nature of the Site Conditions, the ground and the subsoil, the level and quantity of groundwater, the form and nature of the Lands, the loadbearing and other relevant properties of the Lands, the risk of injury or damage to property affecting the Lands, the nature of the materials (whether natural or otherwise) to be excavated and the nature of the design, work and materials necessary for the execution and delivery of the Works.
- (c) Project Co further acknowledges and agrees that, other than as referred to or contained in this Project Agreement, no representations or warranties have been made, nor documentation delivered to Project Co or any Project Co Party, which would indicate that Project Co would be unable to perform the Project Operations in a lawful manner.

16.2 Contamination

- (a) HMQ shall be responsible for Contamination on, in or under, or migrating to or from, the Lands, except for any such Contamination:
 - (i) that was described in, or was properly inferable, readily apparent or readily discoverable from, the Environmental Reports or the Geotechnical Reports; or
 - (ii) that is caused by any Extension User (other than a Province Person), Project Co or any Project Co Party.
- (b) Upon the discovery of any Contamination, Project Co shall immediately inform the HMQ Representative and shall comply, and ensure compliance by all Project Co Parties, with all Applicable Law and Schedule 17 - Environmental Obligations in respect thereof:
 - (i) at HMQ's cost pursuant to Section 16.2(e), in respect of Contamination for which HMQ is responsible pursuant to Section 16.2(a), and
 - (ii) at its own cost in respect of Contamination for which it is responsible pursuant to Section 16.2(a).
- (c) Except to the extent required to prevent or mitigate an Emergency or to comply with Applicable Law, Project Co shall not undertake any significant work pursuant to Section 16.2(b) in respect of Contamination for which HMQ is responsible pursuant to Section 16.2(a) until the HMQ Representative has been given a reasonable opportunity to review the nature and extent of the Contamination and has instructed Project Co to proceed with such work.
- (d) In the event that HMQ wishes Project Co to perform actions in respect of any Contamination which are in addition to any required pursuant to Section 16.2(b), then HMQ shall issue an instruction to Project Co specifying what action HMQ requires Project Co to take and Project Co shall promptly and diligently comply with all such instructions at HMQ's cost pursuant to Section 16.2(e).
- (e) If Sections 16.2(b) or 16.2(d) require Project Co to perform any alteration, addition, demolition, extension or variation in the Project Operations as a result of Contamination for which HMQ is responsible pursuant to Section 16.2(a) or as a result of any instructions given by HMQ pursuant to Section 16.2(d) and which would not otherwise be required under this Project Agreement, then any such alteration, addition, demolition, extension or variation:
 - (i) prior to Section Substantial Completion of any relevant Section shall, subject to and in accordance with Section 40, be treated as a Delay Event and, subject to and in accordance with Section 41, be treated as a Compensation Event; and
 - (ii) following Section Substantial Completion of any relevant Section shall, subject to and in accordance with Schedule 22 - Variation Procedure, result in a Variation.
- (f) In the event that HMQ and Project Co do not agree as to the nature or extent of the Contamination or of the actions to be performed by Project Co pursuant to Section 16.2(b), such

disagreement shall be referred for determination to an independent and suitably qualified and experienced person, acceptable to Project Co and HMQ, each acting reasonably (and the costs and expenses of retaining such person shall be borne by the unsuccessful Party). Such person's decision shall be final and binding on the Parties, except to the extent that either Party alleges that such decision would result in non-compliance with Applicable Law or this Project Agreement, in which event either Party may refer the disagreement for resolution in accordance with Schedule 27 - Dispute Resolution Procedure.

16.3 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 or at the Lands are or shall be the sole and absolute property of HMQ.
- (b) HMQ shall be responsible for items referred to in Section 16.3(a) except for any such items:
 - (i) that were described in, or were properly inferable, readily apparent or readily discoverable from, the Archaeological Reports; or
 - (ii) that are found after Section Substantial Completion of a Section on or at the Lands forming part of such Section.
- (c) Upon the discovery of any item referred to in Section 16.3(a), Project Co shall:
 - (i) immediately inform the HMQ Representative of such discovery;
 - (ii) take all steps not to disturb the item and, if necessary, cease any Project Operations in so far as performing such Project Operations would endanger the item or prevent or impede its excavation, take all necessary steps to preserve and ensure the preservation of the item in the same position and condition in which it was found, and comply, and ensure compliance by all Project Co Parties, with Applicable Law and all requirements of Governmental Authorities with respect to such discovery, including Schedule 19 - Heritage Guidelines and Protocols:
 - (A) at HMQ's cost pursuant to Section 16.3(e), in respect of any such discovery for which HMQ is responsible pursuant to Section 16.3(b); and
 - (B) at its own cost in respect of any such discovery for which it is responsible pursuant to Section 16.3(b).
- (d) In the event that HMQ wishes Project Co to perform actions in respect of any discovery of any item referred to in Section 16.3(a) which are in addition to any required pursuant to Section 16.3(c), then HMQ shall issue an instruction to Project Co specifying what action HMQ requires Project Co to take and Project Co shall promptly and diligently comply with all such instructions at HMQ's cost pursuant to Section 16.3(e).
- (e) If Sections 16.3(c) or 16.3(d) require Project Co to perform any alteration, addition, demolition, extension or variation in the Project Operations as a result of any such discovery for which HMQ

is responsible pursuant to Section 16.3(b) or as a result of any instructions given by HMQ pursuant to Section 16.3(d) and which would not otherwise be required under this Project Agreement, then any such alteration, addition, demolition, extension or variation (but in the case of Section 16.3(c), only to the extent it directly results in the interruption of the Initial Works during a continuous period of 14 days or more with respect to each such discovery) shall, subject to and in accordance with Section 40, be treated as a Delay Event and, subject to and in accordance with Section 41, be treated as a Compensation Event.

- (f) In the event that HMQ and Project Co do not agree as to the nature or extent of the actions required to be performed by Project Co pursuant to Section 16.3(c)(ii), such disagreement shall be referred for determination to an independent and suitably qualified and experienced person, acceptable to Project Co and HMQ, each acting reasonably (and the costs and expenses of retaining such person shall be borne by the unsuccessful Party). Such person's decision shall be final and binding on the Parties except to the extent that either Party alleges that such decision would result in non-compliance with Applicable Law or this Project Agreement, in which event either Party may refer the disagreement for resolution in accordance with Schedule 27 - Dispute Resolution Procedure.

16.4 Species-at-Risk

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

- (d) If Sections 16.4(b) or 16.4(c) require Project Co to perform any alteration, addition, demolition, extension or variation in the Project Operations as a result of the discovery of any Species-at-Risk for which HMQ is responsible pursuant to Section 16.4(a) or as a result of any instructions given by HMQ pursuant to Section 16.4(c) and which would not otherwise be required under this Project Agreement, then any such alteration, addition, demolition, extension or variation:
 - (i) prior to Section Substantial Completion of any relevant Section shall, subject to and in accordance with Section 40, be treated as a Delay Event and, subject to and in accordance with Section 41, be treated as a Compensation Event; and
 - (ii) following Section Substantial Completion of any relevant Section shall, subject to and in accordance with Schedule 22 - Variation Procedure, result in a Variation.

17. GOVERNMENTAL AND THIRD PARTY FINANCIAL OBLIGATIONS

17.1 Governmental, Railway and Utility Company Fees

- (a) Project Co shall be responsible for all Financial Obligations under or in respect of all Project Co Permits, Licences and Approvals and HMQ shall be responsible for all Financial Obligations under or in respect of all HMQ Permits, Licences and Approvals, including, as applicable in either case, to which the Durham Region, the Town of Ajax, the City of Oshawa, the Town of Whitby and the City of Pickering, any Utility Company, any Railway Company, any Governmental Authority or any third party in respect of the Project Operations, including:
 - (i) any development charges relating to the Works, the Extension or the Site;
 - (ii) any engineering administration and inspection fees required in respect of works or services required to be performed;
 - (iii) any security deposits required under any Permits, Licences and Approvals; and
 - (iv) any other amounts payable under any Permits, Licences and Approvals.
- (b) The Parties agree that any refund, partial rebate or credit granted by which Durham Region, the Town of Ajax, the City of Oshawa, the Town of Whitby and the City of Pickering any applicable Utility Company, any applicable Railway Company, any applicable Governmental Authority or any other third party relating to the Financial Obligations referred to in Section 17.1(a) shall be for the benefit of HMQ to the extent such Financial Obligations were paid by HMQ and shall be for the benefit of Project Co to the extent such Financial Obligations were paid by Project Co.

18. CHANGE IN STANDARDS

- (a) Where this Project Agreement requires Project Co to comply with a technical standard in respect of the design and construction aspects of the Project Operations, and that standard has changed between Commercial Close and the date that such compliance is required, then Project Co shall give notice to HMQ of such change. If, after such notice, HMQ requires compliance with the changed standard (rather than the standard applicable as of the date of Commercial Close), then, to the extent such change impacts the design and construction aspects of the Project Operations

and would not have otherwise been taken into account by compliance with Good Industry Practice, such changed standard shall, subject to and in accordance with Schedule 22 - Variation Procedure, result in a Variation. If HMQ does not require compliance with the changed standard, then Project Co shall continue to comply with the standard applicable as of Commercial Close, without a Variation therefor. This Section 18 shall not apply where a change in a technical standard is also a Change in Law.

19. COORDINATION AND NO DISRUPTION

- (a) Project Co shall perform the Project Operations so as to coordinate with:
 - (i) subject to and in accordance with Section 9.7 (to the extent applicable), the operations of HMQ, any Province Person, any Governmental Authority, Other Contractor, Railway Company or Utility Company engaged in activities on or about the Lands;
 - (ii) the operation, maintenance and rehabilitation of Highway 401 and Highway 407 ETR; and
 - (iii) the construction of the interface, connection or inter-connection between the Extension and (a) Highway 407 ETR, (b) Highway 401 and (c) any other Ontario road or roadway.
- (b) Project Co shall use commercially reasonable efforts to minimize:
 - (i) any interference with the operations of HMQ, any Province Person, any Governmental Authority, any Other Contractor, Railway Company or Utility Company, including the performance of the Governmental Activities and the Other Works;
 - (ii) any interference with the operation, maintenance and rehabilitation of (a) Highway 407 ETR, (b) Highway 401 and (c) any other Ontario road or roadway; and
 - (iii) any lane closures, traffic diversions or restrictions or other impairment of the public's use and enjoyment of the Extension.

20. DESIGN AND CONSTRUCTION OBLIGATIONS

20.1 Overall Responsibility

- (a) Project Co shall perform and complete the Initial Works:
 - (i) so as to satisfy the Output Specifications;
 - (ii) in accordance with the Project Co Proposal Extracts;
 - (iii) in accordance with the Design Data;
 - (iv) in accordance with the Works Schedule; and
 - (v) in accordance with the other terms and conditions of this Project Agreement.

- (b) Without prejudice to Section 20.1(a), but subject to the provisions of the OM&R Specifications, Schedule 20 - Payment Mechanism and Schedule 24 - Expiry Transition Procedure, if, at any time during the Project Term, any of the Initial Works, the Extension or any parts thereof do not fully satisfy the Output Specifications and/or any other term or condition of this Project Agreement (other than the Project Co Proposal Extracts), Project Co shall, at its own cost and expense, rectify the Initial Works, the Extension and any part thereof so that:
- (i) the Initial Works, the Extension and all parts thereof shall, at all times, comply with and satisfy in full the Output Specifications and the other terms and conditions of this Project Agreement (other than the Project Co Proposal Extracts); and
 - (ii) the Initial Works, the Extension and all parts thereof will, at all times, be able to meet all safety and performance standards and other requirements set out in the Output Specifications.

20.2 Complete and Operational Extension

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

20.3 Development of Design

- (a) Project Co shall, at its own cost, develop and complete the design of the Extension and all Design Data in accordance with the requirements of this Project Agreement, including Schedule 10 - Review Procedure and this Section 20.3.
- (b) The further development of the design of the Extension and the process by which such design is progressed must fully comply with the requirements of this Project Agreement.
- (c) In order to develop the detailed design of the Extension, Project Co shall consult with the Stakeholders (which consultation requirements pursuant to the Environmental Assessments are further described in Schedule 17 - Environmental Obligations) and the HMQ Representative and the HMQ Design Team in an interactive process. If the result of any consultation with Stakeholders is a change to the scope, configuration or size of any New Extension Infrastructure or a change in the Construction Activities, then such change shall, subject to and in accordance with Schedule 22 - Variation Procedure, result in a Variation; provided that, notwithstanding any provision to the contrary elsewhere in this Project Agreement, such change shall be a Cash Allowance Item and any resulting payments to be made to Project Co pursuant to Schedule 22 - Variation Procedure shall be payable to Project Co from the Cash Allowance Account.
- (d) The Parties agree that Appendix A to Schedule 10 - Review Procedure is an initial list of Design Data and other items that will require design review, which Design Data and other items shall include (to a scale required by the HMQ Representative):
- (i) design development drawings, reports, schedules and specifications progressed from Commercial Close with extensive user group input, showing all architectural, engineering

and landscape design information sufficient to allow for the development of working drawing documentation, submitted at [REDACTED]% completion (the “**Pre-final Design Development Submittals**”) and at [REDACTED]% completion (the “**Final Design Development Submittals**”) of the development of the working drawings (collectively, the “**Design Development Submittals**”);

- (ii) working drawing documentation, being construction drawings, reports, schedules and specifications progressed from the Design Development Submittals, showing all architectural, engineering and landscape design information in accordance with the requirements of this Project Agreement, submitted at [REDACTED]% completion of the construction drawings (the “**Construction Document Submittals**”); and
 - (iii) all other documentation required pursuant to Schedule 10 - Review Procedure.
- (e) The Construction Document Submittals shall each be accompanied by a Technical Appraisal Form.
 - (f) Project Co shall submit to the HMQ Representative for review in accordance with Schedule 10 - Review Procedure all Design Data and other items listed in Sections 20.3(c) and 20.3(e).
 - (g) The Parties agree that, with respect to the Design Development Submittals and the Construction Document Submittals, the period for review shall be 15 Business Days rather than the 10 Business Days prescribed in Section 2.2 of Schedule 10 - Review Procedure.
 - (h) The Design Data and other items listed in Section 20.3(c) must contain, at a minimum, the following additional information:
 - (i) identification of the stage of design or construction to which the documentation relates;
 - (ii) all design or construction drawings and specifications necessary to enable the HMQ Representative to make an informed decision as to whether Project Co is permitted to proceed pursuant to Schedule 10 - Review Procedure;
 - (iii) for each stage of the design or construction documentation, a schedule identifying all changes to the relevant documentation that has occurred from the previous stage of design or construction documentation; and
 - (iv) where changes have been submitted, an indication of how the changes meet the requirements of this Project Agreement.
 - (i) If Project Co commences or permits the commencement of the next level of design or construction of any part or parts of the Extension prior to being entitled to proceed in accordance with Schedule 10 - Review Procedure and it is subsequently determined in accordance with Schedule 10 - Review Procedure or Schedule 27 - Dispute Resolution Procedure that the design or construction does not comply with this Project Agreement, then Project Co shall forthwith, at its own cost and risk, undo, remove from the Site, replace and restore, as applicable, any parts of the design or construction that do not comply with this Project Agreement.

- (j) Neither HMQ nor any Province Person will have any liability:
 - (i) if a document submitted by Project Co and reviewed by HMQ, the HMQ Representative or the HMQ Design Team results in non-compliance with this Project Agreement by Project Co or a breach by Project Co of Applicable Law; or
 - (ii) for any loss or claim arising due to any defect in any documents, drawings, specifications or certificates submitted by Project Co.
- (k) Project Co and HMQ will cooperate with each other in the design review process. Notwithstanding such cooperation by HMQ, such review shall not constitute acceptance of the Initial Works, and Project Co shall remain solely responsible for compliance in full with all requirements of this Project Agreement.
- (l) Project Co shall allow the HMQ Representative and the HMQ Design Team, at any time, a reasonable opportunity to view any items of Design Data, which shall be made available to the HMQ Representative and/or HMQ Design Team, as applicable, as soon as practicable following receipt of a written request from the HMQ Representative.

20.4 Start-Up Meeting

- (a) Within 10 Business Days after Commercial Close, Project Co and the Design Team shall attend a start up meeting (the “**Start-Up Meeting**”) with HMQ to set out the design development process in greater detail.
- (b) The agenda for the Start-Up Meeting shall include the following:
 - (i) Project Co’s plan to develop a successful long-term partnership with HMQ for the purpose of supporting HMQ in achieving its vision, mission and core values;
 - (ii) Project Co’s plan to ensure that the Initial 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 Initial Works, as applicable, as a fully integrated team;
 - (v) a proposed schedule of Works Submittals which is consistent with the Works Schedule and which provides for a progressive and orderly flow of Works Submittals from Project Co to the HMQ Representative to allow sufficient time for review of each Works Submittal by the HMQ Representative, and taking into account both the resources available to the HMQ Representative to conduct such review and whether delay in the review of the subject matter of the Works Submittal will have a material impact on Project Co’s ability to progress future anticipated Works Submittals and the Initial Works in accordance with the Works Schedule;

- (vi) Project Co's plan to successfully integrate feedback from consultations with Stakeholders and the HMQ Design Team;
- (vii) Project Co's approach to timing, construction, and adjustment; and
- (viii) a communication process that includes an electronic data room and the use of a computerized document tracking system that has the capacity to report, on request, the status of all design and construction documentation and that takes into account the document security protocol described in Section 52.5(f).

20.5 Design Review Meetings

- (a) In order to obtain input in the preparation of, and prior to submitting, the Design Development Submittals and the Construction Document Submittals, Project Co and the Design Team shall hold design review meetings (the "**Design Review Meetings**") with HMQ and the HMQ Design Team upon the following terms:
 - (i) the Project Co Representative shall arrange the Design Review Meetings in consultation with the HMQ Representative;
 - (ii) all Design Review Meetings shall be held in the GTA unless HMQ agrees otherwise in writing;
 - (iii) the Parties shall cooperate to develop a reasonable schedule for the Design Review Meetings and shall incorporate such schedule into the Works Schedule;
 - (iv) Project Co shall circulate to HMQ and the HMQ Design Team an agenda for each of the Design Review Meetings no later than 10 Business Days prior to the relevant Design Review Meeting;
 - (v) in advance of a Design Review Meeting, Project Co may submit to the HMQ Design Team for comment any interim drafts of any designs or plans required under this Project Agreement, which submissions shall be used to inform HMQ on the development of Extension design and provide an opportunity for dialog on compliance with the requirements of the Project Agreement. For greater certainty, interim submissions shall be informal and shall not be reviewed in accordance with Schedule 10 - Review Procedure;
 - (vi) the Design Review Meetings shall be held in person, except where otherwise agreed by the Parties, acting reasonably;
 - (vii) Project Co shall maintain minutes of the Design Review Meetings, including possible design solutions and changes in design, and, within 5 Business Days after each Design Review Meeting, Project Co shall provide to HMQ and the HMQ Design Team a copy of the minutes, together with a copy of any notes, comments, sketches, drawings, tracings, lay-outs, plans or diagrams prepared at the Design Review Meeting; and

- (viii) HMQ and Project Co agree that the subject matter of the Design Review Meetings shall not be regarded as Submittals to which Schedule 10 - Review Procedure applies, and that HMQ shall not be bound by the input provided in connection with the Design Review Meetings.
- (b) The Parties shall, together with the HMQ Design Team, hold Design Review Meetings prior to the submission of:
 - (i) each of the Design Development Submittals; and
 - (ii) each of the Construction Document Submittals.
- (c) The purpose of the Design Review Meetings is to facilitate the incorporation of HMQ input, involvement and feedback into the Design Data prior to submission of such Design Data in accordance with Schedule 10 - Review Procedure.

20.6 Testing

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

20.7 Checking

- (a) Project Co shall, at its own cost and expense, engage consultants to conduct activities as set forth in Part 2, Article 4 and Article 18 of the Design and Construction Specifications (the "**Checking Team**").
- (b) The following expertise shall be included in the expertise of the Checking Team:
 - (i) recognized expertise in:
 - (A) the disciplines of geotechnical and structural engineering;
 - (B) the analysis and design of all aspects of complex Structures;

- (C) the use of state-of-the-art geotechnical, structural, and soil-structure interaction modeling and software used for design and analysis of foundations; and
- (D) the review of designs to ensure compliance with Environmental Laws and other environmental requirements; and
- (ii) individuals who are registered or qualified to be registered as Professional Engineers in Ontario.

20.8 Performance of Design Obligations

- (a) In the design and engineering of the Extension, 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 engineering and architectural personnel and other licensed or registered professionals, as applicable, 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 Initial Works shall, as required by Applicable Law, be performed or reviewed by licensed or registered professional engineers and architects registered to practice in the Province of Ontario. Such architects and engineers shall certify and, if required by Applicable Law, sign and seal, all designs, drawings and technical reports confirming that they comply with all prevailing design standards and design practices for such work in the Province of Ontario, all other applicable standards, specifications and codes, and as otherwise required by Applicable Law.

20.9 General Construction Obligations

- (a) Project Co is responsible for all construction means, methods and techniques used to undertake the Initial Works and must provide everything (including labour, plant, equipment and materials) necessary for the construction and commissioning of the Extension, and other performance of the Initial Works.
- (b) Project Co shall in a timely and professional manner and in accordance with the requirements of this Project Agreement:
 - (i) construct the Initial Works diligently, expeditiously and in a thorough and workman-like manner consistent with Schedule 11 - Quality Management;
 - (ii) ensure that no works other than the Works under this Project Agreement are constructed on the Lands by Project Co or any person for whom Project Co is responsible at law;
 - (iii) protect the Initial Works from all of the elements, casualty and damage;
 - (iv) in respect of plant, equipment and materials incorporated in the Initial Works, use plant, equipment and materials that:
 - (A) are of a kind that are consistent with the Output Specifications;

- (B) are new, of good quality and are used, handled, stored and installed in accordance with Applicable Law and Good Industry Practice with respect to health and safety so as not to be hazardous or dangerous; and
 - (C) where they differ from the Output Specifications, have been substituted with HMQ's prior written consent in accordance with Section 20.10.
- (c) Without limiting Project Co's obligations pursuant to Sections 9.5 or 9.6 or Project Co's indemnity pursuant to Section 56.1, Project Co shall, at all times throughout the progress of the Initial Works, be responsible for maintaining and securing the Site to prevent access onto the Site of any persons not entitled to be there, as determined by Project Co acting reasonably, and the licence granted to Project Co pursuant to Section 14.1 shall include rights for Project Co to do so.

20.10 Substitutions

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

20.11 Works Submittals

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

20.12 Construction Period Operations and Maintenance

- (a) Commencing on September 1, 2012, Project Co shall provide the operations and maintenance services described in Section 2 of Part 1 of Schedule 15-3 - Operations, Maintenance and Rehabilitation Specifications for each Section until Section Substantial Completion of such Section.

21. ACCESS AND MONITORING

21.1 Access for Province Persons and HMQ Archaeologist

- (a) Subject to Section 21.1(b), but without limiting any of HMQ's rights in respect of the Site or the Extension, Project Co:

- (i) acknowledges and agrees that throughout the Project Term, HMQ, the Province Persons and their respective representatives, including Her Majesty the Queen in Right of Canada and the Auditor General of Canada, shall have unrestricted access to the Site and the Extension and any workshop where materials, plant or equipment are being manufactured, prepared or stored at all reasonable times during normal working hours, including for the purposes of general inspection or audit, or of attending any test or study being carried out in respect of the Works, or to fulfill any statutory, public or other duties or functions; and
 - (ii) shall, and shall ensure that the Project Co Parties shall, throughout the Project Term, give the archaeologist appointed by HMQ in respect of the Project, and each of its agents, representatives, contractors and employees (collectively, the “**HMQ Archaeologist**”) access to those parts of the Site and the Extension as is necessary for the purpose of allowing the HMQ Archaeologist to monitor and inspect the excavation of the Site, provided always that such right of access shall be on reasonable prior notice to Project Co.
- (b) In exercising their access rights under Section 21.1(a), HMQ, the Province Persons, their respective representatives and the HMQ Archaeologist shall:
- (i) provide reasonable prior notice appropriate to the circumstances (other than for any offices or other facilities provided at the Site for the use of HMQ and/or Province Persons); and
 - (ii) comply with all relevant safety procedures and any reasonable directions with regard to site safety that may be issued by or on behalf of the Project Co Representative from time to time.

21.2 Increased Monitoring

- (a) If, at any time during the Project Term, HMQ is of the opinion, acting reasonably, that there are defects in the Works or that Project Co has failed to comply, in any material respect, with the requirements of this Project Agreement (including the Output Specifications and the Project Co Proposal Extracts), HMQ 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 HMQ considers reasonable taking into account the nature of the relevant defect or failure until such time as Project Co shall have demonstrated, to HMQ’s satisfaction, that it is capable of performing and will perform, in all material respects, its obligations under this Project Agreement. Project Co will compensate HMQ for any reasonable costs incurred as a result of such increased monitoring.

21.3 Right to Uncover

- (a) Project Co shall ensure that HMQ is afforded advance notice of, and that HMQ 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 HMQ uncover any relevant part of the Works which have been covered up or otherwise put out of view or remove any relevant part of the Works that have been proceeded with in order to

permit HMQ to witness the relevant inspection or test activity. Project Co shall bear all costs of any such uncovering or removal, regardless of whether or not any defect is discovered in the relevant Works.

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

21.4 No Relief from Obligations

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

21.5 Access by Others

- (a) Subject to Section 21.5(b) and subject to and in accordance with Section 9.7 (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:
 - (i) any contractors, consultants or other persons authorized by the HMQ Representative or HMQ, including the Other Contractors, have access to those parts of the Site and the Extension as is necessary for the purpose of carrying out the Other Works;

- (ii) the Independent Certifier has access to the Site and the Extension to the extent required to perform its obligations pursuant to Schedule 6 - Independent Certifier Agreement;
 - (iii) inspectors and other persons authorized to act on behalf of HMQ have access to the Site for inspection and acceptance purposes;
 - (iv) all Other Contractors, including the owners or operators of any Third Party Facilities and their agents, have access to the Site and the Extension at all reasonable times to perform Other Works and where applicable, in accordance with or to exercise any right or power or perform any duty or obligation under any Applicable Law or the Utility Agreements, Railway Orders or encroachment permits, provided that, wherever consistent with the requirements of Applicable Law and the requirements of this Project Agreement, Project Co may limit such access so as to not unnecessarily impede or restrict traffic flows or any Project Operations;
 - (v) all Governmental Authorities and Emergency Service Providers have access to the Site and the Extension in order to carry out any work (including surveys and inspections) in accordance with or to exercise any right or power or perform any duty or obligation under any Applicable Law and provided that, whenever consistent with the applicable requirements of such Governmental Authority, Emergency Service Providers or Applicable Law and the requirements of this Project Agreement (as the case may be), Project Co may limit such access so as to not unnecessarily impede or restrict traffic flows or any Project Operations; and
 - (vi) any Province Person, Other Contractors, owners or operators of Third Party Facilities, Governmental Authorities, Emergency Service Providers, Utility Companies and Railway Companies are permitted to enter upon the Site and the Extension for the purposes of access to and from any other lands and/or facilities adjacent to or in proximity to the Site and the Extension (including any other highway) owned or operated by such person or in which such person has any interest, provided that, whenever consistent with the requirements of Applicable Law and the requirements of this Project Agreement, Project Co may limit such access so as to not unnecessarily impede or restrict traffic flows or any Project Operations.
- (b) In exercising their access rights under Section 21.5(a), each person referred to therein (except for Other Contractors, who shall instead comply with any instructions or procedures made by Project Co pursuant to Section 9.7) shall (except in the case of access rights described in Section 21.5(a) for the purpose of responding to an Emergency (for the purposes of this clause (b), references in the definition of “Emergency” to HMQ or the HMQ Representative shall be deemed to be references to the applicable Governmental Authority or Emergency Service Provider) and except to the extent inconsistent with the applicable requirements of such Governmental Authority or Emergency Service Provider):
- (i) provide reasonable prior notice 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.

21.6 Public Use

- (a) It is HMQ and not Project Co that grants to the general public the right to use the Extension. Project Co shall use commercially reasonable efforts to keep open for public use the Extension at all times during the Project Term, except for lane closures or diversions of traffic flow:

- (i) by Project Co in accordance with the provisions of the Traffic Management Plan; or
 - (ii) of a type described in clauses (a) to (f) of the definition of “Availability Failure” in Schedule 20 - Payment Mechanism;

and, except as otherwise expressly provided in this Project Agreement, Project Co shall not have any claim whatsoever against HMQ, any Province Person, Emergency Service Providers or any other Governmental Authority for or in respect of any lane closure or diversion, including any lane closure or diversion referred to in this Section or 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 Site or the Extension at any time.

- (b) Subject to closures or diversions of traffic flow with respect to the Extension permitted by Section 21.6(a)(i) and Section 21.6(a)(ii), Project Co shall cause all Initial Works and OM&R Work to be carried on so as not to interfere unnecessarily with, and so as to minimize any necessary interference with, the convenience of the public in respect of, and the access of the public to and use of, any public or private roads or highways or other transportation infrastructure (other than the Extension), whether under the control or in the possession of HMQ or any other person.

22. WORKS SCHEDULE AND WORKS REPORT

22.1 Completion of Initial Works

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

22.2 The Works Schedule

- (a) Project Co shall prepare and submit to HMQ and the Independent Certifier:

- (i) within 30 days after Financial Close, a detailed 6-Month Works Schedule;
- (ii) within 180 days after Financial Close, a detailed draft of the Works Schedule; and
- (iii) every 180 days thereafter until Final Completion, an updated detailed draft of the Works Schedule,

each using Primavera 6.0 or other software compatible with Primavera 6.0, that support the completion of the Initial Works in accordance with Section 22.1.

- (b) HMQ shall provide Project Co with comments on the 6-Month Works Schedule and the draft of the Works Schedule in accordance with Schedule 10 - Review Procedure, provided that the period for review of the draft of the 6-Month Works Schedule and the Works Schedule shall be 20 Business Days rather than the 10 Business Days prescribed in Section 2.2 of Schedule 10 - Review Procedure. Project Co shall revise the 6-Month Works Schedule and the draft of the Works Schedule to the extent required by Schedule 10 - Review Procedure within 15 days of receipt of any comments from HMQ.
- (c) When agreed by the Parties, the draft of the Works Schedule shall become the Works Schedule.
- (d) The 6-Month Works Schedule and the Works Schedule shall be prepared in accordance with Good Industry Practice for a project of similar scale, scope, type and complexity and shall be in sufficient detail so as to enable the HMQ Representative and, if applicable, the Independent Certifier, to monitor the progress of the Initial Works, including all commissioning activities, and the likely future progress of the Initial Works.
- (e) Without limiting the generality of Section 22.2(d), the 6-Month Works Schedule shall include, at a minimum, in respect of the 6-month period beginning at Financial Close:
 - (i) all elements to be included in the Works Schedule pursuant to Schedule 3, Part 1 of the Request for Proposals;
 - (ii) major milestone events;
 - (iii) the dates that key decisions must be made by HMQ, or key meetings where HMQ is to be present, to support the progress of the Initial Works;
 - (iv) the proposed dates for all plans, all Works Submittals and all OM&R Submittals required to be submitted under this Project Agreement and any Schedule by Project Co pursuant to the Review Procedure;
 - (v) all activities related to the environmental process, proposed Stakeholder consultations, and Environmental Approvals, including review periods by Governmental Authorities and third parties pursuant to Project Co Permits, Licences and Approvals showing in sufficient detail how these dates affect the critical path of the Schedule, as well as how these dates affect the commencement date of Construction Clearing and Grubbing;
 - (vi) all design related activities;

- (vii) all field and construction activities, including construction staging, subcontract work and cash allowance work, both on and off the Site;
 - (viii) all activities leading up to Construction Clearing and Grubbing;
 - (ix) projected Construction Contract cash flows; and
 - (x) a narrative that describes, in sufficient detail, the rationale behind the items identified in this Section 22.2(e).
- (f) Without limiting the generality of Section 22.2(d), the Works Schedule shall include, at a minimum, in respect of the period from 6 months following Financial Close until the Substantial Completion Date:
- (i) subject to Section 22.2(f)(ii), all elements to be included in the 6-Month Works Schedule pursuant to Section 22.2(e);
 - (ii) the proposed date for each Works Submittal, except for the proposed dates for plans under Subsection (iv) of Section 22.2(e);
 - (iii) the process and schedule for Road Safety Audits;
 - (iv) all Project Co Commissioning activities;
 - (v) the manpower requirements for each activity, including subcontract work;
 - (vi) a manpower histogram, with descriptions of overall manpower as well as by trade and manpower sourced locally (including both direct engagement and subcontract work); and
 - (vii) a cumulative “S”-curve showing planned percent completion for each month from the commencement of the Works until the Scheduled Final Completion Date.

22.3 Failure to Maintain Schedule

- (a) Without limiting any other provision of this Project Agreement but subject to Section 40, if, at any time:
- (i) the actual progress of the Initial Works has significantly fallen behind the Works Schedule; or
 - (ii) HMQ is of the opinion that:
 - (A) the actual progress of the Initial Works has significantly fallen behind the Works Schedule; or
 - (B) Project Co will not achieve Substantial Completion by the Longstop Date,

Project Co shall be required:

- (iii) within 5 Business Days of receipt of notice from HMQ, to produce and deliver to each of the HMQ Representative and the Independent Certifier:
 - (A) a report identifying the reasons for the delay; and
 - (B) a plan showing the steps that are to be taken by Project Co to eliminate or reduce the delay to:
 - (I) achieve Substantial Completion by the Scheduled Substantial Completion Date; or
 - (II) if Substantial Completion will not be achieved by the Scheduled Substantial Completion Date, achieve Substantial Completion by the Longstop Date; and
- (iv) to bring the progress of the Initial Works back on schedule in accordance with the plan delivered under Section 22.3(a)(iii)(B) and approved by the HMQ Representative.
- (b) Project Co shall notify the HMQ Representative if, at any time, the actual progress of the Initial Works is significantly ahead of the Works Schedule.
- (c) Provided that Project Co has complied with this Section 22.3 and is not in default under Section 45.1(a)(iii), for greater certainty, the failure to achieve either (x) Section Substantial Completion by the relevant Scheduled Section Substantial Completion Date or (y) Substantial Completion by the Scheduled Substantial Completion Date shall not be a Project Co Event of Default for the purposes of Section 45.1(a)(v).

22.4 Notification of Early Substantial Completion

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

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

22.5 Works Report

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

all in form and substance satisfactory to HMQ, acting reasonably. For greater certainty, for all updates and revisions to the Works Schedule, Project Co must provide a revised critical path reflecting the updated/revised Works Schedule.
- (b) Project Co shall use, and shall ensure that the Construction Contractor uses, the project management software system specified by HMQ.

23. CASH ALLOWANCE

23.1 Cash Allowance Items

- (a) Project Co shall open the Cash Allowance Account and manage the Cash Allowance Account in accordance with this Section 23.1.
- (b) The cash flow process applicable to the Cash Allowance Account will be as follows:
 - (i) Project Co will deposit the entire amount of the Stakeholder Consultation Cash Allowance Amount into the Cash Allowance Account as set out in the Financial Model at Financial Close;

- (ii) HMQ will deposit the entire amount of the TCI Cash Allowance Amount into the Cash Allowance Account no later than 6 months prior to the Scheduled Substantial Completion Date;
 - (iii) Project Co will hold and manage all monies in the Cash Allowance Account and shall ensure that such monies earn a rate of interest that is no less than the rate of interest that is quoted or published by Schedule I Banks in Canada as payable on interest bearing Canadian dollar demand deposit accounts;
 - (iv) interest earned on the Cash Allowance Account will accrue in the Cash Allowance Account and will be for the benefit of HMQ;
 - (v) Project Co shall provide a reconciliation of the Cash Allowance Account to HMQ on a monthly basis;
 - (vi) subject to Project Co's obligation to fund the Cash Allowance Account pursuant to Section 23.1(b)(i) and to HMQ's obligation to fund the Cash Allowance Account pursuant to Section 23.1(b)(ii), HMQ shall make deposits into the Cash Allowance Account: (A) in the event that the payment requirements for SC Cash Allowance Items, including applicable HST, for invoices approved by HMQ that exceed the then balance of the Cash Allowance Account prior to approving any such invoices; and (B) with respect to Request for Payment Approvals relating to TCI Cash Allowance Items approved by HMQ pursuant to Section 23.1(i), within 30 days following HMQ's approval of such Request for Payment Approvals;
 - (vii) within the Cash Allowance Account, the Cash Allowance Amount shall be allocated to certain Cash Allowance Items so that:
 - (A) the TCI Cash Allowance Amount is solely committed to funding the TCI Cash Allowance Items; and
 - (B) the Stakeholder Consultation Cash Allowance Amount is solely committed to funding the SC Cash Allowance Items;
 - (viii) if there exists at Substantial Completion a positive balance in the Cash Allowance Account with respect to amounts committed to the Cash Allowance Amount, such balance will be the property of HMQ and will be paid by Project Co to HMQ or as HMQ directs;
 - (ix) for certainty, any amounts in the Cash Allowance Account committed to the TCI Cash Allowance Amount shall at all times be the property of HMQ until paid to Project Co in accordance with this Section 23.1; and
 - (x) the Parties agree to mutually review the operation of the Cash Allowance Account on a regular basis and make any appropriate modifications to ensure its efficient operation.
- (c) Project Co shall provide monthly reports to the HMQ Representative that include the following information:

- (i) itemized and aggregate amounts committed to date for all Cash Allowance Items;
 - (ii) itemized and aggregate amounts spent to date for all Cash Allowance Items; and
 - (iii) the projected cost of each remaining Cash Allowance Item, and the projected effect of such costs on the Cash Allowance Account.
- (d) In addition to the monthly report described in Section 23.1(c), Project Co shall, on a monthly basis, provide to the HMQ Representative a request for payment approval (each, a **“Request for Payment Approval”**) that includes the following information:
- (i) with respect to both SC Cash Allowance Items and TCI Cash Allowance Items:
 - (A) details of all vendor or Project Co Party invoices that are due for payment that month, including relevant supporting documentation;
 - (B) evidence that the commitment by Project Co to purchase the Cash Allowance Items has been approved by HMQ; and
 - (C) any discounts, rebates, refunds, chargebacks, credits, price adjustments and other allowances available to Project Co in connection with the Cash Allowance Items; and
 - (ii) with respect to TCI Cash Allowance Items only:
 - (A) all costs paid or incurred by Project Co related and attributable to such TCI 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
 - (B) sufficient information to demonstrate to HMQ’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 TCI 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 TCI 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 HMQ.
- (e) Subject to Section 23.1(g), HMQ shall, within 10 Business Days of receipt of a Request for Payment Approval, advise Project Co, in writing, whether or not payment of the invoices set out in such Request for Payment Approval is approved. HMQ shall only be permitted to withhold its approval if HMQ determines that the Request for Payment Approval does not contain the

information that HMQ requires, acting reasonably, to discharge its obligations under this Section 23.1. If HMQ withholds its approval pursuant to this Section 23.1(e) and subsequently receives the information that HMQ requires, acting reasonably, to discharge its obligations under this Section 23.1, it shall, within 10 Business Days of its receipt of such information, provide to Project Co, in writing, HMQ's approval of the invoices set out in the aforementioned Request for Payment Approval. Any Dispute in respect of or arising from any Request for Payment Approval (including the approval thereof) will be determined in accordance with Schedule 27 - Dispute Resolution Procedure.

- (f) Subject to Sections 23.1(g) and 23.1(i), if HMQ approves the payment of the invoices set out in a Request for Payment Approval, Project Co shall make payment to the relevant vendors or each Project Co Party from the Cash Allowance Account.
- (g) Notwithstanding that a Request for Payment Approval relating to a TCI Cash Allowance Item has been approved pursuant to this Section 23.1, payment by HMQ of any invoices set out in such Request for Payment Approval shall not be made (and for greater certainty, HMQ shall have no obligation to pay Project Co or any Project Co Party with respect to any TCI Cash Allowance Item) until the date which is 2 Business Days following the earlier of:
 - (i) the Substantial Completion Date, provided that such date of payment by HMQ shall be extended by the aggregate number of calendar days that the construction of the interchanges described in Section 16.1 of Schedule 15.2 – Design and Construction is not completed in accordance with the provisions of the Project Agreement on the applicable dates specified for the completion of construction of such interchanges as set out in Section 16.1 of Schedule 15.2 – Design and Construction, and such failure to construct such interchanges on the applicable dates therefor so specified in Section 16.1 of Schedule 15.2 – Design and Construction is caused, or contributed by Project Co or any Project Co Party, or would have been prevented by the proper performance of Project Co's obligations under this Project Agreement; and
 - (ii) the date when HMQ confirms in writing to Project Co that HMQ is satisfied, in its sole discretion, that the Tolling Civil Infrastructure has been completed in accordance with Schedule 36 – Tolling Infrastructure.
- (h) Project Co acknowledges and agrees that:
 - (i) prior to Project Co purchasing, or committing to purchase, any TCI Cash Allowance Item, such purchase or commitment by Project Co must be approved in writing by HMQ, and in determining whether such approval will be granted by HMQ, HMQ shall take into account the obligations of Project Co set forth in Section 23.1(d)(ii)(B);
 - (ii) 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 save and except:
 - (A) for any mark-ups for profit and overhead contained in a Variation Confirmation; and

- (B) with respect to TCI Cash Allowance Items, Project Co and any Project Co Party shall be entitled to charge the margins for overhead and profit as set out in Appendix B of Schedule 22 – Variation Procedure as applicable to the costs paid or incurred by Project Co or such Project Co Party, as the case may be, related and attributable to such TCI Cash Allowance Items provided that Project Co shall not charge any margins on any amounts charged by any Project Co Party;
 - (iii) 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;
 - (iv) 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
 - (v) the Cash Allowance Amount will be deposited and the Cash Allowance Account will be managed in accordance with the Works Schedule and any costs, expense or delays related to funding or managing the Cash Allowance Account are the responsibility of Project Co.
- (i) Notwithstanding Section 23.1(g), to the extent that the aggregate amount of payments to be made by HMQ to Project Co pursuant to Request for Payment Approvals relating to TCI Cash Allowance Items approved by HMQ pursuant to Section 23.1 exceed the TCI Cash Allowance Amount (such excess amount being the “**TCI Excess Amount**”), then (i) in accordance with Section 23.1(b)(vi), HMQ shall, within 30 days of HMQ’s approval of such Request for Payment Approvals, deposit into the Cash Allowance Account the TCI Excess Amount; and (ii) Project Co shall be entitled to make payments from the Cash Allowance Account up to the aggregate amount of the TCI Excess Amount to the relevant vendors or each Project Party, as applicable, noted in such Request for Payments Approvals pursuant to Section 23.1(e) and Section 23.1(f). For certainty, this Section 23.1(i) shall not apply when the aggregate amount of payments to be made by HMQ to Project Co pursuant to Request for Payment Approvals relating to TCI Cash Allowance Items approved by HMQ pursuant to Section 23.1 is less than or equal to the TCI Cash Allowance Amount.
- (j) Project Co warrants to HMQ that all Tolling Civil Infrastructure shall conform to the specifications set out in the Tolling Design in all respects and shall be new, of good quality material, of merchantable quality and free of defects in materials, equipment and workmanship for a period of two (2) years from the date that HMQ has the obligation to pay for TCI Cash Allowance Items as set forth in Section 23.1(g). Project Co’s warranty set forth in this Section 23.1(j) shall cover labour and material, including, the costs of removal and replacement of covering materials.

24. ENVIRONMENTAL REQUIREMENTS

24.1 Environmental Management / Contamination and Hazardous Substances

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

24.2 Greenhouse Gas Credits

- (a) Any carbon or other greenhouse gas credits (including but not limited to allowances, offset credits and any other credits that may be recognized in any provincial, regional, national, international or other emissions trading system from time to time) which may be contracted for or otherwise guaranteed as a result of the Project shall be owned by HMQ and Project Co shall have no entitlement to any of such credits whatsoever.

24.3 [Intentionally Deleted]

24.4 Greenroads Design and Construction Obligations

- (a) Project Co shall perform the Works so as to achieve the prerequisites and credits required to achieve Greenroads Certification and, may, in its sole discretion, determine which credits to pursue

24.5 Greenroads Rating System

- (a) Project Co shall:
 - (i) register the Project with Greenroads within 60 days following Financial Close; and
 - (ii) prepare and submit to Greenroads the Project documentation required to apply for a rating assessment for the Project under the Greenroads Rating System as soon as Project Co has completed the relevant Works or parts thereof required to facilitate preparation of the applicable Project documentation.
- (b) If, after application for registration of the Project is made in accordance with Section 24.5(a)(i), there is a change in the requirements for achievement of Greenroads Certification under the Greenroads Rating System, and Project Co is required by Greenroads to comply with such change, then Project Co shall notify HMQ of such change and such change shall, subject to and in accordance with Schedule 22 - Variation Procedure, result in a Variation.
- (c) If Project Co fails to obtain Greenroads Certification, or deliver a Greenroads Compliance Certificate in accordance with Section 24.5(d) within 24 months after the Substantial Completion Date, other than as a direct result of any act or omission of HMQ, the amount payable by Project Co to HMQ as liquidated damages shall be equal to \$[REDACTED]. The Parties agree that such liquidated damages are not a penalty but represent a genuine and reasonable pre-estimate of the damages that HMQ will suffer as a result of a failure by Project Co to achieve Greenroads Certification or deliver a Greenroads Compliance Certificate and it would be difficult or impossible to quantify such damages upon the happening of such event. Such payment shall constitute full and final settlement of any and all damages that may be claimed by HMQ as a result of a failure by Project Co to achieve Greenroads Certification or deliver a Greenroads Compliance Certificate and, for greater certainty, a failure by Project Co to achieve Greenroads Certification or deliver a Greenroads Compliance Certificate shall not result in a Project Co Event of Default. The Parties agree that such liquidated damages shall be payable whether or not HMQ incurs or mitigates its damages, and that HMQ shall not have any obligation to mitigate any such damages.

- (d) Notwithstanding that an application to Greenroads by Project Co for Greenroads Certification has been made but such certification has not been received from Greenroads, Project Co shall be deemed to have met the obligations under Section 24.4 if it has delivered a certificate (the “**Greenroads Compliance Certificate**”), certified by an Expert appointed pursuant to Schedule 27 - Dispute Resolution Procedure, that Project Co has performed and completed the relevant Works in the manner required to obtain all necessary prerequisites, credits and points under the Greenroads Rating System in order for Project Co to achieve Greenroads Certification.

24.6 Greenroads Progress Reports

- (a) As part of each Works Report provided in accordance with Section 22.5, Project Co shall submit a progress report comparing its actual Construction Activities and procurement activities with Greenroads rating requirements.

25. INDEPENDENT CERTIFIER

25.1 Appointment

- (a) On or prior to Financial Close, the Parties shall appoint an independent, suitably qualified and experienced consultant to act as the Independent Certifier for the purposes of this Project Agreement and shall enter into an agreement with the Independent Certifier substantially in the form of Schedule 6 - Independent Certifier Agreement. If the Parties are unable to agree upon the Independent Certifier within such period of time, then the determination of the Independent Certifier shall be made in the same manner as the identification of a replacement Independent Certifier under Section 25.7(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.

25.2 Role of Independent Certifier

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

25.3 Changes to Terms of Appointment

- (a) Neither HMQ 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.

25.4 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 both 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 25.7, 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.

25.5 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 both Parties shall be entitled to attend all inspections performed by or meetings involving the Independent Certifier.

25.6 Payment of Independent Certifier

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

25.7 Replacement

- (a) In the event of the Independent Certifier's engagement being terminated otherwise than for full performance, the Parties shall liaise and cooperate with each other in order to appoint a replacement consultant to act as the Independent Certifier as soon as reasonably practicable. The identity of any such replacement shall be as agreed by the Parties and the terms of his/her appointment shall, unless otherwise agreed, be as set out in the Independent Certifier Agreement.
- (b) In the event the Parties fail to agree upon the identity of a replacement Independent Certifier within 5 Business Days of the original Independent Certifier's appointment being terminated, then a replacement Independent Certifier shall be chosen as follows:
 - (i) each Party shall, within 5 Business Days thereafter, select 3 suitably qualified and experienced replacements that would be acceptable to that Party, and shall provide notice thereof to the other Party, with a ranking of preference for replacements;
 - (ii) if the Parties have both selected a common replacement, then such common replacement shall be the Independent Certifier, and if there is more than one common replacement, then the common replacement with the highest overall ranking (calculated by adding together the ordinal rank assigned by both 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.

26. COMMISSIONING AND COMPLETION

26.1 Commissioning Activities

- (a) Project Co shall perform all Project Co Commissioning, and shall support and facilitate the performance of all required commissioning by HMQ, as set forth in this Section 26 and in Schedule 14 - Commissioning in respect of Section Substantial Completion and Section Final Completion of each Section, and Substantial Completion and Final Completion, as applicable.

26.2 Substantial Completion Certificate

- (a) Project Co shall give the Independent Certifier and the HMQ Representative at least 10 Business Days' notice prior to the date upon which Project Co anticipates all requirements for a Section Substantial Completion or Substantial Completion, as applicable, shall be satisfied.
- (b) Project Co shall give the Independent Certifier and the HMQ Representative notice (the "**Substantial Completion Notice**") upon the satisfaction of all requirements for a Section Substantial Completion or Substantial Completion, which Substantial Completion Notice shall describe, in reasonable detail, the satisfaction of the requirements for the relevant Section Substantial Completion or Substantial Completion, together with Project Co's opinion as to whether the conditions for issuance of the Section Substantial Completion Certificate or Substantial Completion Certificate have been satisfied.
- (c) HMQ shall, within 5 Business Days after receipt of a Substantial Completion Notice, provide the Independent Certifier and Project Co with HMQ's opinion as to whether the conditions for issuance of the Section Substantial Completion Certificate or Substantial Completion Certificate have been satisfied and, if applicable, any reasons as to why it considers that the Section Substantial Completion Certificate or Substantial Completion Certificate should not be issued.
- (d) Within 5 Business Days after Project Co's receipt of HMQ's opinion pursuant to Section 26.2(c), the Parties shall cause the Independent Certifier to determine whether the conditions for issuance of the Section Substantial Completion Certificate or Substantial Completion Certificate have been satisfied, having regard for the opinions of both Project Co and HMQ, to determine whether any Minor Deficiencies exist, and to issue to HMQ and to Project Co either:
 - (i) the relevant Section Substantial Completion Certificate or the Substantial Completion Certificate, setting out in such certificate the relevant Section Substantial Completion Date or the Substantial Completion Date, as applicable, and the Minor Deficiencies List (if applicable) in accordance with Section 26.4; 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 Section Substantial Completion Certificate or the Substantial Completion Certificate.

- (e) Where the Independent Certifier has issued a report in accordance with Section 26.2(d)(ii) and Project Co has not referred a Dispute in relation thereto for resolution in accordance with Schedule 27 - Dispute Resolution Procedure, Project Co shall, within 5 Business Days after receipt of such report, provide the Independent Certifier and the HMQ Representative with:
- (i) a detailed list indicating the rectification actions proposed for all matters raised in such report;
 - (ii) the schedule for completion of all such rectification actions; and
 - (iii) any additional Project Co Commissioning that needs to be undertaken as a result of the rectification actions,
- and Project Co shall perform all such additional rectification actions and Project Co Commissioning in a timely manner. Upon completion thereof, Project Co may give a further Substantial Completion Notice and Sections 26.2(c) to (e), inclusive, shall be repeated until the Section Substantial Completion Certificate or Substantial Completion Certificate has been issued.
- (f) The Independent Certifier's decision to issue or not to issue a Section Substantial Completion Certificate or the Substantial Completion Certificate shall be final and binding on the Parties solely in respect of determining the relevant Section Payment Commencement Date, and a Dispute in relation to a Section Payment Commencement Date shall not be subject to resolution pursuant to Schedule 27 - Dispute Resolution Procedure, provided, however, that any other Dispute in relation to the Independent Certifier's decision to issue or not to issue a Section Substantial Completion Certificate or the Substantial Completion Certificate may be referred for resolution pursuant to the Dispute Resolution Procedure.

26.3 Countdown Notice

- (a) Project Co shall deliver a notice (a "**Countdown Notice**") to HMQ and the Independent Certifier specifying the date (which, for greater certainty, will be on or before the Scheduled Section Substantial Completion Date of each Section or on or before the Scheduled Substantial Completion Date, as applicable) on which Project Co anticipates that the relevant Section Substantial Completion or Substantial Completion will be achieved (the "**Anticipated Section Substantial Completion Date**" or "**Anticipated Substantial Completion Date**", as applicable).
- (b) The Countdown Notice shall be delivered not less than 180 days prior to the Anticipated Section Substantial Completion Date or Anticipated Substantial Completion Date. If Project Co fails to deliver the Countdown Notice not less than 180 days prior to the Scheduled Section Substantial Completion Date or the Scheduled Substantial Completion Date, the Anticipated Section Substantial Completion Date or the Anticipated Substantial Completion Date shall be deemed to be the same date as the Scheduled Section Substantial Completion Date or the Scheduled Substantial Completion Date, as applicable.
- (c) In accordance with Section 22.4(a), any Anticipated Section Substantial Completion Date or the Anticipated Substantial Completion Date shall not be earlier than the Scheduled Section Substantial Completion Date or the relevant Section or the Substantial Completion Date, as applicable, without the prior written consent of HMQ, in its sole discretion.

26.4 Minor Deficiencies

- (a) In the event that Minor Deficiencies exist when Project Co gives a Substantial Completion Notice, the Independent Certifier, in consultation with Project Co and HMQ, shall, within 15 Business Days of Project Co's application, prepare a list of all Minor Deficiencies (the "**Minor Deficiencies List**") identified at that time and an estimate of the cost and the time for rectifying such Minor Deficiencies.
- (b) The Minor Deficiencies List will contain the schedule for the completion and rectification of the Minor Deficiencies. In determining the relevant time for rectifying Minor Deficiencies, Project Co shall schedule the completion and rectification of Minor Deficiencies so as to minimize, to the greatest extent reasonably possible, any lane closures, traffic diversions or restrictions or other impairment of the public's use and enjoyment of the Extension or the relevant portion thereof, or disruption of the Project Operations or of the operations of HMQ, any Province Person, any Governmental Authority or any Other Contractor, including the performance of the Governmental Activities and the Other Works, and otherwise in accordance with the Traffic Management Plan.
- (c) The Independent Certifier must prepare the Minor Deficiencies List before a Section Substantial Completion Certificate or the Substantial Completion Certificate is issued, but shall not withhold a Section Substantial Completion Certificate or the Substantial Completion Certificate by reason solely that there are Minor Deficiencies.
- (d) HMQ may, in its sole discretion, waive any requirement for a Section Substantial Completion or Substantial Completion, and the failure to meet any such requirement shall constitute a Minor Deficiency.

26.5 Rectification of Minor Deficiencies

- (a) Project Co shall, in consultation with the HMQ Representative and so as to minimize, to the greatest extent reasonably possible, any lane closures, traffic diversions or restrictions or other impairment of the public's use and enjoyment of the Extension or any portion thereof or disruption of the Project Operations or of the operations of HMQ, any Province Person, any Governmental Authority or any Other Contractor, including the performance of the Governmental Activities and the Other Works, and otherwise in accordance with the Traffic Management Plan, complete and rectify all Minor Deficiencies within 180 days of the issuance of the applicable Minor Deficiencies List or such other period as the Independent Certifier may specify in the Minor Deficiencies List.
- (b) Project Co acknowledges and agrees that the completion and rectification of Minor Deficiencies may require work outside of normal working hours in order to accommodate the efficient operation of the Extension or any portion thereof and to ensure compliance with the Traffic Management Plan.

26.6 Failure to Rectify Minor Deficiencies

- (a) If Project Co has failed to complete and rectify any Minor Deficiency specified in the Minor Deficiencies List
- (i) within 210 days of the issuance of the Minor Deficiencies List for all Minor Deficiencies where no time for rectification or completion has been specified by the Independent Certifier, or
 - (ii) within 30 days after the time for completion and rectification of any Minor Deficiency where such a time has been specified in the Minor Deficiencies List by the Independent Certifier,

HMQ may:

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

26.7 Final Completion Certificate

- (a) Project Co shall give the Independent Certifier and the HMQ Representative at least 10 Business Days' notice prior to the date upon which Project Co anticipates all requirements for a Section Final Completion or Final Completion shall be satisfied.
- (b) Project Co shall give the Independent Certifier and the HMQ Representative notice (a "**Final Completion Notice**") upon the satisfaction of all requirements for a Section Final Completion or Final Completion, as applicable, which Final Completion Notice shall describe, in reasonable detail, the satisfaction of the requirements for the relevant Section Final Completion or Final Completion, including the completion and rectification of all Minor Deficiencies, the time required for completion of all outstanding seasonal work and the submission of all records and data as set forth in Section 3 of Schedule 14 - Commissioning, together with Project Co's opinion as to whether the conditions for issuance of the Section Final Completion Certificate or the Final Completion Certificate have been satisfied.

- (c) HMQ shall, within 5 Business Days after receipt of the Final Completion Notice, provide the Independent Certifier and Project Co with HMQ's opinion as to whether the conditions for issuance of the Section Final Completion Certificate or the Final Completion Certificate have been satisfied and, if applicable, any reasons as to why it considers that the Section Final Completion Certificate or the Final Completion Certificate should not be issued.
- (d) Within 5 Business Days after Project Co's receipt of HMQ's opinion pursuant to Section 26.7(c), the Parties shall cause the Independent Certifier to determine whether the conditions for issuance of the Section Final Completion Certificate or the Final Completion Certificate have been satisfied, having regard for the opinions of both Project Co and HMQ, and to issue to HMQ and to Project Co either:
 - (i) the relevant Section Final Completion Certificate or the Final Completion Certificate, setting out in such certificate the relevant Section Final Completion Date or the Final Completion Date, as applicable; 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 Section Final Completion Certificate or 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 26.7(d)(ii) and Project Co has not referred a Dispute in relation thereto for resolution in accordance with Schedule 27 - Dispute Resolution Procedure, Project Co shall, within 5 Business Days after receipt of such report, provide the Independent Certifier and the HMQ Representative with:
 - (i) a detailed list indicating the rectification actions proposed for all matters raised in such report;
 - (ii) the schedule for completion of all such rectification actions; and
 - (iii) any additional Project Co Commissioning that needs to be undertaken as a result of the rectification actions,

and Project Co shall perform all such additional rectification actions in a timely manner. Upon completion thereof, Project Co may give a further Final Completion Notice and Sections 26.7(c) to (e), inclusive, shall be repeated until the Section Final Completion Certificate or the Final Completion Certificate, as applicable, has been issued.
- (f) Any Dispute in relation to the Independent Certifier's decision to issue or not to issue a Section Final Completion Certificate or the Final Completion Certificate may be referred for resolution in accordance with Schedule 27 - Dispute Resolution Procedure.
- (g) If, within 30 days after the time specified in the Final Completion Notice for completion of seasonal work, Project Co has failed to complete such seasonal work, HMQ may engage others to perform the work necessary to complete the seasonal work, at the risk and cost of Project Co. Project Co shall pay to HMQ the costs incurred by HMQ to complete such seasonal work within 10 Business Days of presentation of an invoice for such costs.

26.8 Effect of Certificates/Use

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

26.9 [Intentionally Deleted]**26.10 Post-Completion Survey**

- (a) Not more than 90 days after the Final Completion Date, Project Co shall cause an up-to-date topographical and an up-to-date legal survey of the Lands to be completed by a duly qualified surveyor to be delivered to HMQ.

27. OM&R WORK**27.1 Overall Responsibility**

- (a) Project Co shall, following the Section Substantial Completion Date of any Section, perform the OM&R Work in respect of such Section:
 - (i) so as to satisfy the Output Specifications; and
 - (ii) in accordance with the other terms of this Project Agreement.

27.2 Commencement of OM&R Work

- (a) Project Co shall commence the OM&R Work in respect of each Section on the day immediately after the Section Substantial Completion Date of such Section and shall perform the OM&R Work in respect of such Section until the end of the Operational Term.

27.3 Equipment for OM&R Work

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

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

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

28.2 Confirmation of Action

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

28.3 Finality as to Admission

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

28.4 Staff Competency

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

28.5 Disciplinary Action

- (a) HMQ, 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 HMQ to be undesirable, to constitute a threat to the health and/or safety of any of the users of the Lands and/or Extension Users or which HMQ considers may potentially compromise the reputation or integrity of HMQ and/or any HMQ Party or the nature of the Province of Ontario's highway system or the Province of Ontario's undertaking of any Tolling Activities, so as to negatively affect public perception of that system or undertaking. Upon investigation, Project Co may institute, or cause the relevant Project Co Party to institute, disciplinary proceedings, which shall be in accordance with the requirements of Applicable Law, and shall advise HMQ in writing of the outcome of any disciplinary action taken in respect of such person.

28.6 Human Resources Policies

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

28.7 Management Organizations

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

29. GOODS, EQUIPMENT, CONSUMABLES AND MATERIALS**29.1 Standards**

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

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

29.2 Stocks

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

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

- (a) Unless this Project Agreement is terminated in accordance with its terms (including under Section 45.3, Section 47.1, Section 47.2 or Section 47.3), if all or any part of the Extension is damaged or destroyed, Project Co shall, at its own cost and expense, repair or replace, as applicable, the Extension or such part of the Extension, 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 Extension shall not terminate this Project Agreement or relieve Project Co of any of its obligations hereunder or entitle Project Co to any compensation from HMQ.

30.2 Reinstatement Plan

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

- (i) a description of the Reinstatement Work required to restore, replace and reinstate the damage or destruction;
- (ii) Project Co’s proposed schedule for the execution of the Reinstatement Work; and
- (iii) the information required pursuant to Schedule 22 - Variations as if such plan were an Estimate;

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

30.3 Conduct of Reinstatement Work

- (a) Project Co shall cause the Reinstatement Work to be carried out in accordance with the Output Specifications and all other applicable requirements under this Project Agreement and, where applicable, in accordance with the Reinstatement Plan consented to by the HMQ Representative in accordance with Schedule 10 - Review Procedure. All designs, plans and specifications in respect of the Reinstatement Work shall be subject to the Design and Certification Procedure. If requested by the HMQ Representative, the persons (and if applicable, a suitable parent entity thereof acceptable to HMQ) retained by Project Co to design and carry out any Reinstatement Work shall, as a condition to their retainer and prior to commencing any Reinstatement Work or design work in connection therewith, enter into a construction contract with Project Co and a direct agreement with HMQ in substantially the same forms as the Construction Contract and the Construction Contractor's Direct Agreement.
- (b) In the event any Insurance Proceeds under Insurance Policies as referred to in Schedule 30 - Insurance Trust Agreement are available to carry out the Reinstatement Work, such Insurance Proceeds shall be paid into the Insurance Trust Account and shall be dispensed in accordance with the provisions of the Insurance Trust Agreement to carry out the Reinstatement Work.

31. MONITORING

31.1 Monitoring of Performance

- (a) Project Co shall monitor the performance of the OM&R Work in the manner and at the frequencies set out in the Output Specifications and the Payment Mechanism, and shall compile and at all times maintain records which are accurate and complete of such monitoring and performance. In addition to Project Co's obligations as set out in the Output Specifications and the Payment Mechanism, Project Co shall, as reasonably requested by HMQ, provide the HMQ Representative with relevant particulars of any aspects of Project Co's performance which fail to meet the requirements of this Project Agreement.
- (b) HMQ may, at any and all reasonable times, observe, inspect, monitor, audit and take any steps reasonably necessary to satisfy itself as to the adequacy of the monitoring, including performing sample checks.

31.2 Failure Points

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

31.3 Warning Notices

- (a) Without prejudice to HMQ's rights under Section 45 and any other rights under this Project Agreement, if Project Co accrues the following number of Failure Points or more in any one Payment Period, then HMQ may give written notice (a "**Warning Notice**") to Project Co setting out the matter or matters giving rise to such notice and stating that it is a "Warning Notice":

- (i) [REDACTED] Failure Points in respect of Availability Failures; or
- (ii) [REDACTED] Failure Points in respect of Quality Failures.

31.4 Monitoring Notices

- (a) Without prejudice to HMQ's rights under Section 45 and any other rights under this Project Agreement, if Project Co accrues the following number of Failure Points or more in any rolling 3 Payment Periods, HMQ may, by notice (a "**Monitoring Notice**") to Project Co require Project Co to increase the level of Project Co's monitoring of its own performance of its obligations under this Project Agreement until such time as Project Co shall have demonstrated to the reasonable satisfaction of HMQ that it is performing, and is capable of continuing to perform, its obligations under this Project Agreement in respect of the relevant OM&R Work:
 - (i) [REDACTED] Failure Points in respect of Availability Failures; or
 - (ii) [REDACTED] Failure Points in respect of Quality Failures.
- (b) HMQ may give a Warning Notice pursuant to Section 31.3 despite the issuance of a Monitoring Notice in respect of the same matter where a further breach occurs or the original breach has not been remedied within a reasonable period, and whether or not the previous Monitoring Notice remains in effect.
- (c) If a Monitoring Notice is given, then:
 - (i) such Monitoring Notice shall specify in reasonable detail the additional measures to be taken by Project Co in monitoring its own performance;
 - (ii) if Project Co, acting reasonably, objects to any of the specified measures on the grounds that they are excessive or that HMQ was not entitled to give the Monitoring Notice, Project Co shall, within 3 Business Days of the receipt of the Monitoring Notice, notify HMQ in writing of the matters objected to and any changes necessary in order to prevent prejudice to Project Co's performance of its obligations under this Project Agreement;
 - (iii) if Project Co gives HMQ a notice under Section 31.4(c)(ii), the measures to be taken by Project Co shall be agreed between the Parties or, in the absence of agreement within 10 Business Days of HMQ's receipt of such notice, may be referred for resolution in accordance with Schedule 27 - Dispute Resolution Procedure;
 - (iv) if Project Co fails to increase Project Co's monitoring as provided herein, HMQ may perform such monitoring save where Project Co, acting in good faith, is pursuing a Dispute pursuant to Section 31.4(c)(iii);
 - (v) if it is determined in accordance with Schedule 27 - Dispute Resolution Procedure that HMQ was entitled to give the applicable Monitoring Notice, Project Co shall bear its own costs and reimburse HMQ for any reasonable costs and expenses incurred by or on behalf of HMQ in relation to the giving of such Monitoring Notice; and

- (vi) if it is determined in accordance with Schedule 27 - Dispute Resolution Procedure that HMQ was not entitled to give the applicable Monitoring Notice, HMQ shall bear its own costs and reimburse Project Co for any reasonable costs and expenses incurred by or on behalf of Project Co in relation to the giving of such Monitoring Notice.
- (d) In respect of any Monitoring Notice, if Project Co shall have demonstrated to the reasonable satisfaction of HMQ that Project Co has performed its obligations under this Project Agreement for a period of 90 consecutive days and during such period has not received a Warning Notice or Monitoring Notice in respect of the same or similar OM&R Work, Project Co may apply for the withdrawal of such Monitoring Notice. If HMQ is satisfied, acting reasonably, that Project Co has satisfied the aforesaid requirements, it shall, within 10 Business Days of receipt of such application, withdraw such Monitoring Notice and cease to perform or require the performance of the increased monitoring implemented in respect of such Monitoring Notice.
- (e) If it is determined in accordance with Schedule 27 - Dispute Resolution Procedure that HMQ was not entitled to give any Monitoring Notice, HMQ shall promptly withdraw such Monitoring Notice and cease to perform or require the performance of the increased monitoring implemented in respect of such Monitoring Notice.

32. HMQ'S REMEDIAL RIGHTS

32.1 Exercise of Remedial Rights

- (a) HMQ may exercise all rights set out in this Section 32 at any time and from time to time if:
 - (i) HMQ, 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 Extension User or Province Person;
 - (B) does or can reasonably be expected to result in a materially adverse interruption in the OM&R Work or the availability of the Extension to Extension Users;
 - (C) does or can reasonably be expected to materially prejudice the performance of any Governmental Activities; or
 - (D) may potentially compromise the reputation or integrity of HMQ and/or any HMQ Party or the nature of the Province of Ontario's highway system or the Province of Ontario's undertaking of any Tolling Activities, so as to negatively affect public perception of that system or undertaking,

provided that:

- (E) in respect of a breach by Project Co of any obligation under this Project Agreement, or any act or omission on the part of Project Co or any Project Co Party, which can reasonably be expected to cause any of the consequences set out

in Sections 32.1(a)(i)(A), 32.1(a)(i)(B) and 32.1(a)(i)(C), HMQ shall not exercise its rights under this Section 32 unless Project Co has failed to cure the relevant breach, act or omission within 5 Business Days of notice from HMQ or, if such breach, act or omission cannot reasonably be cured within such 5 Business Day period, Project Co thereafter fails to diligently and continuously pursue such cure and to cure such breach, act or omission within a reasonable period thereafter, provided that Project Co shall not be entitled to a cure period if any of the consequences set out in Sections 32.1(a)(i)(A), 32.1(a)(i)(B) and 32.1(a)(i)(C) actually occur; and

- (F) in respect of Section 32.1(a)(i)(D), HMQ shall not exercise its rights under this Section 32 unless Project Co has failed to cure the relevant breach, act or omission within 5 Business Days of notice from HMQ or, if such breach, act or omission cannot reasonably be cured within such 5 Business Day period, Project Co thereafter fails to diligently and continuously pursue such cure and to cure such breach, act or omission within a reasonable period thereafter;
- (ii) Project Co accrues the following number of Failure Points or more:
 - (A) in any one (1) Payment Period:
 - (I) [REDACTED] Failure Points in respect of Availability Failures; or
 - (II) [REDACTED] Failure Points in respect of Quality Failures; and
 - (B) in any rolling three (3) Payment Periods, [REDACTED] Failure Points in respect of Quality Failures;
- (iii) while a Monitoring Notice is in effect that is not being disputed by Project Co, acting in good faith, Project Co receives a Warning Notice in respect of the same or similar OM&R Work;
- (iv) pursuant to Part 5 of Schedule 11 - Quality Management, a Quality Audit that is not being disputed by Project Co, acting in good faith, shows that Project Co has not performed or is not performing its obligations and Project Co has failed to perform the rectification or OM&R Work as provided in the Output Specifications;
- (v) a labour dispute materially affects or can reasonably be expected to materially affect the Project Operations, the Governmental Activities or the availability of the Extension to Extension Users;
- (vi) HMQ has received a notice under the OM&R Provider's Direct Agreement that entitles HMQ to exercise step-in rights thereunder; or
- (vii) Project Co has failed to comply with any written direction issued by or on behalf of HMQ (or any designate appointed pursuant to Section 63.1).

32.2 Emergency

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

32.3 Rectification

- (a) Without prejudice to HMQ's rights under Section 45 and any other rights under this Project Agreement, in any of the circumstances set out in Sections 32.1 or 32.2, HMQ may, by written notice, require Project Co to take such steps as HMQ, acting reasonably, considers necessary or expedient to mitigate, rectify or protect against such circumstance, including, if applicable, the termination and replacement of Subcontractors, and Project Co shall use commercially reasonable efforts to comply with HMQ's requirements as soon as reasonably practicable.

- (b) If HMQ gives notice to Project Co pursuant to Section 32.3(a) and either:

- (i) Project Co does not either confirm, within 5 Business Days of such notice or such shorter period as is appropriate in the case of an Emergency or in the event HMQ is entitled to exercise step-in rights under the OM&R Provider's Direct Agreement, that it is willing to take the steps required in such notice or present an alternative plan to HMQ to mitigate, rectify and protect against such circumstances that HMQ may accept or reject acting reasonably; or
- (ii) Project Co fails to take the steps required in such notice or accepted alternative plan within such time as set out in such notice or accepted alternative plan or within such longer time as HMQ, acting reasonably, shall think fit,

then HMQ may take such steps as it considers to be appropriate, acting reasonably, including, if applicable, exercising step-in rights under the OM&R Provider's Direct Agreement and requiring the termination and replacement of Subcontractors, either itself or by engaging others (including a third party) to take any such steps, and may perform or obtain the performance of the relevant OM&R Work to the standards required by this Project Agreement, and the provisions of Section 42, including Section 42.1(a)(iv) and Section 42.2, shall apply.

- (c) Notwithstanding the foregoing provisions of this Section 32.3, in the event of an Emergency, the notice under Section 32.3(a) shall be given as promptly as possible having regard to the nature of the Emergency and HMQ may, prior to Project Co's confirmation under Section 32.3(b)(i), take such steps as are appropriate having regard to the nature of the Emergency.
- (d) Where HMQ considers it to be necessary to do so, the steps which HMQ may take pursuant to this Section 32.3 subsequent to the provision of the notice under Section 32.3(a) unless the notice is given at a later time as provided in Section 32.3(c), may, at HMQ's option, include the partial or total suspension of Project Co's right and obligation to perform any OM&R Work having regard to the circumstances in question (without any extension of the Project Term or suspension of any other OM&R Work, and the provisions of Section 42, including Section 42.1(a)(iv) and Section 42.2, shall apply, but such suspension shall be only for so long as, as applicable:

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

32.4 Costs and Expenses

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

32.5 Reimbursement Events

- (a) In this Section 32.5, a "Reimbursement Event" means:
 - (i) an act or omission of Project Co or any Project Co Party or a breach by Project Co or any Project Co Party of any obligation under this Project Agreement, but only to the extent such act, omission or breach is caused by a Province Person;
 - (ii) a labour dispute involving employees of any Province Person that materially affects or can reasonably be expected to materially affect the Project Operations; or
 - (iii) an Emergency.
- (b) If HMQ either takes steps itself or requires Project Co to take steps in accordance with this Section 32 as a result of a Reimbursement Event:
 - (i) HMQ shall reimburse Project Co for the reasonable costs and expenses incurred by Project Co in relation to the exercise of HMQ's rights pursuant to this Section 32 that would not otherwise have been incurred by Project Co in the proper performance of its obligations under this Project Agreement; and
 - (ii) subject to Section 32.5(c), HMQ shall bear all costs and expenses incurred by HMQ in relation to the exercise of HMQ rights pursuant to this Section 32.
- (c) If, in exercising its rights pursuant to this Section 32, HMQ performs any part of the OM&R Work either itself or by engaging others, HMQ shall be entitled to deduct from any Monthly OM&R Payment the reasonable cost of performing such OM&R Work. If HMQ makes such a

deduction, then Project Co shall be relieved of its reimbursement obligations under Section 32.4(a)(ii) up to the amount equal to the deduction.

32.6 Reimbursement if Improper Exercise of Rights

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

33. [INTENTIONALLY DELETED]

33.1 [Intentionally Deleted]

34. PAYMENT

34.1 Lump Sum Payments

- (a) HMQ shall pay to Project Co the Crossing Roads Section Substantial Completion Payment plus, for clarity, applicable HST, on the Crossing Roads Section Payment Commencement Date.
- (b) HMQ shall pay to Project Co the Main Line Section Substantial Completion Payment plus, for clarity, applicable HST, on the Main Line Section Payment Commencement Date.
- (c) HMQ shall pay to Project Co the Substantial Completion Payment plus, for clarity, applicable HST, on the Substantial Completion Payment Commencement Date.

34.2 Monthly OM&R Payments

- (a) Subject to and in accordance with this Project Agreement, including this Section 34 and Schedule 20 - Payment Mechanism, HMQ shall pay to Project Co the all-inclusive Monthly OM&R Payments for the performance of all of the Project Operations.

34.3 Payment Adjustments

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

34.4 Payment Commencement

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

34.5 Adjustments to Payment Periods

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

34.6 Invoicing and Payment Arrangements

- (a) Within 5 Business Days following the end of each Payment Period, Project Co shall issue to HMQ an invoice for the amount of the Monthly OM&R Payment owing by HMQ to Project Co for such Payment Period, with such adjustments as provided in the Payment Adjustment Report issued in the previous Payment Period.
- (b) Project Co shall comply with all requirements of Schedule 20 - Payment Mechanism in respect of invoices and shall include with each invoice such supporting documentation as HMQ may reasonably require in connection with payments hereunder.

- (c) Each invoice shall be in a form agreed by the Parties, acting reasonably, and shall include as a minimum:
- (i) the Monthly OM&R Payment payable in respect of the applicable Payment Period;
 - (ii) any adjustments set out in the Payment Adjustment Report issued in the previous Payment Period that have been approved by HMQ;
 - (iii) any other adjustments to reflect overpayments and underpayments, as agreed between the Parties or determined in accordance with Schedule 27 - Dispute Resolution Procedure;
 - (iv) any amount owing to HMQ under this Project Agreement;
 - (v) any amount owing to Project Co under this Project Agreement;
 - (vi) the net amount owing by HMQ to Project Co, or by Project Co to HMQ, as applicable; and
 - (vii) a statutory declaration in form and in substance satisfactory to HMQ with respect to CLA compliance and payment to all lien claimants:
 - (A) from Project Co, and
 - (B) upon request by HMQ, from any Project Co Party.
- (d) The invoices issued to HMQ in respect of the first Monthly OM&R Payment following each Section Payment Commencement Date shall include up-to-date copies of the parcel registers for all parts of the Lands contained in the newly completed Section, as applicable, which subsearches of title in support thereof shall not be performed earlier than 45 days following the relevant Section Substantial Completion Date or the Substantial Completion Date, as applicable.
- (e) HST shall be shown separately on all invoices from Project Co, together with Project Co's HST registration number.
- (f) Upon agreement of the Parties, the form of invoice may be changed from time to time.
- (g) The HMQ Representative shall review each invoice submitted in accordance with this Section 34.6. HMQ shall pay the amount stated in such invoice on the first Business Day of the Payment Period next following the Payment Period in which the invoice is received. Any such payment shall be subject to adjustment pursuant to Section 34.6(k).
- (h) HMQ shall not be obligated to make any payment to Project Co unless all conditions precedent applicable to such payment under this Project Agreement have been satisfied by Project Co. Further, HMQ shall not be obligated to pay an invoice delivered by Project Co after the second Payment Period following the Payment Commencement Date until Project Co has delivered the Payment Adjustment Report referred to in Section 34.6(i) for the previous Payment Period. In the event that Project Co delivers any Payment Adjustment Report later than the stipulated date in Section 34.6(i), HMQ's obligation to pay the invoice issued by Project Co for the immediately

following Payment Period shall be extended by the number of days by which Project Co was late in delivering the applicable Payment Adjustment Report to HMQ.

- (i) Within 5 Business Days following the end of each Payment Period, Project Co shall also submit to HMQ:
 - (i) a Performance Monitoring Report in respect of the Payment Period just ended (as further described in Part 8 of Schedule 11 - Quality Management); and
 - (ii) a report (a “**Payment Adjustment Report**”) setting out any adjustments required between the actual Monthly OM&R Payments determined by Project Co to be owing by HMQ to Project Co in respect of the Payment Period just ended and the amount that was paid by HMQ during such Payment Period, including details of:
 - (A) all Deductions in relation to Availability Failures;
 - (B) all Deductions in relation to Quality Failures.
- (j) Project Co shall include with each Payment Adjustment Report such supporting documentation as is reasonably required to substantiate and confirm the adjustments set out in each Payment Adjustment Report.
- (k) Within 10 Business Days of receipt by HMQ of the Payment Adjustment Report, the HMQ Representative shall:
 - (i) determine and advise Project Co that the Payment Adjustment Report is approved by HMQ, in which case the adjustments set out therein will be reflected by Project Co in the invoice next issued by Project Co; or
 - (ii) if HMQ disputes Project Co’s entitlement to any part of the amounts set out therein, notify Project Co in writing of that part of the amounts (insofar as at the time of such notice HMQ is reasonably able to quantify it) which HMQ disputes and submit to Project Co such supporting documentation as is reasonably required to substantiate and confirm such claim. In such event, HMQ shall withhold payment of any disputed amount pending agreement or determination of Project Co’s entitlement to the disputed amount in accordance with Section 34.9.

34.7 Electronic Invoicing

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

34.8 Final Payment Periods

- (a) At the beginning of each of the final 3 Payment Periods immediately prior to the Expiry Date, HMQ shall estimate, acting reasonably, the adjustments to the Monthly OM&R Payments for

each such Payment Period. HMQ may withhold the amounts that it has reasonably estimated for such adjustments from amounts paid to Project Co during each of the final 3 Payment Periods.

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

34.9 Disputes

- (a) If HMQ, acting in good faith, disputes all or any part of a Payment Adjustment Report and/or the Monthly OM&R Payments payable thereunder, it shall notify Project Co in writing of that part of the amounts (insofar as at the time of such notice HMQ is reasonably able to quantify it) which HMQ disputes and submit to Project Co such supporting documentation as is reasonably required to substantiate and confirm such claim. The Parties shall use commercially reasonable efforts to resolve the Dispute in question within 10 Business Days of the aforesaid notice of the Dispute. If they fail to so resolve the Dispute within such period, the Dispute may be referred for resolution in accordance with Schedule 27 - Dispute Resolution Procedure. Following resolution of the Dispute, any amount which has been paid by HMQ that is determined not to have been payable shall be paid forthwith by Project Co to HMQ, and Project Co shall indemnify and hold harmless HMQ from and against any damages suffered or incurred resulting from such overpayment by HMQ as provided for at Section 56.1(e) on the basis that the due date was the date of the overpayment by HMQ. Following resolution of the Dispute, any amount which has been withheld by HMQ that is determined to have been payable shall be paid forthwith by HMQ to Project Co and HMQ shall indemnify and hold harmless Project Co from and against any damages suffered or incurred resulting from such withholding by HMQ as provided for at Section 56.2(c) on the basis that the due date was the date upon which such amount became payable to Project Co.

34.10 Payments

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

34.11 Manner of Payment

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

34.12 [Intentionally Deleted]**34.13 Set-Off**

- (a) The Parties agree that their rights of set-off at law or in equity are limited to the right of:
 - (i) HMQ to set off against any amounts otherwise due to Project Co pursuant to the terms of this Project Agreement, any amounts (including, without limitation, any amounts payable in accordance with Section 56) which are due to HMQ by Project Co pursuant to the terms of this Project Agreement; and
 - (ii) Project Co to set off against any amounts otherwise due to HMQ pursuant to the terms of this Project Agreement, any amounts (including, without limitation, any amounts payable in accordance with Section 56) which are due to Project Co by HMQ pursuant to the terms of this Project Agreement.

34.14 Effect of Payment

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

34.15 Audit of Performance and Payment

- (a) Without limiting HMQ's rights and Project Co's obligations pursuant to Section 37.2, at any time and from time to time until 365 days after the Termination Date, HMQ may give notice to Project Co requiring an audit of any matter relating to performance of the Project Operations and

payments by or to HMQ within the 7 year period prior to the date of such notice, including any Payment Adjustment Reports, and any other records, reports, information, documents or data relating to performance and payments to verify their accuracy, correctness and completeness.

- (b) HMQ shall appoint an auditor to perform and complete such audit at HMQ's cost and expense and pursuant to terms of reference determined by HMQ.
- (c) Within a reasonable time following receipt of a notice referred to in Section 34.15(a), Project Co shall make available to HMQ's auditor, any Payment Adjustment Reports, and any other records, reports, information, documents or data relating to performance and payments.
- (d) HMQ shall notify Project Co of the results of the audit, and if HMQ's auditor discovers any inaccuracy, incorrectness or incompleteness, then, subject to Project Co's right to dispute the same in accordance with Schedule 27 - Dispute Resolution Procedure:
 - (i) Project Co shall:
 - (A) remedy any such inaccuracy, incorrectness or incompleteness and issue a revision to the applicable Payment Adjustment Report or other record, report, information, document or data; and
 - (B) where the inaccuracy, incompleteness or incorrectness has resulted in any material overpayment by HMQ, reimburse HMQ for all costs relating to the auditor and audit to a maximum amount that is the lesser of:
 - (I) the actual costs relating to the auditor and audit; or
 - (II) an amount equal to the amount of any overpayment;
 - (ii) where the inaccuracy, incompleteness or incorrectness has resulted in any overpayment, whether or not material, by HMQ, Project Co shall reimburse HMQ for the amount of such overpayment and, further, shall indemnify and hold harmless HMQ from and against any damages suffered or incurred resulting from such overpayment by HMQ as provided for at Section 56.1(e) on the basis that the due date was the date of the overpayment by HMQ; and
 - (iii) where the inaccuracy, incompleteness or incorrectness has resulted in any underpayment by HMQ, whether or not material, HMQ shall pay Project Co the amount of such underpayment and, further, shall indemnify and hold harmless Project Co from and against any damages suffered or incurred resulting from such underpayment by HMQ as provided for at Section 56.2(c) on the basis that the due date was the date of the underpayment by HMQ.

34.16 No Other Entitlement

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

35. TAXES**35.1 Taxes**

- (a) All amounts specified in this Project Agreement are expressed exclusive of HST but inclusive of all other Taxes. Except as specified in Section 35.1(c), applicable HST shall be paid simultaneously with any amount due hereunder, including, for clarity, any compensation on termination.
- (b) HMQ shall pay, when due and payable, all property taxes or payments in lieu of property taxes that are assessed in respect of ownership or use of the Site or Extension.
- (c) Within 3 weeks of the end of the month in which either a Section Substantial Completion or Substantial Completion occurs, HMQ shall pay to Project Co all HST payable in accordance with paragraph 168(3)(c) of the *Excise Tax Act* (Canada) in respect of the construction of the relevant Section of the Extension, as applicable (if any) for remittance to the Canada Revenue Agency, which amount, if any, shall be set out in an invoice issued by Project Co to HMQ upon the occurrence of Section Substantial Completion of each of the Crossing Roads Section, the Main Line Section and of Substantial Completion, and shall reflect the capital cost of construction of each Section, as applicable, set out in the Financial Model, which shall serve as a reasonable estimate of the full consideration for Section Substantial Completion of each of the Crossing Roads Section, the Main Line Section and Substantial Completion, respectively. For clarity, the amount of each payment made by HMQ to Project Co pursuant to paragraph 168(3)(c) of the *Excise Tax Act* (Canada) does not include any HST amounts already paid by HMQ to Project Co on the Crossing Roads Section Substantial Completion Payment, the Main Line Section Substantial Completion Payment or Substantial Completion Payment, as applicable.
- (d) Subject to Section 35.1(e), in each Monthly OM&R Payment invoice provided by Project Co to HMQ, Project Co shall show on a distinct line of the invoice the Monthly Previously Paid HST Amount used to determine the amount of unpaid HST payable by HMQ on such Monthly OM&R Payment. For clarity, a Monthly Previously Paid HST Amount must be credited to HMQ on each Monthly OM&R Payment invoice.
- (e) HMQ shall pay all applicable HST properly payable in accordance with the *Excise Tax Act* (Canada) by HMQ upon and in connection with payments by HMQ to Project Co under this Project Agreement.

35.2 Changes in Recoverability of Tax Credits

- (a) HMQ will pay to Project Co from time to time, as the same is incurred by Project Co, amounts equal to any Irrecoverable Tax to the extent such Irrecoverable Tax results from a Change in Law. Project Co will pay to HMQ from time to time, as the same is incurred by Project Co, amounts equal to any Recoverable Tax to the extent such Recoverable Tax results from a Change in Law.
- (b) For the purposes of this Section 35.2, the term “**Irrecoverable Tax**” means HST or an irrecoverable sales tax levied by the Legislative Assembly of Ontario in lieu of all or a portion of HST incurred by Project Co in respect of the supply of any good or service to HMQ which is

consumed, used or supplied, or to be consumed, used or supplied, exclusively by Project Co in the course of carrying out the Works or otherwise performing the Project Operations to the extent that Project Co is unable to recover or be credited with input tax credits, refunds, rebates or exemptions for such HST, or after obtaining an input tax credit, is required to pay an additional amount to the Canada Revenue Agency equal to all or part of the input tax credit claimed.

- (c) For the purposes of this Section 35.2, the term “**Recoverable Tax**” means HST incurred by Project Co in respect of the supply of any good or service to HMQ which is consumed, used or supplied, or to be consumed, used or supplied, exclusively by Project Co in the course of carrying out the Works or otherwise performing the Project Operations to the extent that Project Co is able to recover or be credited with input tax credits, refunds, rebates or exemptions for such HST.

35.3 Information and Assistance Provided by Project Co

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

35.4 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 ceasing to be [REDACTED] for the purposes of the *Income Tax Act (Canada)* or any [REDACTED] becoming a Non-Resident without HMQ’s prior written consent, which consent may be withheld in HMQ’s sole discretion.

35.5 Taxes – General

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

35.6 Taxes – Indemnity

- (a) If (i) Project Co ceases to be [REDACTED] for the purposes of the *Income Tax Act* (Canada) or any [REDACTED] becomes a Non-Resident, or (ii) HMQ or any HMQ Party is or becomes required by Applicable Law to deduct and withhold any amount in respect of Taxes on or in respect of any amounts paid or credited to Project Co or a Project Co Party by HMQ or any HMQ Party under this Project Agreement or under any of the Project Documents, then HMQ or any HMQ Party shall be entitled to make any applicable deductions or withholdings from any amount paid or credited or to be paid or credited to Project Co or a Project Co Party on or after the date on which (A) Project Co or the Project Co Party ceases to be [REDACTED] for the purposes of the *Income Tax Act* (Canada) or any [REDACTED] or any partner of the Project Co Party becomes a Non-Resident and at all times while it remains a Non-Resident; or (B) HMQ or any HMQ Party is required by Applicable Law to deduct or withhold amounts in respect of any such amounts, in each case, in respect of all Taxes that are required by Applicable Law to be deducted or withheld from amounts paid or credited to a Non-Resident or otherwise as required by Applicable Law; and all amounts paid or credited by HMQ or any HMQ Party under this Project Agreement or under any other Project Document to Project Co or a Project Co Party shall be paid or credited net of such deductions or withholdings.
- (b) If (i) Project Co ceases to be [REDACTED] for the purposes of the *Income Tax Act* (Canada) or any [REDACTED] becomes a Non-Resident, or (ii) HMQ or any HMQ Party is or becomes required by Applicable Law to deduct and withhold any amount in respect of Taxes on or in respect of any amounts paid or credited to Project Co or a Project Co Party by HMQ or any HMQ Party under this Project Agreement or under any of the Project Documents, Project Co shall, in each case, indemnify and hold harmless HMQ and the HMQ Parties for (A) the full amount of all Taxes (“**Indemnifiable Taxes**”) that arise, are imposed on or are required to be paid by HMQ or any HMQ Party in respect of any amounts paid or credited by HMQ or any HMQ Party to Project Co or any Project Co Party under this Project Agreement or under any other Project Document as a result of either of the foregoing items less any amount withheld or deducted by HMQ or any HMQ Party (as applicable) in respect of such Taxes, and (B) any liability payable or incurred in connection with Indemnifiable Taxes (including penalties, interest and reasonable expenses associated with Tax compliance, reporting and contesting such liability for Indemnifiable Taxes, including reasonable professional expenses payable or incurred in connection therewith) arising from or with respect to Indemnifiable Taxes, whether or not they were correctly or legally asserted (“**Associated Liabilities**”). Payment under this indemnification shall be made within 30 days from the date HMQ 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 HMQ shall be conclusive evidence, absent manifest error, of the amount due from Project Co to HMQ. HMQ shall be entitled to exercise its rights of set-off under Section 34.13 against any amounts owing under this indemnification.

36. FINANCIAL MODEL**36.1 Appointment of Custodian**

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

36.2 Delivery and Use of Financial Model

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

37. RECORDS, INFORMATION AND AUDIT

37.1 Records Provisions

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

37.2 Information and General Audit Rights

- (a) Project Co shall provide and shall cause each Subcontractor to provide to HMQ all information, reports, documents, records and the like, including as referred to in Schedule 26 - Record Provisions, in the possession of, or available to, Project Co as HMQ may reasonably require from time to time for any purpose in connection with this Project Agreement, other than Sensitive Information. Project Co shall use commercially reasonable efforts to ensure that, for such purpose, all such information, reports, documents, records and the like in the possession of, or available to, the Construction Contractor and the OM&R Provider shall be available to Project Co and Project Co shall include relevant terms in all Subcontracts to this effect.
- (b) Project Co shall also provide to HMQ, and shall require each Subcontractor, including the Construction Contractor and the OM&R Provider, to provide to HMQ (at HMQ's reasonable cost), all information, reports, documents, records and the like required to be provided pursuant to Section 37.2(a) which subsequently come into the possession of, or become available to, Project Co or each Subcontractor, as HMQ may reasonably require from time to time to enable HMQ to provide reports, notices, returns and the like pursuant to Applicable Law, including information and documentation pertaining to the physical condition of the Extension, security, health and

safety, fire safety, emergency preparedness, environmental matters, employees and human resources related matters, other than Sensitive Information.

- (c) Project Co shall promptly after receipt provide HMQ with a copy of any material notice, order, direction, requirement or other similar communication received by it or by any Subcontractor from any Governmental Authority in relation to any of the Project Operations or the Extension, and Project Co shall include relevant terms in all Subcontracts to this effect.
- (d) Project Co shall promptly notify HMQ of any actions, suits, proceedings, or investigations commenced, pending or threatened against Project Co or, to Project Co's knowledge, any Subcontractor at law or in equity before any Governmental Authority or arbitral body (whether or not covered by insurance) that individually or in the aggregate could result in any material adverse effect on the business, properties, or assets or the condition, financial or otherwise, of Project Co or in any impairment of its ability to perform its obligations under this Project Agreement.
- (e) All information, reports, documents and records in the possession of, or available to, Project Co, including as referred to in Schedule 26 - Record Provisions, which are required to be provided to or available to HMQ hereunder, shall be subject and open to inspection and audit by HMQ at any time and from time to time, which inspection and audit shall take place during normal business hours and at Project Co's normal places of business unless HMQ and Project Co otherwise agree. HMQ shall also have the right to monitor and audit the performance of any and all parts of the Project Operations wherever located, and Project Co shall cooperate with, and shall require each Subcontractor to cooperate with, and provide access to the representatives of HMQ monitoring and auditing such parts of the Project Operations, including providing them with access and copies (at HMQ's reasonable cost) of all relevant information, reports, documents and records pertaining to the performance of such parts of the Project Operations. Except as otherwise provided herein, all of HMQ's costs for the inspections, audits and monitoring shall be borne by HMQ.
- (f) In conducting an audit of Project Co under Section 37.2(e) or as otherwise provided under this Project Agreement, HMQ shall have all rights necessary or incidental to conducting an audit, including the right to have access to and inspect and take copies (at HMQ's reasonable cost) of all books and records of Project Co required to be provided to or available to HMQ hereunder, upon reasonable notice and at reasonable times. Project Co shall fully cooperate with HMQ 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 HMQ all matters arising from such audits, including the refunding of monies to HMQ where applicable. At the reasonable request of HMQ's auditors, Project Co shall provide such information, reports, documents and records as HMQ's auditors may reasonably require, other than Sensitive Information.
- (g) HMQ's rights pursuant to this Section 37.2 shall be in addition to, and shall not limit, any other audit, information, inspection or similar rights under this Project Agreement.
- (h) HMQ's rights pursuant to this Section 37.2 shall not limit or restrict any Governmental Authority's right of review, audit, information or inspection under Applicable Law. HMQ's right

pursuant to this Section 37.2 may also be exercised by the Auditor General of Ontario, Her Majesty the Queen in Right of Canada and the Auditor General of Canada without the requirement for further action on the part of HMQ.

37.3 Delivery of Reports to Infrastructure Ontario

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

38. CHANGES IN LAW

38.1 Performance after Change in Law

- (a) Following any and all Changes in Law, Project Co shall perform the Project Operations in accordance with the terms of this Project Agreement, including in compliance with Applicable Law.
- (b) Project Co acknowledges and agrees that any decision by HMQ during the Project Term as to whether or not to conduct any Tolling Activities on the Extension shall not be a Relevant Change in Law or a Works Change in Law, and Project Co shall not be entitled to any payment or compensation hereunder, or to relief from any of its obligations hereunder, as a consequence of such a decision by HMQ.

38.2 Works Change in Law

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

- (B) Project Co shall be responsible for obtaining all Project Co Permits, Licences and Approvals required in respect of the Variation;
- (C) HMQ 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; provided that, notwithstanding the provisions of Schedule 22 - Variation Procedure, if one or more Works Change(s) in Law increase(s) the cost to Project Co of providing the Project Operations, Project Co shall only be entitled to payment or compensation for such costs as follows (for greater certainty, determined on an aggregate basis for all Works Changes in Law prior to the Termination Date):
 - (I) as to the first \$[REDACTED] of such costs, \$[REDACTED];
 - (II) as to the next \$[REDACTED] of such costs, [REDACTED]% of such costs; and
 - (III) as to any such costs in excess of \$[REDACTED], [REDACTED]% of such costs.

38.3 Relevant Change in Law

- (a) On the occurrence of a Relevant Change in Law, either Party shall be entitled to seek compensation for any increase or decrease (as the case may be) in the net cost to Project Co of performing the Project Operations so as to put such Party in no better and no worse position than it would have been in had the Relevant Change in Law not occurred. Any such compensation shall be calculated in accordance with this Section 38.3.
- (b) On the occurrence of a Relevant Change in Law:
 - (i) either Party may give notice to the other of the need for a Variation as a result of such Relevant Change in Law;
 - (ii) the Parties shall meet within 10 Business Days of such notice to consult with respect to the effect of the Relevant Change in Law and to reach an agreement on whether a Variation is required as a result of such Relevant Change in Law, and, if the Parties have not, within 10 Business Days of this meeting, reached an agreement, either Party may refer the question of whether a Relevant Change in Law has occurred or the effect of any Relevant Change in Law for resolution in accordance with Schedule 27 - Dispute Resolution Procedure; and

- (iii) HMQ shall, within 10 Business Days of agreement or determination that a Variation is required, issue a Variation Enquiry and the relevant provisions of Schedule 22 - Variation Procedure shall apply except that:
- (A) Project Co may only object to any such Variation Enquiry on the grounds that the implementation of the Variation would not enable it to comply with the Relevant Change in Law;
 - (B) Project Co shall be responsible for obtaining all Development Approvals and Project Co Permits, Licences and Approvals required in respect of the Variation;
 - (C) HMQ shall not be entitled to withdraw any such Variation Enquiry unless the Parties otherwise agree;
 - (D) Project Co shall proceed to implement the Variation within such period as will enable it to comply with the Relevant Change in Law as soon as reasonably practicable;
 - (E) the Parties shall, without prejudice to their respective general obligations to comply with the terms of this Project Agreement:
 - (I) use commercially reasonable efforts to mitigate the adverse effects of any Relevant Change in Law and take commercially reasonable steps to minimize any increase in costs arising from such Relevant Change in Law; and
 - (II) use commercially reasonable efforts to take advantage of any positive or beneficial effects of any Relevant Change in Law and take commercially reasonable steps to maximize any reduction in costs arising from such Relevant Change in Law; and
 - (F) any entitlement to compensation payable shall be in accordance with this Section 38.3, and any calculation of compensation shall take into consideration, *inter alia*:
 - (I) any failure by a Party to comply with Section 38.3(b)(iii)(E);
 - (II) the extent to which a Party has been, or shall be, compensated in respect of such Relevant Change in Law as a result of any indexation or adjustment of the Monthly OM&R Payments under this Project Agreement;
 - (III) any increase or decrease in its costs resulting from such Relevant Change in Law; and
 - (IV) any amount which Project Co recovers under any insurance policy (or would recover if it complied with its obligations to insure under this Project Agreement or the terms of any policy of insurance required

under this Project Agreement) which amount, for greater certainty, shall not include the amount of any excess or deductibles or any amount above the maximum insured amount applicable to any such insurance policy.

- (c) Project Co shall not be entitled to any payment or compensation or, except as provided in Section 40 or otherwise in this Project Agreement, relief in respect of any Relevant Change in Law, or the consequences thereof, other than in accordance with this Section 38.3, and Section 41 shall be construed accordingly.
- (d) In relation to a Relevant Change in Law that results in a net increase or decrease in costs incurred by Project Co in delivery of the Project Operations, taking into consideration, inter alia, Section 38.3(b)(iii)(E), if the cost impact of such Relevant Change in Law in a given Contract Year (in aggregate with all other such Relevant Changes in Law that have a cost impact in the same Contract Year) amounts to less than \$[REDACTED] (index linked) in that Contract Year, neither HMQ nor Project Co shall be entitled to any payment or compensation pursuant to this Section 38.3 or otherwise in respect of the cost impact of that Relevant Change in Law in that Contract Year, or, except as provided in Section 40 or otherwise in this Project Agreement, any other relief in respect of such Relevant Change in Law in that Contract Year.

39. VARIATIONS

39.1 Variation Procedure

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

39.2 Innovation and Value Engineering

- (a) Project Co acknowledges that HMQ at all times desires to reduce the Monthly OM&R Payments and the overall cost to HMQ of the Extension, the Works and the OM&R Work, and Project Co agrees to cooperate, explore and work with HMQ in investigating and considering innovation and value engineering and other cost saving measures.

- (b) If an innovation and value engineering proposal is at any time and from time to time originated and initiated solely by Project Co, Project Co may make a proposal (the “**Innovation Proposal**”) by notice to HMQ.
- (c) The Parties agree that the subject of an Innovation Proposal shall not include:
 - (i) any Variation Enquiry initiated by HMQ;
 - (ii) any Variation resulting from a Change in Law; or
 - (iii) any change to the MTO Activities.
- (d) The Innovation Proposal must:
 - (i) set out sufficient detail to enable HMQ to evaluate the Innovation Proposal in full;
 - (ii) specify Project Co’s reasons and justification for proposing the Innovation Proposal;
 - (iii) request HMQ to consult with Project Co with a view to deciding whether to agree to the Innovation Proposal and, if so, what consequential changes HMQ 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 HMQ;
 - (v) indicate, in particular, whether an increase or decrease to the Monthly OM&R Payments is proposed, and, if so, give a detailed cost estimate of such proposed change;
 - (vi) indicate if there are any dates by which a decision by HMQ must be made;
 - (vii) indicate the capital cost of the Innovation Proposal, including the cost of financing; and
 - (viii) include such other information and documentation as may be reasonably requested by HMQ to fully evaluate and consider the Innovation Proposal.
- (e) HMQ shall, acting in good faith, evaluate the Innovation Proposal, taking into account all relevant issues, including whether:
 - (i) a change in the Monthly OM&R Payments will occur;
 - (ii) the Innovation Proposal affects the quality of the Works, the Extension or the OM&R Work, or the likelihood of successful completion of the Works or performance of the OM&R Work;
 - (iii) the Innovation Proposal will benefit or interfere with the efficient operation of the Extension;
 - (iv) the Innovation Proposal will interfere with the relationship between HMQ and third parties;

- (v) the financial strength of Project Co is sufficient to deliver the changed Works or perform the changed OM&R Work, as applicable;
 - (vi) the residual value of the Extension is affected;
 - (vii) the Innovation Proposal will change the Rehabilitation Payment;
 - (viii) the Innovation Proposal materially affects the risks or costs to which HMQ is exposed; or
 - (ix) any other matter HMQ considers relevant.
- (f) HMQ may request clarification or additional information regarding the Innovation Proposal, and may request modifications to the Innovation Proposal.
- (g) HMQ may, in its sole discretion, accept or reject any Innovation Proposal.
- (h) If HMQ accepts the Innovation Proposal, with or without modification, the relevant Innovation Proposal shall be documented and evidenced by a written Variation Confirmation, together with any other documents necessary to amend this Project Agreement or any relevant Project Documents to give effect to the Innovation Proposal.
- (i) Unless HMQ specifically agrees to an increase in the Monthly OM&R Payments in accepting an Innovation Proposal pursuant to Section 39.2(h), there shall be no increase in the Monthly OM&R Payments as a result of an Innovation Proposal.
- (j) If, after taking into account the agreed implementation and reasonably allocated development costs incurred by Project Co in connection with the Innovation Proposal and any other uses of the Innovation Proposal by Project Co, the Innovation Proposal causes or will cause the costs of Project Co and/or of a Subcontractor to decrease, the net savings in the costs of Project Co and/or the Subcontractor will be shared equally by Project Co and HMQ, and HMQ's share of the net savings shall, as agreed by the Parties, be reflected in either a lump sum payment or in a reduction of the Monthly OM&R Payments.
- (k) If an Innovation Proposal causes or will cause the costs of HMQ to decrease, the net savings in the costs of HMQ will be shared as follows:
- (i) equally by Project Co and HMQ for the first 5 years following the implementation of the Innovation Proposal; and
 - (ii) thereafter, HMQ shall be entitled to the full benefit of the net savings in costs (if applicable),
- and Project Co's share of the net savings shall, at HMQ's sole option, be reflected in either a lump sum payment or in an increase in the Monthly OM&R Payments.

40. DELAY EVENTS**40.1 Definition**

- (a) For the purposes of this Project Agreement, “**Delay Event**” means any of the following events or circumstances only to the extent, in each case, that it affects the Initial Works so as to cause a delay in achieving a Section Substantial Completion by the relevant Scheduled Section Substantial Completion Date, or achieving Substantial Completion by the Scheduled Substantial Completion Date:
- (i) the implementation of a Variation to the extent Project Co has identified such delay in its Estimate and such delay has been documented in the Variation Confirmation;
 - (ii) any breach by HMQ of any of HMQ’s obligations under this Project Agreement (including any delay by HMQ in giving access to the Site pursuant to Section 14.1, any obstruction of the rights afforded to Project Co under Section 14.1, or any delay by HMQ 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;
 - (iii) an uncovering of the Works pursuant to Section 21.3 where such Works are not subsequently found to be defective or not in compliance with the requirements of this Project Agreement (including the Output Specifications, the Project Co Proposal Extracts and the Design Data), unless such uncovering of the Works was reasonable in the light of other defects or non-compliance previously discovered by HMQ in respect of the same or a similar component of the Works or subset of the Works;
 - (iv) a requirement pursuant to Sections 16.2(b)(i) or 16.2(d) for Project Co to perform any alteration, addition, demolition, extension or variation in the Initial Works, or to suspend or delay performance of the Initial Works, upon the discovery of Contamination, which alteration, addition, demolition, extension or variation in the Initial Works, or suspension or delay in the performance of the Initial Works, would not otherwise be required under this Project Agreement;
 - (v) a requirement pursuant to Sections 16.3(c)(ii)(A) or 16.3(d) for Project Co to perform any alteration, addition, demolition, extension or variation in the Initial Works, or to suspend or delay performance of the Initial Works, upon the discovery of any fossils, artifacts and other objects having artistic, historic, archaeological or monetary value, including human remains and burial sites, which alteration, addition, demolition, extension or variation in the Initial Works, or suspension or delay in the performance of the Initial Works, would not otherwise be required under this Project Agreement;
 - (vi) a requirement pursuant to Sections 16.4(a) or 16.4(c) for Project Co to perform any alteration, addition, demolition, extension or variation in the Initial Works, or to suspend or delay performance of the Initial Works, upon the discovery of Species-at-Risk for which HMQ is responsible, which alteration, addition, demolition, extension or variation in the Initial Works, or suspension or delay in the performance of the Initial Works, would not otherwise be required under this Project Agreement;

- (vii) subject to compliance by Project Co with the provisions of Section 9.7, damage, costs or delays from the execution of Additional Works (other than Early Works) or Third Party Works on the Lands by Additional Contractors or Third Party Contractors, as applicable, in the circumstances described in Section 9.7(e);
 - (viii) a requirement pursuant to Section 13.1 of Schedule 27 - Dispute Resolution Procedure for Project Co to proceed in accordance with the direction of HMQ during the pendency of a Dispute, which Dispute is subsequently determined in Project Co's favour;
 - (ix) an event of Force Majeure;
 - (x) a Relief Event;
 - (xi) a Relevant Change in Law; or
 - (xii) any change to the terms, conditions or requirements of the Environmental Assessments or the ESA Permits, 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.
- (b) For greater certainty: (i) prior to Substantial Completion an event described above may constitute a Delay Event with respect to one or more Sections that have not achieved Section Substantial Completion while simultaneously entitling Project Co to a Variation or constituting an Excusing Cause with respect to other Sections that have achieved Section Substantial Completion, and (ii) no event shall constitute a Delay Event with respect to a Section and also entitle Project Co to a Variation or constitute an Excusing Cause with respect to the same Section.

40.2 Consequences of a Delay Event

- (a) Project Co shall provide written notice to the HMQ Representative and the Independent Certifier within 5 Business Days of becoming aware of the occurrence of Delay Event. Project Co shall, within 10 Business Days after such notification, provide further written details to the HMQ Representative and the Independent Certifier which shall include:
- (i) a statement of which Delay Event the claim is based upon;
 - (ii) details of the circumstances from which the Delay Event arises;
 - (iii) details of the contemporary records which Project Co shall maintain to substantiate its claim for extra time;
 - (iv) details of the consequences (whether direct or indirect, financial or non-financial) which such Delay Event may have upon any relevant Scheduled Section Substantial Completion Date or the Scheduled Substantial Completion Date, or both, as applicable; and
 - (v) details of any measures which Project Co proposes to adopt to mitigate the consequences of such Delay Event.

- (b) As soon as possible but in any event within 3 Business Days of Project Co receiving, or becoming aware of, any supplemental information which may further substantiate or support Project Co's claim, Project Co shall submit further particulars based on such information to the HMQ Representative and the Independent Certifier.
- (c) The HMQ Representative shall, after receipt of written details under Section 40.2(a), or of further particulars under Section 40.2(b), be entitled by written notice to require Project Co to provide such further supporting particulars as the HMQ Representative may reasonably consider necessary. Project Co shall afford the HMQ Representative and the Independent Certifier reasonable facilities for investigating the validity of Project Co's claim, including, without limitation, on-site inspection.
- (d) Subject to the provisions of this Section 40, the HMQ Representative shall allow Project Co an extension of time equal to the delay caused by the Delay Event and shall fix one or more revised Scheduled Section Substantial Completion Dates or a revised Scheduled Substantial Completion Date, or both, as applicable, as soon as reasonably practicable and in any event within 10 Business Days of the later of:
 - (i) the date of receipt by the HMQ Representative of Project Co's notice given in accordance with Section 40.2(a) and the date of receipt of any further particulars (if such are required under Section 40.2(c)), whichever is later; and
 - (ii) the date of receipt by the HMQ Representative of any supplemental information supplied by Project Co in accordance with Section 40.2(b) and the date of receipt of any further particulars (if such are required under Section 40.2(c)), whichever is later.
- (e) For the avoidance of doubt, there shall be no extension to the Project Term as a result of any delay caused by a Delay Event.
- (f) If:
 - (i) the HMQ Representative declines to fix a revised Scheduled Section Substantial Completion Date or Scheduled Substantial Completion Date or both, as applicable;
 - (ii) Project Co considers that a different Scheduled Section Substantial Completion Date or Scheduled Substantial Completion Date or both, as applicable should be fixed; or
 - (iii) there is a dispute as to whether a Delay Event has occurred,then Project Co shall be entitled to refer the matter for determination by the Independent Certifier. The decision of the Independent Certifier may be disputed by either Party and referred for resolution in accordance with Schedule 27 - Dispute Resolution Procedure.

40.3 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 40.3, such failure shall be taken into account in determining Project Co's entitlement to an extension of time pursuant to this Section 40.

41. COMPENSATION EVENTS

41.1 Definition

- (a) For the purposes of this Project Agreement, "**Compensation Event**" means any event referred to in Sections 40.1(a)(ii), 40.1(a)(iii), 40.1(a)(iv), 40.1(a)(v), 40.1(a)(vi), 40.1(a)(vii), 40.1(a)(viii) and 40.1(a)(xii) to the extent it affects the Initial Works in respect of one or more Sections that have not achieved Section Substantial Completion, as a direct result of which Project Co has incurred loss or expense, whether or not any of these events has also caused a delay.
- (b) For greater certainty: (i) prior to Substantial Completion an event described above may constitute a Compensation Event with respect to one or more Sections that have not achieved Section Substantial Completion while simultaneously entitling Project Co to a Variation or constituting an Excusing Cause with respect to other Sections that have achieved Section Substantial Completion, and (ii) no event shall constitute a Compensation Event with respect to a Section and also entitle Project Co to a Variation or constitute an Excusing Cause with respect to the same Section.

41.2 Consequences of a Compensation Event

- (a) If a Compensation Event occurs, Project Co's sole right to compensation shall be as set out in this Section 41. For greater certainty, except as aforesaid, no other Delay Event shall entitle Project Co to receive any compensation, except as otherwise provided in:
 - (i) Schedule 22 - Variation Procedure, in the case of a Delay Event referred to in Section 40.1(a)(i);
 - (ii) Section 44, in the case of a Delay Event referred to in Section 40.1(a)(ix);
 - (iii) Section 43, in the case of a Delay Event referred to in Section 40.1(a)(x); and

- (iv) Section 38, in the case of a Delay Event referred to in Section 40.1(a)(xi).
- (b) Subject to Sections 41.3 and 41.4, if it is agreed, or determined in accordance with Schedule 27 - Dispute Resolution Procedure, that there has been a Compensation Event, Project Co shall be entitled to such compensation as would place Project Co in no better and no worse position than it would have been in had the relevant Compensation Event not occurred. For greater certainty, in respect of a Compensation Event that is also a Delay Event, such compensation will include amounts which, but for the Delay Event, would have been paid by HMQ to Project Co. Project Co shall promptly provide the HMQ Representative with any information the HMQ Representative may require in order to determine the amount of such compensation.
- (c) If HMQ is required to compensate Project Co pursuant to this Section 41.2, then HMQ may either pay such compensation as a lump sum payment or payments at times and in a manner to be agreed with Project Co, acting reasonably, or, alternatively, HMQ may request Project Co to agree to an adjustment to the Monthly OM&R Payments. If Project Co agrees to an adjustment to the Monthly OM&R Payments, then the provisions of Schedule 22 - Variation Procedure shall apply.

41.3 Mitigation

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

41.4 Insured Exposure

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

42. EXCUSING CAUSES

42.1 Definition

- (a) For the purposes of this Project Agreement, "**Excusing Cause**" means any of the following events or circumstances if it occurs after the Section Substantial Completion Date of a Section and to the extent, in each case, that it interferes adversely with, or causes a failure of, the performance of the OM&R Work:

- (i) the implementation of a Variation to the extent Project Co has identified any impact on the OM&R Work in its Estimate and such impact has been documented in the Variation Confirmation;
- (ii) any breach by HMQ of any of HMQ's obligations under this Project Agreement (including any obstruction of the rights afforded to Project Co under Section 14.1), except to the extent that any such breach is caused, or contributed to, by Project Co or any Project Co Party;
- (iii) any deliberate or negligent act or omission of any Province Person or any failure by any Province Person (having regard to the interactive nature of the activities of such Province Person and Project Co) to take commercially reasonable steps to perform its activities in a manner which minimizes undue interference with Project Co's performance of the OM&R Work, except to the extent:
 - (A) any such act, omission or failure is caused, or contributed to, by Project Co or any Project Co Party;
 - (B) the Province Person is acting in accordance with a recommendation or instruction of Project Co or any Project Co Party;
 - (C) any such act, omission or failure was contemplated in Schedule 15 - Output Specifications or was otherwise provided for in this Project Agreement; or
 - (D) the consequences of any such act, omission or failure would have been prevented by the proper performance of Project Co's obligations under this Project Agreement;
- (iv) the implementation of any action taken by HMQ, or any suspension of Project Co's obligation to deliver all or any part of the OM&R Work, or the compliance by Project Co with instructions given by HMQ, in each case in the circumstances referred to in Section 32;
- (v) the performance of any Small Works in accordance with the terms of this Project Agreement during the period of time agreed between HMQ and Project Co;
- (vi) any official or unofficial strike, lockout, work to rule or other labour-related action involving employees of any Province Person;
- (vii) the occurrence of any Contamination for which HMQ is responsible pursuant to Section 16.2;
- (viii) the discovery of any Species-at-Risk for which HMQ is responsible pursuant to Section 16.4; and
- (ix) any deliberate or negligent act or omission of the Toll Operator in respect of, or any failure by the Toll Operator in, the development, construction, maintenance and operation of the Tolling Infrastructure, except to the extent that:

- (A) such act, omission or failure is caused, or contributed to, by Project Co or any Project Co Party; or
 - (B) the consequences of such act, omission or failure would have been prevented by the proper performance of Project Co's obligations under this Project Agreement.
- (b) For greater certainty: (i) prior to Substantial Completion an event described above may constitute an Excusing Cause with respect to one or more Sections that have achieved Section Substantial Completion while simultaneously constituting a Delay Event or Compensation Event with respect to other Sections that have not achieved Section Substantial Completion, and (ii) no event shall constitute an Excusing Cause with respect to a Section and also constitute a Delay Event or a Compensation Event with respect to the same Section.

42.2 Consequences of an Excusing Cause

- (a) Provided that the effect of an Excusing Cause is claimed by Project Co, in writing, within 10 Business Days of the date on which Project Co or any Project Co Party became aware of the occurrence of such Excusing Cause, then (subject to Sections 42.3 and 42.4):
- (i) any failure by Project Co to perform, and any poor performance of, any affected OM&R Work shall not constitute a breach of this Project Agreement by Project Co, no Failure Points shall accrue in respect of such failure and Project Co shall be relieved of its obligations to perform such OM&R Work for the duration and to the extent prevented by such Excusing Cause;
 - (ii) any interference shall be taken into account in measuring the performance of any affected OM&R Work in accordance with the Performance Monitoring Program, which shall be operated as though the relevant OM&R Work had been performed free from such adverse interference;
 - (iii) any interference shall be taken into account in operating the Payment Mechanism, which shall be operated as though any Availability Failure or Quality Failure resulting from such interference had not occurred, so that Project Co shall be entitled to payment under this Project Agreement as if there had been no such interference with the OM&R Work, provided however that Project Co shall not be entitled to any additional compensation, except as may be provided hereunder for compensation on termination of this Project Agreement, if this Project Agreement is terminated as provided herein;
 - (iv) this Section 42.2 shall not limit HMQ's entitlement to reimbursement pursuant to Section 32.4;
 - (v) HMQ shall reimburse Project Co for all incremental Direct Costs (including all applicable Taxes and all legal or professional services, legal costs being on a full indemnity basis) incurred by Project Co as a result of any Excusing Cause referred to in Section 42.1(a)(ii), 42.1(a)(iii), 42.1(a)(vi), 42.1(a)(vii), 42.1(a)(viii) or 42.1(a)(ix), including costs arising from any steps taken to cure or mitigate against such events, together with any applicable margin for overhead and profit on such Direct Costs as set out in Schedule 22 - Variation Procedure; and

- (vi) the Monthly OM&R Payments payable by HMQ shall be reduced by any savings in Direct Costs arising from Project Co being relieved of its obligations to perform the OM&R Work as otherwise provided herein, together with any applicable margin for overhead and profit on such Direct Costs as set out in Schedule 22 - Variation Procedure.

42.3 Mitigation

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

42.4 Insured Exposure

- (a) The compensation payable to Project Co pursuant to this Section 42 shall be reduced by any amount which Project Co or a Project Co Party recovers, or is entitled to recover, under any insurance policy, or would have recovered if it had complied with the requirements of this Project Agreement in respect of insurance or the terms of any policy of insurance required under this Project Agreement, which amount, for greater certainty, shall not include any excess or deductibles or any amount over the maximum amount insured under any such insurance policy.

43. RELIEF EVENTS

43.1 Definition

- (a) For the purposes of this Project Agreement, "**Relief Event**" means any of the following events or circumstances to the extent, in each case, that it causes any failure by a Party to perform any of its obligations under this Project Agreement:
 - (i) fire, explosion, lightning, storm, tempest, hurricane, tornado, flood, ionizing radiation (to the extent it does not constitute Force Majeure), earthquake, riot or civil commotion;
 - (ii) failure by any Utility Company, Railway Company, local authority or other like body to perform works or provide services, provided, however, that a failure by any Utility Company to perform works or provide services in connection with the construction, installation or relocation of Utility Infrastructure in connection with the Initial Works shall not, in any event, be cause for a Relief Event, unless Project Co:

- (A) has performed its obligations under any applicable Utility Agreement and the relevant Utility Company has failed to meet its obligations thereunder; and
- (B) has made all, and is continuing to make any, commercially reasonable efforts to diligently enforce its legal rights under any applicable Utility Agreement and otherwise cause the Utility Company to perform those works or services;
- (iii) accidental loss or damage to the Works and/or the Extension or any roads servicing the Site;
- (iv) without prejudice to any obligation of Project Co to provide stand-by power facilities in accordance with this Project Agreement, failure or shortage of power, fuel or transport;
- (v) blockade or embargo falling short of Force Majeure;
- (vi) any official or unofficial strike, lockout, work to rule or other labour-related action generally affecting the construction or road maintenance industry (or a significant sector of that industry) in the Province of Ontario; or
- (vii) any civil disobedience or protest action, including any action taken by any person or persons protesting or demonstrating against the carrying out of any part of the Project Operations or the construction and/or operation of roads in general, provided, however, that a civil disobedience or protest action shall not, in any event, be cause for a Relief Event unless Project Co has fully complied with Section 9.6;

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

43.2 Consequences of a Relief Event

- (a) Subject to Section 43.3:
 - (i) no right of termination, other than either Party's right to terminate this Project Agreement pursuant to Section 47.1, shall arise under this Project Agreement by reason of any failure by a Party to perform any of its obligations under this Project Agreement; and
 - (ii) as soon as the events or circumstances constituting a Relief Event have ceased, any Failure Points accrued in respect of any failure by Project Co to perform any of its obligations under this Project Agreement shall be cancelled and any related Warning Notices and Monitoring Notices shall be withdrawn,

but only to the extent that such failure to perform is caused by the occurrence of a Relief Event (it being acknowledged and agreed by the Parties that all other rights and obligations of the Parties under this Project Agreement remain unaffected by the occurrence of a Relief Event). For greater certainty, HMQ shall be entitled to make Deductions in accordance with Schedule 20 - Payment Mechanism notwithstanding the cancellation of Failure Points pursuant to Section 43.2(a)(ii).

Any Deduction to Project Co as a result of Relief Events referred to in Section 43.1(a)(v), 43.1(a)(vi), or 43.1(a)(vii) shall not exceed, in the aggregate, the amount that would be necessary to reduce payments to Project Co to an amount below the Senior Debt Service Amount.

- (b) In respect of a Relief Event that is also a Delay Event pursuant to Section 40.1(a)(x):
 - (i) Project Co shall only be relieved of its obligations under this Project Agreement to the extent, if any, provided for in Section 40; and
 - (ii) in respect of a Relief Event occurring prior to the Section Substantial Completion Date of a Section affected by that Delay Event and referred to in Section 43.1(a)(ii) (but only in respect of failure by a Utility Company to perform works or provide services), 43.1(a)(v), 43.1(a)(vi) or 43.1(a)(vii), on the earlier of (A) the Section Substantial Completion Date of that Section and (B) the date of payment of the HMQ Default Termination Sum, Non-Default Termination Sum or Prohibited Acts Termination Sum (and as a part thereof) in accordance with Schedule 23 - Compensation on Termination, HMQ shall pay to Project Co an amount equal to the Senior Debt Service Amount accrued and paid or which became payable in accordance with the Lending Agreements during the period of the delay by Project Co or any Project Co Party to the Senior Lenders up to and including such date, together with interest thereon at the rate payable on the Senior Debt Amount, which, but for the Delay Event, would have been paid by HMQ to Project Co in respect of that Section.
- (c) If a Relief Event occurs prior to the Substantial Completion Date, Project Co shall not be entitled to receive any compensation other than as expressly provided in Sections 43.2(b)(ii) and 49.
- (d) For greater certainty, notwithstanding Sections 43.2(b)(ii) and 43.2(c), during a Relief Event which occurs on or after the Section Substantial Completion Date of a Section that is not affected by such Relief Event, the provisions of Schedule 20 - Payment Mechanism as they relate to the portion of the Monthly OM&R Payment attributable to that Section (determined by reference to Appendix D-1 and Appendix D-2 to Schedule 20 - Payment Mechanism) will continue to be in full force and effect.
- (e) During a Relief Event which occurs on or after the Substantial Completion Date, the provisions of Schedule 20 - Payment Mechanism will continue to be in full force and effect, subject to Section 43.2(a).
- (f) Subject to Section 49, Project Co's sole right to payment or otherwise in relation to the occurrence of a Relief Event shall be as provided in this Section 43.

43.3 Mitigation and Process

- (a) Where a Party is (or claims to be) affected by a Relief Event, such Party shall take commercially reasonable steps to mitigate the consequences of the Relief Event upon the performance of its obligations under this Project Agreement, shall resume performance of its obligations affected by the Relief Event as soon as practicable and shall use commercially reasonable efforts to remedy its failure to perform.

- (b) To the extent that the Party claiming relief does not comply with its obligations under this Section 43.3, such failure shall preclude such Party's entitlement to relief pursuant to this Section 43.
- (c) The Party claiming relief shall give written notice to the other Party within 5 Business Days of such Party becoming aware of the relevant Relief Event. Such initial notice shall give sufficient details to identify the particular event claimed to be a Relief Event.
- (d) A subsequent written notice shall be given by the Party claiming relief to the other Party within a further 5 Business Days of the initial notice, which notice shall contain such relevant information relating to the failure to perform (or delay in performing) as is available, including, without limitation, the effect of the Relief Event on the ability of the Party to perform, the action being taken in accordance with Section 43.3(a), the date of the occurrence of the Relief Event, and an estimate of the period of time required to overcome the Relief Event and/or its effects.
- (e) The Party claiming relief shall notify the other as soon as the consequences of the Relief Event have ceased and of when performance of its affected obligations can be resumed.
- (f) If, following the issue of any notice referred to in Section 43.3(d), the Party claiming relief receives or becomes aware of any further information relating to the Relief Event and/or any failure to perform, such Party shall submit such further information to the other Party as soon as reasonably possible.

43.4 Insured Exposure

- (a) The compensation payable to Project Co pursuant to this Section 43 shall be reduced by any amount which Project Co or a Project Co Party recovers, or is entitled to recover, under any insurance policy, or would have recovered if it had complied with the requirements of this Project Agreement in respect of insurance or the terms of any policy of insurance required under this Project Agreement, which amount, for greater certainty, shall not include any excess or deductibles or any amount over the maximum amount insured under any such insurance policy.

44. FORCE MAJEURE

44.1 Definition

- (a) For the purposes of this Project Agreement, "**Force Majeure**" means any of the following events or circumstances which directly causes either Party to be unable to perform all or a material part of its obligations under this Project Agreement:
 - (i) war, civil war, armed conflict, terrorism, acts of foreign enemies or hostilities;
 - (ii) nuclear or radioactive contamination of the Initial Works, the Extension and/or the Site, unless Project Co or any Project Co Party is the source or cause of the contamination;
 - (iii) chemical or biological contamination of the Initial Works, the Extension and/or the Site from any event referred to in Section 44.1(a)(i);

- (iv) pressure waves caused by devices traveling at supersonic speeds; or
- (v) the discovery of any Species-at-Risk, fossils, artifacts and other objects having artistic, historic, archaeological or monetary value, including human remains and burial sites, which, as a result of Applicable Law, requires the Initial Works to be abandoned.

44.2 Consequences of Force Majeure

- (a) Subject to Section 44.3, the Party claiming relief shall be relieved from liability under this Project Agreement to the extent that, by reason of the Force Majeure, it is not able to perform its obligations under this Project Agreement.
- (b) In respect of an event of Force Majeure that is also a Delay Event pursuant to Section 40.1(a)(ix):
 - (i) Project Co shall only be relieved of its obligations under this Project Agreement to the extent, if any, provided for in Section 40; and
 - (ii) where such Delay Event causes a delay in achieving Section Substantial Completion of a Section by the Scheduled Section Substantial Completion Date of that Section, on the earlier of (A) the Section Substantial Completion Date of that Section and (B) the date of payment of the HMQ Default Termination Sum, Non-Default Termination Sum or Prohibited Acts Termination Sum (and as a part thereof) in accordance with Schedule 23 - Compensation on Termination, HMQ shall pay to Project Co an amount equal to the Senior Debt Service Amount and the Junior Debt Service Amount accrued and paid or which became payable in accordance with the Lending Agreements during the period of delay by Project Co or any Project Co Party to the Lenders up to and including such date, together with interest thereon at the rate or rates payable on the principal amount of debt funded under the Lending Agreements, which, but for the Delay Event, would have been paid by HMQ to Project Co.
- (c) If an event of Force Majeure occurs prior to the first Section Substantial Completion Date to be achieved, Project Co shall not be entitled to receive any compensation other than as expressly provided in Sections 44.2(b)(ii) and 49.
- (d) During an event of Force Majeure which occurs on or after the first Section Substantial Completion Date to be achieved, the provisions of Schedule 20 - Payment Mechanism will be suspended, and HMQ shall pay to Project Co, for each Payment Period, the Senior Debt Service Amount, the Junior Debt Service Amount and an amount which reflects the cost to Project Co of the OM&R Work performed, provided that, during such Payment Period, the amount paid to Project Co pursuant to this Section 44.2(d) shall never be more than the Maximum OM&R Payment.
- (e) Subject to Section 49, Project Co's sole right to payment or otherwise in relation to the occurrence of an event of Force Majeure shall be as provided in this Section 44.

44.3 Mitigation and Process

- (a) Where a Party is (or claims to be) affected by an event of Force Majeure, such Party shall take commercially reasonable steps to mitigate the consequences of such event of Force Majeure upon the performance of its obligations under this Project Agreement, shall resume performance of its obligations affected by the event of Force Majeure as soon as practicable and shall use commercially reasonable efforts to remedy its failure to perform.
- (b) To the extent that the Party claiming relief does not comply with its obligations under this Section 44.3, such failure shall be taken into account in determining such Party's entitlement to relief pursuant to this Section 44.
- (c) The Party claiming relief shall give written notice to the other Party within 5 Business Days of such Party becoming aware of the relevant event of Force Majeure. Such initial notice shall give sufficient details to identify the particular event claimed to be an event of Force Majeure.
- (d) A subsequent written notice shall be given by the Party claiming relief to the other Party within a further 5 Business Days of the initial notice, which notice shall contain such relevant information relating to the failure to perform (or delay in performing) as is available, including, without limitation, the effect of the event of Force Majeure on the ability of the Party to perform, the action being taken in accordance with Section 44.3(a), the date of the occurrence of the event of Force Majeure, and an estimate of the period of time required to overcome the event of Force Majeure and its effects.
- (e) The Party claiming relief shall notify the other as soon as the consequences of the event of Force Majeure have ceased and of when performance of its affected obligations can be resumed.
- (f) If, following the issue of any notice referred to in Section 44.3(d), the Party claiming relief receives or becomes aware of any further information relating to the event of Force Majeure and/or any failure to perform, such Party shall submit such further information to the other Party as soon as reasonably possible.

44.4 Insured Exposure

- (a) The compensation payable to Project Co pursuant to this Section 44 shall be reduced by any amount which Project Co or a Project Co Party recovers, or is entitled to recover, under any insurance policy, or would have recovered if it had complied with the requirements of this Project Agreement in respect of insurance or the terms of any policy of insurance required under this Project Agreement, which amount, for greater certainty, shall not include any excess or deductibles or any amount over the maximum amount insured under any such insurance policy.

44.5 Modifications

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

45. PROJECT CO DEFAULT**45.1 Project Co Events of Default**

- (a) Subject to Section 45.1(b), for the purposes of this Project Agreement, “**Project Co Event of Default**” means any one or more of the following events or circumstances:
- (i) the occurrence of any of the following events other than as a consequence of a breach by HMQ of its payment obligations hereunder:
- (A) Project Co or any [REDACTED] 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 or of any [REDACTED] with respect to Project Co or any [REDACTED] or any of the property, assets or undertaking of Project Co or of any [REDACTED], or any creditor of Project Co or of any [REDACTED] takes control, or takes steps to take control, of Project Co or any [REDACTED] or any of Project Co’s or of any [REDACTED] assets, or any proceedings are instituted against Project Co or any [REDACTED] that result in Project Co or any [REDACTED] 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 or any [REDACTED] seeking any such result, or any such proceedings are instituted by a person other than Project Co, any [REDACTED], HMQ, an HMQ Party or a person related to any of them seeking such result and such proceedings have or will have a material adverse effect on the Governmental Activities or the availability of the Extension to Extension Users (where such proceedings have not been withdrawn, stayed, discharged, or are otherwise of no further effect, within 90 days of being instituted), under any Applicable Law (including the *Bankruptcy and Insolvency Act* (Canada) and the *Companies’ Creditors Arrangement Act* (Canada)) relating to bankruptcy, insolvency or reorganization of or relief with respect to debtors or debtors’ obligations or assets or other similar matters, or seeking the appointment of a receiver, manager, administrator, administrative receiver, receiver and manager, trustee, custodian or other similar official or like person for it or with respect to any of its assets, or any resolutions are passed or other corporate actions of Project Co or any [REDACTED] are taken to authorize any of the actions set forth in this Section 45.1(a)(i)(A);
- (B) Project Co or any [REDACTED] 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 any [REDACTED] or if a distress or analogous process is levied against any property of Project Co or of any [REDACTED] that materially adversely affects Project Co's ability to perform its obligations hereunder; or
- (D) Project Co or any [REDACTED] shall suffer any event, or any event or set of circumstances occurs or comes about, analogous to the foregoing events or sets of circumstances set out in this Section 45.1(a)(i) in any jurisdiction in which it is incorporated or resident and such event or set of circumstances would, if set out in Section 45.1(a)(i)(A), (B) or (C), constitute a Project Co Event of Default;
- (ii) Project Co failing to achieve Substantial Completion within 365 days after the Scheduled Substantial Completion Date (the "**Longstop Date**");
- (iii) Project Co either:
 - (A) failing to deliver a rectification plan under Section 22.3(a)(iii)(B);
 - (B) delivering a rectification plan under Section 22.3(a)(iii)(B) which indicates that Project Co will not achieve Substantial Completion by the Longstop Date; or
 - (C) delivering a rectification plan under Section 22.3(a)(iii)(B) that is not acceptable to the Independent Certifier, acting reasonably, as to the matters set out in Section 22.3(a)(iii)(B)(II);
- (iv) Project Co or any [REDACTED] making any representation or warranty herein that is false or misleading when made, and that has or will have at any time a material adverse effect on the performance of Project Operations, the Governmental Activities or the availability of the Extension to Extension Users, or that may compromise (1) HMQ's reputation or integrity or the nature of the Province of Ontario's highway system or the Province of Ontario's undertaking of any Tolling Activities, or (2) the ability of HMQ to conduct its business, so as to negatively affect public perception of that system or undertaking, and, in the case of a false or misleading representation or warranty that is capable of being remedied, such breach is not remedied within 10 Business Days of receipt of notice of the same from HMQ;
- (v) Project Co committing a breach of Sections 52 or 53 or a breach of its obligations under this Project Agreement (other than a breach that is referred to in Sections 45.1(a)(i) to (iv) inclusive or 45.1(a)(vi) to (xx) inclusive) which has or will have a material adverse effect on the Governmental Activities or the availability of the Extension to Extension Users, other than where such breach is a consequence of a breach by HMQ 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 HMQ and the Governmental Activities or the availability of the Extension to Extension Users;
 - (II) put forward, within 5 Business Days of receipt of notice of such breach from HMQ, a reasonable plan and schedule for diligently remedying the breach and mitigating its effect, which plan and schedule shall specify in reasonable detail the manner in which, and the latest date by which, such breach is proposed to be remedied, which latest date shall in any event be within 60 days of notice of such breach, or if such breach is not capable of being rectified in such period then such longer period as is reasonable in the circumstances; and
 - (III) thereafter perform its obligations to achieve all elements of such plan and schedule in accordance with its terms within the time for the performance of its obligations thereunder; and
- (B) upon Project Co failing to comply with any of the provisions of Section 45.1(a)(v)(A):
- (I) Project Co shall continue to diligently remedy the breach and to mitigate any adverse effects on HMQ and the Governmental Activities or the availability of the Extension to Extension Users;
 - (II) Project Co shall, within 3 Business Days after notice from HMQ, submit a plan and schedule, which HMQ shall have no obligation to accept, for remedying the breach and mitigating its effect within such period, if any, acceptable to HMQ, in its sole discretion, and thereafter perform its obligations to achieve all elements of such plan and schedule in accordance with its terms within the time for the performance of its obligations thereunder; and
 - (III) for greater certainty, Project Co failing to comply with any of the provisions of this Section 45.1(a)(v)(B), or HMQ, in its sole discretion, not accepting the plan and schedule submitted by Project Co pursuant to that Section, shall constitute a Project Co Event of Default;
- (vi) Project Co wholly abandoning the Works for a period which exceeds 3 Business Days from receipt by Project Co of a written request to return to the Site, other than as a consequence of a breach by HMQ of its obligations under this Project Agreement;
- (vii) Project Co ceasing to perform any OM&R Work in accordance with this Project Agreement which is necessary for the Governmental Activities or the availability of the Extension to Extension Users, other than as a consequence of a breach by HMQ of its obligations under this Project Agreement;
- (viii) Project Co failing to comply with Sections 59.1 or 59.3;

- (ix) the occurrence of any Change in Ownership or Change in Control which is prohibited by Section 59.4;
- (x) Project Co being awarded a total of [REDACTED] or more Failure Points in any rolling 3 Payment Periods;
- (xi) Project Co being awarded a total of [REDACTED] or more Failure Points in any rolling 6 Payment Periods;
- (xii) Project Co being awarded a total of [REDACTED] or more Failure Points in any rolling 12 Payment Periods;
- (xiii) Project Co failing to remove an Encumbrance that arose due to an act or omission of Project Co or any Project Co Party (other than a Title Encumbrance and any Encumbrance derived through HMQ) within 45 days of the earlier of:
 - (A) the registration of such Encumbrance against title to the Lands or any part thereof; and
 - (B) the date on which Project Co or any Project Co Party knew, or ought to have known, about the existence of the Encumbrance;
- (xiv) Project Co failing to pay any sum or sums due to HMQ under this Project Agreement, which sum or sums are not being disputed by Project Co in accordance with Schedule 27 - Dispute Resolution Procedure and which sum or sums, either singly or in aggregate, exceed(s) \$[REDACTED] (index linked), and such failure continues for 30 days from receipt by Project Co of a notice of non-payment from HMQ;
- (xv) Project Co failing to comply with Section 60;
- (xvi) Project Co failing to comply with Section 7.3 or Schedule 28 - Refinancing;
- (xvii) Project Co failing to obtain any bond, security or insurance required to be obtained by or on behalf of Project Co pursuant to this Project Agreement or any such bond, security or insurance being vitiated or otherwise ceasing to be in full force and effect or in material compliance with the requirements set out in this Project Agreement, other than as a consequence of a breach by HMQ of its obligations under this Project Agreement, and:
 - (A) in respect of insurance, such breach by Project Co is not remedied within 10 Business Days of the occurrence of the breach; and
 - (B) in respect of a bond or security, such breach by Project Co is not remedied within 5 Business Days of Project Co becoming aware of such breach;
- (xviii) Project Co failing to comply with any determination, order or award made against Project Co in accordance with Schedule 27 - Dispute Resolution Procedure;

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

45.2 Notification of Occurrence

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

45.3 Right to Termination

- (a) On the occurrence of a Project Co Event of Default, or at any time after HMQ becomes aware of a Project Co Event of Default (and, if the occurrence of a Project Co Event of Default is disputed

by Project Co in good faith, then following confirmation in accordance with Schedule 27 - Dispute Resolution Procedure that a Project Co Event of Default has occurred), HMQ may, subject to Section 45.4, terminate this Project Agreement in its entirety by written notice having immediate effect, such notice to be given to Project Co, and to any person specified in the Lenders' Direct Agreement to receive such notice.

45.4 Remedy Provisions

- (a) In the case of a Project Co Event of Default referred to in Sections 45.1(a)(i)(B), 45.1(a)(i)(C), 45.1(a)(i)(D) (where the Project Co Event of Default referred to in Section 45.1(a)(i)(D) is analogous to a Project Co Event of Default referred to in Section 45.1(a)(i)(B) or 45.1(a)(i)(C)), 45.1(a)(iii), 45.1(a)(iv), 45.1(a)(vi), 45.1(a)(vii), 45.1(a)(viii), 45.1(a)(ix) (where the Project Co Event of Default referred to in Section 45.1(a)(ix) is capable of being remedied), 45.1(a)(xiv), 45.1(a)(xvi), 45.1(a)(xvii) (where the Project Co Event of Default referred to in Section 45.1(a)(xvii) is not in respect of insurance), 45.1(a)(xviii), 45.1(a)(xix) or 45.1(a)(xx), HMQ shall, prior to being entitled to terminate this Project Agreement, give notice of default to Project Co, and to any person specified in the Lenders' Direct Agreement to receive such notice, and Project Co shall:
 - (i) within 5 Business Days of such notice of default, put forward a reasonable plan and schedule for diligently remedying the Project Co Event of Default, which schedule shall specify in reasonable detail the manner in, and the latest date by which, such Project Co Event of Default is proposed to be remedied, which latest date shall, in any event, be within 30 days of the notice of default, or if such breach is not capable of being remedied in such period then such longer period as is acceptable to HMQ, acting reasonably; and
 - (ii) thereafter, perform its obligations to achieve all elements of such plan and schedule in accordance with its terms within the time for the performance of its obligations thereunder.
- (b) Where Project Co puts forward a plan and schedule in accordance with Section 45.4(a)(i) that has a date for the Project Co Event of Default to be remedied that is beyond 30 days from the notice of default, HMQ shall have 5 Business Days from receipt of the same within which to notify Project Co that HMQ does not accept such longer period in the plan and schedule and that the 30 day limit will apply, failing which HMQ shall be deemed to have accepted the longer period in the plan and schedule.
- (c) If a Project Co Event of Default, of which a notice of default was given under Section 45.4(a), occurs and:
 - (i) Project Co fails to immediately commence and thereafter diligently continue to remedy the Project Co Event of Default and to mitigate any adverse effects on HMQ and the Governmental Activities or the availability of the Extension to Extension Users; or
 - (ii) Project Co fails to put forward a plan and schedule pursuant to Section 45.4(a)(i); or

- (iii) such Project Co Event of Default is not remedied within 30 days of such notice of default or such longer period as is established pursuant to the plan and schedule established pursuant to Sections 45.4(a) and (b); or
- (iv) where Project Co puts forward a plan and schedule pursuant to Section 45.4(a)(i) and Project Co fails to perform its obligations thereunder necessary to achieve all elements of such plan and schedule in accordance with its terms within the time for the performance of its obligations,

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

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

45.5 Replacement of Non-Performing OM&R Provider

- (a) HMQ may, acting reasonably, require Project Co to terminate the OM&R Contract and ensure that a replacement OM&R Provider is appointed in accordance with Section 59.3 to provide the OM&R Work within 60 days:
 - (i) if HMQ could have exercised a right to terminate this Project Agreement but for the provisions of Section 45.1(b), and the Project Co Event of Default was caused, or contributed to, by the OM&R Provider or otherwise relates to the OM&R Work; or
 - (ii) as an alternative to termination of this Project Agreement pursuant to Sections 45.3 or 45.4, in any circumstance in which HMQ could exercise such right of termination, if the Project Co Event of Default was caused, or contributed to, by the OM&R Provider or otherwise relates to the OM&R Work; or
 - (iii) if Project Co accrues, in any rolling 6 Payment Periods more than:
 - (A) **[REDACTED]** Failure Points in respect of Availability Failures; or
 - (B) **[REDACTED]** Failure Points in respect of Quality Failures,

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

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

45.6 HMQ's Costs

- (a) Project Co shall reimburse HMQ for all reasonable costs (including all applicable Taxes and all legal or professional services, legal costs being on a full indemnity basis) properly incurred by HMQ in exercising its rights under this Section 45, including any relevant increased administrative expenses. HMQ shall take commercially reasonable steps to mitigate such costs.

45.7 No other Rights to Terminate

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

46. HMQ DEFAULT

46.1 HMQ Events of Default

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

- (B) subject to Section 46.1(a)(i)(C), in respect of any Monthly OM&R Payment, such failure continues for 30 days;
- (C) in respect of any 3 Monthly OM&R Payments in any rolling 9 month period, such failure continues for 15 Business Days in respect of each such Monthly OM&R Payment; or
- (D) in respect of any other payment due and payable by HMQ to Project Co under this Project Agreement, such failure continues for 90 days,

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

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

46.2 Project Co’s Options

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

46.3 Project Co’s Costs

- (a) HMQ shall reimburse Project Co for all reasonable costs (including all applicable Taxes and all legal or professional services, legal costs being on a full indemnity basis) properly incurred by Project Co in exercising its rights under this Section 46, including any relevant increased administrative expenses. Project Co shall take commercially reasonable steps to mitigate such costs.

46.4 No Other Rights to Terminate

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

47. RELIEF EVENT AND NON-DEFAULT TERMINATION**47.1 Termination for Relief Event**

- (a) Subject to Section 47.1(b), if a Relief Event occurs and the effects of the Relief Event continue for 180 days from the date on which the Party affected gives notice to the other Party pursuant to Section 43.3(c), either Party may, at any time thereafter, terminate this Project Agreement by written notice to the other Party having immediate effect, provided that the effects of the Relief Event continue during such period to prevent either Party from performing a material part of its obligations under this Project Agreement.
- (b) Neither Party shall be entitled to exercise its right to terminate this Project Agreement in accordance with Section 47.1(a) if Project Co or a Project Co Party recovers, or is entitled to recover, under any insurance policy, or would have recovered if it had complied with the requirements of this Project Agreement in respect of insurance or the terms of any policy of insurance required under this Project Agreement, an amount which, together with all Monthly OM&R Payments for the relevant Payment Period or Payment Periods, is equal to or greater than the Senior Debt Service Amount and the Junior Debt Service Amount for the relevant Payment Period or Payment Periods.

47.2 Termination for Force Majeure

- (a) If an event of Force Majeure occurs and the Parties, having used commercially reasonable efforts, have failed to reach agreement on any modification to this Project Agreement pursuant to Section 44.5 within 180 days from the date on which the Party affected gives notice to the other Party as set out therein, either Party may, at any time thereafter, terminate this Project Agreement by written notice to the other Party having immediate effect, provided that the effects of the event of Force Majeure continue during such period to prevent either Party from performing a material part of its obligations under this Project Agreement.

47.3 Termination for Convenience

- (a) HMQ 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 HMQ in accordance with this Section 47.3, HMQ shall, at any time before the expiration of such notice, be entitled to direct Project Co to refrain from commencing, or allowing any third party to commence, the Works, or any part or parts of the Works, or the OM&R Work, or any element of the OM&R Work, where such Works or OM&R Work have not yet been commenced.

47.4 Automatic Expiry on Expiry Date

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

48. EFFECT OF TERMINATION**48.1 Termination**

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

48.2 Continued Effect - No Waiver

- (a) Notwithstanding any breach of this Project Agreement by a Party, the other Party may elect to continue to treat this Project Agreement as being in full force and effect and to enforce its rights under this Project Agreement without prejudice to any other rights which such other Party may have in relation to such breach. The failure of either Party to exercise any right under this Project Agreement, including any right to terminate this Project Agreement and any right to claim damages, shall not be deemed to be a waiver of such right for any continuing or subsequent breach.

48.3 Continuing Performance

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

48.4 Effect of Notice of Termination

- (a) On the service of a notice of termination, or termination on the Expiry Date pursuant to Section 47.4:
 - (i) if termination is prior to the Substantial Completion Date, in so far as any transfer shall be necessary to fully and effectively transfer such property to HMQ as shall not already have been transferred to HMQ pursuant to Section 55.1, Project Co shall transfer to, and there shall vest in, HMQ, free from all Encumbrances (other than the Title Encumbrances and any Encumbrances caused or consented to by HMQ), such part of the Works and Extension as shall have been constructed and such items of the Plant and equipment as shall have been procured by Project Co, and, if HMQ so elects:

- (A) all plant, equipment and materials (other than those referred to in Section 48.4(a)(i)(B)) on or near to the Site shall remain available to HMQ for the purposes of completing the Works; and
- (B) all construction plant and equipment shall remain available to HMQ for the purposes of completing the Works, subject to payment by HMQ of the Construction Contractor's reasonable charges;
- (ii) if termination is prior to the Substantial Completion Date, Project Co shall deliver to HMQ (to the extent such items have not already been delivered to HMQ) one complete set of all Project Data and Intellectual Property relating to the design, construction and completion of the Works and the Extension;
- (iii) in so far as title shall not have already passed to HMQ pursuant to Section 55.1 or Section 48.4(a)(i), Project Co shall hand over to, and there shall vest in, HMQ, free from all Encumbrances (other than the Title Encumbrances and any Encumbrances caused or consented to by HMQ), the Extension together with all other assets and rights capable of being transferred that are necessary for the performance of the Project and the Project Operations and all facilities and equipment including, notwithstanding that termination may occur prior to the Expiry Date, the verification and transfer of inventory as set forth in Appendix C (Expiry Date Requirements), Section 10.3 of the OM&R Specifications, and to the extent that any such assets or rights are not capable of being transferred by Project Co to HMQ, Project Co shall enter into agreements or make other arrangements in order to permit the use of the assets or rights by HMQ in order to enable it, or its designated agents or subcontractors, to continue to perform the activities which would have otherwise been performed by Project Co if this Project Agreement had not been terminated;
- (iv) if HMQ so elects, Project Co shall ensure that any of the Subcontracts between Project Co and a Subcontractor (including the Construction Contract and the OM&R Contract), and any other instrument entered into between any such Subcontractor and Project Co for securing the performance by such Subcontractor of its obligations in respect of the Project Operations or to protect the interests of Project Co, shall be novated or assigned to HMQ or its nominee, provided that where termination occurs other than as a result of a Project Co Event of Default, the consent of the relevant Subcontractor shall be required, and further provided that any such novation or assignment of a Subcontract with the Construction Contractor or the OM&R Provider shall be made to HMQ pursuant to, and subject to, the terms of the applicable Direct Agreement;
- (v) Project Co shall, or shall ensure that any Project Co Party shall, offer to sell (and if HMQ so elects, execute such sale) to HMQ at a fair value (determined as between a willing vendor and willing purchaser, with any Disputes as to such fair value being resolved in accordance with Schedule 27 - Dispute Resolution Procedure), free from all Encumbrances (other than the Title Encumbrances and any Encumbrances caused or consented to by HMQ), 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 Extension, and reasonably required by HMQ in connection with the operation of the Extension or the performance of the OM&R Work;

- (vi) Project Co shall deliver to HMQ (to the extent such items have not already been delivered to HMQ) one complete set of:
 - (A) the most recent As Built Drawings in the format that HMQ, acting reasonably, considers most appropriate at the time showing all alterations made to each Section since the relevant Section Substantial Completion Date; and
 - (B) the most recent maintenance, operation and training manuals for the Extension;
- (vii) Project Co shall use commercially reasonable efforts to assign, or otherwise transfer, to HMQ, free from all Encumbrances (other than the Title Encumbrances and any Encumbrances caused or consented to by HMQ), 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 Extension;
- (viii) Project Co shall deliver to HMQ all information, reports, documents, records and the like referred to in Section 37, including as referred to in Schedule 26 - Record Provisions, except where such are required by Applicable Law to be retained by Project Co or the Project Co Parties (in which case complete copies shall be delivered to HMQ); and
- (ix) in the case of the termination of this Project Agreement on the Expiry Date in accordance with Section 47.4, the Extension and elements of the Extension shall be in the condition required in accordance with Section 50 and Schedule 24 - Expiry Transition Procedure.

48.5 Ownership of Information

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

48.6 Provision in Subcontracts

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

48.7 Transitional Arrangements

- (a) On the termination of this Project Agreement for any reason, for a reasonable period both before and after any such termination, Project Co shall, subject to the continued performance of OM&R Work pursuant to Sections 3.2 and 3.3 of Schedule 23 - Compensation on Termination if applicable:
 - (i) cooperate fully with HMQ, any Toll Operator and any successors providing services in the nature of any of the OM&R Work, any part of the OM&R Work or any Tolling Works in order to achieve a smooth transfer of the manner in which the OM&R Work and/or the Tolling Work, as applicable, is performed and to avoid or mitigate, in so far as reasonably practicable, any inconvenience or any risk to the health and safety of any Extension Users;
 - (ii) as soon as practicable remove from the Site all property belonging to Project Co or any Project Co Party that is not acquired by HMQ pursuant to Section 48.4 or otherwise, and, if Project Co has not done so within 60 days after any notice from HMQ requiring it to do so, HMQ may, without being responsible for any loss, damage, costs or expenses, remove and sell any such property and shall hold any proceeds, less all costs incurred to the credit of Project Co;
 - (iii) forthwith deliver to the HMQ Representative:
 - (A) all keys to, and any pass cards and other devices used to gain access to any part of the Extension; and
 - (B) to the extent transferable and without prejudice to HMQ's rights pursuant to Section 51, any copyright licences for any computer programs, or licences to use the same, used in connection with the operation of the Extension; and
 - (iv) as soon as practicable vacate the Site and, without limiting Project Co's obligations under Schedule 24 - Expiry Transition Procedure, shall leave the Site and the Extension in a safe, clean and orderly condition.
- (b) If HMQ wishes to conduct a competition prior to the Expiry Date with a view to entering into an agreement for the provision of services, which may or may not be the same as, or similar to, the OM&R Work or any part of the OM&R Work, following the expiry of this Project Agreement, Project Co shall, subject to payment of Project Co's reasonable costs, cooperate with HMQ fully in such competition process, including by:
 - (i) providing any information which HMQ may reasonably require to conduct such competition, including all information contained in any asset management system maintained by Project Co not otherwise transferred to HMQ, other than Sensitive Information; and
 - (ii) assisting HMQ by allowing any or all participants in such competition process unrestricted access to the Site and the Extension.

48.8 Termination upon Aforesaid Transfer

- (a) On completion of Project Co's obligations pursuant to this Section 48, this Project Agreement shall terminate and, except as provided in Section 48.9, all rights and obligations of HMQ and Project Co under this Project Agreement shall cease and be of no further force and effect.

48.9 Survival

- (a) Except as otherwise provided in this Project Agreement, termination of this Project Agreement shall be without prejudice to, and shall not affect:
 - (i) all representations, warranties and indemnities under this Project Agreement; and
 - (ii) Sections 1.2, 1.3, 5, 6, 7, 15.2, 16.1, 16.2(a), 16.3(a), 16.4(a), 25.6, 26.8, 31.4, 32, 34.6, 34.8, 34.13, 34.14, 34.15, 35, 36, 37, 45.6, 46.3, 47.4, 48, 49, 50, 51, 52, 53, 55, 56, 57, 58, 60.3, 61.1, 64.4, 64.8, 64.9, 64.10, 64.11 and 64.12 of this Project Agreement, Schedule 23 - Compensation on Termination, Sections 2, 4 and 5 of Schedule 24 - Expiry Transition Procedure, Sections 1.2 to 1.8 of Schedule 26 - Record Provisions, Schedule 27 - Dispute Resolution Procedure, and any other provisions of this Project Agreement which are expressed to survive termination and which are required to give effect to such provisions which survive termination or to such termination or the consequences of such termination,

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

49. COMPENSATION ON TERMINATION

49.1 Compensation on Termination

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

49.2 Full and Final Settlement

- (a) Except as otherwise provided in Section 49.2(b), any compensation paid pursuant to this Section 49, including pursuant to Schedule 23 - Compensation on Termination in the total amount owing thereunder, shall be in full and final settlement of any claims, demands and proceedings of Project Co and HMQ, and each shall be released from all liability to the other in relation to any breaches or other events leading to such termination of this Project Agreement, and the circumstances leading to such breach or termination, and Project Co and HMQ shall be precluded from exercising all other rights and remedies in respect of any such breach or termination whether in contract, tort, restitution, statute, at common law or otherwise.
- (b) Section 49.2(a) shall be without prejudice to:

- (i) any liability of either Party to the other, including under the indemnities contained in this Project Agreement, that arose prior to the Termination Date (but not from the termination itself or the events leading to such termination) to the extent such liability has not already been set off pursuant to Section 34.13 or taken into account pursuant to Schedule 23 - Compensation on Termination in determining or agreeing upon the HMQ Default Termination Sum, Adjusted Highest Qualifying Tender Price, Adjusted Estimated Fair Value, Non-Default Termination Sum, Prohibited Acts Termination Sum or any other termination sum, as the case may be;
- (ii) any liabilities arising under or in respect of any breach by either Party of their obligations under Section 48.9 of this Project Agreement, or the Sections referred to therein, which did not lead to such termination and which arises or continues after the Termination Date; and
- (iii) any amount owing to HMQ in relation to:
 - (A) taxes or tax withholdings, including workers' compensation levies;
 - (B) fines, penalties or restitution orders by a court under any Federal or Provincial statute;
 - (C) any order made by a court under the *Civil Remedies Act*, S.O. 2001, c.28; and
 - (D) any fraud or other criminal offence committed against HMQ.
- (iv) any right or remedy available to HMQ pursuant to Schedule 36 - Tolling Infrastructure, including the right of HMQ to draw on the Tolling Civil Infrastructure Letter of Credit;

50. EXPIRY TRANSITION PROCEDURE

50.1 Expiry Transition

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

51. INTELLECTUAL PROPERTY

51.1 Representation and Warranty

- (a) Project Co represents, warrants and covenants to HMQ and agrees that:
 - (i) Project Co is and shall be the sole and exclusive owner of the Project Data and the Intellectual Property Rights or has and shall have the right to provide the licences granted to HMQ herein;
 - (ii) Project Co has and shall have the right to execute, and shall ensure that the Project Co Parties have the right to execute, all assignments of Intellectual Property, Project Data and Jointly Developed Materials contemplated under this Section 51; and

- (iii) the Project Data and the Intellectual Property Rights do not and shall not infringe, and are not and shall not be misappropriation of, any third party Intellectual Property Rights, and, as of Commercial Close, Project Co has not received any alleged infringement or misappropriation notices from third parties regarding the Project Data or the Intellectual Property Rights.

51.2 Delivery of Project Data and Intellectual Property Rights

- (a) Project Co shall make all Project Data and Intellectual Property Rights available to, and upon request shall deliver to, HMQ free of charge all Project Data, and shall obtain all necessary licences, permissions and consents to ensure that Project Co shall make the Project Data and Intellectual Property Rights available to and deliver the Project Data to HMQ on the aforesaid terms of this Section 51.2(a), for any and all of the Approved Purposes.

51.3 Licence of Project Data and Intellectual Property Rights

- (a) Project Co:
 - (i) hereby grants to HMQ an irrevocable, worldwide, royalty free, perpetual, non-exclusive and transferable licence, including the right to grant sub-licences, to use the Project Data and the Intellectual Property Rights for any and all of the Approved Purposes;
 - (ii) shall, at Project Co's cost, where any Intellectual Property Rights are or become vested in the Construction Contractor or the OM&R Provider, obtain the grant of an equivalent licence to that referred to in Section 51.3(a)(i), provided that such licence may, in respect of the Construction Contractor's and the OM&R Provider's Intellectual Property Rights that are proprietary and subject to trademark or copyright, be limited to the term of the relevant Subcontract; and
 - (iii) shall, at Project Co's cost, where any Intellectual Property Rights are or become vested in a third party (other than the Construction Contractor or the OM&R Provider), obtain the grant of an equivalent licence to that referred to in Section 51.3(a)(i), provided that Project Co is able to obtain such licence from such third party on reasonable commercial terms and conditions.
- (b) In this Section 51.3 and Section 51.5(a), "use" includes any and all acts of copying, modifying, adapting, translating, incorporating with other materials, creating derivative works and otherwise using the Project Data and Intellectual Property Rights.

51.4 Jointly Developed Materials

- (a) To the extent any data, documents, drawings, reports, plans, software, formulae, calculations or designs or any other materials are developed jointly by Project Co and HMQ pursuant to this Project Agreement or in relation to the Extension, the Site or Project Operations (the "**Jointly Developed Materials**"), then the Parties hereby acknowledge and agree that HMQ shall be the sole and exclusive owner of all right, title and interest in and to the Jointly Developed Materials, any Intellectual Property associated therewith and any and all improvements, modifications and enhancements thereto. Project Co shall, at the request of HMQ, execute such further agreements

and cause the Project Co Parties to execute any and all assignments, waivers of moral rights and other documents as may be reasonably required to fulfill the intent of this provision.

- (b) HMQ 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 Jointly Developed Materials during the Project Term for the sole purposes of Project Co or any Subcontractor performing its obligations under this Project Agreement or its Subcontract, as applicable.
- (c) Upon termination of this Project Agreement, all rights and licences whatsoever granted to Project Co in the Jointly Developed Materials shall automatically terminate, and Project Co shall return any and all Jointly Developed Materials in the custody or possession of Project Co to HMQ.

51.5 Maintenance of Data

- (a) To the extent that any of the data, materials and documents referred to in this Section 51 are generated by, or maintained on, a computer or similar system, Project Co shall procure for the benefit of HMQ, either at no charge or at the lowest reasonable fee, the grant of a licence or sub-licence for any relevant software to enable HMQ or its nominee to access and otherwise use (as such term is defined in Section 51.3(b), subject to the payment by HMQ of any relevant fee) such data, materials and documents for the Approved Purposes.
- (b) Without limiting the obligations of Project Co under Section 51.5(a), Project Co shall ensure the back up and storage in safe custody of the data, materials and documents referred to in this Section 51 in accordance with Good Industry Practice. Project Co shall submit to the HMQ Representative Project Co's proposals for the back up and storage in safe custody of such data, materials and documents and HMQ shall be entitled to object if the same is not in accordance with Good Industry Practice. Project Co shall comply, and shall cause all Project Co Parties to comply, with all procedures to which the HMQ Representative has not objected. Project Co may vary its procedures for such back up and storage subject to submitting its proposals for change to the HMQ Representative, who shall be entitled to object on the basis set out above. Any Disputes in connection with the provisions of this Section 51.5(b) may be referred for resolution in accordance with Schedule 27 - Dispute Resolution Procedure with reference to Good Industry Practice.

51.6 Claims

- (a) Where a demand, claim, action or proceeding is made or brought against HMQ or any Province Person which arises out of the alleged infringement or misappropriation of any rights in or to any Project Data or Intellectual Property Rights or the use thereof by HMQ or any Province Person or because the use of any materials, Plant, machinery or equipment in connection with the Project Operations infringes any rights in or to any Intellectual Property of a third party then, unless such infringement has arisen out of the use of any Project Data or Intellectual Property Rights by HMQ or any Province Person otherwise than in accordance with the terms of this Project Agreement, Project Co shall indemnify, defend and hold harmless HMQ and such Province Person from and against all such demands, claims, actions and proceedings and Section 56.3 shall apply.

51.7 HMQ Trade-Marks

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

51.8 Confidential Information

- (a) It is expressly acknowledged and agreed that nothing in this Section 51 shall be deemed to create or convey to a Party any right, title, or interest in and/or to the Confidential Information of the other Party.

51.9 Government Use of Documents

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

51.10 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 Project Co Party shall use the Project Know-How to the extent that such Project Know-How incorporates, references or is otherwise based on the Project Data, the Intellectual Property Rights, the Jointly Developed Material, the Intellectual Property of HMQ or the Confidential Information of HMQ, including, without limitation, 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, without limitation, use in any other request for proposal or similar procurement process, of the Project Data, the Intellectual Property Rights, the Jointly Developed Material, the Intellectual Property of HMQ or the Confidential Information of HMQ, including, without limitation, the Output Specifications, or any other drawings, reports, documents, plans, formulae, calculations, manuals, or other data that was created specifically for the Project or was based upon the Project Data, the Intellectual Property Rights, the Jointly Developed Material, the Intellectual Property of HMQ or the Confidential Information of HMQ, including, without limitation, the Output Specifications.

52. CONFIDENTIALITY/COMMUNICATIONS**52.1 Disclosure**

- (a) Subject to Sections 52.1(b), 52.1(c) and 52.2, but notwithstanding anything else in this Project Agreement to the contrary, Project Co acknowledges and agrees that, in accordance with the transparency and accountability principles of the IPFP Framework, HMQ 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 HMQ, in its sole discretion, may consider appropriate. In exercising its discretion, HMQ will be guided by the principles set out in Sections 52.1(b) and 52.1(c).
- (b) HMQ will not disclose portions of this Project Agreement, any terms hereof, including any contractual submissions or other records kept in accordance with this Project Agreement, any information related to the performance of Project Co (or any Project Co Party) or any information derived from this Project Agreement or the information related to the performance of Project Co (or any Project Co Party) which would be exempt from disclosure under section 17(1) of FIPPA.
- (c) Notwithstanding Section 52.1(b), but subject to Section 52.2, where a compelling public interest in the disclosure of the information clearly outweighs the public interest in limiting the disclosure of the information supplied by Project Co (or any Project Co Party), HMQ may disclose such information.

52.2 Redaction

- (a) Prior to disclosing or publishing this Project Agreement, any terms hereof, including any contractual submissions or other records kept in accordance with this Project Agreement, any information related to the performance of Project Co (or any Project Co Party) or any information derived from this Project Agreement or the information related to the performance of Project Co (or any Project Co Party), HMQ shall provide to Project Co a redacted version of this Project Agreement or other documents or information to be disclosed or published, on the basis that the information so redacted constitutes information which should not be disclosed pursuant to Section 52.1(b). The Parties acknowledge and agree that the Annual OM&R Payment, but not the breakdown thereof, may be disclosed.
- (b) If Project Co, acting in good faith, contends that any of the information not redacted constitutes information that falls within the scope of Section 52.1(b) and, accordingly, would be exempt from disclosure under FIPPA, the dispute may be referred for resolution in accordance with Schedule 27 - Dispute Resolution Procedure, and HMQ shall not disclose any information in dispute until a determination is made. Any such determination shall be made with reference to the text and principles of FIPPA.

52.3 Disclosure to Government

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

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

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

52.5 Use and Disclosure of Confidential Information

- (a) Except as authorized hereunder, each Party shall hold in confidence, not disclose and not permit any person any manner of access to, whether directly or indirectly, any Confidential Information of the other Party, provided that this Section 52 shall not restrict either Party from disclosing such Confidential Information to its professional advisors, to the extent necessary, to enable that Party to perform, to cause to be performed, or to enforce, its rights or obligations under this Project Agreement.
- (b) Project Co may:
 - (i) disclose in confidence to the Lenders and prospective Lenders and their professional advisors such Confidential Information as is reasonably required by the Lenders in connection with the raising or syndication of the financing or any sub-participation in the financing of the Project Operations or which Project Co is obliged to supply by the terms of the Lending Agreements; and
 - (ii) disclose in confidence to any Project Co Party and their professional advisors, such Confidential Information as is necessary for the performance by that Project Co Party of that Project Co Party's obligations under this Project Agreement.
- (c) Project Co acknowledges that HMQ may use the Confidential Information of Project Co for purposes not specific to the Project, but for other general governmental purposes, such as

development of HMQ's alternate procurement and financing policies and framework. HMQ 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 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.
- (f) Without limiting the generality of Section 52.5, Project Co shall comply with the document control and security protocol submitted by Project Co pursuant to Section 20.11 and approved by HMQ, which protocol shall prescribe limitations on the use, disclosure and storage of this Project Agreement and any other Confidential Information specified by HMQ.

52.6 Exceptions

- (a) Information of a Party (the "**Proprietor**"), other than Government Sensitive Information and other than Personal Information, will not be considered to be Confidential Information in the following circumstances:
 - (i) the Proprietor advises the other Party to whom the information has been disclosed (the "**Confidant**") that the information is not required to be treated as Confidential Information;
 - (ii) the information is as of Commercial Close, or becomes at any time thereafter, generally available to or accessible by the public through no fault or wrongdoing of the Confidant;
 - (iii) the information is a matter of public record or in the public domain;
 - (iv) the information was in the possession of the Confidant prior to its disclosure and the Confidant came into possession of such information without being in breach of this Project Agreement;
 - (v) the information is received by the Confidant on a non-confidential basis from a source other than the Proprietor, provided that to the best of the Confidant's knowledge such source is not bound by a confidentiality agreement with the Proprietor or otherwise prohibited from disclosing the information to the Confidant by a contractual, legal or fiduciary obligation;
 - (vi) the information was independently developed by the Confidant without access to the Confidential Information, as evidenced by written records;

- (vii) the information is required to be disclosed pursuant to Applicable Law, provided that the Confidant provides the Proprietor with reasonable notification and an opportunity to contest such requirement prior to disclosure;
- (viii) the information is disclosed to HMQ upon a termination of this Project Agreement, pursuant to Section 48 or is otherwise required by HMQ for the purposes of performing (or having performed) the Project Operations, including the design or construction of the Extension, the operation, maintenance or improvement of the Extension, or any other operations or services the same as, or similar to, the Project Operations; or
- (ix) the information would not be exempt from disclosure under FIPPA.

52.7 Survival of Confidentiality

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

52.8 Communications Protocol

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

53. PERSONAL INFORMATION

53.1 General

- (a) Project Co acknowledges the importance of maintaining the confidentiality and privacy of Personal Information.
- (b) Project Co shall, and shall require each Project Co Party to, only collect, hold, process, use, store and disclose Personal Information with the prior consent of HMQ and: (i) shall not collect, hold, process, use or store Personal Information except to the extent necessary to perform Project Co's obligations under this Project Agreement; and (ii) shall not disclose Personal Information or otherwise permit access to or make Personal Information available to any person except as expressly permitted or instructed by HMQ.
- (c) Project Co shall, and shall require each Project Co Party to, at all times treat Personal Information as strictly confidential and shall comply with all applicable requirements of the Output Specifications and the requirements of Applicable Law, including FIPPA, the *Personal Information Protection and Electronic Documents Act* (Canada) and any other Canadian federal or provincial legislation now in force or that may in the future come into force governing the collection, use, disclosure and protection of personal information applicable to Project Co, each Project Co Party or to the Project Operations.
- (d) Project Co shall take all necessary and appropriate action, and shall require each Project Co Party to take all necessary and appropriate action, against any person who fails to comply with this Section 53.

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

53.2 Protection of Personal Information

- (a) Project Co shall implement and use, and shall require each Project Co Party to implement and use, appropriate technical, organizational and physical security measures to protect Personal Information against loss, theft and unauthorized access, disclosure, copying, use, modification or disposal, and shall otherwise ensure that Project Co, the Project Co Parties, and its and their staff shall protect, secure and keep confidential any Personal Information.
- (b) Project Co shall and shall cause each Project Co Party to restrict access to Personal Information to only those authorized employees that require access to such Personal Information to fulfil their job requirements in connection with the Project Operations and that are subject to obligations of confidentiality and Personal Information protection no less stringent than those of this Section 53.
- (c) Upon termination of this Project Agreement or upon request of HMQ, whichever comes first, Project Co shall immediately cease all use of and return to HMQ or, at the direction of HMQ, dispose of, destroy or render permanently anonymous all Personal Information, in each case using appropriate technical, organizational and physical security measures to protect Personal Information against loss, theft and unauthorized access, disclosure, copying, use or modification.
- (d) To the extent that any of the Project Operations involve or may involve destruction or disposal of Personal Information, including any disposal or destruction pursuant to (c) above, such activities shall include, at a minimum, irreversible destruction, shredding or pulverizing of all documents, records or media containing Personal Information to a size or state that ensures that the document, record or other medium is permanently destroyed and that no information contained therein can be read, reconstructed or deciphered.
- (e) Project Co shall immediately inform HMQ of any actual or suspected loss, theft or accidental or unauthorized access, disclosure, copying, use, modification or destruction of Personal Information by Project Co or any Project Co Party or any other breach of this Section 53.
- (f) HMQ may from time to time require that Project Co and any Project Co Party or member of its or their staff execute and deliver within two Business Days of such request an agreement satisfactory to HMQ, acting reasonably, requiring such person to keep Personal Information confidential.

53.3 Personal Information

- (a) Project Co shall provide, and shall cause each Project Co Party to provide, in a timely manner, all necessary and reasonable information and co-operation to HMQ and to any regulatory or other governmental bodies or authorities with jurisdiction or oversight over Applicable Law governing the collection, use, disclosure and protection of personal information in connection with any investigations, audits or inquiries made by any such bodies or authorities under such legislation.
- (b) To the extent of any conflict or inconsistency between this Section 53 and any other provision of the Project Agreement, this Section 53 shall prevail.
- (c) The obligations in this Section 53 shall survive the termination of this Project Agreement.

54. INSURANCE AND PERFORMANCE SECURITY**54.1 General Requirements**

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

54.2 No Relief from Liabilities and Obligations

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

55. KING'S HIGHWAY/TITLE**55.1 King's Highway/Title**

- (a) Project Co acknowledges that the Extension will be a King's Highway under all interpretations and for all purposes of Applicable Law with ownership vested in HMQ. For greater certainty, no provision of this Project Agreement shall confer upon Project Co any statutory or common law rights or privileges of HMQ with respect to a King's Highway (or of a municipality or other relevant authority with respect to a municipal road) other than the licence rights and other rights specifically set out in this Project Agreement.
- (b) Title to each item and part of the Extension, including any materials, supplies, equipment, facilities, parts and any other deliverable or component items, but not the risk of loss or damage or destruction thereto or thereof, shall pass to HMQ (or as HMQ may direct) upon the receipt of such item on the Site, provided however that title to items of tangible personal property (personal property that can be seen, weighed, measured, felt or touched or that is in any way perceptible to the senses and includes computer programs, natural gas and manufactured gas) that comprise the Extension or are to be affixed or attached to a Section prior to the relevant Section Substantial Completion shall pass to HMQ (or as HMQ may direct) at the time that such items are included in the Extension or affixed or attached to the Extension.

56. INDEMNITIES

56.1 Project Co Indemnities to HMQ

- (a) Project Co shall indemnify and save harmless HMQ 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 a Section Substantial Completion by the relevant Section Substantial Completion Date or Substantial Completion by the Scheduled Substantial Completion Date;
 - (ii) any physical loss of or damage to all or any part of the Site and the Extension, or to any equipment, assets or other property related thereto;
 - (iii) the death or personal injury of any person;
 - (iv) any physical loss of or damage to property or assets of any third party; or
 - (v) any other loss or damage of any third party,
- in each case, arising, directly or indirectly, out of, or in consequence of, or involving or relating to, the performance or any breach of this Project Agreement by Project Co or any act or omission of Project Co or any Project Co Party, except to the extent caused, or contributed to, by:
- (vi) the breach of this Project Agreement by HMQ; or
 - (vii) in respect of Section 56.1(a)(i), deliberate or negligent act or omission of HMQ or any Province Person; or
 - (viii) in respect of Sections 56.1(a)(ii), 56.1(a)(iii), 56.1(a)(iv) or 56.1(a)(v), any act or omission of HMQ or any Province Person; or
 - (ix) a deliberate or negligent act or omission of an Extension User that results in undue interference with Project Co's performance of the OM&R Work and Project Co has been unable to take commercially reasonable steps necessary to prevent, negate or mitigate the undue interference due to acting in accordance with a recommendation or instruction of HMQ or an appropriate Province Person, except to the extent:
 - (A) any such deliberate or negligent act or omission is caused or contributed to by Project Co or any Project Co Party; or
 - (B) the Extension User is acting in accordance with a direction, recommendation or instruction of Project Co or any Project Co Party.
- (b) Project Co shall indemnify and save harmless HMQ and each of its directors, officers, employees, agents and representatives from and against any and all Direct Losses which may be suffered,

sustained, incurred or brought against them as a result of, in respect of, or arising out of any breach of a representation or warranty by Project Co herein.

- (c) Project Co shall indemnify and save harmless HMQ and each of its directors, officers, employees, agents and representatives from and against any and all Direct Losses which may be suffered, sustained, incurred or brought against them as a result of, in respect of, arising out of, or involving or relating to any one or more of the following:
 - (i) the performance by Project Co of this Project Agreement not in accordance with or in breach of the requirements of any Permits, Licences and Approvals, Applicable Law or requirements of Governmental Authorities, or the failure of Project Co to obtain all necessary Project Co Permits, Licences and Approvals in accordance with this Project Agreement;
 - (ii) any Contamination on, in or under, or migrating to or from, the Lands (or any lands formerly comprised in the Lands to the extent such Contamination was on, in or under, or migrated to or from, such lands while they were comprised in the Lands), except for Contamination for which HMQ is responsible pursuant to Section 16.2(a); or
 - (iii) the provision of assistance by HMQ to Project Co pursuant to Section 9.6(c),

except to the extent that such Direct Losses are caused, or contributed to, by the breach of this Project Agreement by HMQ or by any act or omission of HMQ or any HMQ Party.
- (d) Without prejudice to HMQ's rights under Section 45 and any other rights under this Project Agreement, if HMQ exercises its step-in rights under the Construction Contractor's Direct Agreement or the OM&R Provider's Direct Agreement, Project Co shall indemnify HMQ for all obligations of Project Co assumed by HMQ under the Construction Contract or the OM&R Contract, as the case may be, and for all reasonable costs and expenses incurred by HMQ in relation to the exercise of HMQ's rights.
- (e) Project Co shall indemnify HMQ for damages suffered or incurred on account of: (i) any payment not duly made by Project Co pursuant to the terms of this Project Agreement on the due date; (ii) any overpayment to or underpayment by Project Co; or (iii) an amount determined as payable by Project Co to HMQ under Schedule 27 - Dispute Resolution Procedure, by payment of an amount equal to the Payment Compensation Amount calculated from day to day at a rate per annum from the day after the date on which payment was due, the day on which overpayment was made by HMQ, or from the date identified (if any) applicable to an amount determined as payable by Project Co to HMQ under Schedule 27 - Dispute Resolution Procedure, up to and including the date of payment.

56.2 HMQ Indemnities to Project Co

- (a) HMQ shall indemnify and save harmless Project Co and the Project Co Parties and each of their respective directors, officers, employees, agents and representatives from and against any and all Direct Losses which may be suffered, sustained, incurred or brought against them as a result of, in respect of, or arising out of any one or more of the following:

- (i) the death or personal injury of any person arising, directly or indirectly, out of, or in consequence of, or involving or relating to, the performance or breach of this Project Agreement by HMQ or any act or omission of any Province Person, except to the extent caused, or contributed to, by the breach of this Project Agreement by Project Co or by any act or omission of Project Co or any Project Co Party;
- (ii) any physical loss of or damage to all or any part of any property or assets of Project Co or any Project Co Party, arising, directly or indirectly, out of, or in consequence of, or involving or relating to, breach of this Project Agreement by HMQ or any deliberate or negligent act or omission of any Province Person, except to the extent caused, or contributed to, by the breach of this Project Agreement by Project Co or by any act or omission of Project Co or any Project Co Party; and
- (iii) any physical loss of or damage to property or assets of any third party, or any other loss or damage of any third party, arising, directly or indirectly, out of, or in consequence of, or involving or relating to, breach of this Project Agreement by HMQ or any deliberate or negligent act or omission of any Province Person, except to the extent caused, or contributed to, by the breach of this Project Agreement by Project Co or by any act or omission of Project Co or any Project Co Party,

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

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

56.3 Conduct of Claims

- (a) This Section 56.3 shall apply to the conduct of claims, made by a third person against a Party having, or claiming to have, the benefit of an indemnity pursuant to this Project Agreement. The Party having, or claiming to have, the benefit of the indemnity is referred to as the “**Beneficiary**” and the Party giving the indemnity is referred to as the “**Indemnifier**”.

- (b) If the Beneficiary receives any notice, demand, letter or other document concerning any claim for which it appears that the Beneficiary is, or may become entitled to, indemnification under this Section 56, the Beneficiary shall give written notice to the Indemnifier as soon as reasonably practicable and in any event within 10 Business Days of receipt of the same. Such notice shall specify with reasonable particularity, to the extent that information is available, the factual basis for the claim and the amount of the claim.
- (c) Subject to Sections 56.3(d), 56.3(e) and 56.3(f), on the giving of such notice by the Beneficiary, where it appears that the Beneficiary is or may be entitled to indemnification from the Indemnifier in respect of all, but not part only, of the liability arising out of the claim, the Indemnifier shall (subject to providing the Beneficiary with a secured indemnity to the Beneficiary's reasonable satisfaction against all costs and expenses that the Beneficiary may incur by reason of such action) be entitled to dispute the claim in the name of the Beneficiary at the Indemnifier's own expense and take conduct of any defence, dispute, compromise, or appeal of the claim and of any incidental negotiations. The Beneficiary shall give the Indemnifier all reasonable cooperation, access and assistance for the purposes of considering and resisting such claim. The Beneficiary shall have the right to employ separate counsel in respect of such claim and the reasonable fees and expenses of such counsel shall be to the account of the Indemnifier only where representation of both the Indemnifier and Beneficiary by common counsel would be inappropriate due to any actual or potential conflicting interests between the Indemnifier and Beneficiary.
- (d) With respect to any claim conducted by the Indemnifier:
 - (i) the Indemnifier shall keep the Beneficiary fully informed and consult with it about material elements of the conduct of the claim;
 - (ii) the Indemnifier shall not bring the name or reputation of the Beneficiary into disrepute;
 - (iii) the Indemnifier shall not pay, compromise or settle such claims without the prior consent of the Beneficiary, such consent not to be unreasonably withheld or delayed;
 - (iv) the Indemnifier shall not admit liability or fault to any third party without the prior consent of the Beneficiary, such consent not to be unreasonably withheld or delayed; and
 - (v) the Indemnifier shall use commercially reasonable efforts to have the Beneficiary named as a beneficiary under any release given by the persons bringing the claim to which this Section 56.3 relates.
- (e) The Beneficiary shall be free to pay or settle any such claim on such terms as it thinks fit and without prejudice to its rights and remedies under this Project Agreement if:
 - (i) the Indemnifier is not entitled to take conduct of the claim in accordance with Section 56.3(c);
 - (ii) the Indemnifier fails to notify the Beneficiary of its intention to take conduct of the relevant claim within 10 Business Days of the notice from the Beneficiary under Section

56.3(b) or notifies the Beneficiary that the Indemnifier does not intend to take conduct of the claim; or

- (iii) the Indemnifier fails to comply in any material respect with Section 56.3(d).
- (f) The Beneficiary shall be free at any time to give notice to the Indemnifier that the Beneficiary is retaining or taking over, as the case may be, the conduct of any defence, dispute, compromise or appeal of any claim, or of any incidental negotiations, to which Section 56.3(c) applies. For greater certainty, Project Co acknowledges and agrees that where HMQ is the Beneficiary, HMQ may retain or take over such conduct in any matter involving Personal Information or any matter involving public policy. On receipt of such notice the Indemnifier shall promptly take all steps necessary to transfer the conduct of such claim to the Beneficiary, and shall provide to the Beneficiary all relevant documentation and all reasonable cooperation, access and assistance for the purposes of considering and resisting such claim. If the Beneficiary gives any notice pursuant to this Section 56.3(f), then the Indemnifier shall be released from any liabilities arising under the applicable indemnity hereunder in respect of the applicable claim.
- (g) If the Indemnifier pays to the Beneficiary an amount in respect of an indemnity and the Beneficiary subsequently recovers, whether by payment, discount, credit, saving, relief or other benefit or otherwise, a sum or anything else of value (the “**Recovery Amount**”) which is directly referable to the fact, matter, event or circumstances giving rise to the claim under the indemnity, the Beneficiary shall forthwith repay to the Indemnifier whichever is the lesser of:
 - (i) an amount equal to the Recovery Amount less any out-of-pocket costs and expenses properly incurred by the Beneficiary in recovering the same; and
 - (ii) the amount paid to the Beneficiary by the Indemnifier in respect of the claim under the relevant indemnity,provided that there shall be no obligation on the Beneficiary to pursue any Recovery Amount and that the Indemnifier is repaid only to the extent that the Recovery Amount, aggregated with any sum recovered from the Indemnifier, exceeds the loss sustained by the Beneficiary except, however, that if the Beneficiary elects not to pursue a Recovery Amount, the Indemnifier shall be entitled to require an assignment to it of the right to do so.
- (h) Any person taking any of the steps contemplated by this Section 56.3 shall comply with the requirements of any insurer who may have an obligation to provide an indemnity in respect of any liability arising under this Project Agreement.

56.4 Mitigation - Indemnity Claims

- (a) For greater certainty, Section 64.4 applies to any indemnity given under this Project Agreement and any such indemnity shall not extend to Direct Losses which could have been reduced or avoided by the Beneficiary complying with such Section.

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

- (a) Subject to Section 57.1(b), without prejudice to HMQ's rights under the Payment Mechanism, or the Parties' rights in respect of payments provided for herein, the indemnities under this Project Agreement shall not apply and there shall be no right to claim damages for breach of this Project Agreement, in tort or on any other basis whatsoever, to the extent that any loss claimed by either Party is:
- (i) for punitive, exemplary or aggravated damages;
 - (ii) for loss of profits, loss of use, loss of production, loss of business or loss of business opportunity; or
 - (iii) a claim for consequential loss or for indirect loss of any nature suffered or allegedly suffered by either Party,
- (collectively, "**Indirect Losses**").
- (b) With respect to the indemnity in Section 56.1(a)(i), the exceptions in Sections 57.1(a)(ii) and (iii) shall not apply as a result of, or in relation to, HMQ's loss of use of the Extension or a portion thereof, which for the purposes of Section 56.1(a)(i), shall be Direct Losses, except that the loss of toll revenue by HMQ shall at all times remain an Indirect Loss.

57.2 No Liability in Tort

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

57.3 Sole Remedy

- (a) Subject to:
- (i) any other rights of HMQ expressly provided for in this Project Agreement; and
 - (ii) HMQ's right to claim, on or after termination of this Project Agreement, the amount of its reasonable costs, losses, damages and expenses suffered or incurred by it as a result of rectifying or mitigating the effects of any breach of this Project Agreement by Project Co except to the extent that the same has already been recovered by HMQ pursuant to this Project Agreement or has been taken into account to reduce any compensation payable by HMQ pursuant to Section 49,

the sole remedy of HMQ in respect of a failure to perform the OM&R Work in accordance with this Project Agreement shall be the operation of the Payment Mechanism.

- (b) Nothing in Section 57.3(a) shall prevent or restrict the right of HMQ to seek injunctive relief or a decree of specific performance or other discretionary remedies of a court of competent jurisdiction.
- (c) Notwithstanding any other provision of this Project Agreement, and except to the extent recovered under any of the insurances required pursuant to Schedule 25 - Insurance and Performance Security Requirements, neither Party shall be entitled to recover compensation or make a claim under this Project Agreement, or any other agreement in relation to the Project, in respect of any loss that it has incurred (or any failure of the other Party) to the extent that the Party has already been compensated in respect of that loss or failure pursuant to this Project Agreement, or otherwise.

57.4 Maximum Liability

- (a) Subject to Section 57.4(b), the maximum aggregate liability of each Party in respect of all claims under Section 56 shall not exceed \$[REDACTED]. This limit shall be index linked and shall be exclusive of any insurance or performance security proceeds received or which will be received pursuant to policies maintained in accordance with Schedule 25 - Insurance and Performance Security Requirements. This limit shall not apply in cases of wilful misconduct or deliberate acts of wrongdoing.
- (b) Project Co's maximum aggregate liability in respect of all claims under Section 56.1(a)(i) shall not exceed \$[REDACTED]. This limit shall be index linked and shall be exclusive of any insurance or performance security proceeds received or which will be received pursuant to policies maintained in accordance with Schedule 25 - Insurance and Performance Security Requirements. This limit shall not apply in cases of wilful misconduct or deliberate acts of wrongdoing.
- (c) Nothing in this Section 57.4 shall restrict, limit, prejudice or in any other way impair the rights and/or remedies of the Parties under any other provision of this Project Agreement.

58. DISPUTE RESOLUTION PROCEDURE

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

59. ASSIGNMENT, SUBCONTRACTING AND CHANGES IN CONTROL

59.1 Project Co Assignment

- (a) Project Co shall not assign, transfer, charge, dispose of or otherwise alienate any interest in this Project Agreement, the Construction Contract, the OM&R Contract or any agreement entered into in connection with this Project Agreement without the prior written consent of HMQ, 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: (i) are inconsistent with HMQ's role (in HMQ's reasonable opinion) in the Province of Ontario; (ii) may compromise the reputation or integrity of HMQ and/or any HMQ Party; or (iii) are inconsistent with the nature of the Province of Ontario's highway system or the Province of

Ontario's undertaking of any Tolling Activity, so as to affect public perception of that system or undertaking.

- (b) Section 59.1(a) shall not apply to the grant of any security for any loan made to Project Co under the Lending Agreements provided that any grantee of such security shall enter into the Lenders' Direct Agreement in relation to the exercise of its rights, if HMQ so requires.

59.2 HMQ Assignment

- (a) HMQ may assign, transfer, dispose of or otherwise alienate any interest in this Project Agreement or any agreement in connection with this Project Agreement to which Project Co and HMQ are parties:
 - (i) as may be required to comply with Applicable Law;
 - (ii) to any minister of HMQ;
 - (iii) to an agency of HMQ having the legal capacity, power, authority and ability to become a party to and to perform the obligations of HMQ under this Project Agreement provided that such person confirms in writing to Project Co that it will perform all of HMQ's obligations hereunder and under the other Project Documents to which HMQ is a party in respect of the period from and after the assignment; and
 - (iv) in circumstances other than those described in Sections 59.2(a)(i) to 59.2(a)(iii), with the prior written consent of Project Co; provided that the person to whom any such assignment, transfer, disposition or other alienation is made has the capacity to perform, and confirms in writing to Project Co that it will perform all the obligations of HMQ hereunder and under any agreement in connection with this Project Agreement to which Project Co and HMQ are parties in respect of the period from and after the assignment.
- (b) HMQ shall not be released of any of its obligations under this Project Agreement except upon an assignment, transfer, disposition or other alienation of its interest in this Project Agreement in accordance with this Section 59.2.

59.3 Subcontractors

- (a) Project Co shall not subcontract any interest in this Project Agreement, the Construction Contract or the OM&R Contract, and shall not permit the Construction Contractor or the OM&R Provider to subcontract any interest in the Construction Contract or OM&R Contract, to a Restricted Person, or any Affiliate thereof, or a person whose standing or activities: (i) are inconsistent with HMQ's role (in HMQ's reasonable opinion) in the Province of Ontario; (ii) may compromise the reputation or integrity of HMQ and/or any HMQ Party; or (iii) are inconsistent with the nature of the Province of Ontario's highway system or the Province of Ontario's undertaking of any Tolling Activities, so as to affect public perception of that system or undertaking.
- (b) Project Co shall not terminate, agree to the termination of or replace the Construction Contractor or the OM&R Provider unless Project Co has complied with Sections 7.2(a), 59.3(c) and 59.3(d) or received the prior written consent of HMQ.

- (c) Subject to Section 59.3(d), if either the Construction Contract or the OM&R Contract shall at any time lapse, terminate or otherwise cease to be in full force and effect, whether by reason of expiry, default or otherwise, with the effect that the Construction Contractor or the OM&R Provider, as the case may be, shall cease to act in relation to the Project, Project Co shall forthwith appoint a replacement, subject to HMQ's prior written consent, acting reasonably, as to the suitability of the replacement.
- (d) It is a condition of replacement of the Construction Contractor or OM&R Provider that, and Project Co shall require that, any replacement enter into a contract upon the same or substantially similar terms as the person so replaced and into a direct agreement on the same terms as the Direct Agreement entered into by the person so replaced, unless any material variations are approved by HMQ, acting reasonably.

59.4 Changes in Ownership and Control

- (a) No Change in Ownership of Project Co, or of any person with any form of direct, indirect, beneficial or other ownership interest in Project Co, shall be permitted:
 - (i) where the person acquiring the ownership interest is a Restricted Person or a person whose standing or activities: (i) are inconsistent with HMQ's role (in HMQ's reasonable opinion) in the Province of Ontario; (ii) may compromise the reputation or integrity of HMQ and/or, any HMQ Party; or (iii) are inconsistent with the nature of the Province of Ontario's highway system or the Province of Ontario's undertaking of any Tolling Activities, so as to affect public perception of that system or undertaking; or
 - (ii) if such Change in Ownership would have a material adverse effect on the performance of the Project Operations, the Governmental Activities or the availability of the Extension to Extension Users.
- (b) Prior to the third anniversary following the Substantial Completion Date, HMQ shall be entitled to receive a [REDACTED] per cent share of any Excess Equity Gain arising from a Change in Ownership of Project Co.
- (c) Subject to Sections 59.4(a) and (b), no Change in Control of Project Co, or of any person with any form of direct, indirect, beneficial or other ownership interest in Project Co, shall be permitted without the prior written consent of HMQ.
- (d) This Section 59.4 shall not apply to a Change in Ownership or Change in Control of persons whose equity securities or units evidencing ownership or any other ownership interests are listed on a recognized stock exchange.
- (e) Whether or not Project Co is required to obtain HMQ's consent pursuant to this Section 59.4, Project Co shall provide notice to HMQ of any proposed Change in Ownership or Change in Control of Project Co, or of any person with any form of direct, indirect, beneficial or other ownership interest in Project Co, as the case may be, within 5 Business Days after such Change in Ownership or Change in Control, and such notification shall include a statement identifying such owners, or persons with an ownership interest in Project Co, as the case may be, and their

respective holdings of such ownership interests of Project Co prior to and following any such Change in Ownership or Change in Control.

59.5 HMQ Due Diligence

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

60. PROHIBITED ACTS

60.1 Definition

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

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

- (ii) entering into this Project Agreement or any other agreement with HMQ or any public body in connection with the Project if a commission or a fee has been paid or has been agreed to be paid by Project Co, or on its behalf or to its knowledge, to HMQ or any public body (or anyone employed by or acting on their behalf), or to any family member of such person, unless, before the relevant agreement is entered into, particulars of any such commission or fee have been disclosed in writing to HMQ, provided that this Section 60.1(a)(ii) shall not apply to a fee or commission paid by Project Co or any Project Co Party (or anyone employed by or acting on their behalf) to HMQ or any public body pursuant to an agreement where such fee or commission is paid in the ordinary course, or as reasonably necessary, to fulfill or comply with the obligations and liabilities of Project Co under this Project Agreement or any other agreement with HMQ or any public body in connection with the Project without contravening the intent of this Section 60;

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

60.2 Remedies

- (a) If Project Co or any Project Co Party (or anyone employed by or acting on their behalf) commits any Prohibited Act, then HMQ shall be entitled to act in accordance with the following:
 - (i) if the Prohibited Act is committed by Project Co or by an employee acting under the direction of a director or officer of Project Co, then HMQ may give written notice to Project Co and Section 45 shall apply;
 - (ii) if the Prohibited Act is committed by an employee of Project Co acting independently of a direction of a director or officer of Project Co, then HMQ may give written notice to Project Co and Section 45 shall apply, unless, within 30 days of receipt of such notice, Project Co terminates the employee's employment and ensures that the relevant part of the Project Operations shall be performed by another person;
 - (iii) if a Prohibited Act is committed by a Project Co Party or by an employee of that Project Co Party not acting independently of a direction of a director or officer of that Project Co Party, then HMQ may give written notice to Project Co and Section 45 shall apply, unless, within 30 days of receipt of such notice, Project Co terminates the relevant Subcontract and ensures that the relevant part of the Project Operations shall be performed by another person, where relevant, in accordance with Section 59.3;
 - (iv) if the Prohibited Act is committed by an employee of a Project Co Party acting independently of a direction of a director or officer of that Project Co Party, then HMQ may give notice to Project Co and Section 45 shall apply, unless, within 30 days of receipt of such notice, Project Co causes the termination of the employee's employment and ensures that the relevant part of the Project Operations shall be performed by another person; and
 - (v) if the Prohibited Act is committed on behalf of Project Co or a Project Co Party by a person not specified in Sections 60.2(a)(i) to 60.2(a)(iv), then HMQ may give notice to Project Co and Section 45 shall apply, unless, within 30 days of receipt of such notice, Project Co causes the termination of such person's employment or the appointment of their employer and, if necessary, ensures that the relevant part of the Project Operations shall be performed by another person.
- (b) Any notice of termination under this Section 60.2 shall specify:
 - (i) the nature of the Prohibited Act;
 - (ii) the identity of the person whom HMQ believes has committed the Prohibited Act; and

- (iii) the date of termination in accordance with the applicable provisions of this Project Agreement.
- (c) Without prejudice to its other rights or remedies under this Section 60.2, HMQ shall be entitled to recover from Project Co any Direct Loss sustained in consequence of any breach of this Section 60.

60.3 Permitted Payments

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

60.4 Notification

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

60.5 Replacement of Project Co Party

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

61. NOTICES

61.1 Notices to Parties

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

If to Project Co: [REDACTED]

E-mail: [REDACTED]

Fax: [REDACTED]

Attn.: [REDACTED]

With a copy to: [REDACTED]

Fax: [REDACTED]

Attn.: [REDACTED]

And a copy to: [REDACTED]

Fax: [REDACTED]

Attn.: [REDACTED]

With electronic copies to:

[REDACTED]

[REDACTED]

[REDACTED]

If to HMQ:

Infrastructure Ontario

777 Bay Street

6th Floor

Toronto, Ontario

M5G 2C8

Fax No.: [REDACTED]

Attn.: [REDACTED]

With a copy to:

Ministry of Transportation

1201 Wilson Avenue

Building D, 7th Floor

Toronto, Ontario

M3M 1J8

Fax No.: [REDACTED]

Attn.: [REDACTED]

61.2 Notices to Representatives

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

If to Project Co Representative:

[REDACTED]

Fax No.: [REDACTED]

Attn: [REDACTED]

If to HMQ Representative: Infrastructure Ontario
777 Bay Street
6th Floor
Toronto, Ontario
M5G 2C8

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

With a copy to: Ministry of Transportation
1201 Wilson Avenue
Building D, 7th Floor
Toronto, Ontario
M3M 1J8
Fax No.: [REDACTED]
Attn.: [REDACTED]

61.3 Facsimile

- (a) Where any Notice is provided or submitted to a Party via facsimile, an original of the Notice sent via facsimile shall promptly be sent by regular mail or registered mail. For greater certainty, a Notice given via facsimile shall not be invalid by reason only of a Party's failure to comply with this Section 61.3.

61.4 Change of Address

- (a) Either Party to this Project Agreement may, from time to time, change any of its contact information set forth in Sections 61.1 or 61.2 by prior Notice to the other Party, and such change shall be effective on the Business Day that next follows the recipient Party's receipt of such Notice unless a later effective date is given in such Notice.

61.5 Deemed Receipt of Notices

- (a) Subject to Sections 61.5(b), 61.5(c) and 61.5(d):
- (i) a Notice given by registered mail shall be deemed to have been received on the third Business Day after mailing;
 - (ii) a Notice given by hand delivery shall be deemed to have been received on the day it is delivered; and
 - (iii) a Notice given by facsimile shall be deemed to have been received on the day it is transmitted by facsimile.
- (b) If the Party giving the Notice knows or ought reasonably to know of difficulties with the postal system which might affect negatively the delivery of mail, any such Notice shall not be mailed

but shall be made or given by personal delivery or by facsimile transmission in accordance with this Section 61.

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

61.6 Service on HMQ

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

62. EMERGENCY MATTERS

62.1 Emergency

- (a) From Financial Close until the earliest Section Substantial Completion Date, upon the occurrence of an Emergency, Project Co shall comply with the MTO Central Region Emergency Plan.
- (b) From and after the earliest Section Substantial Completion Date, upon the occurrence of an Emergency, Project Co shall comply with its Emergency Response Plan in accordance with Part 2, Article 14 of the Design and Construction Specifications.
- (c) If, in respect of any Emergency, HMQ notifies Project Co that it requires compliance with any additional or overriding procedures as may be determined by HMQ or any other statutory body, then Project Co shall, subject to Schedule 22 - Variation Procedure (if compliance with such procedures constitutes a Variation), comply with such procedures (whether such procedures are specific to the particular Emergency or of general application and on the basis that such procedures shall take precedence to the extent that they overlap with the procedures mentioned in Section 62.1(a) or (b)).

63. HMQ DESIGNATE

63.1 Right to Designate

- (a) At any time and from time to time, HMQ may designate any ministry, branch, agency, division, department or office of the Government of Ontario to carry out administrative responsibility for the rights and obligations of HMQ under this Project Agreement (including, without limitation, review of all documentation submitted by Project Co, a Project Co Representative or a Project Co Party to HMQ for review, approval, comment, evaluation or otherwise as described in this Project Agreement, engagement in discussions, consultations and meetings with Project Co, submission of notices and documentation to HMQ, 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 HMQ has notified Project Co in writing that such designated person is no longer the person designated by HMQ 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). HMQ 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 HMQ to delegate administrative responsibilities hereunder as set forth in this Section 63.1.

64. GENERAL

64.1 Amendments

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

64.2 Waiver

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

64.3 Relationship Between the Parties

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

enter into any contract or agreement, or make any representations or warranties of any kind to any person, or to assume or create any obligation, express or deemed, on behalf of or binding, or purportedly binding upon, the other Party;

- (ii) neither Party shall be required to make or pay employment benefits, contributions for Employment Insurance, Canada Pension Plan, Workers' Compensation Board or other similar levies with respect to any persons employed or engaged by the other Party;
- (iii) except as otherwise expressly provided in this Project Agreement, each Party shall be free from the control of the other Party as to the manner in which it shall perform its obligations, or cause same to be performed, under this Project Agreement; and
- (iv) any person which a Party may engage as an agent, employee, subcontractor or otherwise, to perform such Party's obligations under this Project Agreement, as permitted hereby, shall, unless the Parties otherwise agree in writing, be engaged by such Party to act solely on behalf of such Party, and such person shall not act, or be deemed to act, on behalf of the Party that did not engage its services.

64.4 General Duty to Mitigate

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

64.5 Actual Knowledge

- (a) Without limitation to its actual knowledge and/or such knowledge which it, at law, may from time to time, be deemed to have, Project Co and HMQ shall, for all purposes of this Project Agreement, be deemed to have such knowledge in respect of the Project as is actually held (or ought reasonably to be held) by the directors, officers and senior management of Project Co and in the case of HMQ, its directors, officers and senior management, and the HMQ Representative or the Project Co Representative, as applicable. For clarity, except as expressly set out to the contrary, a reference in this Project Agreement to the "knowledge" of Project Co or of HMQ shall be construed in a manner consistent with the foregoing sentence.

64.6 Entire Agreement

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

64.7 No Reliance

- (a) Each of the Parties acknowledge that:
 - (i) it has not entered into this Project Agreement on the basis of and does not rely, and has not relied, upon any statement or representation, whether negligent or innocent, or

warranty or other provision, whether oral, written, express or implied, made or agreed to by any person, whether a Party to this Project Agreement or not, except those expressly made, given or repeated in this Project Agreement and the only remedy or remedies available in respect of any misrepresentation or untrue statement made to it shall be those expressly provided for in this Project Agreement; and

- (ii) this Section 64.7 shall not apply to any statement, representation or warranty made fraudulently, or to any provision of this Project Agreement which was induced by fraud, for which the remedies available shall be all those available under the law governing this Project Agreement.

64.8 Severability

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

64.9 Enurement

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

64.10 Governing Law and Jurisdiction

- (a) This Project Agreement, and each of the documents contemplated by or delivered under or in connection with this Project Agreement, shall be governed by and construed in accordance with the laws of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract, without regard to conflict of laws principles.
- (b) Subject to Schedule 27 - Dispute Resolution Procedure, 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).

64.11 Cumulative Remedies

- (a) Except as otherwise set forth in this Project Agreement, the rights, powers and remedies of each Party set forth in this Project Agreement are cumulative and are in addition to and without prejudice to any other right, power or remedy that may be available to such Party under this Project Agreement.

64.12 Further Assurance

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

64.13 Costs

- (a) Each Party shall be responsible for paying its own costs and expenses incurred in connection with the negotiation, preparation and execution and delivery of this Project Agreement.

64.14 Language of Agreement

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

64.15 Proof of Authority

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

64.16 Counterparts

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

64.17 Province Persons as Third Party Beneficiaries

- (a) The provisions of Sections 6.1, 6.2(a), 6.3(a), 8.1(e), 9.2(a)(i), 9.2(a)(ii), 9.4(b), 9.5(a)(v), 16.1(a), 20.3(j), 21.1, 35.6, 36.2(e), 51.6(a), 56.1, and 57.2(a) and each other provision of this Project Agreement which is expressed to be for the benefit of a Province Person or an HMQ Party, as applicable, are:
 - (i) intended for the benefit of each Province Person, or HMQ Party, as applicable and, if so set out in the relevant Section, each Province Person's or HMQ Party's, as applicable, directors, officers employees, board appointees, agents and representatives, and shall be enforceable by each of such persons and his or her heirs, executors, administrators and

other legal representatives (collectively, in respect of each Province Person, the “Province Person Third Party Beneficiaries”, and in respect of each HMQ Party, the “HMQ Third Party Beneficiaries”); and

- (ii) are in addition to, and not in substitution for, any other rights that the Province Person Third Party Beneficiaries may have in contract or otherwise.
- (b) HMQ shall hold the rights and benefits of Sections 6.1, 6.2(a), 6.3(a), 8.1(e), 9.2(a)(i), 9.2(a)(ii), 9.4(b), 9.5(a)(v), 16.1(a), 20.3(j), 21.1, 35.6, 36.2(e), 51.6(a), 56.1, and 57.2(a) and each other provision of this Project Agreement which is to the benefit of a Province Person or an HMQ Party, as applicable, in trust for and on behalf of the Province Person Third Party Beneficiaries or HMQ Third Party Beneficiaries, as applicable, and HMQ hereby accepts such trust and agrees to hold the benefit of and enforce performance of such covenants on behalf of the Province Person Third Party Beneficiaries or HMQ Third Party Beneficiaries, as applicable.

64.18 Copyright Notice

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

[SIGNATURE PAGES IMMEDIATELY FOLLOW]

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

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

Per:

Name:
Title:

Per:

Name:
Title:

I/We have authority to bind the corporation.

**407 EAST DEVELOPMENT GROUP GENERAL
PARTNERSHIP, [REDACTED]**

[REDACTED]

Per:

Name:
Title:

Per:

Name:
Title:

I/We have authority to bind the corporation.

[REDACTED]

Per:

Name:
Title:

Per:

Name:
Title:

I/We have authority to bind the corporation.

SCHEDULE 1

DEFINITIONS AND INTERPRETATION

- 1. Definitions.** In the Project Agreement, unless the context otherwise requires:
- 1.1 **“6-Month Works Schedule”** means the schedule to be prepared and submitted by Project Co in accordance with Section 22.2 of the Project Agreement.
- 1.2 **“Aboriginal Groups”** means the aboriginal peoples of Canada including Indian, Inuit and Métis, in accordance with the *Constitution Act of Canada, 1982* (Canada).
- 1.3 **“Account Trustee”** has the meaning given in Schedule 30 - Insurance Trust Agreement.
- 1.4 **“Actual Relevant Insurance Cost”** has the meaning given in Section 7.1(a) of Schedule 25 - Insurance and Performance Security Requirements.
- 1.5 **“Additional Contractor”** means any independent contractor (not being, for the avoidance of doubt, the Construction Contractor, the OM&R Provider or Project Co) or HMQ’s own forces, engaged by HMQ to carry out the Additional Works. For greater certainty, the Toll Operator is, and shall be, an Additional Contractor.
- 1.6 **“Additional Works”** means those works or services in relation to the Extension which are not Initial Works or OM&R Work and which are to be carried out by an Additional Contractor, including works or services to be performed either before or after Substantial Completion, including the Early Works and the Tolling Infrastructure.
- 1.7 **“Adjusted Estimated Fair Value”** has the meaning given in Schedule 23 - Compensation on Termination.
- 1.8 **“Adjusted Highest Qualifying Tender Price”** has the meaning given in Schedule 23 - Compensation on Termination.
- 1.9 **“Adjusted OM&R Payment”** has the meaning given in Schedule 20 - Payment Mechanism.
- 1.10 **“Affiliate”** means an “affiliate” as that term is used in the *Business Corporations Act* (Ontario) and any successor legislation thereto, and, in the case of Project Co, shall include each of its unitholders, shareholders, partners or owners as the case may be.
- 1.11 **“Ancillary Documents”** means the Construction Contract, the OM&R Contract, the Interface Agreement, [REDACTED], the Performance Guarantees and the Performance Security.
- 1.12 **“Annual OM&R Payment”** has the meaning given in Schedule 20 - Payment Mechanism.
- 1.13 **“Anticipated Section Substantial Completion Date”** has the meaning given in Section 26.3(a) of the Project Agreement.
- 1.14 **“Anticipated Substantial Completion Date”** has the meaning given in Section 26.3(a) of the Project Agreement.

1.15 “**Applicable Law**” means:

- (a) any statute or proclamation or any delegated or subordinate legislation including regulations and by-laws;
- (b) any Authority Requirement; and
- (c) any judgment of a relevant court of law, board, arbitrator or administrative agency which is a binding precedent in the Province of Ontario,

in each case, in force in the Province of Ontario, or otherwise binding on Project Co, any Project Co Party, HMQ, any HMQ Party or any Province Person.

1.16 “**Appointed Representative**” has the meaning given in Schedule 4 - Lenders’ Direct Agreement.

1.17 “**Appointed Representative Notice**” has the meaning given in Schedule 4 - Lenders’ Direct Agreement.

1.18 “**Approved Purposes**” means:

- (a) the performance of Governmental Activities (and operations relating to such performance), the obligations of HMQ under the Project Agreement and/or any other activities of HMQ or a Governmental Authority in connection with the Extension and the Lands;
- (b) following termination of the Project Agreement, the design, construction and/or maintenance of the Extension, and/or the performance of any other operations the same as, or similar to, the Project Operations; and
- (c) the development by HMQ of transportation standards, policies and procedures.

1.19 “**Archaeological Reports**” means the document(s) described in Appendix 3 - Archaeological Reports to this Schedule 1 - Definitions and Interpretation.

1.20 “**As Built Drawings**” means drawings prepared by Project Co in a format and with content and details that HMQ, acting reasonably, considers appropriate.

1.21 “**Asset Management Plan**” has the meaning given in Schedule 15-1 - Definitions and Reference Documents.

1.22 “**Associated Liabilities**” has the meaning given in Section 35.6(b) of the Project Agreement.

1.23 “**Authority Requirements**” means any order, direction, directive, request for information, policy, administrative interpretation, guideline or rule of or by any Governmental Authority.

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

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

- 1.26 **“Background Information”** means any and all drawings, reports (including the Environmental Reports, the Archaeological Reports, the Geotechnical Reports, the Environmental Assessments and the ESA Permits), studies, data, documents, or other information, given or made available to Project Co or any Project Co Party by HMQ or any HMQ Party, or which was obtained from or through any other sources prior to Commercial Close.
- 1.27 **“Bank”** has the meaning given in Schedule 30 - Insurance Trust Agreement.
- 1.28 **“Barn Swallow ESA Permit”** means Permit Number [REDACTED] issued under the ESA, Clause 17(2)(c) in connection with the Project.
- 1.29 **“Base Case Equity IRR”** means [REDACTED]%.
- 1.30 **“Base Date”** has the meaning given in Schedule 20 - Payment Mechanism.
- 1.31 **“Base Relevant Insurance Cost”** has the meaning given in Section 7.1(b) of Schedule 25 - Insurance and Performance Security Requirements.
- 1.32 **“Beneficiary”** has the meaning given in Section 56.3(a) of the Project Agreement.
- 1.33 **“Bobolink and Eastern Meadowlark ESA Permit”** means Permit Number [REDACTED] issued under the ESA, Clause 17(2)(c) in connection with the Project.
- 1.34 **“Bridge”** has the meaning given in Schedule 15-1 - Definitions and Reference Documents.
- 1.35 **“Brock Road Interchange Eastern Limit”** means the eastern limit of the Brock Road interchange, which is the western limit of the Main Line, located at Station 18+800 in the Preliminary Design Report.
- 1.36 **“Business Day”** means any day other than Saturday, Sunday, a statutory holiday in the Province of Ontario or any day on which banks are not open for business in the City of Toronto, Ontario.
- 1.37 **“Business Opportunities”** has the meaning given in Section 4.1(a) of the Project Agreement.
- 1.38 **“Butternut Tree ESA Permit”** means Permit Number [REDACTED] issued under the ESA, Clause 17(2)(c) in connection with the Project.
- 1.39 **“Canadian and Industry Standards”** means, at the applicable time, those standards, practices, methods and procedures applicable to Good Industry Practice.
- 1.40 **“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.
- 1.41 **“Capital Expenditure”** means capital expenditure as interpreted in accordance with Canadian GAAP.

- 1.42 “**Cash Allowance Account**” means [REDACTED].
- 1.43 “**Cash Allowance Amount**” means the aggregate of the Stakeholder Consultation Cash Allowance Amount and the TCI Cash Allowance Amount.
- 1.44 “**Cash Allowance Items**” means, collectively, the SC Cash Allowance Items and the TCI Cash Allowance Items.
- 1.45 “**Certification Services**” has the meaning given in Schedule 6 - Independent Certifier Agreement.
- 1.46 “**Certification Services Variation**” has the meaning given in Schedule 6 - Independent Certifier Agreement.
- 1.47 “**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 to direct or cause the direction of the management, actions or policies of such person.
- 1.48 “**Change in Law**” means the coming into effect or repeal (without re-enactment or consolidation) in Ontario of any Applicable Law, or any amendment or variation of any Applicable Law, including any judgment of a relevant court of law which changes binding precedent in Ontario in each case after Commercial Close.
- 1.49 “**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.
- 1.50 “**Change of Authorization Event**” has the meaning given in Schedule 30 - Insurance Trust Agreement.
- 1.51 “**Change of Authorization Notice**” has the meaning given in Schedule 30 - Insurance Trust Agreement.
- 1.52 “**Checking Team**” has the meaning given in Section 20.7(a) of the Project Agreement.
- 1.53 “**CLA**” means the *Construction Lien Act* (Ontario).
- 1.54 “**Commercial Close**” means the date of the Project Agreement.
- 1.55 “**Compensation Date**” has the meaning given in Schedule 23 - Compensation on Termination.

- 1.56 “**Compensation Event**” has the meaning given in Section 41.1(a) of the Project Agreement.
- 1.57 “**Confidant**” has the meaning given in Section 52.6(a)(i) of the Project Agreement.
- 1.58 “**Confidential Information**” means all confidential and proprietary information which is supplied by or on behalf of a Party, whether before or after Commercial Close.
- 1.59 “**Construction Activities**” means construction, rehabilitation, Reinstatement Work, rectification work, and any other aspect of the Works that:
- (a) comprises the alteration, augmenting, upgrading, construction, completion, testing or commissioning of any part of the Extension Infrastructure;
 - (b) comprises the assessment of any Extension Infrastructure;
 - (c) may affect the structural integrity of any Extension Infrastructure, and including any such aspect of the Works carried out as part of any Force Majeure event, Relief Event, Variation, or Innovation Proposal accepted by HMQ; or
 - (d) comprises Construction Clearing and Grubbing.
- 1.60 “**Construction Clearing and Grubbing**” means the stage of the Initial 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).
- 1.61 “**Construction Contract**” means the construction contract between Project Co and the Construction Contractor dated on or about Financial Close.
- 1.62 “**Construction Contractor**” means [REDACTED], engaged by Project Co to perform the Initial Works and any substitute construction contractor engaged by Project Co as may be permitted by the Project Agreement.
- 1.63 “**Construction Contractor’s Direct Agreement**” means the direct agreement between HMQ, Project Co, the Construction Contractor and the Construction Guarantors in the form set out in Schedule 5-1 - Construction Contractor’s Direct Agreement.
- 1.64 “**Construction Document Submittals**” has the meaning given in Section 20.3(d)(ii) of the Project Agreement.
- 1.65 “**Construction Guarantors**” means [REDACTED] and [REDACTED] and “**Construction Guarantor**” means any one of them.
- 1.66 “**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.
- 1.67 “**Contract Material**” has the meaning given in Schedule 6 - Independent Certifier Agreement.

- 1.68 “**Contract Month**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.69 “**Contract Year**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.70 “**Countdown Notice**” has the meaning given in Section 26.3(a) of the Project Agreement.
- 1.71 “**CPI**” means CPI, as published by Statistics Canada from time to time, or failing such publication, such other index as the Parties may agree, or as may be determined in accordance with Schedule 27 - Dispute Resolution Procedure, which most closely resembles such index.
- 1.72 “**CPI_n**” is the value of CPI on April 1 of the relevant Contract Year “n”, to be determined by reference to the relevant index in the month immediately preceding the indexation date.
- 1.73 “**CPI₀**” is the value of CPI on the Base Date, to be determined by reference to the relevant index in the month immediately preceding the Base Date.
- 1.74 “**Crossing Roads Section**” means those Initial Works constituting the portion of the Extension consisting of the following as more particularly described in the Design and Construction Specifications:
- (a) the following crossing roads, including associated grade separated structures and culverts:
 - (i) Sideline 14 at Main Line Section;
 - (ii) Westney Road at Main Line Section;
 - (iii) Salem Road at Main Line Section;
 - (iv) Kinsale Road at Main Line Section;
 - (v) Lake Ridge Road at Main Line Section;
 - (vi) Coronation Road at Main Line Section;
 - (vii) Cochrane Street at Main Line Section;
 - (viii) Ashburn Road at Main Line Section;
 - (ix) Baldwin Street at Main Line Section;
 - (x) Anderson Street at Main Line Section;
 - (xi) Thicksen Road at Main Line Section;
 - (xii) Simcoe Street at Main Line Section;
 - (xiii) Ritson Road N at Main Line Section;

- (xiv) Harmony Road at Main Line Section;
 - (xv) Lake Ridge Road at Re-Aligned Highway 401;
 - (xvi) Dundas Street at West Durham Link Section;
 - (xvii) Rossland Road at West Durham Link Section; and
 - (xviii) Taunton Road at West Durham Link Section;
 - (b) the Re-Aligned Highway 401 and associated Infrastructure;
 - (c) the Lyndebrook Road connection; and
 - (d) all Infrastructure comprising such Initial Works.
- 1.75 **“Crossing Roads Section Payment Commencement Date”** means the date that is two (2) Business Days after the Section Substantial Completion Date for the Crossing Roads Section.
- 1.76 **“Crossing Roads Section Substantial Completion Payment”** means \$[REDACTED].
- 1.77 **“CSA”** means the Canadian Standards Association.
- 1.78 **“CSA Standards”** means, at the applicable time, the standards of the CSA.
- 1.79 **“Culvert”** has the meaning given in Schedule 15-1 - Definitions and Reference Documents.
- 1.80 **“Custodian”** means the person appointed as Custodian pursuant to the Custody Agreement and as may be permitted pursuant to the Project Agreement.
- 1.81 **“Custody Agreement”** means the custody agreement between Project Co, HMQ, the Custodian and the Lenders’ Agent in the form set out in Schedule 3 - Custody Agreement.
- 1.82 **“Deduction”** has the meaning given in Schedule 20 - Payment Mechanism.
- 1.83 **“Default Notice”** has the meaning given in Schedule 4 - Lenders’ Direct Agreement.
- 1.84 **“Default Period”** has the meaning given in Schedule 30 - Insurance Trust Agreement.
- 1.85 **“Delay Events”** has the meaning given in Section 40.1(a) of the Project Agreement.
- 1.86 **“Design and Bid Fee”** has the meaning given in the Request for Proposals.
- 1.87 **“Design and Certification Procedure”** means the procedure for design and certification of the Extension set forth in the Design and Construction Specifications and Section 20 of the Project Agreement.
- 1.88 **“Design and Construction Specifications”** means Schedule 15-2 - Output Specifications - Design and Construction.

- 1.89 “**Design Data**” means all drawings, reports, documents, plans, software, formulae, calculations, and other data prepared by Project Co relating to the design, construction or testing of the Extension, but excluding Intellectual Property Rights of third parties, such as CAD software, that is used only in the process of design and construction.
- 1.90 “**Design Development Submittals**” has the meaning given in Section 20.3(d)(i) of the Project Agreement.
- 1.91 “**Design Review Meetings**” has the meaning given in Section 20.5(a) of the Project Agreement.
- 1.92 “**Design Team**” means, collectively, [REDACTED], engaged by Project Co to design the Extension and any substitute design team engaged by Project Co as may be permitted by the Project Agreement.
- 1.93 “**Development Approval**” means development permits, building permits, zoning approvals and any other planning or development permit, consent or applicable Permits, Licences and Approvals required from time to time for construction of the Extension.
- 1.94 “**Direct Agreements**” means the Construction Contractor’s Direct Agreement and the OM&R Provider’s Direct Agreement.
- 1.95 “**Direct Cost**” has the meaning given in Schedule 22 -Variation Procedure.
- 1.96 “**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.
- 1.97 “**Discount Rate**” has the meaning given in Schedule 23 - Compensation on Termination.
- 1.98 “**Discriminatory Change in Law**” means any Change in Law the effect of which is to discriminate directly against or impose additional Taxes which apply specifically to:
- (a) roads or highways whose design, construction, financing, operations, maintenance and rehabilitation are procured by a contract similar to the Project Agreement in relation to other similar roads or highways;
 - (b) the Extension in relation to other roads or highways;
 - (c) Project Co in relation to other persons; or
 - (d) Persons undertaking projects for design, construction, financing, operations, maintenance and rehabilitation that are procured by a contract similar to the Project Agreement in relation to other persons undertaking similar projects procured on a different basis,
- except that such Change in Law shall not be a Discriminatory Change in Law:

- (e) where it is in response to any act or omission on the part of Project Co which contravenes Applicable Law (other than an act or omission rendered illegal by virtue of the Discriminatory Change in Law itself);
 - (f) solely on the basis that its effect on Project Co is greater than its effect on other companies; or
 - (g) where such Change in Law is a change in Taxes that affects companies generally.
- 1.99 **“Dispute”** has the meaning given in Schedule 27 - Dispute Resolution Procedure.
- 1.100 **“Dispute Resolution Procedure”** means the procedure set out in Schedule 27 - Dispute Resolution Procedure.
- 1.101 **“Distribution”** has the meaning given in Schedule 28 - Refinancing.
- 1.102 **“Durham Region”** means The Regional Municipality of Durham, Ontario.
- 1.103 **“Early Works”** means the following projects initiated by HMQ prior to Commercial Close:
- (a) MTO contract [REDACTED] (Re: Construction of the Highway 7 bridge over the 407 East Main line);
 - (b) Hydro One tower relocation;
 - (c) Enbridge Crude Oil Pipeline within Hydro One ROW; and
 - (d) TransCanada Pipeline at Simcoe Street.
- 1.104 **“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 Extension Users and Province Persons) or any part of or the whole of the Extension;
 - (ii) causes or may cause damage or harm to property, buildings and/or equipment;
 - (iii) constitutes a hostage situation or state of emergency declared as such by the HMQ Representative or HMQ (acting reasonably);
 - (iv) materially interferes with or prejudices or may materially interfere with or prejudice the safe operation of the Extension, any part of the Lands, the conduct of Project Operations, or the conduct of Governmental Activities; or
 - (v) constitutes a period of transition to or from war;

and which, in the opinion of HMQ, 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.
- 1.105 **“Emergency Response Plan”** means the plan to be prepared, submitted and implemented by Project Co in accordance with Article 14 of Part 2 of the Design and Construction Specifications.
- 1.106 **“Emergency Service Providers”** means any Police Service, fire fighting service, ambulance service, armed forces or other authority with emergency service authority pursuant to Applicable Law which may require access to the Extension from time to time.
- 1.107 **“Employee Termination Payments”** has the meaning given in Schedule 23 - Compensation on Termination.
- 1.108 **“Encumbrance”** means, with respect to the Lands and the Extension, any mortgage, lien, pledge, judgment, execution, charge, security interest, restriction, claim or encumbrance of any nature whatsoever, including claims of the Workplace Safety and Insurance Board, Canada Revenue Agency, and other Governmental Authorities.
- 1.109 **“Energy Utilities”** has the meaning given in Schedule 20 - Payment Mechanism.
- 1.110 **“Enforcement Event”** has the meaning given in Schedule 4 - Lenders’ Direct Agreement.
- 1.111 **“Environmental Approvals”** means:
- (a) the Environmental Assessments;
 - (b) the ESA Permits;
 - (c) the Fisheries Act Authorizations; and
 - (d) any Permits, Licences and Approvals relating to environmental matters.
- 1.112 **“Environmental Assessments”** means:
- (a) Ministry of Transportation (Ontario), EAAB File No.: [REDACTED] 407 East Individual Environmental Assessment and Preliminary Design Study (August 2009) and errata, including all appendices, technical reports and reference documents noted therein;
 - (b) Minister of the Environment (Ontario) Notice of Approval to Proceed with the Undertaking re: An Environmental Assessment for the Easterly Extension of the 407 Transportation Corridor, EAAB File No.: [REDACTED] (June 2010) and documents generated during Ministry of the Environment review leading to Notice of Approval, being: Table 2 Public Comments Summary Table (compiled by MTO); Table 1 Government Review Team Comments Summary Table (compiled by MOE); and 407 East Environmental Assessment Review Document (December 2009) (prepared by MOE);

- (c) Comprehensive Study Report pursuant to the *Canadian Environmental Assessment Act* (Canada) for the proposed 407 East Transportation Corridor (including all appendices thereto and the Follow-Up Monitoring Plan as required by Section 9 of that Report), CEAR No.: 10-03-39781. 407 East Transportation Corridor Project April 19, 2011; and
- (d) Canadian Environmental Assessment Act Comprehensive Study, CEAR No.: [REDACTED]. 407 East Transportation Corridor Project – Notice of Decision July 19, 2011 (updated September 8, 2011);

and any amendment or supplement to the documents listed in (a) to (d) as may be issued after Commercial Close or required in connection with the Project from time to time during the Project Term.

- 1.113 **“Environmental Laws”** means all Applicable Laws relating to public health or the protection of the environment or Species-at-Risk.
- 1.114 **“Environmental Management System”** has the meaning given to it in Section 3.5 of Schedule 17 - Environmental Obligations.
- 1.115 **“Environmental Quality Management Plan”** has the meaning given in Schedule 11 - Quality Management.
- 1.116 **“Environmental Reports”** means:
 - (a) Updated Full Report. Waste Management and Contamination Impact Assessment of the Recommended Design. 407 East Expansion Environmental Assessment, Project No. [REDACTED], dated December 2010 and prepared by Ecoplans Limited; and
 - (b) the preliminary site screening forms, the phase I and phase II environmental site assessments and the designated substances surveys in respect of the Lands, as described in Appendix 4 - Environmental Reports to this Schedule 1 - Definitions and Interpretation.
- 1.117 **“Equity Capital”** means the aggregate (without double counting) of all subscribed share capital, shareholder loans and other contributed capital of Project Co, excluding, for greater certainty, any amounts advanced to Project Co under the Lending Agreements which has a fixed return without equity participation, step-up rights or rights to share in Project Co’s excess cash flow and a coupon equal to or less than [REDACTED]% of the coupon payable to the Senior Lenders.
- 1.118 **“Equity IRR”** has the meaning given in Schedule 28 - Refinancing.
- 1.119 **“Equity Providers”** means [REDACTED] and [REDACTED] and **“Equity Provider”** means any one of them.
- 1.120 **“Equity Sale IRR”** means the Equity IRR calculated to the date of any sale of Equity Capital and calculated by taking into account the full Implied Equity Value, together with all Distributions paid in respect of the Equity Capital, and the actual timing of payment of all such amounts.
- 1.121 **“ESA”** means the *Endangered Species Act, 2007* (Ontario).

1.122 “**ESA Permits**” means the following permits issued in connection with the Project:

- (a) Butternut Tree ESA Permit;
- (b) Redside Dace ESA Permit;
- (c) Bobolink and Eastern Meadowlark ESA Permit;
- (d) Barn Swallow ESA Permit; and
- (e) the Letter of Advice;

and any amendment or supplement to the documents listed in (a) to (e) as may be issued after Commercial Close or required in connection with the Project from time to time during the Project Term.

1.123 “**Escalation Factor**” has the meaning given in Schedule 20 - Payment Mechanism.

1.124 “**Escrow Account**” has the meaning given in Schedule 24 - Expiry Transition Procedure.

1.125 “**Estimate**” has the meaning given in Schedule 22 - Variation Procedure.

1.126 “**Estimated Fair Value**” has the meaning given in Schedule 23 - Compensation on Termination.

1.127 “**Excess Equity Gain**” means an amount equal to the greater of zero and the difference between:

- (a) the amount paid in consideration of the percentage of Equity Capital (as at Financial Close) sold in a particular sale of Equity Capital; and
- (b) the Threshold Equity Sale Amount.

1.128 “**Excusing Cause**” has the meaning given in Section 42.1(a) of the Project Agreement.

1.129 “**Exempt Refinancing**” has the meaning given in Schedule 28 - Refinancing.

1.130 “**Exercise Date**” has the meaning given in Schedule 4 - Lenders’ Direct Agreement.

1.131 “**Existing Extension Infrastructure**” means Infrastructure, including the Early Works, situated in, on, over or under any part of the Lands at Commercial Close that in accordance with the Output Specifications is to form part of the completed Extension, but excluding Third Party Facilities and Infrastructure and other property of Railway Companies and Utility Companies.

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

1.133 “**Expiry Date**” means the 30th anniversary of the Scheduled Section Substantial Completion Date of the Main Line Section, without taking into account any extensions to such date pursuant to Section 40 of the Project Agreement.

- 1.134 “**Expiry Rehabilitation Costs**” has the meaning given in Schedule 24 - Expiry Transition Procedure.
- 1.135 “**Expiry Transition Amount**” has the meaning given in Schedule 24 - Expiry Transition Procedure.
- 1.136 “**Expiry Transition Procedure**” means the procedure for Expiry Transition described in Schedule 24 - Expiry Transition Procedure.
- 1.137 “**Expiry Transition Requirements**” has the meaning given in Schedule 24 - Expiry Transition Procedure.
- 1.138 “**Expiry Transition Security**” has the meaning given in Schedule 24 - Expiry Transition Procedure.
- 1.139 “**Expiry Transition Works**” has the meaning given in Schedule 24 - Expiry Transition Procedure.
- 1.140 “**Expiry Transition Works Costs**” has the meaning given in Schedule 24 - Expiry Transition Procedure.
- 1.141 “**Extension**” means:
- (a) all Infrastructure;
 - (b) the Plant;
 - (c) all site services, utilities, roadways and parking areas required to support such Infrastructure and Plant;
 - (d) all supporting systems and improvements; and
 - (e) all other works, improvements, and demolitions to occur on the Lands or the Site,
- in each case required to meet the Output Specifications and the requirements under the Permits, Licences and Approvals and whether or not in the course of construction, installation or completion.
- 1.142 “**Extension Condition Report**” has the meaning given in Schedule 24 - Expiry Transition Procedure.
- 1.143 “**Extension Infrastructure**” at any time means the Existing Extension Infrastructure and the New Extension Infrastructure at that time.
- 1.144 “**Extension Management Committee**” has the meaning given in Section 12.1(a) of the Project Agreement.

- 1.145 “**Extension User**” means any member of the public, any Province Person and any other person that is on or about the Extension or is otherwise making use of the Extension Infrastructure for any purpose.
- 1.146 “**Failure Points**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.147 “**Final Completion**” means the completion of the Initial Works in accordance with the Project Agreement, including rectification of all Minor Deficiencies; for greater certainty, Final Completion shall not occur until Section Final Completion has occurred in respect of each Section.
- 1.148 “**Final Completion Certificate**” means the certificate to be issued by the Independent Certifier in accordance with Section 26.7 of the Project Agreement.
- 1.149 “**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.
- 1.150 “**Final Completion Notice**” has the meaning given in Section 26.7(b) of the Project Agreement.
- 1.151 “**Final Design Development Submittals**” has the meaning given in Section 20.3(d)(i) of the Project Agreement.
- 1.152 “**Final Extension Condition Report**” has the meaning given in Schedule 24 - Expiry Transition Procedure.
- 1.153 “**Financial Close**” means the first date that funding is available under the Lending Agreements.
- 1.154 “**Financial Close Target Date**” means May 18, 2012, as such date may be extended in accordance with the provisions of the Project Agreement.
- 1.155 “**Financial Model**” means the computer spreadsheet model for the Project incorporating statements of Project Co’s cashflows including all expenditure, revenues, financing and taxation of the Project Operations together with the profit and loss accounts and balance sheets for Project Co throughout the Project Term accompanied by details of all assumptions, calculations and methodology used in their compilation and any other documentation necessary or desirable to operate the model.
- 1.156 “**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.
- 1.157 “**FIPPA**” means the *Freedom of Information and Protection of Privacy Act* (Ontario).
- 1.158 “**Fisheries Act Authorizations**” means the authorization(s) issued by Fisheries and Oceans Canada in connection with the Project, and any amendment or supplement to the authorization(s) as may be issued after Commercial Close or required in connection with the Project from time to time during the Project Term.
- 1.159 “**Force Majeure**” has the meaning given in Section 44.1(a) of the Project Agreement.

- 1.160 “**Freeway**” means those portions of the Extension that are fully-controlled access highways and that will be designated as part of the Main Line Section, the West Durham Link Section or Highway 401, as applicable, following Substantial Completion.
- 1.161 [REDACTED].
- 1.162 “**Geotechnical Reports**” means:
- (a) Preliminary Soils Information Report, W.O. 07-20015/20016/20017, Highway 407 East Extension from Brock Road to Highway 35/115, including two links to Highway 401, Regional Municipality of Durham, Ontario (July 28, 2010);
 - (b) Hydrogeological Foundation Investigation Report for Preliminary Design Highway 407 East Extension – Central Section, W.O. 07 – 20016 (June 2009);
 - (c) Hydrogeological Foundation Investigation Report for Preliminary Design Highway 407 East Extension – Eastern Section, W.O. 07 – 20017 (June 2009);
 - (d) Hydrogeological Foundation Investigation Report for Preliminary Design Highway 407 East Extension – Western Section, W.O. 07 – 20015 (June 2009);
 - (e) Final Report Preliminary Foundation Investigation and Design Report Highway 407 East Extension – Central Section (East Part) Simcoe Street North to Courtice Road Region of Durham, W.O. 07-20016 (April 2010);
 - (f) Final Report Preliminary Foundation Investigation and Design Report Highway 407 East Extension – Central Section (West Part) Ashburn Road to Simcoe Street North Region of Durham, W.O. 07-20016 (April 2010);
 - (g) Preliminary Foundation Investigation and Design Report Highway 407 East Extension – Western Section Region of Durham Ministry of Transportation, Ontario, W.O. 07-20015 (June 2010);
 - (h) Final Preliminary Foundation Investigation and Design Report - Highway 407 East Extension - Central Section (West Part) Ashburn Road to Simcoe Street North - Region of Durham W.O. 07-20016 prepared by Peto MacCallum Ltd. dated February 2011;
 - (i) Final Preliminary Foundation Investigation and Design Report - Highway 407 East Extension - Western Section - Region of Durham W.O. 07-20015 prepared by Peto MacCallum Ltd. (February 2011); and
 - (j) Preliminary Soils Information Report - W.O. 09-20012 Highway 407 East Extension - Phase 1 From Brock Road to Simcoe Street, Durham Region prepared by Peto MacCallum Ltd. (January 31, 2011).

- 1.163 “**Good Industry Practice**” means using standards, practices, methods and procedures to a good commercial standard, conforming to Applicable Law and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a qualified, skilled and experienced person engaged in a similar type of undertaking under the same or similar circumstances.
- 1.164 “**Governmental Activities**” means the provision of all governmental services and the conduct of all activities provided in connection or otherwise associated with the Lands and the Extension by any Governmental Authority or Emergency Service Provider, and includes the MTO Activities.
- 1.165 “**Governmental Authority**” means any federal, provincial, territorial, regional, municipal or local governmental authority, quasi-governmental authority, court, government or self-regulatory organization, commission, board, tribunal, organization, or any regulatory, administrative or other agency, or any political or other subdivision, department, or branch of any of the foregoing, having legal jurisdiction in any way over HMQ, any aspect of the performance of the Project Agreement, the operation of the Extension or the Governmental Activities, in each case to the extent it has or performs legislative, judicial, regulatory, administrative or other functions within its jurisdiction.
- 1.166 “**Government Sensitive Information**” means any information which is designated as such by HMQ from time to time, or which a reasonable person, having regard to the circumstances, would regard as sensitive, including (i) all confidential information that is designated as such by Applicable Law, and (ii) any record, the disclosure of which could be injurious to the interests of HMQ.
- 1.167 “**Greenroads**” means the sustainability performance metric system for roadways described at and accessible through the Greenroads website at: <http://www.greenroads.us>.
- 1.168 “**Greenroads Certification**” means Greenroads Gold certification level under the Greenroads Rating System, including any addenda or updates thereto issued prior to Commercial Close.
- 1.169 “**Greenroads Compliance Certificate**” has the meaning given in Section 24.5(d) of the Project Agreement.
- 1.170 “**Greenroads Rating System**” means Greenroads Rating System Version 1.0 by Greenroads, including any addenda or updates thereto issued prior to Commercial Close.
- 1.171 “**GTA**” means the Greater Toronto Area.
- 1.172 “**H&S Conviction**” has the meaning given in Section 45.1(a)(xix) of the Project Agreement.
- 1.173 “**Harmony Road Interchange Eastern Limit**” means the eastern limit of the Harmony Road interchange, which is the eastern limit of the Main Line, located at Station 15+550 in the Preliminary Design Report.
- 1.174 “**Hazardous Substances**” means any contaminant, pollutant, dangerous substance, toxic substance, liquid waste, industrial waste, gaseous waste, hauled liquid waste, hazardous material, or hazardous substance as defined or identified pursuant to any Applicable Law.

- 1.175 “**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.
- 1.176 “**Hedging Agreement**” means an agreement relating to interest rate risk entered into by Project Co and the Hedge Provider(s) pursuant to the Lending Agreements.
- 1.177 “**Heritage Guidelines and Protocols**” means the Government of Ontario’s Best Practice Guidelines for the Treatment of Human Skeletal Remains Discovered Outside a Licensed Cemetery and the Cultural Heritage Protocol Agreement between the Ministry of Government Services and the Ministry of Tourism and Culture.
- 1.178 “**Highway 401**” means the King’s Highway in Ontario known and designated as “Highway 401”.
- 1.179 “**Highway 407 ETR**” means the King’s Highway in Ontario known and defined in the *Highway 407 Act, 1998* as “Highway 407”.
- 1.180 “**Highway Specific Change in Law**” means any Change in Law which principally affects or principally relates only to the design, construction, operation, maintenance or rehabilitation of roads and highways.
- 1.181 “**HMQ**” means Her Majesty the Queen in right of Ontario as represented by the Minister of Infrastructure, as represented by Ontario Infrastructure and Lands Corporation, a non-share capital corporation continued and amalgamated under the *Ontario Infrastructure and Lands Corporation Act, 2011*, S.O. 2011, c. 9, Schedule 32, as amended.
- 1.182 “**HMQ Archaeologist**” has the meaning given in Section 21.1(a)(ii) of the Project Agreement.
- 1.183 “**HMQ Default Termination Sum**” has the meaning given in Schedule 23 - Compensation on Termination.
- 1.184 “**HMQ Design Team**” means any of HMQ, 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 Extension or the MTO Activities on behalf of MTO, but excluding Project Co and any Project Co Party.
- 1.185 “**HMQ Event of Default**” has the meaning given in Section 46.1(a) of the Project Agreement.
- 1.186 “**HMQ Party**” means any of HMQ’s agents, contractors and subcontractors of any tier engaged with respect to the Project Operations and its or their directors, officers and employees, but excluding Project Co and any Project Co Party, and the “HMQ Parties” shall be construed accordingly.

- 1.187 **“HMQ Permits, Licences and Approvals”** means those permissions, consents, approvals, certificates, permits, licences, agreements and authorizations, including Railway Approvals, Railway Orders, Utility Agreements, and Development Approvals which are the responsibility of HMQ to obtain as set out in Appendix 1 – HMQ Permits, Licences and Approvals to this Schedule 1 - Definitions and Interpretation but for greater certainty shall not include any permission, consent, approval, certificate, permit, licence, agreement or authorization not set out in such appendix but required by the terms of any such item set out in such appendix.
- 1.188 **“HMQ Project Documents”** has the meaning given in Schedule 4 - Lenders’ Direct Agreement.
- 1.189 **“HMQ Representative”** means the person designated as such by HMQ on or prior to Commercial Close and any permitted replacement.
- 1.190 **“HMQ Taxes”** means taxes, or payments in lieu of taxes, imposed on HMQ and HST and property taxes for which HMQ is responsible pursuant to Section 35 of the Project Agreement.
- 1.191 **“HMQ Third Party Beneficiaries”** has the meaning given in Section 64.17(a)(i) of the Project Agreement.
- 1.192 **“HMQ Trade-Marks”** means any and all Trade-Marks used by HMQ in any manner whatsoever.
- 1.193 **“HMQ Work”** has the meaning given in Schedule 22 - Variation Procedure.
- 1.194 **“HST”** means the value-added tax imposed pursuant to Part IX of the *Excise Tax Act* (Canada), and any successor legislation thereto.
- 1.195 **“Implied Equity Value”** means the amount paid in consideration of a percentage of Equity Capital divided by the percentage of Equity Capital (as at Financial Close) sold in a particular sale of Equity Capital.
- 1.196 **“Indebtedness Notice”** has the meaning given in Schedule 4 - Lenders’ Direct Agreement.
- 1.197 **“Indemnifiable Taxes”** has the meaning given in Section 35.6(b) of the Project Agreement.
- 1.198 **“Indemnifier”** has the meaning given in Section 56.3(a) of the Project Agreement.
- 1.199 **“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.
- 1.200 **“Independent Certifier Agreement”** means the contract entered into between Project Co, HMQ and the Independent Certifier in substantially the form attached hereto as Schedule 6 - Independent Certifier Agreement.
- 1.201 **“Independent Inspector”** has the meaning given in Schedule 24 - Expiry Transition Procedure.

- 1.202 **“Infrastructure”** means all road, highway and landscape infrastructure including roadways, hard shoulders, slip roads, side roads, access roads, cul-de-sacs, pavement, bridges, water crossing structures, tunnels, sign structures, and other highway structures whether over or under the travelled surface, together with all related equipment, electrical infrastructure, mechanical infrastructure, supporting infrastructure, buildings, improvements and amenities, including all intelligent traffic systems and equipment, tolling systems and equipment, fences and barriers, curbs, culverts, drainage systems including outfalls and stormwater management ponds, grassed areas, sidewalks, cycling lanes, hedges and trees, planted areas, footways, recreational equipment and facilities, road markings, road traffic signs, road traffic signals, road lighting, communications installations, embankments, retaining walls, paved lots, truck lay-bys, maintenance yards, and signage, sculpture or decorative objects.
- 1.203 **“Indirect Losses”** has the meaning given in Section 57.1(a) of the Project Agreement.
- 1.204 **“Initial Works”** means the design, construction, installation, testing, commissioning and completion of each of the Sections, including rectification of any Minor Deficiencies, and any other activities required to enable or facilitate the commencement of the OM&R Work, and all work under the Permits, Licenses and Approvals, together with the related construction-period operations and maintenance services described in the OM&R Specifications.
- 1.205 **“Innovation Proposal”** has the meaning given in Section 39.2(b) of the Project Agreement.
- 1.206 **“Inspection and Test Plan”** has the meaning given in Schedule 11 - Quality Management.
- 1.207 **“Insurance Adjustment”** has the meaning given in Section 7.3 of Schedule 25 - Insurance and Performance Security Requirements.
- 1.208 **“Insurance Cost Differential”** has the meaning given in Section 7.1(c) of Schedule 25 - Insurance and Performance Security Requirements.
- 1.209 **“Insurance Policies”** has the meaning given in Schedule 30 - Insurance Trust Agreement.
- 1.210 **“Insurance Proceeds”** has the meaning given in Schedule 30 - Insurance Trust Agreement.
- 1.211 **“Insurance Review Date”** has the meaning given in Section 7.1(d) of Schedule 25 - Insurance and Performance Security Requirements.
- 1.212 **“Insurance Review Period”** has the meaning given in Section 7.1(e) of Schedule 25 - Insurance and Performance Security Requirements.
- 1.213 **“Insurance Trust Agreement”** means the insurance trust agreement to be entered into between HMQ, the Lenders’ Agent, Project Co and the Account Trustee in the form set out in Schedule 30 - Insurance Trust Agreement.

- 1.214 **“Intellectual Property”** means in connection with a specified subject matter, on a worldwide basis, all registered or unregistered Trade-Marks, trade names, patents, copyrights, trade secrets, designs, rights of publicity, mask work rights, utility models and other industrial or intangible property rights of a similar nature, all grants and registrations worldwide in connection with the foregoing and all other rights with respect thereto existing other than pursuant to grant or registration; all applications for any such grant or registration, all rights of priority under international conventions to make such applications and the right to control their prosecution, and all amendments, continuations, divisions and continuations-in-part of such applications; and all corrections, reissues, patents of addition, extensions and renewals of any such grant, registration or right.
- 1.215 **“Intellectual Property Rights”** means all Intellectual Property in or associated with the Project Data and all Intellectual Property which, or the subject matter of which, is at any time before or after Commercial Close created, brought into existence, acquired, used or intended to be used by Project Co, any Project Co Party or by other third parties (for such third parties’ use by or on behalf of or for the benefit of Project Co) for any or all of the purposes of:
- (a) the Initial Works, including the design and construction of the Extension (excluding Intellectual Property Rights of third parties, such as CAD software, that is used only in the process of design and construction);
 - (b) the OM&R Work, including the operation, maintenance, improvement, testing and rehabilitation of the Extension;
 - (c) any other Project Operations; or
 - (d) the Project Agreement.
- 1.216 **“Interface Agreement”** means the interface agreement dated on or about Commercial Close to be entered into between Project Co, the Construction Contractor and the OM&R Provider.
- 1.217 **“Invoice Date”** has the meaning given in Schedule 23 - Compensation on Termination.
- 1.218 **“IO”** means Ontario Infrastructure and Lands Corporation, a non-share capital corporation continued and amalgamated under the *Ontario Infrastructure and Lands Corporation Act, 2011*, S.O. 2011, c. 9, Schedule 32, as amended and includes any successors thereto or persons exercising delegated power and the Minister's authority, as agent for Her Majesty the Queen in Right of Ontario, as represented by the Minister of Infrastructure.
- 1.219 **“IPFP Framework”** has the meaning given in the recitals to the Project Agreement.
- 1.220 **“Irrecoverable Tax”** has the meaning given in Section 35.2(b) of the Project Agreement.
- 1.221 **“Joint Insurance Cost Report”** has the meaning given in Section 7.2 of Schedule 25 - Insurance and Performance Security Requirements.
- 1.222 **“Jointly Developed Materials”** has the meaning given in Section 51.4(a) of the Project Agreement.

- 1.223 “**Junior Debt Amount**” has the meaning given in Schedule 23 - Compensation on Termination.
- 1.224 “**Junior Debt Makewhole**” has the meaning given in Schedule 23 - Compensation on Termination.
- 1.225 “**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.
- 1.226 “**Junior Lenders**” means [Not Used].
- 1.227 “**Key Individual**” means those Project Co Parties listed in Schedule 9 - Key Individuals.
- 1.228 “**Lands**” means at any time and from time to time, those lands described in Appendix 2 - Lands to this Schedule 1 - Definitions and Interpretation provided that, unless the context otherwise requires, the Municipal Conveyed Lands shall not constitute part of the Lands from and after the date of conveyance of such lands to a municipal Governmental Authority.
- 1.229 “**Landscape Plan**” has the meaning given in Schedule 15-1 - Definitions and Reference Documents.
- 1.230 “**Lender Representative**” has the meaning given in Schedule 4 - Lenders’ Direct Agreement.
- 1.231 “**Lenders**” means all or any of the persons who provide financing to Project Co in respect of the Project Operations under the Lending Agreements, including, without limitation, the Senior Lenders and the Junior Lenders, and, where the context so permits, prospective financiers or lenders.
- 1.232 “**Lenders’ Agent**” has the meaning given in Schedule 4 - Lenders’ Direct Agreement.
- 1.233 “**Lenders’ Direct Agreement**” means the direct agreement to be entered into between HMQ, the Lenders’ Agent and Project Co in the form set out in Schedule 4 - Lenders’ Direct Agreement.
- 1.234 “**Lending Agreements**” has the meaning given in Schedule 23 - Compensation on Termination.
- 1.235 “**Letter of Advice**” means the letter of advice issued by the MNR dated on or about Financial Close entitled “Highway 407 East Extension – Approach to Endangered Species” which outlines permitted activities and associated conditions, prior to the issuance of the required ESA Permits, for the purpose of facilitating necessary fieldwork planned to commence after Financial Close.
- 1.236 “**Limited Access Lands**” means at any time and from time to time, those lands described in Part 2 of Appendix 2 to this Schedule 1 - Definitions and Interpretation.
- 1.237 “**Liquid Market**” has the meaning given in Schedule 23 - Compensation on Termination.
- 1.238 “**Longstop Date**” has the meaning given in Section 45.1(a)(ii).

- 1.239 **“Main Line Section”** means those Initial Works constituting the portion of the Extension consisting of the following as more particularly described in the Design and Construction Specifications:
- (a) the Freeway located across the City of Pickering, the Town of Whitby and the City of Oshawa in an east-west direction connecting the Brock Road Interchange Eastern Limit to the Harmony Road Interchange Eastern Limit, consisting of approximately 20.3 km of new alignment;
 - (b) all the interchanges along the section of the Freeway noted in (a) above; and
 - (c) all Infrastructure comprising such Initial Works.
- 1.240 **“Main Line Section Payment Commencement Date”** means the date that is two (2) Business Days after the Section Substantial Completion Date for the Main Line Section.
- 1.241 **“Main Line Section Substantial Completion Payment”** means \$[REDACTED].
- 1.242 **“Mandatory Refinancing”** has the meaning given in Schedule 28 - Refinancing.
- 1.243 **“Market Value Availability Deduction Amount”** has the meaning given in Schedule 23 - Compensation on Termination.
- 1.244 **“Maximum OM&R Payment”** has the meaning given in Schedule 23 - Compensation on Termination.
- 1.245 **“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 of Infrastructure’s authority.
- 1.246 **“Mini-Perm Financing”** has the meaning given in Schedule 28 - Refinancing.
- 1.247 **“Minister”** means the Minister of Transportation (Ontario) or any appointee succeeding to all or substantially all of the duties of the Minister of Transportation (Ontario).
- 1.248 **“Minor Deficiencies”** means any defects, deficiencies and items of outstanding work (including in relation to seasonal work) arising from or related to the work required to achieve Section Substantial Completion or Substantial Completion, as the case may be, and which would not materially impair:
- (a) the public’s or HMQ’s use and enjoyment of the Extension (or in the case of a Section Substantial Completion, of the relevant Section);
 - (b) the performance of the Governmental Activities;
 - (c) the performance of the OM&R Work by Project Co; or
 - (d) safety or traffic flow on the Extension in any relevant respect.

- 1.249 “**Minor Deficiencies List**” has the meaning given in Section 26.4(a) of the Project Agreement.
- 1.250 “**MNR**” means Her Majesty The Queen in Right of Ontario as represented by the Minister of Natural Resources, and includes any successors thereto or persons exercising delegated power under the Minister of Natural Resources’ authority.
- 1.251 “**MOE**” means Her Majesty The Queen in Right of Ontario as represented by the Minister of the Environment, and includes any successors thereto or persons exercising delegated power under the Minister of the Environment’s authority.
- 1.252 “**Monitoring Notice**” has the meaning given in Section 31.4(a) of the Project Agreement.
- 1.253 “**Monthly OM&R Payment**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.254 “**Monthly Previously Paid HST Amount**” means a monthly HST amount to be determined as provided for below which in the aggregate is equal to the amount of the Section 35.1(c) Payment. The amount of each Monthly Previously Paid HST Amount shall be:
- (a) the amount of the Section 35.1(c) Payment amortized on a straight line basis over the Monthly OM&R Payments due over the remainder of the Operational Term following the payment of the Section 35.1(c) Payment subject to an alternative basis on which to amortize the remaining unapplied Section 35.1(c) Payment as provided for by Applicable Law in which case HMQ shall determine the Monthly Previously Paid HST Amount in accordance with such Applicable Law, provided that HMQ may, at any time, proceed to obtain an advance ruling under the *Excise Tax Act* (Canada) (or rely upon an existing advance ruling under the *Excise Tax Act* (Canada)) in respect to some other basis for amortizing the remaining unapplied Section 35.1(c) Payment over the Monthly OM&R Payments due over the remainder of the Operational Term, and in such event, the remaining unapplied Section 35.1(c) Payment may be amortized over the Monthly OM&R Payments in a manner provided for in the advance ruling if HMQ so determines in its sole discretion;
 - (b) communicated by HMQ to Project Co in writing at the same time that HMQ pays Project Co the Section 35.1(c) Payment; and
 - (c) credited to HMQ in each Monthly OM&R Payment invoice sent by Project Co to HMQ following the payment of the Section 35.1(c) Payment.
- 1.255 “**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 delegated power and such Minister’s authority.
- 1.256 “**MTO Activities**” includes the provision of all governmental services and the conduct of all activities performed in or associated with Ontario roads and other services of a similar nature, including Tolling Activities.

- 1.257 “**MTO Central Region Emergency Plan**” means MTO’s emergency management plan that describes actions to be taken in the event of an emergency on or about roads in the Province of Ontario as required by the *Emergency Management and Civil Protection Act* (Ontario), or such similar plan as may replace the MTO Central Region Emergency Plan from time to time.
- 1.258 “**Municipal Conveyed Lands**” means those lands where the New Municipal Infrastructure will be located and which are described in Appendix B to the Design and Construction Specifications.
- 1.259 “**Municipal Infrastructure**” means Infrastructure (excluding Infrastructure and other property of Utility Companies and Railway Companies) located on, over or under the Municipal Conveyed Lands on the date of Commercial Close.
- 1.260 “**New Agreement**” has the meaning given in Schedule 23 - Compensation on Termination.
- 1.261 “**New Extension Infrastructure**” at any time means Infrastructure constructed in, on, over or under any part of the Lands as part of the Initial Works (including any Existing Extension Infrastructure that has been altered, upgraded or augmented at that time by the carrying out of the Initial Works), but excluding Third Party Facilities and Infrastructure and other property of Railway Companies and Utility Companies.
- 1.262 “**New Municipal Infrastructure**” at any time means Infrastructure constructed by Project Co on the Municipal Conveyed Lands as part of the carrying out of the Initial Works and includes any Municipal Infrastructure that has been altered, upgraded or augmented at that time by the carrying out of the Initial Works, all as more particularly described in Appendix B to the Design and Construction Specifications, but particularly excluding Infrastructure and other property of Railway Companies and Utility Companies.
- 1.263 “**New Project Co**” has the meaning given in Schedule 23 - Compensation on Termination.
- 1.264 “**No Default 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 quoted by Bank of Montreal 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.
- 1.265 “**Non-Conformance**” has the same meaning as Quality Failure.
- 1.266 “**Non-Default Termination Sum**” has the meaning given in Schedule 23 - Compensation on Termination.
- 1.267 “**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).
- 1.268 “**Notice**” has the meaning given in Section 61.1(a) of the Project Agreement.
- 1.269 “**Notice of Dispute**” has the meaning given in Schedule 27 - Dispute Resolution Procedure.
- 1.270 “**Notice Period**” has the meaning given in Schedule 4 - Lenders’ Direct Agreement.

- 1.271 “**Novation Date**” has the meaning given in Schedule 4 - Lenders’ Direct Agreement.
- 1.272 “**Novation Notice**” has the meaning given in Schedule 4 - Lenders’ Direct Agreement.
- 1.273 “**OM&R Construction**” means all demolition and construction work carried out by or on behalf of Project Co forming part of, required by or in connection with the OM&R Work or the other Project Operations, but not including the Initial Works.
- 1.274 “**OM&R Contract**” means the operations, maintenance and rehabilitation contract between Project Co and the OM&R Provider dated on or about the date of Financial Close.
- 1.275 “**OM&R Guarantors**” means [REDACTED] and [REDACTED] and “**OM&R Guarantor**” means any one of them.
- 1.276 “**OM&R Provider**” means [REDACTED], engaged by Project Co to perform the OM&R Work and any substitute person engaged by Project Co to perform the OM&R Work as may be permitted by the Project Agreement.
- 1.277 “**OM&R Provider’s Direct Agreement**” means the direct agreement between HMQ, Project Co, the OM&R Provider and the OM&R Guarantors, in the form set out in Schedule 5-2 - OM&R Provider’s Direct Agreement.
- 1.278 “**OM&R Specifications**” means Schedule 15-3 - Output Specifications - Operation, Maintenance and Rehabilitation Specifications (OM&R).
- 1.279 “**OM&R Submittal**” has the meaning given in Section 11.1 of Schedule 10 - Review Procedure.
- 1.280 “**OM&R Work**” means the operations, maintenance, rehabilitation and other work to be performed and services to be provided by Project Co as described in the OM&R Specifications, as such work and services may from time to time be varied in accordance with the Project Agreement, but specifically excluding the Governmental Activities.
- 1.281 “**Operational Term**” means the period from the first occurrence of a Section Substantial Completion Date until the end of the Project Term.
- 1.282 “**ORC**” means Ontario Realty Corporation and any successors thereto.
- 1.283 “**Order**” has the meaning given in Schedule 30 - Insurance Trust Agreement.
- 1.284 “**Other Contractor**” means an Additional Contractor, a Toll Contractor or a Third Party Contractor.
- 1.285 “**Other Existing Infrastructure**” means all existing works and Infrastructure on, over or under the Lands at Commercial Close.
- 1.286 “**Other Works**” means the Additional Works, the Third Party Works and the Tolling Works.

- 1.287 “**Output Specifications**” means Schedule 15 - Output Specifications, and includes Schedule 15-1 - Definitions and Reference Documents, Schedule 15-2 - Design and Construction and Schedule 15-3 - Operation, Maintenance and Rehabilitation Specifications (OM&R).
- 1.288 “**Overhead Sign Support Structure**” has the meaning given in Schedule 15-1 - Definitions and Reference Documents.
- 1.289 “**Owned Available Lands**” means at any time and from time to time, those lands described in Part 1 of Appendix 2 to this Schedule 1 - Definitions of Interpretation.
- 1.290 “**Owned Lands**” means the Owned Available Lands and the Owned Non-Available Lands.
- 1.291 “**Owned Non-Available Lands**” means at any time and from time to time, those lands described in Part 3 of Appendix 2 to this Schedule 1 - Definitions and Interpretation.
- 1.292 “**PA Parties**” or “**PA Party**” has the meaning given in Schedule 6 - Independent Certifier Agreement.
- 1.293 [REDACTED].
- 1.294 “**Party**” means either HMQ or Project Co, and “**Parties**” means both HMQ and Project Co.
- 1.295 “**Party Representative**” and “**Party Representatives**” have the meanings given in Schedule 27 - Dispute Resolution Procedure.
- 1.296 “**Pass-Through Costs**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.297 “**Pavement**” has the meaning given in Schedule 15-1 - Definitions and Reference Documents.
- 1.298 “**Pavement Markings**” has the meaning given in Schedule 15-1 - Definitions and Reference Documents.
- 1.299 “**Payment Adjustment Report**” has the meaning given in Section 34.6(i)(ii) of the Project Agreement.
- 1.300 “**Payment Commencement Date**” means the earliest Section Payment Commencement Date.
- 1.301 “**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 Bank of Montreal 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.
- 1.302 “**Payment Mechanism**” means the payment mechanism set out in Schedule 20 - Payment Mechanism.

- 1.303 **“Payment Periods”** means the payment periods of one calendar month (as adjusted in this definition) established by HMQ for each Contract Year, provided that the first Payment Period following the Section Substantial Completion Date for the Main Line Section and the Section Substantial Completion Date for the West Durham Link Section shall each be not less than 45 days, and the last Payment Period in the last Contract Year may be a shorter period as a result of the timing of the Payment Commencement Date and the Expiry Date within the Payment Periods otherwise established in accordance with the foregoing.
- 1.304 **“Performance Guarantees”** means the guarantees to Project Co in respect of the Construction Contract and the OM&R Contract provided by each of the Construction Guarantors and by each of the OM&R Guarantors, respectively.
- 1.305 **“Performance Monitoring Program”** means the monitoring of performance of the OM&R Work by Project Co through the Nonconformity reporting process detailed in Part 7 of Schedule 11 - Quality Management and the Performance Monitoring Reports prepared and submitted in accordance with Part 8 of Schedule 11 - Quality Management.
- 1.306 **“Performance Monitoring Report”** has the meaning given in Schedule 11 - Quality Management.
- 1.307 **“Performance Security”** means the performance security required pursuant to Article 19 of Schedule 25 – Insurance and Performance Security Requirements.
- 1.308 **“Permanent Pavement Marking Plan”** has the meaning given in Schedule 15-1 - Definitions and Reference Documents.
- 1.309 **“Permits, Licences and Approvals”** means the HMQ Permits, Licences and Approvals and the Project Co Permits, Licences and Approvals.
- 1.310 **“Permitted Borrowing”** means:
- (a) any advance to Project Co under the Lending Agreements;
 - (b) any additional financing approved by HMQ in accordance with Section 1.9 of Schedule 22 - Variation Procedure to the Project Agreement; and
 - (c) any amendment, waiver or exercise of a right under the Lending Agreements made during the Step-In Period that does not increase HMQ’s liabilities under the Project Agreement whether actual or contingent, present or future, known or unknown.
- 1.311 **“Personal Information”** means all personal information (as the term “personal information” is defined in the *Personal Information Protection and Electronic Documents Act* (Canada)) in the custody or control of Project Co or any Project Co Party other than personal information of the employees of Project Co or the Project Co Parties and other than personal information that is wholly unrelated to the Project Operations and not derived directly or indirectly from HMQ in respect of the Project.
- 1.312 **“Planned Mini-Perm Refinancing Date”** has the meaning given in Schedule 28 - Refinancing.

- 1.313 **“Plant”** means all buildings, building services, Infrastructure, building fabric, and mechanical and electrical services, which are required to fulfill the requirements of the Output Specifications.
- 1.314 **“Police Service”** means the Royal Canadian Mounted Police, the Ontario Provincial Police, the Durham Regional Police Service and any other law enforcement agency with jurisdiction pursuant to Applicable Law, as applicable.
- 1.315 **“Post Termination Service Amount”** has the meaning given in Schedule 23 - Compensation on Termination.
- 1.316 **“Pre-Existing Environmental Site Conditions”** means the environmental condition of the Lands as set out in the Environmental Reports.
- 1.317 **“Pre-final Design Development Submittals”** has the meaning given in Section 20.3(d)(i) of the Project Agreement.
- 1.318 **“Preliminary Design Report”** has the meaning given in Schedule 15-1 - Definitions and Reference Documents.
- 1.319 **“Professional Engineer”** means a professional engineer licensed by Professional Engineers Ontario to practice in the Province of Ontario.
- 1.320 **“Prohibited Act”** has the meaning given in Section 60.1(a) of the Project Agreement.
- 1.321 **“Prohibited Acts Termination Sum”** has the meaning given in Schedule 23 - Compensation on Termination.
- 1.322 **“Project”** has the meaning given in the recitals to the Project Agreement.
- 1.323 **“Project Agreement”** has the meaning given in the recitals to the Project Agreement.
- 1.324 **“Project Agreement Arbitration”** has the meaning given in Schedule 27- Dispute Resolution Procedure.
- 1.325 **“Project Co”** means [REDACTED], and any successor or permitted assign.
- 1.326 **“Project Co Commissioning”** means the commissioning activities to be carried out by Project Co in order to achieve Section Substantial Completion in respect of each of the Crossing Roads Section and the Main Line Section and to achieve Substantial Completion as set forth in Schedule 14 - Commissioning.
- 1.327 **“Project Co Event of Default”** has the meaning given in Section 45.1(a) of the Project Agreement.
- 1.328 **“Project Co Party”** means:
- (a) the Construction Contractor;
 - (b) the OM&R Provider;

- (c) any person engaged by Project Co, the Construction Contractor, and/or the OM&R Provider from time to time as may be permitted by the Project Agreement to procure or manage the provision of the Project Operations (or any of them); and
- (d) in respect of each of the above, their subcontractors of any tier, agents, employees, officers and directors,

and “**Project Co Parties**” shall be construed accordingly.

- 1.329 “**Project Co Permits, Licences and Approvals**” means all permissions, consents, approvals, certificates, permits, licences, agreements and authorizations required to perform the Project Operations in accordance with the Project Agreement and as required by Applicable Law, and all necessary consents, approvals, certificates, permits, licences, agreements and authorizations from and with any third parties (including, to the extent applicable, all Development Approvals, Railway Approvals and Utility Agreements, and the approval of the Fire Marshal of Ontario), needed to perform the Project Operations in accordance with the Project Agreement and as required by Applicable Law, but other than the HMQ Permits, Licences and Approvals.
- 1.330 “**Project Co Proposal Extracts**” means the documents attached as Schedule 13 - Project Co Proposal Extracts.
- 1.331 “**Project Co Representative**” means the person designated as such by Project Co on or prior to Commercial Close and any permitted replacement.
- 1.332 “**Project Co Variation Notice**” has the meaning given in Schedule 22 - Variation Procedure.
- 1.333 “**Project Data**” means:
 - (a) all Design Data;
 - (b) all drawings, reports, documents, plans, software, formulae, calculations and other data relating to the performance of the OM&R Work; and
 - (c) any other materials, documents and or data acquired, brought into existence or used in relation to the Project Operations or the Project Agreement, other than the Jointly Developed Materials and Background Information and other than Intellectual Property Rights of third parties, such as CAD software, that is used only in the process of design and construction.
- 1.334 “**Project Documents**” means the Ancillary Documents and the Lending Agreements.
- 1.335 “**Project Insurance Change**” has the meaning given in Section 7.1(f) of Schedule 25 - Insurance and Performance Security Requirements.
- 1.336 “**Project Know-How**” means all ideas, concepts, alternatives, methodologies, processes, recommendations and suggestions developed by or through Project Co or any Project Co Party and revealed to or discovered by HMQ, whether before or after Commercial Close, which may be connected in any way to:

- (a) the Initial Works, including the design and construction of the Extension;
- (b) the OM&R Work, including the operation, maintenance, rehabilitation, improvement and testing of the Extension;
- (c) any other Project Operations; or
- (d) the Project Agreement.

1.337 **“Project Operations”** means:

- (a) the performance of the Initial Works;
- (b) the performance of the OM&R Work;
- (c) the performance of the OM&R Construction; and
- (d) the performance of all other obligations of Project Co under the Project Agreement.

1.338 **“Project Term”** means the period commencing on Commercial Close and expiring at midnight on the Termination Date.

1.339 **“Proprietor”** has the meaning given in Section 52.6(a) of the Project Agreement.

1.340 **“Protester”** has the meaning given in Section 9.6(a) of the Project Agreement.

1.341 **“Province Persons”** means HMQ Parties and, while attending in their official capacity at the Extension and/or the Lands, the following:

- (a) any person to which authority is designated pursuant to Section 63.1 of the Project Agreement and any agents and employees of any such person;
- (b) contractors of HMQ or of any person to which authority is delegated pursuant to Section 63.1 of the Project Agreement and subcontractors of any tier and its or their directors, officers and employees;

but excluding Project Co and any Project Co Party.

1.342 **“Province Person Third Party Beneficiaries”** has the meaning given in Section 64.17(a)(i) of the Project Agreement.

1.343 **“Qualification Criteria”** has the meaning given in Schedule 23 - Compensation on Termination.

1.344 **“Qualifying Bank”** has the meaning in Schedule 28 - Refinancing.

1.345 **“Qualifying Bank Transaction”** has the meaning in Schedule 28 - Refinancing.

1.346 **“Qualifying Refinancing”** has the meaning given in Schedule 28 - Refinancing.

- 1.347 “**Qualifying Tender**” has the meaning given in Schedule 23 - Compensation on Termination.
- 1.348 “**Qualifying Tenderer**” has the meaning given in Schedule 23- Compensation on Termination.
- 1.349 “**Quality Documentation**” means all documentation to be prepared, submitted (where applicable) and implemented by Project Co in accordance with Schedule 11 - Quality Management.
- 1.350 “**Quality Failure**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.351 “**Quality Failure Deduction**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.352 “**Quality Management System**” has the meaning given in Schedule 11 - Quality Management.
- 1.353 “**Quality Plans**” means the Quality Manual, Quality Management Plans and Quality Audit Plans (all as defined in Schedule 11 - Quality Management) to be prepared, submitted and implemented by Project Co in accordance with Schedule 11 - Quality Management.
- 1.354 “**Railway Approvals**” means all consents, approvals, permissions and agreements, and amendments thereto, required to be obtained from a Railway Company pursuant to a Railway Order or Applicable Laws, for the carrying out of Works on land or improvements of a Railway Company, but does not include any Railway Orders.
- 1.355 “**Railway Company**” means the Canadian National Railway, the Canadian Pacific Railway, Go Transit and any other railway company that owns a railway any part of which is on any part of the Lands during the Project Term.
- 1.356 “**Railway Order**” means any order of the Canadian Transportation Agency:
- (a) granted in favour of HMQ allowing or providing for:
 - (i) Infrastructure comprising or to comprise Extension Infrastructure to be located upon and across land or improvements of a Railway Company; and
 - (ii) the construction, maintenance and use of such Infrastructure upon and across such land or improvements; or
 - (b) for the carrying out of any Works on land or improvements of a Railway Company;
- and all amendments thereto.
- 1.357 “**Re-Aligned Highway 401**” means Highway 401 from east of Salem Road at Station 8+987 to west of Henry Street at Station 14+214 as referenced in the Preliminary Design Report that is to be re-aligned to accommodate the construction of the West Durham Link Section and includes associated realigned Lake Ridge Road grade separation crossings.
- 1.358 “**Recoverable Tax**” has the meaning given in Section 35.2(c) of the Project Agreement.
- 1.359 “**Recovery Amount**” has the meaning given in Section 56.3(g) of the Project Agreement.

- 1.360 “**Rectification Costs**” has the meaning given in Schedule 23 - Compensation on Termination.
- 1.361 “**Redside Dace ESA Permit**” means Permit Number [REDACTED] issued under the ESA, Clause 17(2)(c) in connection with the Project.
- 1.362 “**Refinancing**” has the meaning given in Schedule 28 - Refinancing.
- 1.363 “**Refinancing Financial Model**” has the meaning given in Schedule 28 - Refinancing.
- 1.364 “**Refinancing Gain**” has the meaning given in Schedule 28 - Refinancing.
- 1.365 “**Rehabilitation Payment**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.366 “**Reimbursement Event**” has the meaning given in Section 32.5(a) of the Project Agreement.
- 1.367 “**Reinstatement Plan**” has the meaning given in Section 30.2(a) of the Project Agreement.
- 1.368 “**Reinstatement Work**” has the meaning given in Section 30.1(a) of the Project Agreement.
- 1.369 “**Relevant Change in Law**” means a Discriminatory Change in Law or a Highway Specific Change in Law.
- 1.370 “**Relevant Insurance**” has the meaning given in Section 7.1(g) of Schedule 25 - Insurance and Performance Security Requirements.
- 1.371 “**Relevant Insurance Inception Date**” has the meaning given in Section 7.1(h) of Schedule 25 - Insurance and Performance Security Requirements.
- 1.372 “**Relief Event**” has the meaning given in Section 43.1(a) of the Project Agreement.
- 1.373 “**Request for Payment Approval**” has the meaning given in Section 23.1(d) of the Project Agreement.
- 1.374 “**Request for Proposals**” or “**RFP**” means the request for proposals issued in respect of the Project on April 28, 2011.
- 1.375 “**Rescue Refinancing**” has the meaning given in Schedule 28 - Refinancing.
- 1.376 “**Restricted Person**” means any person who, or any member of a group of persons acting together, any one of which:
- (a) has, directly or indirectly, its principal or controlling office in a country that is subject to any economic or political sanctions imposed by Canada or Ontario;
 - (b) has as its primary business the illegal manufacture, sale, distribution or promotion of narcotics substances or arms, or is or has been involved in terrorism;
 - (c) in the case of an individual, he or she (or in the case of a legal entity, any of the members of its board of directors or its senior executive managers) has been sentenced to

imprisonment or otherwise given a custodial sentence, other than a suspended sentence, for any criminal offence or for any offence under Provincial statute, other than offences under the *Highway Traffic Act* or corresponding legislation in any other jurisdiction, or under any municipal laws, less than five years prior to the date at which the consideration of whether such individual is a “**Restricted Person**” is made hereunder;

- (d) has as its primary business the acquisition of distressed assets or investments in companies or organizations which are or are believed to be insolvent or in a financial standstill situation or potentially insolvent;
 - (e) is subject to a material claim of HMQ under any proceedings (including regulatory proceedings) which have been concluded or are pending at the time at which the consideration of whether such person is a “**Restricted Person**” is made hereunder, and which (in respect of any such pending claim, if it were to be successful) would, in HMQ’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
 - (f) has a material interest in the production of tobacco products.
- 1.377 “**Retaining Wall**” has the meaning given in Schedule 15-1 - Definitions and Reference Documents.
- 1.378 “**Review Procedure**” means the procedure set out in Schedule 10 - Review Procedure.
- 1.379 “**Revised Extension Condition Report**” has the meaning given in Schedule 24 - Expiry Transition Procedure.
- 1.380 “**Road Safety Audit**” has the meaning given in Schedule 15-1 - Definitions and Reference Documents.
- 1.381 “**SC Cash Allowance Items**” means any change to the scope, configuration or size of any New Extension Infrastructure or a change in the Construction Activities that, in either case, is referred to in Section 20.3(c) of the Project Agreement.
- 1.382 “**Safety Management Plan**” has the meaning given in Schedule 15-1 - Definitions and Reference Documents.
- 1.383 “**Schedule**” means a schedule to the Project Agreement.
- 1.384 “**Scheduled Final Completion Date**” means March 16, 2016.
- 1.385 “**Scheduled Section Final Completion Date**” means, with respect to any Section, March 16, 2016.
- 1.386 “**Scheduled Section Substantial Completion Date**” means, with respect to the Crossing Roads Section, December 18, 2015; and with respect to the Main Line Section, December 18, 2015; as each such date may be amended pursuant to Section 40 of the Project Agreement.

- 1.387 “**Scheduled Substantial Completion Date**” means December 18, 2015, as such date may be amended pursuant to Section 40 of the Project Agreement.
- 1.388 “**Section**” means any of the Main Line Section, the Crossing Roads Section and the West Durham Link Section.
- 1.389 “**Section Final Completion**” means, with respect to any Section, the completion of the Initial Works in respect of that Section in accordance with the Project Agreement, including rectification of all Minor Deficiencies.
- 1.390 “**Section Final Completion Date**” means, with respect to any Section, the date of completion of the Initial Works in respect of that Section in accordance with the Project Agreement, including rectification of all Minor Deficiencies.
- 1.391 “**Section Payment Commencement Date**” means the Crossing Roads Section Payment Commencement Date, the Main Line Section Payment Commencement Date or the Substantial Completion Payment Commencement Date, as applicable.
- 1.392 “**Section Substantial Completion**” means, with respect to any Section: the point at which that Section has been completed in accordance with the Project Agreement; a certificate is issued by the Independent Certifier to HMQ certifying that the Initial Works (other than the construction-period operations and maintenance services described in the OM&R Specifications) in respect of that Section have been completed in accordance with the Project Agreement and the date of which such completion occurred; and all requirements for Substantial Completion described in Schedule 14 - Commissioning, other than in respect of Minor Deficiencies, have been rectified in respect of that Section.
- 1.393 “**Section Substantial Completion Certificate**” means, with respect to any Section, the certificate to be issued in respect of that Section by the Independent Certifier in accordance with Section 26.2 of the Project Agreement.
- 1.394 “**Section Substantial Completion Date**” means, with respect to any Section, the date on which Section Substantial Completion is achieved with respect to that Section, as evidenced by a Section Substantial Completion Certificate with respect to that Section, as such date shall be stated therein.
- 1.395 “**Section 35.1(c) Payment**” means payment of the HST payable by HMQ to Project Co under Section 35.1(c) of the Project Agreement (pursuant to paragraph 168(3)(c) of the *Excise Tax Act* (Canada)).
- 1.396 “**Security**” has the meaning given in Schedule 4 - Lenders’ Direct Agreement.
- 1.397 “**Security Documents**” has the meaning given in Schedule 4 - Lenders’ Direct Agreement.
- 1.398 “**Senior Debt Amount**” has the meaning given in Schedule 23 - Compensation on Termination.
- 1.399 “**Senior Debt Makewhole**” has the meaning given in Schedule 23 - Compensation on Termination.

- 1.400 “**Senior Debt Service Amount**” means, for any period, the scheduled payments of principal and interest payable by Project Co or any Project Co Party to the Senior Lenders with respect to the Senior Debt Amount under the Lending Agreements, provided that at any time where any portion of the interest payable to the Senior Lenders under the Lending Agreements is subject to the Hedging Agreement(s), interest payable on account of such portion of interest shall be calculated based on the fixed rate payable by Project Co as specified under the Hedging Agreement(s), whether the fixed amounts with respect to such fixed rate are payable to a Senior Lender or the Hedge Provider(s) and all references to interest payable to the Senior Lenders under this Agreement shall be construed accordingly.
- 1.401 “**Senior Lenders**” means the term “Lenders” and the term “Bondholders” in each case as such term is defined in the Lending Agreements, and, for greater clarity, excludes the Hedge Provider(s) or any other hedge providers and their respective permitted successors and assigns.
- 1.402 “**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.
- 1.403 “**Severe Market Disruption**” means any occurrence of exceptional circumstances in financial markets in Europe, the United States of America and/or Canada which:
- (a) results in the suspension or cessation of all or substantially all lending activity in national or relevant international capital or interbank markets; and
 - (b) adversely affect access by Project Co to such markets.
- 1.404 “**Site**” means, at any time and from time to time, that portion of the Lands 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 or on which any of the Works have been commenced but not completed in their entirety or that is otherwise within the active construction footprint of the Works.
- 1.405 “**Site Conditions**” means the condition of the Lands, including the physical, geophysical, climatic, ecological, environmental, geotechnical and archaeological conditions.
- 1.406 “**Small Works**” means any works, including facilities and equipment, of a minor nature that are requested by HMQ to be performed having an individual cost or aggregate cost with other linked works, including facilities and equipment, of a minor nature, not exceeding \$[REDACTED] (index linked), or as otherwise agreed from time to time, but excluding any works, including facilities and equipment, which will increase the likelihood of an Availability Failure or Quality Failure, will increase the cost to Project Co of performing the Project Operations or will materially hinder Project Co in the performance of the OM&R Work.

- 1.407 “**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.
- 1.408 “**Species-at-Risk Permits**” means those permissions, consents, approvals, certificates, permits, licences, agreements and authorizations relating to Species-at-Risk.
- 1.409 “**Stakeholders**” means individuals and organizations with an interest in the Project, including those listed in Section 4.1(c) of Schedule 17 - Environmental Obligations, but excluding HMQ.
- 1.410 “**Stakeholder Consultation Cash Allowance Amount**” means \$[REDACTED].
- 1.411 “**Standby Letter of Credit**” has the meaning given in Section 2.2(a) of the Project Agreement.
- 1.412 “**Start-Up Meeting**” has the meaning given in Section 20.4(a) of the Project Agreement.
- 1.413 “**Step-In Period**” has the meaning given in Schedule 4 - Lenders’ Direct Agreement.
- 1.414 “**Structural Culvert**” means a Structure that forms an opening through soil and has:
- (a) a span of 3 meters or greater, or
 - (b) the sum of the individual spans of 3 metres or greater, for adjacent multiple cell culverts, or
 - (c) the sum of the individual spans of 3 metres or greater, for multiple cell culverts (each with spans at least 2m) separated by soil (a width not more than the span of smallest individual cell).
- 1.415 “**Structure**” has the meaning given in Schedule 15-1 - Definitions and Reference Documents.
- 1.416 “**Subcontractor**” means any subcontractor of Project Co engaged by or through Project Co to perform any of the Project Operations, including the Construction Contractor, the OM&R Provider, any Supplier or consultant, and any subcontractor of any other subcontractor at any tier.
- 1.417 “**Subcontractor Losses**” has the meaning given in Schedule 23 - Compensation on Termination.
- 1.418 “**Subcontracts**” means the contracts entered into by or between Project Co and any Subcontractor or between any Subcontractor at any tier, including the Construction Contractor and the OM&R Provider, and any other Subcontractor at any tier in relation to any aspect of the Project Operations.
- 1.419 “**Submittal**” means either a Works Submittal or an OM&R Submittal.
- 1.420 “**Subsequent Indebtedness Notice**” has the meaning given in Schedule 4 - Lenders’ Direct Agreement.

- 1.421 “**Substantial Completion**” means the point at which the Extension has been completed in accordance with the Project Agreement; a certificate of substantial performance of the Initial Works (other than the construction-period operations and maintenance services described in the OM&R Specifications) is published pursuant to Section 32(1) of the CLA; and all requirements for Substantial Completion described in Schedule 14 - Commissioning, other than in respect of Minor Deficiencies, have been satisfied in respect of the Extension as a whole; for greater certainty, Substantial Completion shall occur when Section Substantial Completion has occurred in respect of all of the Sections.
- 1.422 “**Substantial Completion Certificate**” means the certificate to be issued by the Independent Certifier in accordance with Section 26.2 of the Project Agreement.
- 1.423 “**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.
- 1.424 “**Substantial Completion Notice**” has the meaning given in Section 26.2(b) of the Project Agreement.
- 1.425 “**Substantial Completion Payment**” means \$[REDACTED].
- 1.426 “**Substantial Completion Payment Commencement Date**” means the date that is two Business Days after the Substantial Completion Date.
- 1.427 “**Substitute**” has the meaning given in Schedule 5-1 - Construction Contractor’s Direct Agreement.
- 1.428 “**Suitable Substitute**” has the meaning given in Schedule 4 - Lenders’ Direct Agreement.
- 1.429 “**Supplier**” means a person who supplies to Project Co, or to any Subcontractor, any equipment, materials, supplies or services as part of, or for, the Project Operations.
- 1.430 “**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 HMQ Taxes.
- 1.431 “**TCI Cash Allowance Amount**” means \$[REDACTED].
- 1.432 “**TCI Cash Allowance Items**” means any work or services in relation to the Tolling Civil Infrastructure carried on by or on behalf of Project Co to perform and complete the Tolling Civil Infrastructure.
- 1.433 “**TCI Excess Amount**” has the meaning given to it in Section 23.1(i) of the Project Agreement.
- 1.434 “**Technical Appraisal Form**” or “**TAF**” means a form substantially in the format attached as Attachment 1 - Sample Contents for a Structural TAF to Appendix A of Schedule 10 - Review Procedure.

- 1.435 “**Technical Reports**” means the Environmental Reports, the Geotechnical Reports and the Archaeological Reports.
- 1.436 “**Temporary Pavement Marking Plan**” has the meaning given in Schedule 15-1 - Definitions and Reference Documents.
- 1.437 “**Temporary Works**” means works that are performed to serve a specific temporary function in the execution of the Works and in respect of which any resulting Infrastructure is removed at such time when its temporary use is no longer required.
- 1.438 “**Tender Costs**” has the meaning given in Schedule 23 - Compensation on Termination.
- 1.439 “**Tender Process**” has the meaning given in Schedule 23 - Compensation on Termination.
- 1.440 “**Tender Process Monitor**” has the meaning given in Schedule 23 - Compensation on Termination.
- 1.441 “**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.
- 1.442 “**Third Party Arbitration**” has the meaning given in Schedule 27 - Dispute Resolution Procedure.
- 1.443 “**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.
- 1.444 “**Third Party Facilities**” means transit shelters, telephone facilities, Infrastructure and other property of Utility Companies and Railway Companies and other public facilities and associated equipment, plant, materials and apparatus installed and operated or to be installed and operated on the Lands by any transit authority, communications provider, Utility Company, Railway Company or other third party (not including, for the avoidance of doubt, Project Co or any Project Co Party).
- 1.445 “**Third Party Litigation**” has the meaning given in Schedule 27 - Dispute Resolution Procedure.
- 1.446 “**Third Party Works**” means works in relation to the Third Party Facilities and includes Utility Work and work pursuant to a Utility Agreement, Railway Order or an encroachment permit or other permitting authority of any Governmental Authority under Applicable Law.
- 1.447 “**Threshold Equity Sale Amount**” means the amount which, if paid in consideration of the percentage of Equity Capital (as at Financial Close) sold in a particular sale of Equity Capital, would result in an Implied Equity Value that, if received in full on the day of the sale of Equity Capital, taken together with all Distributions paid in respect of the Equity Capital, and taking account of the actual timing of payment of all such amounts, would result in an Equity Sale IRR equal to the Threshold Equity Sale IRR.
- 1.448 “**Threshold Equity Sale IRR**” means [REDACTED]%.

- 1.449 **“Title Encumbrances”** means the Encumbrances listed in Schedule 16 - Title Encumbrances and any other Encumbrance consented to by HMQ and reasonably required in connection with the development of the Extension and the Project Operations.
- 1.450 **“Toll Operator”** means any person or HMQ’s own forces, retained or engaged by HMQ or any HMQ Party to carry out, perform, conduct and/or operate all or any of the Tolling Work, and its successors and assigns.
- 1.451 **“Tolling Activities”** means the provision of services and the conduct of all activities provided in connection with or otherwise associated with the establishment, collection and enforcement of payment of tolls or similar fees or charges with respect to the operation of vehicles or classes of vehicles on Ontario roads (such roads to include, for the avoidance of doubt, Highway 407 ETR and the Extension).
- 1.452 **“Tolling Design”** means all drawings, documents and other data prepared by the Toll Operator and submitted by HMQ (or by the Toll Operator at the direction of HMQ) to Project Co relating to the design and construction of the Tolling Civil Infrastructure, such design and construction to include:
- (a) all safety and performance standards;
 - (b) the dates on which the Tolling Civil Infrastructure to be completed at or around the interchanges described in Section 16.1 of Schedule 15.2 – Design and Construction are to be completed, tested and commissioned; and
 - (c) all testing and commissioning requirements.
- 1.453 **“Tolling Civil Infrastructure”** means the construction, installation, testing, commissioning and completion of all Infrastructure (other than Tolling Systems Infrastructure) required or necessary to develop, construct, maintain and operate the Tolling Activities. For greater certainty, the Tolling Civil Infrastructure does not include any of the Initial Works and does not form part of the Initial Works.
- 1.454 **“Tolling Civil Infrastructure Letter of Credit”** has the meaning given in Schedule 36 – Tolling Infrastructure.
- 1.455 **“Tolling Infrastructure”** means the Tolling Civil Infrastructure and the Tolling Systems Infrastructure.
- 1.456 **“Tolling Systems Infrastructure”** means all Infrastructure in respect of intelligent traffic systems and equipment and/or electronic toll collection systems and equipment including, without limitation, transponders, video readers, license plate recognition systems and digital video auditing systems together with all associated and related hardware and software required or necessary to develop, construct, maintain and operate the Tolling Activities.
- 1.457 **“Tolling Works”** means works or services in relation to Tolling Activities, including such works or services to be performed either before or after Substantial Completion.

- 1.458 **“Trade-Marks”** means any registered or unregistered mark, trade-mark, service mark, distinguishing guise, logo, insignia, seal, design or symbol.
- 1.459 **“Traffic Control Plan”** has the meaning given in Schedule 15-1 -Definitions and Reference Documents.
- 1.460 **“Traffic Management Plan”** has the meaning given in Schedule 15-1 - Definitions and Reference Documents.
- 1.461 **“Traffic Quality Management Plan”** has the meaning given in Schedule 11 - Quality Management.
- 1.462 **“Trespasser”** has the meaning given in Section 9.6(a) of the Project Agreement.
- 1.463 **“Uninsurable Event”** means any event which arises directly and solely from an Uninsurable Risk.
- 1.464 **“Uninsurable Risk”** has the meaning given in Section 8.1 of Schedule 25 - Insurance and Performance Security Requirements to the Project Agreement.
- 1.465 **“Utilities”** means energy/power supplies and waste recovery, including electricity, natural gas/fuel oil, water, sanitary waste and storm water.
- 1.466 **“Utility Agreements”** means any agreement entered into by Project Co with a Utility Company in connection with the construction, installation, operation, 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.
- 1.467 **“Utility Company”** means the owner or operator of any Utility Infrastructure.
- 1.468 **“Utility Infrastructure”** means privately, publicly or cooperatively owned lines, facilities or systems for transmitting or distributing electricity, data, communications, gas, oil and petroleum products, water, storm water or sewage 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.
- 1.469 **“Utility Work”** means temporary and permanent installation, protection, removal and relocation works relating to Utility Infrastructure carried out in connection with or as part of the Project Operations, including installation, protection, removal and relocation of poles, pole lines, conduits, gas pipes, oil pipes, sewers and tile lines, and related and ancillary works.
- 1.470 **“Variation”** has the meaning given in Schedule 22 - Variation Procedure.
- 1.471 **“Variation Confirmation”** has the meaning given in Schedule 22 - Variation Procedure.
- 1.472 **“Variation Directive”** has the meaning given in Schedule 22 - Variation Procedure.

- 1.473 “**Variation Enquiry**” has the meaning given in Schedule 22 - Variation Procedure.
- 1.474 “**Variation Procedure**” means the procedure set out in Schedule 22 - Variation Procedure.
- 1.475 “**Warning Notice**” has the meaning given in Section 31.3(a) of the Project Agreement.
- 1.476 “**West Durham Link Section**” means those Initial Works constituting the portion of the Extension consisting of the following as more particularly described in the Design and Construction Specifications:
- (a) the Freeway located within the Town of Whitby, east of Lake Ridge Road, that traverses in a north-south direction, and that connects the Main Line Section with Highway 401, consisting of approximately 10 km of new alignment;
 - (b) all the interchanges, including the Freeway-to-Freeway interchanges between the West Durham Link Section and the Main Line Section and the West Durham Link Section and the Re-Aligned Highway 401, along the section of the Freeway noted in (a) above;
 - (c) the CP Rail crossing and associated Infrastructure that intersects the section of the Freeway noted in (a) above, but excluding track and signal work; and
 - (d) all Infrastructure comprising such Initial Works including, without limitation, all other Infrastructure not included in the definition of the Main Line Section and the Crossing Roads Section.
- 1.477 “**Works**” means the Initial Works, the OM&R Construction and any other demolition or construction work carried out by or on behalf of Project Co forming part of, required by or in connection with the Project Operations.
- 1.478 “**Works Change in Law**” means any Change in Law that:
- (a) is not a Relevant Change in Law;
 - (b) occurs after Commercial Close;
 - (c) requires Project Co to perform any work of alteration, addition, demolition, extension or variation in the quality or function of the Extension which is similar in nature to the Initial Works or the OM&R Construction but is not Initial Works, OM&R Construction 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.
- 1.479 “**Works Committee**” has the meaning given in Section 11.1(a) of the Project Agreement.
- 1.480 “**Works Report**” has the meaning given in Section 22.5(a) of the Project Agreement.

- 1.481 “**Works Schedule**” means the schedule to be prepared and submitted by Project Co in accordance with Section 22.2 of the Project Agreement.
- 1.482 “**Works Submittal**” has the meaning given in Section 1.1 of Schedule 10 - Review Procedure.
- 1.483 “**WSIB**” means the Ontario Workplace Safety and Insurance Board that is responsible for administering the *Workplace Safety and Insurance Act, 1997* (Ontario).
- 2. Interpretation.** The Project Agreement shall be interpreted according to the following provisions, unless the context requires a different meaning:
- 2.1 The tables of contents, headings, marginal notes and references to them in the Project Agreement are for convenience of reference only, shall not constitute a part of the Project Agreement, and shall not be taken into consideration in the interpretation of, or affect the meaning of, the Project Agreement.
- 2.2 Except where the context requires otherwise (irrespective of whether some, but not all, references in a Schedule specifically refer to that Schedule or to other portions of the Project Agreement) references to specific Sections, Clauses, Paragraphs, Subparagraphs, Schedules, and other divisions of the Project Agreement are references to such Sections, Clauses, Paragraphs, or Subparagraphs of, Schedules to, or divisions of the Project Agreement and the terms “Section” and “Clause” are used interchangeably and are synonymous.
- 2.3 Except where the context requires otherwise, references to specific Sections, Clauses, Paragraphs, Subparagraphs, Schedules, and other divisions of the Project Agreement followed by a number are references to the whole of the Section, Clause, Paragraph, Subparagraphs, Schedule or other division of the Project Agreement as applicable, bearing that number, including all subsidiary provisions containing that same number as a prefix.
- 2.4 Except where the context requires otherwise, references in the Output Specifications to specific Parts, Sections, Clauses, Paragraphs, Subparagraphs, Schedules, and other divisions of the Output Specifications shall be construed such that each such reference on a page of the Output Specifications will be read to be preceded by and to include the prefix Section number or other reference at the top of the applicable page, and all cross-references to any Section in Schedule 15 - Output Specifications shall be interpreted to include the applicable prefix Section number or other reference.
- 2.5 The Schedules to the Project Agreement are an integral part of the Project Agreement and a reference to the Project Agreement includes a reference to the Schedules.
- 2.6 All references in the Project Agreement to a Schedule shall be to a Schedule of the Project Agreement.
- 2.7 All capitalized terms used in a Schedule shall have the meanings given to such terms in Schedule 1 - Definitions and Interpretation, unless stated otherwise in a particular Schedule in which case such definition shall have the meaning given to it in that Schedule solely for the purposes of that Schedule.

- 2.8 The language of the Output Specifications and other documents comprising the Project Agreement is in many cases written in the imperative for brevity. Clauses containing instructions, directions or obligations are directed to Project Co and shall be construed and interpreted as if the words “Project Co shall” immediately preceded the instructions, directions or obligations.
- 2.9 Words importing persons or parties are to be broadly interpreted and include an individual, corporation, limited liability company, joint stock company, firm, partnership, joint venture, trust, unincorporated organization, Governmental Authority, unincorporated body of persons or association and any other entity having legal capacity, and the heirs, beneficiaries, executors, administrators or other legal representatives of a person in such capacity.
- 2.10 Unless the context otherwise requires, wherever used herein the plural includes the singular, the singular includes the plural, and each of the masculine, feminine and neuter genders include all other genders.
- 2.11 Unless otherwise provided in the Project Agreement, all accounting and financial terms used in the Project Agreement shall be interpreted and applied in accordance with Canadian GAAP.
- 2.12 References to any standard, principle, agreement or document include (subject to all relevant approvals and any other provisions of the Project Agreement concerning amendments) a reference to that standard, principle, agreement or document as amended, supplemented, restated, substituted, replaced, novated or assigned.
- 2.13 References to any Applicable Law, including any statutes or other Applicable Law specifically referred to herein, whether or not amendments or successors to such Applicable Law are referred to herein, are to be construed as references to that Applicable Law as from time to time amended or to any Applicable Law covering the same or similar subject matter from time to time replacing, extending, consolidating or amending the same.
- 2.14 References to a statute shall include all regulations, by-laws, ordinances and orders made under or pursuant to the statute.
- 2.15 References to persons shall include their successors and assigns. References to a public organization shall include their successors and assigns, and if a public organization ceases to exist or ceases to perform its functions without a successor or assign, references to such public organization shall be deemed to include a reference to any public organization or any organization or entity which has taken over either or both the functions and responsibilities of such public organization.
- 2.16 A reference in the Project Agreement or in any Project Document to any right, power, obligation or responsibility of any Governmental Authority shall be deemed to be a reference to the Governmental Authority that, pursuant to Applicable Laws has such right, power, obligation or responsibility at the relevant time.
- 2.17 References to a deliberate act or omission or deliberate or negligent act or omission of any Province Person shall be construed having regard to the interactive nature of the activities of the Province Persons and Project Co and further having regard to:

- (a) acts contemplated by the Output Specifications;
 - (b) acts or omissions in the ordinary course of the Governmental Activities and expressly or reasonably inferred from the Output Specifications to be taken into account by Project Co in the performance of the OM&R Work; or
 - (c) acts otherwise provided for in the Project Agreement.
- 2.18 The words in the Project Agreement shall bear their natural meaning.
- 2.19 Each of Project Co's and HMQ'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.

- 2.26 Unless otherwise indicated, time periods will be strictly construed.
- 2.27 Whenever the terms “will” or “shall” are used in the Project Agreement in relation to Project Co or HMQ they shall be construed and interpreted as synonymous and to read “Project Co shall” or “HMQ shall” as the case may be.
- 2.28 Any reference to currency is to Canadian currency and any amount advanced, paid or calculated is to be advanced, paid or calculated in Canadian currency.
- 2.29 Unless otherwise identified in the Project Agreement, all units of measurement in any documents submitted by Project Co to HMQ 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 road and highway construction and maintenance industry in Ontario will be construed as having that meaning unless the context otherwise requires.
- 2.31 Save where expressly stated otherwise, references to amounts or sums expressed to be “indexed” or “index linked” are references to amounts or sums which require adjustment to reflect the effects of inflation. Such adjustment shall be calculated in accordance with the following formula:

$$\text{Adjusted amount or sum} = \text{Amount or sum} \times \frac{\text{CPI}_n}{\text{CPI}_0}$$

- 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 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 1
HMQ Permits, Licences and Approvals**

1. the ESA Permits;
2. the Environmental Assessments;
3. an amendment to the Certificate of Approval pursuant to Section 27 of the *Environmental Protection Act* (Ontario) for the Brock Road Landfill; and
4. permanent road closures with cul de sacs in respect of the roads identified in Schedule 15-2 Part 2 Section 1.3(d)(v).

APPENDIX 2
Lands**1. Owned Available Lands**

- (1) All of PIN 16264-0986(LT) being part of Lot 22, Concession 5 (Geographic Township of Whitby), described as Part 1, 40R-26222 (MTO Plan P-5120-0067)
- (2) All of PIN 16264-0992(LT) being part of Lot 22, Concession 5 (Geographic Township of Whitby), described as Part 2, 40R-26222 (MTO Plan P-5120-0067)
- (3) All of PIN 16264-0993(LT) being part of Lots 21 and 22, Concession 5 (Geographic Township of Whitby), described as Parts 3, 4, 5, 6, 7 and 8, 40R-26222 (MTO Plan P-5120-0067); Subject to easement over Parts 4, 5 and 6 as in Instrument CO101801; Subject to easement over Part 5 as in Instrument D91588; Subject to Right-of-way over Part 7 as in Instrument CO245706.
- (4) Part of PIN 16264-0549(LT) being part of Anderson Street, Plan 40M-1953 (Town of Whitby), described as Part 33, 40R-26244 (MTO Plan P-5120-0093)
- (5) Part of PIN 16264-0107(LT) being part of Lot 21, Concession 5 (Geographic Township of Whitby), described as Part 2, 40R-26244 (MTO Plan P-5120-0093)
- (6) All of PIN 16264-0984(LT) being part of Lots 19 and 20, Concession 5 (Geographic Township of Whitby), described as Part 1, 40R-26192 (MTO Plan P-5120-0060)
- (7) All of PIN 16264-0146(LT) being part of Lot 17, Concession 5 (Geographic Township of East Whitby), described as Parts 1, 2 and 3, 40R-26250 (MTO Plan P-5119-0026) subject to easement over Part 3 as in Instrument EW21585
- (8) All of PIN 16264-0966(LT) being part of Lot 17, Concession 5 (Geographic Township of East Whitby), described as Parts 1, 2, 3, 4 and 5 on Expropriation Plan DR974664 (MTO Plan P-5119-0049); subject to easement over Parts 4 and 5 on Expropriation Plan DR974664 as in Instrument EW20413.
- (9) Part of PIN 16264-0134(LT) being part of the Road Allowance between Lots 18 and 19, Concession 5 (Geographic Township of Whitby), described as Part 7, 40R-26249 (MTO Plan P-5120-0092) and Parts 1 and 2, 40R-27264 (MTO Plan P-5120-0251)
- (10) All of PIN 16264-0972(LT) being part of Lots 21 and 22, Concession 5 (Geographic Township of Whitby), described as Parts 1 and 2 on Expropriation Plan DR974639 (MTO Plan P-5120-0132)
- (11) All of PIN 16264-0964(LT) being part of Lot 19, Concession 5 (Geographic Township of Whitby), described as Part 1 on Expropriation Plan DR974665 (MTO Plan P-5120-0139)

- (12) All of PIN 16264-0988(LT) being part of Lot 18, Concession 5 (Geographic Township of Whitby), described as Part 1, 40R-26193 (MTO Plan P-5120-0069)
- (13) All of PIN 16264-0989(LT) being part of Lot 17, Concession 5 (Geographic Township of East Whitby), described as Part 2, 40R-26193 (MTO Plan P-5119-0021)
- (14) All of PIN 16264-0990(LT) being part of Lot 17, Concession 5 (Geographic Township of East Whitby), described as Part 3, 40R-26193 (MTO Plan P-5119-0021)
- (15) Part of PIN 16264-0114(LT) being part of Lots 19 and 20, Concession 5 (Geographic Township of Whitby), described as Part 1, 40R-26249 (MTO Plan P-5120-0092)
- (16) Part of PIN 16434-0630(LT) being part of Lot 17, Concession 5, part of Lot 17, Concession 6 and part of the Road Allowance between Concessions 5 and 6 (Geographic Township of East Whitby), described as Parts 1, 2 and 3, 40R-26309 (MTO Plan P-5119-0032)
- (17) Part of PIN 26400-0014(LT) being part of Lot 12, Concession 6 (Geographic Township of Pickering), described as Part 2, 40R-26171 (MTO Plan P-5054-0044)
- (18) Part of PIN 26400-0102(LT) being part of Lot 11, Concession 6 (Geographic Township of Pickering), described as Part 1, 40R-26713 (MTO Plan P-5054-0113)
- (19) All of PIN 16264-0558(LT) being part of Lots 21 and 22, Concession 5 (Geographic Township of Whitby), described as Part 1 on Expropriation Plan DR974647 (MTO Plan P-5120-0133)
- (20) Part of PIN 16264-0751(LT) being part of Lot 21, Concession 5 (Geographic Township of Whitby), described as Part 4, 40R-26244 (MTO Plan P-5120-0093)
- (21) Part of PIN 16264-0747(LT) being part of Lots 21 and 22, Concession 5 (Geographic Township of Whitby), described as Part 7, 40R-26244 (MTO Plan P-5120-0093)
- (22) Part of PIN 16264-0752(LT) being part of Lot 22, Concession 5 (Geographic Township of Whitby), described as Part 28, 40R-26244 (MTO Plan P-5120-0093)
- (23) Part of PIN 16264-0748(LT) being part of Lot 22, Concession 5 (Geographic Township of Whitby), described as Part 13, 40R-26244 (MTO Plan P-5120-0093)
- (24) Part of PIN 16264-0753(LT) being part of Lot 22, Concession 5 (Geographic Township of Whitby), described as Part 22, 40R-26244 (MTO Plan P-5120-0093)
- (25) All of PIN 16264-0754(LT) being part of Lot 22, Concession 5 (Geographic Township of Whitby), described as Part 11, 40R-26244 (MTO Plan P-5120-0093)

- (26) All of PIN 16264-0955(LT) being part of Lot 22, Concession 5 (Geographic Township of Whitby), described as Part 1 on Expropriation Plan DR974638 (MTO Plan P-5120-0126)
- (27) Part of PIN 16263-0005(LT) being part of Lots 15, 16 and 17, and part of the Road Allowance between Lots 16 and 17, Concession 5 (Geographic Township of East Whitby), described as Part 10, 40R-26205 (MTO Plan P-5119-0025)
- (28) All of PIN 16263-0004(LT) being part of Lot 16, Concession 5 (Geographic Township of East Whitby), described as Part 1 on Expropriation Plan DR974599 (MTO Plan P-5119-0046)
- (29) All of PIN 16264-0529(LT) being Block 196, Registered Plan 40M-1953, described as Part 1 on Expropriation Plan DR974643 (MTO Plan P-5120-0136)
- (30) Part of PIN 16397-0102 (LT) being part of the south half of Lot 3 and Part of Lot 4, Concession 6 (Geographic Township of East Whitby), described as Part 3, 40R-27114 (MTO Plan P-5119-0071)
- (31) Part of PIN 16395-0013(LT) being part of Lot 14, Concession 6 (Geographic Township of East Whitby), described as Parts 3, 4 and 5, 40R-26210 (MTO Plan P-5119-0028); subject to easement over Part 5 as in Instrument C064620
- (32) All of PIN 16395-0133(LT) being part of Lot 13, Concession 6 (Geographic Township of East Whitby), described as Parts 1, 2 and 3 on Expropriation Plan DR974605 (MTO Plan P-5119-0054); subject to easement over Part 3 on said Expropriation Plan DR974605 as in Instrument CO60674.
- (33) All of PIN 16395-0140(LT) being part of Lot 13, Concession 6 (Geographic Township of East Whitby), described as Parts 5, 6, 7 and 8, 40R-26162 (MTO Plan P-5119-0019); subject to easement over Part 6 as in Instrument CO60674; Subject to a Right-of-way over Part 8 as in Instrument CO260015.
- (34) Part of PIN 16395-0002(LT) being part of Lots 15, 16 and 17 and part of the Road Allowance between Lots 16 and 17, Concession 5 and part of Lots 15 and 16, Concession 6 and part of the Road Allowance between Concessions 5 and 6 (Geographic Township of East Whitby), described as Part 2, 40R-26245 (MTO Plan P-5119-0027)
- (35) Part of PIN 16395-0021(LT) being part of Lot 13, Concession 6 (Geographic Township of East Whitby), described as Part 13, 40R-26210 (MTO Plan P-5119-0028)
- (36) Part of PIN 16395-0001(LT) being part of the Road Allowance between Concessions 5 and 6, part of the Road Allowance between Lots 16 and 17 and part of Lot 16, Concession 6 (Geographic Township of East Whitby), described as Part 7, 40R-26309 (MTO Plan P-5119-0032)

- (37) All of PIN 16395-0069(LT), being part of Lot 16, Concession 5 (Geographic Township of East Whitby), described as Part 1, 40R-26245 (MTO Plan P-5119-0027)
- (38) All of PIN 16396-0165(LT) being part of Lot 10, Concession 6 (Geographic Township of East Whitby), described as Part 1 on Expropriation Plan DR1038985 (MTO Plan P-5119-0075)
- (39) Part of PIN 16396-0069(LT) being part of Lots 8 and 9, and part of the Road Allowance between Lots 8 and 9, Concession 6 (Geographic Township of East Whitby), described as Parts 1 and 2, 40R-26463 (MTO Plan P-5119-0036) and Part 1, MTO Plan P-5119-0092
- (40) Part of PIN 16396-0087(LT) being part of Lot 9, Concession 6 (Geographic Township of East Whitby) (known as Ritson Road North), described as Part 3, 40R-26463 (MTO Plan P-5119-0036)
- (41) All of PIN 16396-0072(LT) being part of Lot 9 and part of the Road Allowance between Lots 8 and 9, Concession 6 (Geographic Township of East Whitby), described as Parts 3, 4 and 5, 40R-26955,(MTO Plan P-5119-0064)
- (42) All of PIN 16397-0098(LT) being part of Lot 4, Concession 6 (Geographic Township of East Whitby), described as Part 1, Expropriation Plan DR1039081 (MTO Plan P-5119-0082)
- (43) Part of PIN 16397-0022(LT) being part of Lot 4, Concession 6 (Geographic Township of East Whitby), described as Part 2, 40R-26981(MTO Plan P-5119-0066)
- (44) All of PIN 16397-0023(LT) being part of Lot 4, Concession 6(Geographic Township of East Whitby), described as Part 2, 40R-26368 (MTO Plan P-5119-0035)
- (45) Part of PIN 26493-0031(LT) being part of Lot 35, Concession 1 (Geographic Township of Whitby), described as Part 15, 40R-26276 (MTO Plan P-5120-0104)
- (46) Part of PIN 26494-0333(LT) being part of Miller Street, Registered Plan M-958 (Town of Whitby), described as Part 6, 40R-26085 (MTO Plan P-5120-0039)
- (47) All of PIN 26494-0334(LT) being Blocks F and P, on Registered Plan M-958 and Block E on Registered Plan M-928,
- (48) All of PIN 26570-1042(LT) being part of Lot 34, Concession 5 (Geographic Township of Whitby), described as Part 3, 40R-25403 (MTO Plan P-1771-0058)
- (49) All of PIN 26571-0173(LT) being part of Lot 33, Concession 6 (Geographic Township of Whitby), described as Part 1, 40R-26217 (MTO Plan P-5120-0095)
- (50) All of PIN 26571-0009(LT) being part of Lot 34, Concession 6 (Geographic Township of Whitby), described as Part 1, 40R-1647 (MTO Plan P-5120-0016), save and except Part 3, 40R-6860 (MTO Plan P-1771-0044)

- (51) All of PIN 26571-0172(LT) being part of Lot 33, Concession 6 (Geographic Township of Whitby), described as Parts 1 and 2, Expropriation Plan DR808269 (MTO Plan P-1771-0091)
- (52) All of PIN 26571-0013(LT) being part of Lot 33, Concession 6 (Geographic Township of Whitby), described as Part 1, 40R-18458 (MTO Plan P-5120-0009)
- (53) Part of PIN 26571-0014(LT) being part of Lot 33, Concession 6 (Geographic Township of Whitby), described as Part 3, 40R-26164 (MTO Plan P-5120-0072)
- (54) All of PIN 26548-3057(LT) being part of Lot 34, Concession 3 (Geographic Township of Whitby), described as Part 4, 40R-23879 (MTO Plan P-5120-0048); subject to easement as in Instrument D201710
- (55) All of PIN 26548-3056(LT) being part of Lot 34 and part of the Road Allowance between Lots 34 and 35, Concession 3 (Geographic Township of Whitby), described as Parts 1 and 2, 40R-23879 (MTO Plan P-5120-0048); subject to easement over Part 2 as in Instrument D201710
- (56) Part of PIN 26548-3058(LT) being part of Lots 34 and 35 and part of the Road Allowance between Lots 34 and 35, Concession 3 (Geographic Township of Whitby), described as Parts 3, 4, 5 and 9, 40R-26698 (MTO Plan P-5120-0207); Subject to Easement over Part 3 as in Instrument No. D201708; Subject to an Easement over Parts 4 and 5 as in Instrument D201710 and Part 1, MTO Plan P-5120-0268
- (57) Part of PIN 26493-0001(LT) being part of Lot 1, Concession 1(Town of Ajax, Geographic Township of Pickering), Lots 21, 22 and part of Lot 20, Registrar's Compiled Plan No. 1063(Town of Whitby, Geographic Township of Whitby), and part of the Road Allowance between the Geographic Townships of Pickering and Whitby (Towns of Whitby and Ajax, Geographic Townships of Pickering and Whitby), described as Part 16, 40R-26276 (MTO Plan P-5054-0053 and P-5120-0104)
- (58) Part of PIN 26494-0096(LT) being part of Lot 34, Concession 1 (Geographic Township of Whitby), described as Parts 17 and 18, 40R-26267 (MTO Plan P-5120-0036)
- (59) Part of PIN 26494-0097(LT) being part of Lot 34, Concession 1 (Geographic Township of Whitby), described as Parts 20, 21, 22, 25, 26 and 27, 40R-26267 (MTO Plan P-5120-0036)
- (60) Part of PIN 26494-0098(LT) being part of Lot 34, Concession 1 (Geographic Township of Whitby), described as Parts 29 and 30, 40R-26267 (MTO Plan P-5120-0036); subject to easement over Part 30 as in Instrument CO83136
- (61) All of PIN 26547-0028(LT) being part of Lot 34, Concession 2 (Geographic Township of Whitby), described as Part 1, 40R-25927 (MTO Plan P-5120-0021); subject to easement as in Instrument D201709

- (62) Part of PIN 26547-0016(LT) being part of Lot 34, Concession 2 (Geographic Township of Whitby), described as Part 2, 40R-26142(MTO Plan P-5120-0059), save and except Part 1, 40R-27296 (MTO Plan P-5120-0248); subject to easement as in Instrument D201709
- (63) Part of PIN 26547-0832(LT) being part of Lot 35, Concession 2 (Geographic Township of Whitby), described as Part 2, 40R-26157 (MTO Plan P-5120-0061) and Part 1, 40R-27418 (MTO Plan P-5120-0277); subject to easement as in Instrument D201707
- (64) All of PIN 26548-0006(LT) being part of Lot 35, Concession 3 (Geographic Township of Whitby), described as Part 1, 40R-26175 (MTO Plan P-5120-0089); subject to easement as in Instrument D201708
- (65) Part of PIN 26547-0017(LT) being part of the Road Allowance between Lots 34 and 35, Concession 2 (Geographic Township of Whitby), described as Part 4, 40R-26142 (MTO Plan P-5120-0059) and Part 1, 40R-26262 (MTO Plan P-5120-0053)
- (66) Part of PIN 26547-0026(LT) being part of Lot 34, Concession 2 (Geographic Township of Whitby), described as Part 7, 40R-26262 (MTO Plan P-5120-0053)
- (67) All of PIN 26548-3332(LT) being part of Lot 35, Concession 3 (Geographic Township of Whitby), described as Part 1 on Expropriation Plan DR974663 (MTO Plan P-5120-0155); Subject to easement as in Instrument D201708
- (68) Part of PIN 26548-0010(LT) being part of Lot 34, Concession 3 (Geographic Township of Whitby), described as Part 2, 40R-26158 (MTO Plan P-5120-0062) Subject to Easement as in Instrument D201710
- (69) All of PIN 26548-0007(LT) being part of Lot 35, Concession 3 (Geographic Township of Whitby), described as Part 2, 40R-26175(MTO Plan P-5120-0089); subject to easement as in Instrument D201708
- (70) Part of PIN 26548-0437(LT) being part of Lots 33 and 34, Concession 3 (Geographic Township of Whitby), described as Part 15, 16 and 17, 40R-26145 (MTO Plan P-5120-0075); subject to easements over Part 15 as in Instruments D201711, D201726 and D201727
- (71) All of PIN 26548-0382(LT) being part of the Road Allowance between Lots 34 and 35, Concession 3 (Geographic Township of Whitby), described as Parts 3, 4 and 5, 40R-26158 (MTO Plan P-5120-0062); Subject to easement over Part 4 as in Instrument WH11007
- (72) Part of PIN 26548-0380(LT) being part of Lots 33 and 35, Concession 2, part of Lots 34 and 35, Concession 3 and part of the Road Allowance between Concessions 2 and 3 (Geographic Township of Whitby), described as Parts 1, 3, 4, 5 and 6, 40R-26157 (MTO Plan P-5120-0061) Save and Except Parts 1, 2 and 3, 40R-27194 (MTO Plan P-5120-0245) ; Subject to a Right-of-way over Part 3 as in Instrument CO146841; subject to easement over Part 3 as in Instrument D201707; subject to easement over Part 4 as in Instrument D201705; subject to easement over Part 5 as in Instrument D201710; subject to easement over Part 6 as in

Instrument D201708

- (73) Part of PIN 26548-0379(LT) being part of Lot 35, Concession 3 (Geographic Township of Whitby), described as Part 1, 40R-26231 (MTO Plan P-5120-0101); and Part 2, 40R-27418 (MTO Plan P-5120-0277) subject to easement as in Instrument D201708
- (74) Part of PIN 26548-0836(LT) being part of Lots 35, Concession 3 (Geographic Township of Whitby), described as Part 1, 40R-26214 (MTO Plan P-5120-0085); subject to easement as in Instrument D201708; Subject to a Right-of-way as in Instrument LT960692
- (75) Part of PIN 26548-0004(LT) being part of Lot 35, Concession 3 (Geographic Township of Whitby), described as Part 9, 40R-26146 (MTO Plan P-5120-0074); subject to easement as in Instrument D201708
- (76) All of PIN 26570-0029(LT) being part of Lot 34, Concession 5 (Geographic Township of Whitby), described as Parts 1 and 2, 40R-26124 (MTO Plan P-5120-0025)
- (77) All of PIN 26570-0030(LT) being part of Lot 34, Concession 5 (Geographic Township of Whitby), described as Parts 3 and 4, 40R-26167 (MTO Plan P-5120-0077)
- (78) Part of PIN 26570-0245(LT) being part of Lot 34, Concession 4 (Geographic Township of Whitby), described as Parts 6 and 7 , 40R-26177 (MTO Plan P-5120-0087)
- (79) All of PIN 26570-1115(LT) being part of Lot 34, Concession 4 (Geographic Township of Whitby), described as Part 1 on Expropriation Plan DR974703 (MTO Plan P-5120-0166)
- (80) All of PIN 26570-0468(LT) being part of Lot 35, Concession 4 (Geographic Township of Whitby), described as Part 2, 40R-19436 (MTO Plan P-5120-0110)
- (81) All of PIN 26570-0474(LT) being part of Lot 35, Concession 4 (Geographic Township of Whitby), described as Part 1, 40R-19436 (MTO Plan P-5120-0110)
- (82) All of PIN 26548-3063(LT) being part of Lot 34, Concession 3 (Geographic Township of Whitby), described as Part 3, 40R-23879 (MTO Plan P-5120-0048); subject to easement as in Instrument D201710
- (83) All of PIN 26548-3064(LT) being part of the North Half of Lot 34, Concession 3 (Geographic Township of Whitby), described as Part 1, 40R-26119 (MTO Plan P-5120-0052); subject to easement as in Instrument D201710
- (84) Part of PIN 26570-1027(LT) being part of Lot 33, Concession 4 (Geographic Township of Whitby), described as Part 5, 40R-26214 (MTO Plan P-5120-0085); subject to easement as in Instrument D201725
- (85) All of PIN 26570-1030(LT) being part of Lots 34, Concession 4 (Geographic Township of Whitby), described as Part 2, 40R-23852 (MTO Plan P-5120-0049)

- (86) All of PIN 26570-1031(LT) being part of Lots 34, Concession 4 (Geographic Township of Whitby), described as Part 1, 40R-23852 (MTO Plan P-5120-0049)
- (87) Part of PIN 26571-0015(LT) being part of Lot 33, Concession 6 (Geographic Township of Whitby), described as Part 2, 40R-26166 (MTO Plan P-5120-0073)
- (88) Part of PIN 26571-0004(LT) being part of Lot 35, Concession 6 (Geographic Township of Whitby), described as Part 2, 40R-26180 (MTO Plan P-5120-0065)
- (89) All of PIN 26571-0005(LT) being part of Lot 35, Concession 6 (Geographic Township of Whitby), described as Part 1, 40R-26218 (MTO Plan P-5120-0100)
- (90) All of PIN 26571-0006(LT) being part of Lot 35, Concession 6 (Geographic Township of Whitby), described as Part 2, 40R-1833 (MTO Plan P-5120-0031)
- (91) Part of PIN 26571-0011(LT) being part of Lot 33, Concession 6 (Geographic Township of Whitby), described as Parts 1 and 3, 40R-26744 (MTO Plan P-5120-0035)
- (92) All of PIN 26401-0066(LT) being part of Lot 13, Concession 6 (Geographic Township of Pickering), described as Part 1, on Expropriation Plan DR974546 (MTO Plan 5054-0105)
- (93) All of PIN 16264-0951(LT) being part of Lot 20, Concession 5 (Geographic Township of Whitby), described as Part 3, 40R-26759 (MTO Plan P-5120-0214)
- (94) Part of PIN 26571-0012(LT) being part of Lot 33, Concession 6 (Geographic Township of Whitby), described as Parts 1 and 2, MTO Plan P-5120-0262)
- (95) Part of PIN 16264-0942(LT) being part of Lot 20, Concession 5 (Geographic Township of Whitby), described as Part 14, 40R-26213 (MTO Plan P-5120-0066)
- (96) Part of PIN 16264-0944(LT) being part of Lot 20, Concession 5 (Geographic Township of Whitby), described as Part 12, 40R-26213 (MTO Plan P-5120-0066)
- (97) All of PIN 26570-1066(LT) being part of Lot 33, Concession 4 (Geographic Township of Whitby), described as Parts 1, 2, 3, 4 and 5, 40R-26008 (MTO Plan P-5120-0034)
- (98) Part of PIN 26570-0244(LT) being part of Lot 34, Concession 4 (Geographic Township of Whitby), described as Parts 1, 2, 3, 4 and 5, 40R-26215 (MTO Plan P-5120-0094) Subject to an Easement over Part 2 as in WH12212 and subject to an Easement over Part 4 as in Instrument WH11947
- (99) All of PIN 26570-1132(LT) being part of Lots 33 and 34, Concession 4 (Geographic Township of Whitby), described as Parts 1, 2 and 3, 40R-26239 (MTO Plan P-5120-0103); subject to easement over Part 2 as in Instrument D91588

- (100) Part of PIN 26570-0248(LT) being part of the Road Allowance between Lots 34 and 35, Concession 4 (Geographic Township of Whitby), described as Part 1, 40R-26201 (MTO Plan P-5120-0076)
- (101) All of PIN 26400-0150(LT) being part of the Road Allowance between Lots 8 and 9, Concession 6 (Geographic Township of Pickering), described as Part 1, 40R-26272 (MTO Plan P-5054-0060)
- (102) Part of PIN 26494-0001(LT) being part of Lot 1, Concession 1(Town of Ajax, Geographic Township of Pickering), part of Lot 35, Concession 1(Town of Whitby, Geographic Township of Whitby), and part of the Road Allowance between the Geographic Townships of Pickering and Whitby (Towns of Whitby and Ajax, Geographic Townships of Pickering and Whitby), described as Part 1, 40R-26251 (MTO Plan P-5054-0050 and P-5120-0097)
- (103) Part of PIN 26569-0055(LT) being part of Lot 23, Concession 5 (Geographic Township of Whitby), described as Parts 6, 7, 8, 9, 10, 16, 17, 18 and 19, 40R-26246 (MTO Plan P-5120-0080) Save and except Parts 4, 5 and 6 on MTO Plan P-5120-0266; subject to easement over Parts 7, 9 and 18, 40R-26246 (MTO Plan P-5120-0080) as in Instrument LT647475; subject to easement over Parts 8 and 17, 40R-26246 (MTO Plan P-5120-0080) as in Instrument LT647476;
- (104) Part of PIN 26454-0059(LT) being part of Lots 1 and 2, Concession 1(Geographic Township of Pickering), described as Part 2, 40R-27251 (MTO Plan P-2310-0331)
- (105) All of PIN 16396-0169(LT) being part of the Road Allowance between Lots 10 and 11, Concession 6 (Geographic Township of East Whitby)(known as Bridle Road North), described as Part 5, 40R-26463 (MTO Plan P-5119-0036)
- (106) All PIN 16396-0172(LT) being part of the south half of Lot 12, Concession 6 (Geographic Township of East Whitby), described as Parts 1, 2, 3 and 4, 40R-26162 (MTO Plan P-5119-0019); subject to easement over Parts 2, 3 and 4 on 40R-26162 (MTO Plan P-5119-0019) as in Instrument EW 16892; subject to easement over Part 4 on 40R-26162 (MTO Plan P-5119-0019) as in Instrument CO60675.
- (107) All of PIN 16396-0167(LT) being part of Lot 11, Concession 6 (Geographic Township of East Whitby), described as Parts 1 and 2, DR1038982 (MTO Plan P-5119-0077); subject to easement over Part 2, DR1038982 (MTO Plan P-5119-0037) as in Instrument EW17603
- (108) All of PIN 26571-0158(LT) being part of Lot 27, Concession 6 (Geographic Township of Whitby), described as Part 1, 40R-25404 (MTO Plan P-1771-0056)
- (109) All of PIN 26571-0060(LT) being part of Lot 28, Concession 6 (Geographic Township of Whitby), described as Parts 1, 2 and 3, 40R-25736 (MTO Plan P-1771-0075)
- (110) All of PIN 26571-0159(LT) being part of Lot 28, Concession 6 (Geographic Township of Whitby), described as Part 3, 40R-25404 (MTO Plan P-1771-0056)

- (111) Part of PIN 26570-0475(LT) being part of Lot 35, Concession 4 (Geographic Township of Whitby), described as Parts 7 and 11 (MTO Plan P-5120-0259)
- (112) All of PIN 26571-0151(LT) being part of Lot 35, Concession 6 (Geographic Township of Whitby), described as Parts 1 and 2, 40R-25713 (MTO Plan P-1771-0070)
- (113) All of PIN 26571-0152(LT) being part of Lot 35, Concession 6 (Geographic Township of Whitby), described as Part 1, 40R-26148 (MTO Plan P-5120-0057)
- (114) Part of PIN 26570-0253(LT) being part of Lots 33 and 34, Concession 3, and part of Lots 33, 34, and 35, Concession 4, and part of the Road Allowance between Concessions 3 and 4 (Geographic Township of Whitby), described as Part 3, 40R-26214 (MTO Plan P-5120-0085)
- (115) Part of PIN 26548-3081(LT) being part of Lots 33, Concession 3 (Geographic Township of Whitby), described as Part 4, 40R-26214 (MTO Plan P-5120-0085); Subject to a Right-of-way as in Instrument DR519558
- (116) All of PIN 26570-1055(LT) being part of Lot 34, Concession 5 (Geographic Township of Whitby), described as Part 1, 40R-25819 (MTO Plan P-5120-0024)
- (117) Part of PIN 26400-0146(LT) being part of Lot 12 and part of the Road Allowance between Lots 12 and 13, Concession 6 (Geographic Township of Pickering) described as Part 4, 40R-26082(MTO Plan P-5054-0033)
- (118) Part of PIN 26401-0080(LT) being part of Lot 14 and part of the Road Allowance between Lots 14 and 15, Concession 6 (Geographic Township of Pickering), described as Part 6, 40R-26176 (MTO Plan P-5054-0042)
- (119) Part of PIN 26401-0002(LT) being part of Lot 14, Concession 6, described as Part 4, 40R-26745 (MTO Plan P-5054-0124)
- (120) Part of PIN 26401-0052(LT) being part of Lot 14, Concession 6 (Geographic Township of Pickering), described as Parts 1 and 3, 40R-26745(MTO Plan P-5054-0124) and Part 1, MTO Plan P-5120-0263
- (121) Part of PIN 26401-0064(LT) being part of Lot 15, Concession 6 (Geographic Township of Pickering), described as Parts 1 and 4, 40R-27002 (MTO Plan P-5054-0134); subject to easement over Part 4 as in Instrument DR813462.
- (122) Part of PIN 26571-0073(LT) being part of Lot 35, Concession 6 (Geographic Township of Whitby), described as Part 2, 40R-26218 (MTO Plan P-5120-0100)
- (123) Part of PIN 26571-0074(LT) being part of Lot 34, Concession 6 (Geographic Township of Whitby), described as Part 5, 40R-26769 (MTO Plan P-5120-0223)

- (124) All of PIN 16264-0554(LT) being part of Lot 22, Concession 5 (Geographic Township of Whitby), described as Parts 15 and 16, 40R-26244 (MTO Plan P-5120-0093)
- (125) All of PIN 16264-0982(LT) being part of Lot 22, Concession 5 (Geographic Township of Whitby), described as Part 1 on Expropriation Plan DR1038923 (MTO Plan P-5120-0127)
- (126) Part of PIN 16264-0584(LT) being part of Lot 22, Concession 5 (Geographic Township of Whitby), described as Part 34, 40R-26244 (MTO Plan P-5120-0093)
- (127) Part of PIN 26571-0042(LT) being part of Lot 32, Concession 6 (Geographic Township of Whitby), described as Part 3, 40R-26203 (MTO Plan P-5120-0083)
- (128) All of PIN 26571-0041(LT) being part of Lot 32, Concession 6 (Geographic Township of Whitby), described as Part 2, 40R-26203 (MTO Plan P-5120-0083)
- (129) All of PIN 26570-1068(LT) being part of Lot 34, Concession 5 (Geographic Township of Whitby), described as Part 2, 40R-26031 (MTO Plan P-5120-0028)
- (130) All of PIN 26494-0701(LT) being part of Lot 32, Concession 1 (Geographic Township of Whitby), described as Part 2, 40R-26085 (MTO Plan P-5120-0039)
- (131) Part of PIN 26494-0691(LT) being part of Lot 32, Concession 1 (Geographic Township of Whitby), described as Part 4, 40R-20643 (MTO Plan P-2307-0291)
- (132) Part of PIN 26571-0055(LT) being part of Lot 30, Concession 6 (Geographic Township of Whitby), described as Parts 1, 3 and 4, 40R-26196 (MTO Plan P-5120-0079) and Part 1, MTO Plan P-5120-0264
- (133) Part of PIN 26453-0716(LT), being part of Lots 1, 2, 3, 4, 5 and 6, part of the Road Allowance between Lots 2 and 3, and part of the Road Allowance between Lots 4 and 5, Concession 1 (Geographic Township of Pickering), described as Part 1, 40R-27249 (MTO Plan P-2310-0330), Save and Except that part of Part 1, 40R-26228 (MTO Plan P-5054-0049) within Lot 3, Concession 1; and Part 1, 40R-27143 (MTO Plan P-2310-0327); and Part 1, Plan 40R-27144 (MTO Plan P-2310-0328); and Part 1, 40R-27251 (MTO Plan P-2310-0331)
- (134) Part of PIN 26571-0187(LT) being part of Lot 27, Concession 6 (Geographic Township of Whitby), described as Part 2, 40R-26367 (MTO Plan P-5120-0115)
- (135) Part of PIN 26571-0002(LT) being part of the Road Allowance between Concessions 5 and 6 and part of Lots 27 and 28, Concession 5 and 6 (Geographic Township of Whitby), described as Part 6, 40R-26769 (MTO Plan P-5120-0223)
- (136) Part of PIN 26569-1211(LT) being part of Lot 26, Concession 5 (Geographic Township of Whitby), described as Part 1, 40R-26748 (MTO Plan P-5120-0212)

- (137) Part of PIN 26569-1577(LT) being part of Lot 24, Concession 5 (Geographic Township of Whitby), described as Part 4, 40R-27145(MTO Plan P-5120-0244)
- (138) Part of PIN 26569-0494(LT) being part of Lot 24, Concession 5 (Geographic Township of Whitby described as Part 3, 40R-27145(MTO Plan P-5120-0244)
- (139) All of PIN 16264-0983(LT) being part of Lot 22, Concession 5 (Geographic Township of Whitby), described as Part 1 on Expropriation Plan DR1039074 (MTO Plan P-5120-0137)
- (140) Part of PIN 26399-0136(LT) being part of the Road Allowance between Lots 2 and 3, Concession 6 (Geographic Township of Pickering) and Part of the 10 foot Widening, Registered Plan 644, described as Part 1, 40R-26120 (MTO Plan P-5054-0038)
- (141) Part of PIN 26399-0141(LT) being part of Lots 1 and 2, Concession 6 (Geographic Township of Pickering), described as Parts 1 and 2, 40R-26151 (MTO Plan P-5054-0040) subject to easement over Part 2 as in Instrument PI32270
- (142) All of PIN 26399-0118(LT) being part of Lot 4, Concession 6 (Geographic Township of Pickering), described as Parts 1, 2, 3, 4, 5 and 6, 40R-26312 (MTO Plan P-5054-0065); subject to easement over Parts 3 and 4 as in Instrument PI31897.
- (143) Part of PIN 26399-0138(LT) being part of the Road Allowance between Lots 4 and 5, Concession 6 (Geographic Township of Pickering) described as Part 4, 40R-26114 (MTO Plan P-5054-0037)
- (144) Part of PIN 26399-0013(LT) being part of Lot 5, Concession 6 (Geographic Township of Pickering), described as Parts 2 and 3, 40R-26114 (MTO Plan P-5054-0037); subject to easement over Part 3 as in Instrument PI31876
- (145) All of PIN 26399-0023(LT) being part of Lot 3, Concession 6 (Geographic Township of Pickering), described as Part 1 on Expropriation Plan DR974570 (MTO Plan P-5054-0093)
- (146) All of PIN 26399-0059(LT) being part of Lot 1, Concession 6 (Geographic Township of Pickering), described as Part 1 on Expropriation Plan DR974586 (MTO Plan P-5054-0091)
- (147) Part of PIN 26399-0024(LT) being part of Lot 3, Concession 6 (Geographic Township of Pickering), described as Part 4, 40R-26204 (MTO Plan P-5054-0046)
- (148) Part of PIN 26399-0025(LT) being part of Lot 3, Concession 6 (Geographic Township of Pickering), described as Parts 5 and 7, 40R-26204 (MTO Plan P-5054-0046)
- (149) All of PIN 26399-0108(LT) being part of Lot 6, Concession 6 (Geographic Township of Pickering), described as Part 2, 40R-26015 (MTO Plan P-5054-0032)

- (150) Part of PIN 26399-0069(LT) being part of Lot 3, Concession 6 (Geographic Township of Pickering), described as Part 9, 40R-26204 (MTO Plan P-5054-0046)
- (151) Part of PIN 26399-0076(LT) being part of Lot 3, Concession 6 (Geographic Township of Pickering), described as Part 10, 40R-26204 (MTO Plan P-5054-0046)
- (152) Part of PIN 26399-0077(LT) being part of Lot 3, Concession 6 (Geographic Township of Pickering), described as Part 12, 40R-26204 (MTO Plan P-5054-0046)
- (153) Part of PIN 26399-0078(LT) being part of Lot 3, Concession 6 (Geographic Township of Pickering), described as Part 14, 40R-26204 (MTO Plan P-5054-0046)
- (154) All of PIN 26399-0107(LT) being part of Lot 6, Concession 6 (Geographic Township of Pickering), described as Part 3, 40R-26015 (MTO Plan P-5054-0032)
- (155) Part of PIN 26399-0079(LT) being part of Lot 3, Concession 6 (Geographic Township of Pickering), described as Part 16, 40R-26204 (MTO Plan P-5054-0046)
- (156) Part of PIN 26400-0079(LT) being part of Lot 7, Concession 6 (Geographic Township of Pickering), described as Part 4, 40R-26272 (MTO Plan P-5054-0060)
- (157) All of PIN 26399-0008(LT) being part of Lot 6, Concession 6 (Geographic Township of Pickering), as in D64385, shown as Part 7 on MTO Plan P-5054-0024
- (158) Part of PIN 26399-0140(LT) being part of Lot 7, and part of the Road Allowance between Lots 6 and 7, Concession 6 (Geographic Township of Pickering), described as Parts 1 and 2, 40R-26130 (MTO Plan P-5054-0036)
- (159) Part of PIN 26571-0209(LT) being part of the Road Allowance between the Lots 34 and 35, Concession 6, described as Part 1, 40R-26663 (MTO Plan P-5120-0205)
- (160) Part of PIN 26571-0072(LT) being part of Lot 1, Concession 6 (Geographic Township of Pickering), described as Part 3, 40R-26218 (MTO Plan P-5054-0052)
- (161) All of PIN 26494-0712(LT) being part of the Road Allowance between Lots 32 and 33, Concession 1 (Geographic Township of Whitby), described as Part 2, 40R-26195 (MTO Plan P-5120-0084)
- (162) Part of PIN 26494-0094(LT) being part of Lots 34 and 35 and part of the Road Allowance between Lots 34 and 35, Concession 1 (Geographic Township of Whitby), described as Parts 1, 5, 6, 10 and 12, 40R-26267 (MTO Plan P-5120-0036); subject to easement as in Instrument WH10050
- (163) Part of PIN 26494-0575(LT) being part of Lots 28, 29, 30, 31, 32, 33, 34 and 35, Concession 1, part of the Road Allowance between Lots 28 and 29, Concession 1, part of the Road Allowance between Lots 30 and 31, Concession 1, part of the Road Allowance between Lots

- 32 and 33, Concession 1, part of the Road Allowance between Lots 34 and 35, Concession 1 (Town of Whitby, Geographic Township of Whitby) and part of the Road Allowance between the Geographic Townships of Pickering and Whitby (Towns of Whitby and Ajax, Geographic Townships of Pickering and Whitby), shown as Part 2, 40R-27144 (MTO Plan P-2307-0293), Part 3, 40R-27251 (MTO Plan P-2307-0297), Part 1, 40R-27173 (MTO Plan P-2307-0294), Parts 1 and 3, 40R-27172 (MTO Plan P-2307-0295); and Part 1, 40R-27250 (MTO Plan P-2307-0296)
- (164) All of PIN 26494-0703(LT) being part of Lot 33, Concession 1 (Geographic Township of Whitby), described as Part 1, 40R-26108 (MTO Plan P-5120-0042)
- (165) All of PIN 26494-0704(LT) being part of Lot 33, Concession 1 (Geographic Township of Whitby), described as Part 3, 40R-26108 (MTO Plan P-5120-0042)
- (166) All of PIN 26569-1429(LT) being part of the Road Allowance between Lots 26 and 27, Concession 5 (Geographic Township of Whitby), described as Parts 7, and 11, 40R-25402(MTO Plan P-1771-0055)
- (167) Part of PIN 26569-1430(LT) being part of the Road Allowance between Lots 26 and 27, Concession 5 (Geographic Township of Whitby), described as Part 1, 40R-26198, save and except Parts 7, and 11, 40R-25402(MTO Plan P-1771-0055)
- (168) Part of PIN 26400-0149(LT) being part of Lots 10 and 11 and part of the Road Allowance between Lots 10 and 11, Concession 6 (Geographic Township of Pickering) described as Part 1, 40R-26109 (MTO Plan P-5054-0035).
- (169) Part of PIN 26400-0050(LT) being part of Lot 10, Concession 6 (Geographic Township of Pickering), described as Part 2, 40R-26109 (MTO Plan P-5054-0035)
- (170) Part of PIN 26400-0105(LT) being part of Lot 10, Concession 6 (Geographic Township of Pickering), described as Parts 5 and 7, 40R-26109 (MTO Plan P-5054-0035)
- (171) Part of PIN 26400-0052(LT) being part of Lot 10, Concession 6 (Geographic Township of Pickering), described as Part 9, 40R-26109 (MTO Plan P-5054-0035)
- (172) Part of PIN 26400-0104(LT) being part of Lot 10, Concession 6 (Geographic Township of Pickering), described as Part 1, 40R-26715 (MTO Plan P-5054-0114)
- (173) All of PIN 26401-0060(LT) being part of Lot 14, Concession 6 (Geographic Township of Pickering), described as Part 3, 40R-26176(MTO Plan P-5054-0042)
- (174) Part of PIN 16397-0018(LT) being part of Lots 4 and 5 and part of the Road Allowance between Lots 4 and 5, Concession 6(Geographic Township of East Whitby)(known as Harmony Road North), described as Part 4, 40R-26368 (MTO Plan P-5119-0035) and Part 1, 40R-26981(MTO Plan P-5119-0066)

- (175) Part of PIN 16397-0043(LT) being part of the Road Allowance between Lots 6 and 7, Concession 6(Geographic Township of East Whitby)(known as Wilson Road North), described as Part 1, 40R-26334 (MTO Plan P-5119-0033) and Parts 1 and 2, 40R-27265 (MTO Plan P-5119-0086)
- (176) Part of PIN 16397-0010(LT) being part of Lot 5, Concession 6 (Geographic Township of East Whitby), described as Parts 3 and 4, 40R-26334 (MTO Plan P-5119-0033); subject to easement over Part 4, 40R-26334 (MTO Plan P-5119-0033) as in Instrument CO96426.
- (177) Part of PIN 16397-0087(LT) being part of Lot 6, Concession 6 (Geographic Township of East Whitby), described as Part 2, 40R-26334 (MTO Plan P-5119-0033)
- (178) All of PIN 16397-0017(LT) being part of Lot 5, Concession 6(Geographic Township of East Whitby), described as Part 4, 40R-26331 (MTO Plan P-5119-0031)
- (179) All of PIN 16397-0094(LT) being part of Lot 5, Concession 6(Geographic Township of East Whitby), described as Part 1, Expropriation Plan DR1039069 (MTO Plan P-5119-0083)
- (180) Part of PIN 16397-0012(LT) being part of Lots 5 and 6, Concession 6 (Geographic Township of East Whitby), described as Part 2, 40R-27119 (MTO Plan P-5119-0072). And Part 1, MTO Plan P-5119-0093
- (181) All of PIN 16397-0015(LT) being part of Lot 5, Concession 6(Geographic Township of East Whitby), described as Part 2, 40R-26331 (MTO Plan P-5119-0031)
- (182) All of PIN 16396-0174(LT) being part of Lots 7 and 8, Concession 6 (Geographic Township of East Whitby), described as Parts 1, 2, 3, 4, 5 and 6, 40R-26118 (MTO Plan P-5119-0018); subject to a Right-of-way over Parts 2 and 5 on 40R-26118 (MTO Plan P-5119-0018) as in Instrument CO248799; subject to a Right-of-way over Part 4 on 40R-26118 (MTO Plan P-5119-0018) as in Instrument CO145810.
- (183) Part of PIN 26547-0833(LT) being part of the Road Allowance between Concessions 1 and 2, part of Lots 33 and 34, Concession 2, part of the Road Allowance between Lots 34 and 35 and part of Lots 33 and 34, Concession 1 (Geographic Township of Whitby), described as Parts 9, 10, 11, 17, 18, 19, 20, 21, 22, 23 and 24, 40R-26262 (MTO Plan P-5120-0053); subject to easement over Parts 18, 19 and 20 as in Instrument CO83136; subject to easement over Parts 22 and 23 as in Instrument CO76897; subject to easement over Part 24 as in Instrument CO76783
- (184) Part of PIN 26547-0033(LT) being part of Lot 33, Concession 2 (Geographic Township of Whitby), described as Parts 12 and 14, 40R-26262 (MTO Plan P-5120-0053); subject to easement as in Instrument D201705
- (185) Part of PIN 26547-0018(LT) being part of Lot 34, Concession 2 (Geographic Township of Whitby), described as Part 1, 40R-26141 (MTO Plan P-5120-0058); subject to easement as in

Instrument D201709

- (186) All of PIN 26547-0029(LT) being part of Lot 34, Concession 2 (Geographic Township of Whitby), described as Part 8, 40R-26262 (MTO Plan P-5120-0053); subject to easement as in Instrument D201709
- (187) All of PIN 26400-0122(LT) being part of Lot 10, Concession 6 (Geographic Township of Pickering), described as Part 1, 40R-26271 (MTO Plan P-5054-0058)
- (188) All of PIN 26454-0390(LT) being part of Lot 1, Concession 1 (Geographic Township of Pickering), described as Part 14, 40R-26276 (MTO Plan P-5054-0053)
- (189) All of PIN 26571-0189(LT) being part of Lot 35, Concession 6 (Geographic Township of Whitby), described as Part 1, 40R-26113 (MTO Plan P-5120-0054)
- (190) All of PIN 26570-1078(LT) being part of Lot 33, Concession 4 (Geographic Township of Whitby), described as Part 3, 40R-26177 (MTO Plan P-5120-0087)
- (191) Part of PIN 16397-0089(LT) being part of Lots 3 & 4, Concession 6 (Geographic Township of East Whitby), described as Part 1, 40R-27114 (MTO Plan P-5119-0071)
- (192) All of PIN 26547-1238(LT) being part of Lot 33, Concession 2 (Geographic Township of Whitby), described as Part 16, 40R-26262 (MTO Plan P-5120-0053); subject to easement as in Instrument D201705
- (193) All of PIN 26401-0062(LT) being part of Lot 14, Concession 6 (Geographic Township of Pickering), described as Part 5, 40R-26176(MTO Plan P-5054-0042)
- (194) All of PIN 26570-1080(LT) being part of Lot 35, Concession 4 (Geographic Township of Whitby), described as Part 1, 40R-26652 (MTO Plan P-5120-0051)
- (195) All of PIN 16264-0979(LT) being part of the Road Allowance between Lots 20 and 21, Concession 5 (Geographic Township of Whitby), described as Part 2, 40R-26759 (MTO Plan P-5120-0214)
- (196) All of PIN 16264-0946(LT) being part of Lot 20, Concession 5 (Geographic Township of Whitby), described as Part 1, 40R-26759 (MTO Plan P-5120-0214)
- (197) All of PIN 26399-0116(LT) being part of Lots 5 and 6, Concession 6 (Geographic Township of Pickering), described as Parts 1, 2, 3, 4 and 5, 40R-26313 (MTO Plan P-5054-0118); subject to easement over Parts 2 and 5 as in Instrument PI31876 and subject to the rights of Hydro One over a strip of land 45.72 metres wide, 22.86 metres in perpendicular width on

either side of the recently relocated High Voltage Hydro transmission line.

- (198) All of PIN 26571-0192(LT) being part of Lot 33, Concession 6 (Geographic Township of Whitby), described as Part 3, 40R-26166 (MTO Plan P-5120-0073)
- (199) All of PIN 26401-0073(LT) being part of Lot 13, Concession 6 (Geographic Township of Pickering), described as Part 1 on Expropriation Plan DR974559 (MTO Plan P-5054-0084)
- (200) All of PIN 26400-0137(LT) being part of Lot 7, Concession 6 (Geographic Township of Pickering), described as Part 3, 40R-26272 (MTO Plan P-5054-0060)
- (201) All of PIN 26400-0136(LT) being part of Lots 7 and 8, Concession 6 (Geographic Township of Pickering), described as Part 2, 40R-26272 (MTO Plan P-5054-0060)
- (202) All of PIN 26400-0134(LT) being part of Lot 9, Concession 6 (Geographic Township of Pickering), described as Part 1, 40R-26314 (MTO Plan P-5054-0063)
- (203) All of PIN 16395-0131(LT) being part of Lot 13, Concession 6 (Geographic Township of East Whitby), described as Part 1 on Expropriation Plan DR974600 (MTO Plan P-5119-0055)
- (204) All of PIN 16264-0953(LT) being part of Lot 17, Concession 5 (Geographic Township of East Whitby), described as Part 1 on Expropriation Plan DR974627 (MTO Plan P-5119-0048)
- (205) All of PIN 26399-0133(LT) being part of Lot 3, Concession 6 (Geographic Township of Pickering), described as Part 1 on Expropriation Plan DR974583 (MTO Plan P-5054-0090)
- (206) All of PIN 16264-0958(LT) being part of Lot 19, Concession 5 (Geographic Township of Whitby), described as Part 1 on Expropriation Plan DR974642 (MTO Plan P-5120-0129)
- (207) All of PIN 26569-1431(LT) being part of Lot 24, Concession 5 (Geographic Township of Whitby), described as Part 1 on Expropriation Plan DR974624 (MTO Plan P-5120-0131)
- (208) All of PIN 26454-0430(LT) being part of Lot 1, Concession 1 (Geographic Township of Pickering), described as Part 1 on Expropriation Plan DR974625 (MTO Plan P-5054-0070)
- (209) All of PIN 26570-1122(LT) being part of Lot 34, Concession 5 (Geographic Township of Whitby), described as Part 1 on Expropriation Plan DR974738 (MTO Plan P-5120-0182)

- (210) All of PIN 26401-0067(LT) being part of Lot 13, Concession 6(Geographic Township of Pickering), described as Part 2, on Expropriation Plan DR974546 (MTO Plan 5054-0105)
- (211) All of PIN 26400-0128(LT) being part of Lot 9, Concession 6 (Geographic Township of Pickering), described as Part 1 on Expropriation Plan DR974555 (MTO Plan P-5054-0102)
- (212) All of PIN 26400-0126(LT), being part of Lot 10, Concession 6 (Geographic Township of Pickering), described as Part 1 on Expropriation Plan DR974562 (MTO Plan P-5054-0098)
- (213) All of PIN 26400-0124(LT), being part of Lot 11, Concession 6(Geographic Township of Pickering), described as Part 1 on Expropriation Plan DR974595 (MTO Plan P-5054-0080)
- (214) All of PIN 16264-0962(LT) being part of Block 53, Registered Plan 40M-2207, described as Part 1 on Expropriation Plan DR974640 (MTO Plan P-5120-0128)
- (215) All of PIN 16264-0960(LT), being part of Reserve Block 206, Registered Plan 40M-1953, described as Part 1 on Expropriation Plan DR974641 (MTO Plan P-5120-0134)
- (216) All of PIN 26399-0131(LT) being part of Lot 1, Concession 6 (Geographic Township of Pickering), described as Part 1 on Expropriation Plan DR974549 (MTO Plan P-5054-0086)
- (217) All of PIN 26454-0434(LT) being part of Lot 1, Concession 1 (Geographic Township of Pickering), described as Part 1 on Expropriation Plan DR974611 (MTO Plan P-5054-0072)
- (218) All of PIN 26454-0436(LT) being part of Lot 1, Concession 1 (Geographic Township of Pickering), described as Part 1 on Expropriation Plan DR974597 (MTO Plan P-5054-0074)
- (219) All of PIN 26547-1246(LT) being part of Lot 34, Concession 2 (Geographic Township of Whitby), described as Part 1 on Expropriation Plan DR974695 (MTO Plan P-5120-0152); Subject to easement as in Instrument D201709
- (220) All of PIN 26547-1244(LT) Being Part of Lot 34, Concession 2 (Geographic Township of Whitby), described as Part 1 on Expropriation Plan DR974698 (MTO Plan P-5120-0151); Subejct to easement as in Instrument DR201709
- (221) All of PIN 26548-3322(LT) being part of Lot 35, Concession 3 (Geographic Township of Whitby), described as Part 1 on Expropriation Plan DR974653 (MTO Plan P-5120-0160); Subject to easement as in Instrument D201708
- (222) All of PIN 26569-1438(LT) being part of Lot 24, Concession 5 (Geographic Township of Whitby), described as Part 1 on Expropriation Plan DR974763 (MTO Plan P-5120-0220)

- (223) All of PIN 26570-1109(LT) being part of Lot 33, Concession 4 (Geographic Township of Whitby), described as Part 1 on Expropriation Plan DR974704 (MTO Plan P-5120-0169)
- (224) All of PIN 26570-1110(LT) being part of Lot 33, Concession 4 (Geographic Township of Whitby), described as Part 2 on Expropriation Plan DR974704 (MTO Plan P-5120-0169)
- (225) All of PIN 26570-1102(LT) being part of Lot 35, Concession 5 (Geographic Township of Whitby), described as Part 1 on Expropriation Plan DR974726 (MTO Plan P-5120-0175)
- (226) All of PIN 26570-1103(LT) being part of Lot 35, Concession 5 (Geographic Township of Whitby), described as Part 2 on Expropriation Plan DR974726 (MTO Plan P-5120-0175)
- (227) All of PIN 16395-0135(LT) being part of Lot 16, Concession 6 (Geographic Township of East Whitby), described as Parts 1 and 2 on Expropriation Plan DR974644 (MTO Plan P-5119-0051); subject to easement over Part 2 on Expropriation Plan DR974644 (MTO Plan P-5119-0051) as in Instrument EW20446.
- (228) All of PIN 26548-3334(LT) Being Part of Lot 34, Concession 3(Geographic Township of Whitby), described as Parts 1, 4, 5 and 6, on Expropriation Plan DR974645 (MTO Plan P-5120-0148) Subject to easement as in Instruments D201710 and WH11007
- (229) Part of PIN 26548-3330(LT) being part of Lot 34, Concession 3 (Geographic Township of Whitby), described as Part 1 on Expropriation Plan DR974656 (MTO Plan P-5120-0161) Save and Except Part 5, 40R-27194 (MTO Plan P-5120-0245); Subject to easement as in Instrument D201710
- (230) All of PIN 26548-3328(LT) being part of Lot 35, Concession 3 (Geographic Township of Whitby), described as Parts 1, 2 and 3 on Expropriation Plan DR974699 (MTO Plan P-5120-0153); Subject to easement as in Instruments D201708 and WH11007
- (231) All of PIN 26548-3324(LT) being part of Lot 34, Concession 3 (Geographic Township of Whitby), described as Part 1 on Expropriation Plan DR974671 (MTO Plan P-5120-0163); Subject to easement as in Instrument D201710
- (232) All of PIN 26569-1440(LT) being part of Lot 26, Concession 5 (Geographic Township of Whitby), described as Part 1 on Expropriation Plan DR974746 (MTO Plan P-5120-0196)
- (233) All of PIN 26570-1100(LT) being part of Lot 34, Concession 5 (Geographic Township of Whitby), described as Part 1 on Expropriation Plan DR974749 (MTO Plan P-5120-0198)
- (234) All of PIN 26494-0710(LT) being part of Block "E", Registered Plan M-958, described as Part 1 on Expropriation Plan DR974700 (MTO Plan P-5120-0149)

- (235) All of PIN 26494-0708(LT) being part of the Road Allowance between Lots 32 and 33, Concession 1 (Geographic Township of Whitby), described as Part 1 on Expropriation Plan DR974692 (MTO Plan P-5120-0150)
- (236) All of PIN 16395-0137(LT) being part of the Road Allowance between Lots 14 and 15 and part of Lots 14 and 15, Concession 6 (Geographic Township of East Whitby), described as Parts 1, 2 and 3 on Expropriation Plan DR974654 (MTO Plan P-5119-0050); subject to easement over Part 1 as in Instrument EW20412; subject to easement over Part 2 as in Instrument D297413; subject to easement over Parts 1, 2 and 3 as in Instrument D445406.
- (237) Part of PIN 26570-1107(LT) being part of Lot 35, Concession 4 (Geographic Township of Whitby), described as Parts 18, 21 and 23 (MTO Plan P-5120-0259); Together with an easement over Part 2, Plan 40R-19436 as in LT953259.
- (238) All of PIN 26494-0706(LT) being part of Block "O", Plan M-958, described as Part 1 on Expropriation Plan DR974739 (MTO Plan P-5120-0187)
- (239) All of PIN 26547-1255(LT) being part of Lot 35, Concession 2 (Geographic Township of Whitby), described as Part 1 on Expropriation Plan DR974727 (MTO Plan P-5120-0173); Subject to easement as in Instrument D201707
- (240) All of PIN 26400-0130(LT) being part of Lot 7, Concession 6 (Geographic Township of Pickering), described as Part 1 on Expropriation Plan DR974551 (MTO Plan P-5054-0103)
- (241) All of PIN 16434-4232(LT) being part of Lot 17, Concession 6 (Geographic Township of East Whitby), described as Part 1 on Expropriation Plan DR974614 (MTO Plan P-5119-0056)
- (242) All of PIN 26401-0069(LT) being part of Lot 14, Concession 6 (Geographic Township of Pickering), described as Part 1 on Expropriation Plan DR974634 (MTO Plan P-5054-0097)
- (243) All of PIN 26400-0132(LT) being part of Lot 12, Concession 6 (Geographic Township of Pickering), described as Part 1 on Expropriation Plan DR974566 (MTO Plan P-5054-0096)
- (244) All of PIN 26401-0071(LT) being part of Lot 15, Concession 6 (Geographic Township of Pickering), described as Part 1 on Expropriation Plan DR974550 (MTO Plan P-5054-0104)
- (245) All of PIN 16264-0970(LT) being part of Lot 22, Concession 5 (Geographic Township of Whitby), described as Parts 1 and 2 on Expropriation Plan DR974757 (MTO Plan P-5120-0201)
- (246) All of PIN 16264-0975(LT) being part of the Road Allowance between Lots 22 and 23, Concession 5 (Geographic Township of Whitby), described as Part 1 on Expropriation Plan DR974649 (MTO Plan P-5120-0138)

- (247) All of PIN 26570-1112(LT) being part of Lot 33, Concession 4 (Geographic Township of Whitby), described as Part 1 on Expropriation Plan DR974717 (MTO Plan P-5120-0167)
- (248) All of PIN 26570-1113(LT) being part of Lot 33, Concession 4 (Geographic Township of Whitby), described as Part 2 on Expropriation Plan DR974717 (MTO Plan P-5120-0167)
- (249) All of PIN 26399-0125(LT) being part of Lot 1, Concession 6 (Geographic Township of Pickering), described as Part 1 on Expropriation Plan DR974630 (MTO Plan P-5054-0077)
- (250) Part of PIN 26570-1128(LT) being part of Lot 35, Concession 4 (Geographic Township of Whitby), described as Part 2, 40R-26231 (MTO Plan P-5120-0101)
- (251) Part of PIN 26571-0208(LT) being part of the Road Allowance between the Lots 34 and 35, Concession 6, described as Parts 1 and 2, 40R-25405 (MTO Plan P-1771-0059) save and except Part 2, 40R-26663(MTO Plan P-5120-0205)
- (252) Part of PIN 26571-0207(LT) being part of the Road Allowance between Lots 32 and 33, Concession 6 (Geographic Township of Whitby), described as Part 1, 40R-26164 (MTO Plan P-5120-0072)
- (253) Part of PIN 26571-0203(LT) being part of the Road Allowance between Lots 30 and 31, Concession 6 (Geographic Township of Whitby), described as Part 9, 40R-26156 (MTO Plan P-5120-0064)
- (254) Part of PIN 26571-0205(LT) being part of the Road Allowance between Lots 28 and 29, Concession 6 (Geographic Township of Whitby), described as Part 5, 40R-26098 (MTO Plan P-5120-0043) save and except Part 15, 40R-25407 (MTO Plan P-1771-0057)
- (255) All of PIN 26399-0114(LT) being part of Lot 1, Concession 6 (Geographic Township of Pickering), described as Part 1, 40R-26260 (MTO Plan P-5054-0056)
- (256) All of PIN 16264-0973(LT) being part of Lot 21, Concession 5 (Geographic Township of Whitby), described as Parts 1 and 2 on Expropriation Plan DR974777 (MTO Plan P-5120-0217), subject to easement over Part 2 on said Plan DR 974777, as in Instrument CO101801.
- (257) All of PIN 26571-0219(LT) being part of Lot 33 and 34, Concession 6 (Geographic Township of Whitby), described as Parts 1, 3 and 4, 40R-26291 (MTO Plan P-5120-0111)
- (258) All of PIN 26571-0185(LT) being part of Lots 27 and 28, Concession 6 (Geographic Township of Whitby), described as Part 2, 40R-26083 (MTO Plan P-5120-0041)
- (259) All of PIN 26571-0210(LT) being part of Lot 30, Concession 6 (Geographic Township of Whitby), described as Part 1 on Expropriation Plan DR974732 (MTO Plan P-5120-0179)

- (260) All of PIN 26400-0077(LT) being part of Lot 7, Concession 6 (Geographic Township of Pickering), described as Part 1 on Expropriation Plan DR974561 (MTO Plan P-5054-0111)
- (261) All of PIN 26571-0190(LT) being part of Lot 35, Concession 6 (Geographic Township of Whitby), described as Part 2, 40R-26113 (MTO Plan P-5120-0054)
- (262) Part of PIN 16397-0091(LT) being part of Lot 4, Concession 6 (Geographic Township of East Whitby), described as Part 2, 40R-27114 (MTO Plan P-5119-0071)
- (263) All of PIN 26570-1082(LT) being part of Lot 34, Concession 5 (Geographic Township of Whitby), described as Part 3, 40R-26124 (MTO Plan P-5120-0025)
- (264) All of PIN 26571-0197(LT) being part of Lot 31, Concession 6 (Geographic Township of Whitby), described as Part 4, 40R-26203 (MTO Plan P-5120-0083)
- (265) All of PIN 26399-0127(LT) being part of Lot 6, Concession 6 (Geographic Township of Pickering), described as Part 1 on Expropriation Plan DR974563 (MTO Plan P-5054-0109)
- (266) All of PIN 26569-1443(LT) being part of Lot 24, Concession 5 (Geographic Township of Whitby), described as Part 1 on Expropriation Plan DR974756 (MTO Plan P-5120-0221)
- (267) All of PIN 26399-0129(LT) being part of Lot 3, Concession 6 (Geographic Township of Pickering), described as Parts 1 and 2 on Expropriation Plan DR974585 (MTO Plan P-5054-0094); subject to easement over Part 2 on Expropriation Plan DR974585 (MTO Plan P-5054-0094) as in Instrument PI35042
- (268) All of PIN 16396-0157(LT) being part of Lot 12, Concession 6 (Geographic Township of East Whitby), described as Part 1 on Expropriation Plan DR974769 (MTO Plan P-5119-0042A)
- (269) All of PIN 26570-1105(LT) being part of Lot 33, Concession 4 (Geographic Township of Whitby), described as Part 1 on Expropriation Plan DR974754 (MTO Plan P-5120-0200)
- (270) All of PIN 26571-0215(LT) being part of Lot 31, Concession 6 (Geographic Township of Whitby), described as Part 1 on Expropriation Plan DR974762 (MTO Plan P-5120-0202)
- (271) All of PIN 26547-1252(LT) being part of Lot 33, Concession 2 (Geographic Township of Whitby), described as Part 2 on Expropriation Plan DR974652 (MTO Plan P-5120-0159)
- (272) Part of PIN 26571-0218(LT) Being Part Lot 35, Concession 6 (Geographic Township of Whitby) and Part of the Road Allowance Between the Geographic Townships of Whitby and

- Pickering), described as Part 3, 40R-26180 (MTO Plan P-5120-0065)
- (273) All of PIN 26570-1084(LT) being part of Lot 33, Concession 5(Geographic Township of Whitby), described as Part 4, 40R-26197 (MTO Plan P-5120-0088)
- (274) All of PIN 26570-1074(LT) being part of Lot 34, Concession 5 (Geographic Township of Whitby), described as Part 1, 40R-26150 (MTO Plan P-5120-0044)
- (275) All of PIN 26570-1053(LT) being part of Lots 27 and 28, Concession 5 (Geographic Township of Whitby), described as Part 1, 40R-25733 (MTO Plan P-1771-0076)
- (276) Part of PIN 16397-0009(LT) being part of Lot 5, Concession 6 (Geographic Township of East Whitby), described as Part 10, 40R-26334 (MTO Plan P-5119-0033)
- (277) All of PIN 16264-0980(LT) being part of the Road Allowance between Lots 20 and 21, Concession 5 (Geographic Township of Whitby), described as Part 4, 40R-26759 (MTO Plan P-5120-0214)
- (278) All of PIN 16264-0978(LT) being part of Lot 21, Concession 5 (Geographic Township of Whitby), described as Parts 1 and 2 on Expropriation Plan DR974751 (MTO Plan P-5120-0216), subject to easement over Part 2 on said Plan DR974751, as in Instrument CO101801.
- (279) All of PIN 26571-0194(LT) being part of Lot 32, Concession 6 (Geographic Township of Whitby), described as Part 1, 40R-26635(MTO Plan P-5120-0177)
- (280) All of PIN 26571-0204(LT) being part of the Road Allowance between Lots 28 and 29, Concession 6 (Geographic Township of Whitby), described as Parts 14 and 15, 40R-25407 (MTO Plan P-1771-0057)

2. Limited Access Lands

- (1) Part of PIN 26400-0125(LT), being part of Lot 11, Concession 6 (Geographic Township of Pickering), described as Part 2, 40R-27295 (MTO Plan P-5054-0144)
- (2) Part of PIN 16264-0963(LT) being part of Block 53, Registered Plan 40M-2207 (Town of Whitby), described as Part 1 on Expropriation Plan DR974484 (MTO Plan P-5120-0222)
- (3) Part of PIN 26494-0096(LT) being part of Lot 34, Concession 1 (Geographic Township of Whitby), described as Part 1, 40R-26826 (MTO Plan P-5120-0227)
- (4) Part of PIN 26494-0097(LT) being part of Lot 34, Concession 1 (Geographic Township of Whitby), described as Part 2, 40R-26826 (MTO Plan P-5120-0227)
- (5) Part of PIN 26494-0098(LT) being part of Lot 34, Concession 1 (Geographic Township of Whitby), described as Part 1, 40R-26521 (MTO Plan P-5120-0121)
- (6) Part of PIN 26494-0705(LT) being part of Lot 33, Concession 1 (Geographic Township of Whitby), described as Part 1, 40R-26510 (MTO Plan P-5120-0122)
- (7) Part of PIN 26548-3058(LT) being part of Lots 34 and 35, Concession 3 (Geographic Township of Whitby), described as Parts 1 and 6, 40R- 26698 (MTO Plan P-5120-0207); Subject to an Easement over Part 1 as in Instrument No. D201708; Subject to an Easement over Part 6 as in Instrument D201710.
- (8) Part of PIN 26548-3329(LT) being part of Lot 35, Concession 3 (Geographic Township of Whitby), described as Parts 1 and 2 on Expropriation Plan DR1038939 (MTO Plan P-5120-0154); subject to easement over Parts 1 and 2 as in Instrument D201708; subject to easement over Part 2 as in Instrument WH11007
- (9) Part of PIN 26548-3336(LT) being part of Lot 34, Concession 3(Geographic Township of Whitby), described as Part 1, on Expropriation Plan DR 1038990 (MTO Plan P-5120-0147); subject to easement as in Instrument D201710
- (10) Part of PIN 26570-1073(LT) being part of Lot 27, Concession 5 (Geographic Township of Whitby), described as Part 1 on Expropriation Plan DR974527(MTO Plan P-5120-0142)
- (11) Part of PIN 16395-0136(LT) being part of Lot 16, Concession 6 (Geographic Township of East Whitby), described as Part 1 on Expropriation Plan DR974506 (MTO Plan P-5119-0058)

- (12) Part of PIN 16396-0158(LT) being part of Lot 12, Concession 6 (Geographic Township of East Whitby), described as Part 1 on Expropriation Plan DR974534 (MTO Plan P-5119-0043)
- (13) Part of PIN 16434-4233(LT) being part of Lot 17, Concession 6 (Geographic Township of East Whitby), described as Part 1 on Expropriation Plan DR974519 (MTO Plan P-5119-0057)
- (14) Part of PIN 26571-0191(LT) being part of Lot 35, Concession 6 (Geographic Township of Whitby), described as Part 1, 40R-27208 (MTO P-5120-0237)
- (15) Part of PIN 26569-0056(LT) being part of Lot 23, Concession 5 (Geographic Township of Whitby), described as Parts 1, 2, 3, 7, 8 and 9, MTO Plan P-5120-0266); subject to easement over Parts 1 and 7 as in Instrument LT647476; subject to easement over Parts 2 and 8 as in Instrument LT647475
- (16) Part of PIN 26569-0055(LT) being part of Lot 23, Concession 5 (Geographic Township of Whitby), described as Parts 4, 5 and 6, MTO Plan P-5120-0266); subject to easement over Part 5 as in Instrument LT647475; subject to easement over Part 6 as in Instrument LT647476
- (17) Part of PIN 26570-0475(LT) being part of Lot 35, Concession 4 (Geographic Township of Whitby), described as Part 4, MTO Plan P-5120-0259
- (18) Part of PIN 26400-0107(LT) being part of Lot 8, Concession 6 (Geographic Township of Pickering, described as Part 1, 40R-27440 (MTO Plan P-5054-0160)
- (19) Part of PIN 26569-0055(LT) being part of Lot 23, Concession 5 (Geographic Township of Whitby), described as Parts 4, 5 and 6, MTO Plan P-5120-0266); subject to easement over Part 5 as in Instrument LT647475; subject to easement over Part 6 as in Instrument LT647476

3. Owned Non-Available Lands

- (1) Part of PIN 16263-0001(LT) being part of Lot 17 and part of the Road Allowance between Lots 16 and 17, Concession 5 (Geographic Township of East Whitby), described as Part 9, 40R-26205 (MTO Plan P-5119-0025)
- (2) Part of PIN 16264-0109(LT) being part of Lots 20, 21 and part of the Road Allowance between Lots 20 and 21, Concession 5 (Geographic Township of Whitby), described as Part 7, 10 and 11, 40R-26213 (MTO Plan P-5120-0066) and Parts 5 & 6, 40R-26759 (MTO Plan P-5120-0214)
- (3) All of PIN 16264-0968(LT) being part of Lot 18, Concession 5 (Geographic Township of Whitby), described as Part 1 on Expropriation Plan DR974765 (MTO Plan P-5120-0219)
- (4) Part of PIN 26400-0103(LT) being part of Lots 11 and 12, Concession 6 (Geographic Township of Pickering), described as Parts 1, 2 and 3, 40R-26133 (MTO Plan P-5054-0039) subject to easement over Part 2 as in Instrument PI22023; and Parts 1, 2, 3, 4, 5 and 6, MTO Plan P-5054-0159 subject to easement over Parts 1, 3 and 5 as in Instrument PI22023.
- (5) Part of PIN 26400-0125(LT), being part of Lot 11, Concession 6 (Geographic Township of Pickering), described as Part 1, MTO Plan P-5054-0158
- (6) All of PIN 16263-0051(LT) being part of Lot 16, Concession 5 and part of the Road Allowance between Lots 16 and 17, Concession 5 (Geographic Township of East Whitby), described as Parts 1 and 2, 40R-26220 (MTO Plan P-5119-0024) and Parts 1, 3 and 4, 40R-26579 (MTO Plan P-5119-0040); Part 1 Plan 40R-26220 subject to a Right-of-way as in Instrument CO248484; Part 3 40R-26220 subject to an Easement as in Instrument D91588.
- (7) Part of PIN 16395-0012(LT) being part of Lots 14 and 15 and part of the Road Allowance between Lots 14 and 15, Concession 6 (Geographic Township of East Whitby), described as Part 1, 40R-26247 (MTO Plan P-5119-0029); subject to easement over Part 1 as in Instrument D411678.
- (8) All of PIN 16396-0063(LT) being part of Lot 9, Concession 6 (Geographic Township of East Whitby), described as Parts 1 and 2, 40R-26955 (MTO Plan P-5119-0064)
- (9) Part of PIN 26411-0032(LT), being part of Lot 1, Concession 1 (Geographic Township of Pickering), described as Part 2, 40R-26251 (MTO Plan P-5054-0050)

- (10) Part of PIN 26570-1062(LT) being part of Lot 34, Concession 5 (Geographic Township of Whitby), described as Part 1, 40R-26769 (MTO Plan P-5120-0223)
- (11) All of PIN 26547-1240(LT) being part of Lot 35, Concession 2 (Geographic Township of Whitby), described as Part 1 on Expropriation Plan DR974741 (MTO Plan P-5120-0188)
- (12) Part of PIN 26547-1241(LT) being part of Lot 35, Concession 2 (Geographic Township of Whitby), described as Part 1, MTO Plan P-5120-0276; subject to easement as in Instrument D201707
- (13) All of PIN 26570-1129(LT) being part of the Road Allowance between Concessions 4 and 5(Geographic Township of Whitby), described as Part 1, 40R-26116 (MTO Plan P-5120-0045) and Part 3, 40R-27192(MTO Plan P-5120-0249)
- (14) All of PIN 26570-1130(LT) being part of the Road Allowance between Concessions 4 and 5(Geographic Township of Whitby), described as Part 2, 40R-27192 (MTO Plan P-5120-0245)
- (15) Part of PIN 16396-0001(LT) being part of Lots 12 and 13 and part of the Road Allowance between Lots 12 and 13, Concession 6 (Geographic Township of East Whitby), described as Parts 5, 6, 7 and 8, 40R-26468 (MTO Plan P-5119-0037); subject to easement over Part 6 as in Instrument CO60675; subject to easement over Part 8 as in Instrument CO60674.
- (16) Part of PIN 26401-0053(LT) being part of Lot 14, Concession 6 (Geographic Township of Pickering), described as Parts 1 and 2, 40R-26176(MTO Plan P-5054-0042)
- (17) Part of PIN 26571-0176(LT) being part of Lot 32, Concession 6 (Geographic Township of Whitby), described as Parts 2 and 3, 40R-25977 (MTO Plan P-5120-0027), and Part 5, 40R-26635 (MTO Plan P-5120-0177)
- (18) Part of PIN 26570-1043(LT) being part of Lot 34, Concession 5 (Geographic Township of Whitby), described as Part 3, 40R-26150 (MTO Plan P-5120-0044)
- (19) Part of PIN 26571-0181(LT) being part of Lot 29, Concession 6 (Geographic Township of Whitby), described as Part 2, 40R-26098 (MTO Plan P-5120-0043) and Part 1, MTO Plan P-5120-0265
- (20) Part of PIN 26571-0052(LT) being part of Lot 30, Concession 6 (Geographic Township of Whitby), described as Parts 2 and 3, 40R-26156 (MTO Plan P-5120-0064) and Parts 1 and 2, MTO Plan P-5120-0263
- (21) All of PIN 26571-0053(LT) being part of Lot 30, Concession 6 (Geographic Township of Whitby), described as Parts 4 and 5, 40R-26156 (MTO Plan P-5120-0064)

- (22) Part of PIN 26571-0156(LT) being part of Lot 29, Concession 6 (Geographic Township of Whitby), described as Part 4, 40R-26098 (MTO Plan P-5120-0043)
- (23) All of PIN 26569-1435(LT) being part of Lot 25, Concession 5 (Geographic Township of Whitby), described as Part 1 on Expropriation Plan DR974745 (MTO Plan P-5120-0195)
- (24) Part of PIN 26569-0001(LT) being part of the Road Allowance between Lots 24 and 25, and part of Lots 24 and 25, Concession 5 (Geographic Township of Whitby), described as Part 1, 40R-26170 (MTO Plan P-5120-0063)
- (25) All of PIN 26569-1433(LT) being part of Lot 24, Concession 5 (Geographic Township of Whitby), described as Part 1 on Expropriation Plan DR974622 (MTO Plan P-5120-0130)
- (26) Part of PIN 26399-0007(LT) being part of Lot 6, Concession 6 (Geographic Township of Pickering), described as Part 2, 40R-26636 (MTO Plan P-5054-0082)
- (27) Part of PIN 26400-0078(LT) being part of Lots 7 and 8, Concession 6 (Geographic Township of Pickering), described as Part 7, 40R-26272 (MTO Plan P-5054-0060)
- (28) All of PIN 26494-0099(LT) being part of Lots 33 and 34, Concession 1 (Geographic Township of Whitby), described as Parts 4, 5, 6 and 7, 40R-26108 (MTO Plan P-5120-0042)
- (29) All of PIN 26570-1072(LT) being part of Lots 27 and 28, Concession 5 (Geographic Township of Whitby), described as Parts 1, 2 and 4, 40R-26300 (MTO Plan P-5120-0112)
- (30) All of PIN 16397-0095(LT) being part of Lot 5, Concession 6 (Geographic Township of East Whitby), described as Part 1, Expropriation Plan DR1039065 (MTO Plan P-5119-0078)
- (31) All of PIN 16397-0096(LT) being part of Lot 5, Concession 6 (Geographic Township of East Whitby), described as Part 2, Expropriation Plan DR1039065 (MTO Plan P-5119-0078)
- (32) All of PIN 16396-0163(LT) being part of Lot 7, Concession 6 (Geographic Township of East Whitby), described as Part 1, Expropriation Plan DR1039059 (MTO Plan P-5119-0076)
- (33) All of PIN 16397-0100 (LT) being part of the south half of Lot 5 and part of the south half of Lot 6, Concession 6 (Geographic Township of East Whitby), described as Part 1, 40R-26100 (MTO Plan P-5119-0016)
- (34) All of PIN 16397-0093(LT) being part of Lot 5, Concession 6 (Geographic Township of East Whitby), described as Part 1, Expropriation Plan DR1038926 (Plan P-5119-0080)

- (35) All of PIN 26547-1237(LT) being part of Lot 33, Concession 2 (Geographic Township of Whitby), described as Part 15, 40R-26262 (MTO Plan P-5120-0053); subject to easement as in Instrument D201705
- (36) All of PIN 26571-0195(LT) being part of Lot 32, Concession 6 (Geographic Township of Whitby), described as Parts 2 and 3, 40R-26635(MTO Plan P-5120-0177)
- (37) All of PIN 26570-1124(LT) being part of Lot 33, Concession 5 (Geographic Township of Whitby), described as Part 1 on Expropriation Plan DR974734 (MTO Plan P-5120-0178)
- (38) All of PIN 26570-1117(LT) being part of Lot 34, Concession 5(Geographic Township of Whitby), described as Part 1 on Expropriation Plan DR974742 (MTO Plan P-5120-0183)
- (39) All of PIN 26570-1120(LT) being part of Lot 34, Concession 4 (Geographic Township of Whitby), described as Part 1 on Expropriation Plan DR974725 (MTO Plan P-5120-0168)
- (40) All of PIN 26453-0883(LT) being part of Lots 1 and 2, Concession 1 (Geographic Township of Pickering), described as Parts 1, 2 and 3 on Expropriation Plan DR974593 (MTO Plan P-5054-0081)
- (41) Part of PIN 26569-0056(LT) being part of Lot 23, Concession 5 (Geographic Township of Whitby), described as Parts 10, 11 and 12, MTO Plan P-5120-0266); subject to easement over Part 10 as in Instrument LT647476; subject to easement over Part 11 as in Instrument LT647475
- (42) All of PIN 26453-0488(LT), being part of Lot 4, Concession 1 (Geographic Township of Pickering), described as Part 1, 40R-15386 (MTO Plan P-2310-0241)
- (43) All of PIN 26453-0847(LT), being part of Lot 5, Concession 1 (Geographic Township of Pickering), described as Part 2, 40R-25363 (MTO Plan P-2310-0323)
- (44) Part of PIN 26453-0481(LT), being part of Block 1, Registered Plan 40M-1454, described as part of Part 2, 40R-15386 (MTO Plan P-2310-0241).
- (45) Part of PIN 26453-0479(LT), being part of Block 3, Registered Plan 40M-1454, described as Part 6, 40R-27143 (MTO Plan P-2310-0327).
- (46) Part of PIN 26453-0690(LT), being part of Block 1, Registered Plan 40M-1454, described as Part 1, 40R-27249 (MTO Plan P-2310-330)

- (47) All of PIN 26399-0123(LT) being part of Lot 1, Concession 6 (Geographic Township of Pickering), described as Part 1, 40R-26258 (MTO Plan P-5054-0054)
- (48) All of PIN 16264-0114(LT) being part of Lots 19 and 20, Concession 5 (Geographic Township of Whitby), described as Part 2, 40R-26249 (MTO Plan P-5120-0092)
- (49) Part of PIN 26400-0014(LT) being part of Lot 12, Concession 6 (Geographic Township of Pickering), described as Part 1, 40R-26171 (MTO Plan P-5054-0044)
- (50) Part of PIN 16395-0013(LT) being part of Lot 14, Concession 6 (Geographic Township of East Whitby), described Parts 2 and 3, 40R-27241(MTO Plan P-5119-0084)
- (51) Part of PIN 26548-0010(LT) being part of Lot 34, Concession 3 (Geographic Township of Whitby), described as Part 1, 40R-26158 (MTO Plan P-5120-0062) Subject to Easement as in Instrument D201710
- (52) All of PIN 26548-3337(LT) being part of Lot 35, Concession 3 (Geographic Township of Whitby), described as Part 1 on Expropriation Plan DR974718 (MTO Plan P-5120-0174); Subject to easement as in Instrument D201708
- (53) Part of PIN 26548-3331(LT) being part of Lot 34, Concession 3 (Geographic Township of Whitby), described as Part 1, 40R-6381 Save and Except Part 1 on Expropriation Plan DR974656 (MTO Plan P-5120-0161) Save and Except Part 6, 40R-27194(P-5120-0245); Subject to easement as in Instrument D201710
- (54) All of PIN 26570-0024(LT) being part of Lot 34, Concession 5 (Geographic Township of Whitby), described as Part 2 40R-18465 (MTO Plan P-5120-0011)
- (55) Part of PIN 26571-0011(LT) being part of Lot 33, Concession 6 (Geographic Township of Whitby), described as Part 2, 40R-26744 (MTO Plan P-5120-0035)
- (56) Part of PIN 26570-0244(LT) being part of Lot 34, Concession 4 (Geographic Township of Whitby), described as Parts 1, 2, 3, 6 and 7, 40R-27244 (MTO Plan P-5120-0241), subject to an easement over Part 2 as in WH12212
- (57) All of PIN 26570-1040(LT) being part of Lot 34, Concession 5 (Geographic Township of Whitby), described as Part 2, 40R-25403 (MTO Plan P-1771-0058)
- (58) All of PIN 26570-1041(LT) being part of Lot 34, Concession 5 (Geographic Township of Whitby), described as Part 4, 40R-26150 (MTO Plan P-5120-0044)

- (59) Part of PIN 26571-0031(LT) being part of Lot 32, Concession 6 (Geographic Township of Whitby), described as Part 1, 40R-27242 (MTO Plan P-5120-0240)
- (60) Part of PIN 26399-0141(LT) being part of Lots 1 and 2, Concession 6 (Geographic Township of Pickering), described as Part 1, 40R-26821 (MTO Plan P-5054-0129)
- (61) Part of PIN 26399-0013(LT) being part of Lot 5, Concession 6 (Geographic Township of Pickering), described Parts 1 and 3, 40R-27277 (MTO Plan P-5054-0143)
- (62) Part of PIN 26494-0094(LT) being part of Lots 34 and 35 and part of the Road Allowance between Lots 34 and 35, Concession 1 (Geographic Township of Whitby), described as Parts 2, 4, 7, 8, 9, and 14 and 15, 40R-26267 (MTO Plan P-5120-0036); subject to easement as in Instrument WH10050; Parts 9 and 14 subject to easement as in Instrument CO83136
- (63) Part of PIN 26547-0018(LT) being part of Lot 34, Concession 2 (Geographic Township of Whitby), described as Part 3, 40R-26141 (MTO Plan P-5120-0058); subject to easement as in Instrument D201709
- (64) All of PIN 26454-0432(LT) being part of Lot 1, Concession 1 (Geographic Township of Pickering), described as Part 1 on Expropriation Plan DR974619 (MTO Plan P-5054-0071)
- (65) All of PIN 26454-0428(LT) being part of Lot 1, Concession 1 (Geographic Township of Pickering), described as Part 1 on Expropriation Plan DR974601 (MTO Plan P-5054-0073)
- (66) Part of PIN 16264-0969 being part of Lot 18, Concession 5 (Geographic Township of Whitby), described as Part 1, Plan 40R-27243 (MTO Plan P-5120-0239) and Part 1, MTO Plan P-5120-0267
- (67) Part of PIN 16264-0967 being part of Lot 17, Concession 5 (Geographic Township of East Whitby), described as Part 5, Plan 40R-26205 (MTO Plan P-5119-0025)
- (68) Part of PIN 26569-0055(LT) being part of Lot 23, Concession 5 (Geographic Township of Whitby), described as Parts 5, 11, 12, 13, 14, and 15, , 40R-26246 (MTO Plan P-5120-0080) and Part 13 (MTO Plan P-5120-0266), subject to easement over Parts 12 and 14, 40R-26246 (MTO Plan P-5120-0080) as in Instrument LT647475; subject to easement over Part 13, 40R-26246 (MTO Plan P-5120-0080) as in Instrument LT647476;
- (69) All of PIN 26571-0213(LT) being part of Lot 32, Concession 6 (Geographic Township of Whitby), described as Part 1 on Expropriation Plan DR974743 (MTO Plan P-5120-0194)

APPENDIX 3
Archaeological Reports

Archaeological Reports

1. Stage 1 Archaeological Assessment
Highway 407 East Completion of Environmental Assessment
Region of Durham
By Archaeological Services Inc.
ASI file: 05-EA-033
February 2008
Including Appendices
 - (a) Existing Conditions Technical Report for Archaeology (August 2006)
 - (b) Alternative Methods Technical Report (Archaeology) Final Draft (August 2007)
 - (c) Field Investigation Report (Archaeology) (February 2008)
2. Stage 2 Archaeological Assessment for the 407 East Individual Environmental Assessment,
Regional Municipality of Durham, Ontario
2008 Results
Prepared by: URS Canada (Cultural Resources) and Archaeological Services Inc.
April 2010
3. Stage 2 Archaeological Assessment for the 407 East Individual Environmental Assessment,
Regional Municipality of Durham, Ontario
2009 Results
Prepared by: URS Canada (Cultural Resources) and Archaeological Services Inc.
February 2011
4. Stage 2 Archaeological Assessment for the 407 East Individual Environmental Assessment,
Regional Municipality of Durham, Ontario
2010 Results
Prepared by: URS Canada (Cultural Resources) and Archaeological Services Inc.
May 2011

Cultural Heritage Evaluation Reports

1. 1370 Dundas Street West
Town of Whitby
Site No.: WL-01, PIN 265471234
2. 1220 Rossland Road West
Town of Whitby
Site No.: WL-06, PIN 265480008
3. 865 Taunton Road West

- Town of Whitby
Site No.: WL-19, PIN 265483064
4. 1565 Dundas Street West
Town of Whitby
Site No.: WL-36, PIN: 264940096
 5. 980 Winchester Road West
Town of Whitby
Site No.: WM-22, PIN: 26571 0173
 6. 6200 Coronation Road
Town of Whitby
Site No.: WM-36, PIN: 265710012
 7. 1475 Dundas Street West
Town of Whitby
Site No.: WL-03, PIN: 264940099
 8. 425 Winchester Road West
Town of Whitby
Site No: WM-29, PIN 265701073
 9. 1410 Dundas Street West
Town of Whitby
Site No.: WL-02, PIN: 265470028
 10. 1155 Halls Road North - Town of Whitby
Site No.: WL-05, PIN: 265470016
 11. 945 Taunton Road West - Town of Whitby
Site No.: WL-20, PIN: 265483058
 12. 1520 Dundas Street West
Town of Whitby
Site No.: WL-35, PIN 265470027
 13. 6400 Halls Road North
Town of Whitby
Site No.: WM-21, PIN: 265710006
 14. 5675 Thickson Road North - Town of Whitby
Site No.: CM-07, PIN: 162640114
 15. 5575 Anderson Street
Town of Whitby
Site No.: CM-05, PIN 162640557
 16. 1420 Dundas Street West - Town of Whitby

- Site No.: WL-34, PIN: 265470029
17. 6605 Lakeridge Road
Town of Whitby
Site No. WM-19, PIN: 265710004
18. 3675 Sideline 14
City of Pickering
Site No.: WM-04, PIN: 264010053
19. 3805 Salem Road
City of Pickering
Site No.: WM-11, PIN: 263990008
20. 4005 Kinsale Road
City of Pickering
Site No. : WM-16, PIN 263990053
21. 3500 Sideline 16
City of Pickering
Site No.: WM-01, PIN 264020010
22. 268 Winchester Road West
City of Oshawa
Site No.: CM-12, PIN: 16395 0012
23. 200 Winchester Road West
City of Oshawa
Site No.: CM-13, PIN 163950013
24. 2820 Simcoe Street North
City of Oshawa
Site No.: CM-15, PIN 163950022
25. 2940 Ritson Rd N
City of Oshawa
Site No.: CM-20, PIN 163960063

APPENDIX 4
Environmental Reports

Legend

PIN – Property Identification Number

Risk – Determination as to potential for contamination (documentation undertaken for the Individual Environmental Assessment)

PSS – Preliminary Site Screening

Phase I – Environmental site assessments utilizing CSA Standard (CAN/CSA Z 768)

Phase II – Environmental site assessments utilizing CSA Standard (CAN/CSA Z769)

DSS – Designated Substance Survey

R – Report prepared

NA – No report

[Blank] – No activity or report

PIN	Property	Risk	PSS	Phase I	Phase II	DSS
264010055	3725-3735 Sideline 16, Brougham	High	R		R	
265710152	1270 Winchester Road West, Whitby	High	R		R	
163950012	268 Winchester Road East, Oshawa	High			R	R
264940099	1475 Dundas Street West, Whitby	High	R		R	
265480003	1280 Rossland Road West, Whitby	High	R		R	
265700469	4400 Halls Road North, Whitby	High	R		R	

PIN	Property	Risk	PSS	Phase I	Phase II	DSS
265701032	880 Taunton Road West, Whitby	High	R		R	
265700245	4595 Halls Road North, Whitby	High	R		R	R
263990059	2195 Concession Road 7, Pickering	High	R		R	
264000077	3720 Salem Road, Pickering,	High	R		R	
264000049	3885 Westney Road, Pickering	Moderate	R		R	
265710052	6323 Country Lane, Whitby	Moderate	R		R	
265701072	425 Winchester Road West, Whitby	Moderate	R		R	R
265691210	5380, 5505 Baldwin Street South, Whitby	Moderate			R	
163950013	200 Winchester Road West, Oshawa	Moderate	R		R	
265470029	1420 Dundas Street West, Whitby	Moderate	R		R	
265470028	1410 Dundas Street West, Whitby	Moderate	R		R	R
265471234	1370 Dundas Street West, Whitby	Moderate	R		R	

PIN	Property	Risk	PSS	Phase I	Phase II	DSS
265483064	865 Taunton Road West, Whitby	Moderate	R		R	R
265470003	925 Lake Ridge Road North, Whitby	Moderate	R		R	
265470016	1155 Halls Road North, Whitby	Moderate	R		R	R
265700258	4840 Coronation Road, Whitby	Moderate			R	
265710060	410 Winchester Road, Whitby	Moderate	R		R	R
264000105, 264000104	3755 Westney Road, Pickering	Moderate	R		R	
163970014	2800 Harmony Road North, Oshawa	Moderate	R			
163970015	1020 Winchester Road East, Oshawa	Moderate	R		R	
163970012	980 Winchester Road East, Oshawa	Moderate			R	
264540044	352 Lake Ridge Road South, Ajax	Moderate	R		R	
264540041	412 Lake Ridge Road South, Ajax	Moderate	R		R	
264540043	370 Lake Ridge Road South, Ajax	Moderate	R		R	
264540042	404 Lake Ridge Road South, Ajax	Moderate	R			

PIN	Property	Risk	PSS	Phase I	Phase II	DSS
264530716	HWY 401, Lake Ridge Road to Harwood Avenue, Ajax	Moderate			R	
264940701	1151 Dundas Street West, Whitby	Moderate	R		R	
265471235	1190 Dundas Street West, Whitby	Moderate			R	
265471237 265471238	2 Coronation Road, Whitby	Moderate	R		R	
265710012	6200 Coronation Road, Pickering	Moderate	R		R	
163950022	2820 Simcoe Street North, Oshawa	Moderate	R		R	
163970091	1260 Winchester Road, Oshawa	Moderate	R			
163960073	Ritson Road North, Oshawa	Moderate				
265470005	775 Lake Ridge Road North, Whitby	Low	R			
265480387	1280 Rossland Road West, Whitby	Low	R			
265480005	1280 Rossland Road West, Whitby	Low	R			

PIN	Property	Risk	PSS	Phase I	Phase II	DSS
265483058	945 Taunton Road, Whitby	Low	R			R
264000052	3735 Westney Road, Pickering	Low	R			
263990092	2960 Hwy. 7, Pickering	Low	R			
265710176 265710194	1085 Columbus Road, Whitby	Low	R			
265480007	1250 Rossland Road, Whitby	Low	R			
265710004	6605 Lakeridge Road, Whitby	Low	R			
265701066	4960 Coronation Road, Whitby	Low	R			
263990107	Part Lot 6, Concession Rd. 6, Pickering	Low				
264940097	1535 Dundas Street West, Whitby	Low	R			
264940096	1565 Dundas Street West, Whitby	Low	R			R
265710006	6400 Halls Road North, Whitby	Low	R			
265470026	1510 Dundas Street West, Whitby	Low				

PIN	Property	Risk	PSS	Phase I	Phase II	DSS
265700029	5655 Halls Road North, Whitby	Low				
265480006	1260 Rossland Rd, Whitby	Low	R			R
265701043	1055 Winchester Road, Whitby	Low	R			
263990007	3845 Salem Road, Pickering	Low	R			
265710055	6193 Country Lane, Whitby	Low				
264940098	1525 Dundas Street West, Whitby	Low	R			R
265700475	4075 Lake Ridge Road North, Whitby	Low	R			
265710015	6510 Coronation Road, Whitby	Low	R			
264000014	3775 Paddock Road, Pickering	Low	R			
263990025	3990 Kinsale Road, Pickering	Low				
263990023	4010 Kinsale Road, Pickering	Low	R			
264000103	2370 Highway 7, Pickering	Low	R			

PIN	Property	Risk	PSS	Phase I	Phase II	DSS
265480008	1220 Rossland Road West, Whitby	Low	R			
265470027	1520 Dundas Street West, Whitby	Low	R			
265710040	6292 Country Lane, Whitby	Low	R			
264540040	456 Lake Ridge Rd. South, Ajax	Low	R			
265700023	5000 Halls Road, Whitby	Low	R			
263990116	3060 Highway 7, Pickering	Low	R			
264000079	3830 Salem Road, Pickering	Low	R			
162640130	5840 Garrard Road, Whitby	Low	R			
265700246	4475 Halls Road, Whitby	Low	R			
264000078	Concession 6, PtLt 7 & 8, Pickering	Low	R			
265710054	6233 Country Lane, Whitby	Low	R			
264930005	415 Lakeridge Road, Whitby	Low	R			
264000124	3910 Westney Road, Pickering	Low	R			

PIN	Property	Risk	PSS	Phase I	Phase II	DSS
265701028	4120 Coronation Rd. N., Whitby	Low	R			
264010023	3825 Sideline 14 Road North, Pickering	Low	R			
265480011	1000 Rossland Road West, Whitby	Low	R			
265470033	1250 Dundas St. W, Whitby	Low	R			
265710030	6225 Coronation Road North, Whitby	Low	R			
265710173	980 Winchester Road West, Whitby	Low	R			R
265710197	6472 Country Lane, Whitby	Low	R			
265691433	Baldwin Street South, Whitby	Low	R			
265470025	1550 Dundas Street West, Whitby	Low	R			
264010016	2035 Seventh Concession Road, Pickering	Low	R			
265483082	725 Taunton Road West, Whitby	Low	R			
264010053	3675 Sideline 14, Pickering	Low	R			R

PIN	Property	Risk	PSS	Phase I	Phase II	DSS
265710014	6490 Coronation Road, Whitby	Low	R			
264010064	3610 Sideline 14, Pickering	Low				
265710053	6283 Country Lane, Whitby	Low				
263990008	3805 Salem Road, Pickering	Low				R
265480010	1100 Rossland Road, Whitby	Low				
162640114	5675 Thickson Road, Whitby	Low				
265470030	925 Rossland Road, Whitby	Low	R			
163950008	2869 Thornton Road N, Oshawa	Low	R			
164340626	Thornton Road N (NW Corner of Winchester Rd W & Thornton Rd N), Oshawa	Low	R			
162640742	5945 Garrard Road, Whitby	Low	R			
265710031	6195 Coronation Road Whitby	Low				

PIN	Property	Risk	PSS	Phase I	Phase II	DSS
264010034	3710 Paddock Road Pickering	Low	R			
265480857	900 Rossland Road West, Whitby	Low	R			
264940094	1575 Dundas Street West, Whitby	Low	R			
163960157	2951 Simcoe Street North, Oshawa	Low	R			
263990036	3800 Kinsale Road, Pickering	Low	R			
163970022	3111 Harmony Road North, Oshawa	Low	R			
163960063	2940 Ritson Road North (West), Oshawa	Low	R			
163970089	1260 Winchester Road East, Oshawa	Low	R			
163960052	2867 Bridle Road North, Oshawa	Low	R			
163960069	Concession 6 Pt Lt 9, Oshawa (590 Winchester)	Low	R			
163970017	1054 Winchester Road, Oshawa	Low	R			

PIN	Property	Risk	PSS	Phase I	Phase II	DSS
163970023	2887 Harmony Road N, Oshawa	Low				R
163970020	3189 Harmony Road N, Oshawa	Low	R			
163970022	3111 Harmony Road North, Oshawa	Low	R			
163960063	2940 Ritson Road North (West), Oshawa	Low	R			

SCHEDULE 2**COMPLETION DOCUMENTS**

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

1. DOCUMENTS TO BE DELIVERED BY PROJECT CO

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

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

- (a) a true copy of the Financial Model audit report dated [REDACTED] prepared by [REDACTED]; and
 - (b) that the Financial Model algorithms have not changed from the audit report referred to in (a) above;
- 1.16 a certificate of an officer of Project Co substantially in the form attached as Appendix B to this Schedule 2;
 - 1.17 a certificate of an officer of the Construction Contractor substantially in the form attached as Appendix B to this Schedule 2;
 - 1.18 a certificate of an officer of the OM&R Provider substantially in the form attached as Appendix B to this Schedule 2;
 - 1.19 a certificate of an officer of each of the Construction Guarantors substantially in the form attached as Appendix B to this Schedule 2;
 - 1.20 a certificate of an officer of each of the OM&R Guarantors substantially in the form attached as Appendix B to this Schedule 2;
 - 1.21 an original of the opinion from counsel to Project Co, the Construction Contractor, the OM&R Provider, each of the Construction Guarantors, each of the OM&R Guarantors and such other Project Co Parties as HMQ may reasonably require substantially in the form attached as Appendix C to this Schedule 2 and otherwise acceptable to HMQ and its counsel; and
 - 1.22 such other documents as the Parties may agree, each acting reasonably.

2. DOCUMENTS TO BE DELIVERED BY HMQ

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

- 2.1 an original of this Project Agreement;
- 2.2 an original of the Custody Agreement;
- 2.3 an original of the Lenders' Direct Agreement;
- 2.4 an original of the Construction Contractor's Direct Agreement;
- 2.5 an original of the OM&R Provider's Direct Agreement;
- 2.6 an original of the Independent Certifier Agreement;
- 2.7 an original of the Insurance Trust Agreement;
- 2.8 a reliance letter in respect of the data contained in the Geotechnical Reports;

- 2.9 reliance letter(s) in respect of the Environmental Reports;
- 2.10 a reliance letter in respect of the Archaeological Reports;
- 2.11 an original notice of appointment of the HMQ Representative;
- 2.12 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 and Appendix E respectively to this Schedule 2;
- 2.13 the Letter of Advice; and
- 2.14 such other documents as the Parties may agree, each acting reasonably.

APPENDIX A

FORM OF UNDERTAKING AND ACKNOWLEDGEMENT

TO: Her Majesty The Queen in Right of Ontario (“**HMQ**”)

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

TO: Ontario Infrastructure and Lands Corporation (“**IO**”)

RE: Project Agreement (as amended, supplemented or modified from time to time, the “**Project Agreement**”) dated the 15th day of May, 2012 between HMQ, as represented by the Minister, as represented by IO and 407 East Development Group General Partnership (“**Project Co**”)

-
1. The undersigned acknowledges that:
 - (a) The Project will proceed as an alternative financing and procurement project and complies with the principles set out in the IPFP Framework.
 - (b) The IPFP Framework establishes 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.
 - (v) All processes must be fair, transparent and efficient.
 - (c) Public ownership of the Extension will be preserved.
 2. The undersigned undertakes to comply with all Applicable Law in any direction or order issued by HMQ or IO to the extent that the direction or order affects the Project Operations.

3. Capitalized terms used but not defined herein have the respective meanings ascribed thereto in the Project Agreement.

DATED this ____ day of May, 2012.

**407 EAST DEVELOPMENT GROUP GENERAL
PARTNERSHIP, [REDACTED]:**

[REDACTED]

Per:

Name:
Title:

Per:

Name:
Title:

I/We have authority to bind the corporation.

[REDACTED]

Per:

Name:
Title:

Per:

Name:
Title:

I/We have authority to bind the corporation.

APPENDIX B

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

Certificate of an Officer of

[●]

(the “Corporation”)

TO: HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO (“HMQ”)
AND TO: THE MINISTER OF INFRASTRUCTURE
AND TO: ONTARIO INFRASTRUCTURE AND LANDS CORPORATION
AND TO: CASSELS BROCK & BLACKWELL LLP
AND TO: DAVIES WARD PHILIPS VINEBERG LLP
AND TO: [REDACTED]
AND TO: OSLER, HOSKIN & HARCOURT LLP

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

1. 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 HMQ made as of May 15, 2012 (as the same may be amended, supplemented, restated or otherwise modified from time to time, the “**Project Agreement**”) pursuant to which the Corporation will design, build, finance and maintain a new freeway and ancillary roads;
 - (2) a lenders' direct agreement between the Corporation, HMQ and the Lenders' Agent;

- (3) a direct agreement between [REDACTED] (the “**Construction Contractor**”), the Corporation, the Construction Guarantors and HMQ;
- (4) a direct agreement between [REDACTED] (the “**OM&R Provider**”), the Corporation, the OM&R Guarantors and HMQ; and
- (5) *[NTD: List other documents delivered at Financial Close.]*,
(collectively, the “**Documents**”); or
- (ii) restrict or limit the authority of the directors or shareholders of the Corporation by resolution to delegate the powers set out in subparagraph (i) to a director or an officer of the Corporation.

2. Resolutions

- (a) Annexed hereto, forming part hereof and marked as **Schedule “D”** are true and complete copies of the resolutions of the [directors/shareholders] of the Corporation (the “**Resolutions**”), which have been duly and validly passed in accordance with applicable law, constituting authority and approval for the Corporation, *inter alia*, to enter into the Documents. The Resolutions are the only resolutions of the Corporation pertaining to the subject matter thereof and the same are in full force and effect, unamended as of the date hereof.
- (b) The authorization, execution and delivery of each Document contemplated in the Resolutions, and the performance by the Corporation of its obligations thereunder, do not constitute or result in a violation or breach or default under:
 - (i) the Articles, By-laws or the Unanimous Shareholders' Agreement;
 - (ii) to the best of my knowledge and belief after due diligence, any order of any Canadian or [Ontario] governmental body by which it is bound;
 - (iii) to the best of my knowledge and belief after due diligence, the terms of any agreement or instrument under which any of its property or assets is bound; or
 - (iv) to the best of my knowledge and belief after due diligence, any writ, judgment, injunction, determination or award which is binding on the Corporation or any of its properties.
- (c) To the best of my knowledge and belief after due diligence, there is no claim, action, suit, proceedings, arbitration, investigation or inquiry before any governmental agency, court or tribunal, foreign or domestic, or before any private arbitration tribunal, pending or threatened against the Corporation, or involving its properties or business. To the best of my knowledge and belief after due diligence, no administrative or court decree is outstanding in respect of the Corporation or its assets.

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

3. No Breach or Default

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

4. Specimen Signatures

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

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(s) of such shares:

ISSUED SHARES	REGISTERED OWNER
---------------	------------------

Attached hereto as **Schedule "E"** are true copies of all certificates in respect of such issued and outstanding shares. The Corporation has issued no securities, including (without limitation) securities convertible or exchangeable into shares and/or securities in respect of debt, other than such issued and outstanding shares as are listed above.

DATED this ____ day of May, 2012.

By: _____
Name:
Title:

FOR INFORMATION ONLY

APPENDIX C

FORM OF PROJECT CO/PROJECT CO PARTY OPINION

[INSERT DATE]

Her Majesty The Queen in Right of Ontario
c/o Ontario Infrastructure and Lands Corporation
777 Bay Street, 9th Floor
Toronto, Ontario
M5G 2E5

The Minister of Infrastructure
c/o Ontario Infrastructure and Lands Corporation
777 Bay Street, 9th Floor
Toronto, Ontario
M5G 2E5

Ontario Infrastructure and Lands Corporation
777 Bay Street, 9th Floor
Toronto, Ontario
M5G 2E5

Cassels Brock & Blackwell LLP
2100-40 King Street West
Toronto, Ontario
M5H 3C2

[●]

Dear Sirs/Mesdames:

Re: Highway 407 East Extension

We have acted as counsel to ____ [REDACTED] (“Project Co”), [REDACTED] (the “Construction Contractor”) and [REDACTED] (the “OM&R Provider”) in connection with the alternative financing and procurement transaction whereby Project Co has agreed to enter into a design, build, finance and maintain agreement for an easterly extension of Highway 407 ETR from the Brock Road Interchange Eastern Limit to the Harmony Road Interchange Eastern Limit in Whitby/Oshawa. *[NTD: Additional parties to be added depending on consortium structure and/or the financing package.]*

This opinion is being delivered to Her Majesty The Queen in Right of Ontario (“**HMQ**”), the Minister of Infrastructure (the “**Minister**”), Ontario Infrastructure and Lands Corporation (“**IO**”) and their counsel pursuant to Section 1.21 of Schedule 2 to the Project Agreement made as of May 15, 2012 between HMQ, as represented by the Minister, as represented by IO 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 OM&R Provider, we have participated in the preparation and negotiation, and have examined an executed copy, of each of the following documents (unless otherwise indicated, all documents are dated as of May 15, 2012):

1. the Project Agreement; and
2. the following project documents (collectively, the “**Implementation Documents**”):
 - (a) the Construction Contract;
 - (b) the OM&R Contract;
 - (c) the Lenders' Direct Agreement;
 - (d) the Construction Contractor's Direct Agreement;
 - (e) the OM&R Provider's Direct Agreement;
 - (f) the Lending Agreements; and
 - (g) **[the Performance Guarantees]**.

The Project Agreement and the Implementation Documents are hereinafter collectively referred to as the “**Documents**”, and each is individually referred to as a “**Document**”. *[NTD: Additional documents to be added depending on consortium structure and/or the financing package.]*

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

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

Searches and Reliance

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

We have also made such investigations and examined originals or copies, certified or otherwise identified to our satisfaction, of such certificates of public officials and of such other certificates, documents and

records as we have considered necessary or relevant for purposes of the opinions expressed below, including, without limitation, the Officer's Certificates.

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

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

In connection with the opinions set forth in paragraphs 5, 8, 11, 17 and 20 below, we have relied exclusively, and without any independent investigation or enquiry, upon the opinion of [●] dated [●], 2012 (the “**CC Opinion**”), a copy of which has been delivered to you. To the extent that the CC Opinion contains assumptions, qualifications, limitations or definitions, or is expressed as relying on any certificate(s) or other documents identified therein, the opinions herein expressed in reliance on the CC Opinion should be read as incorporating the identical assumptions, qualifications, limitations, definitions and reliances.

In connection with the opinions set forth in paragraphs 6, 9, 12, 18 and 21 below, we have relied exclusively, and without any independent investigation or enquiry, upon the opinion of [●] dated [●], 2012 (the “**OM&RP Opinion**”), a copy of which has been delivered to you. To the extent that the OM&RP Opinion contains assumptions, qualifications, limitations or definitions, or is expressed as relying on any certificate(s) or other documents identified therein, the opinions herein expressed in reliance on the OM&RP Opinion should be read as incorporating the identical assumptions, qualifications, limitations, definitions and reliances.

Assumptions

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

3. 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.
4. Each of the parties (other than Project Co, the Construction Contractor and the OM&R Provider) to each of the Documents is and was, at all relevant times, a subsisting corporation, partnership, limited partnership, limited liability company or trust, as applicable, under the laws of its jurisdiction of formation.
5. Each of the parties (other than Project Co, the Construction Contractor and the OM&R Provider) has (and had) the corporate power, authority and capacity to own its property and assets and to carry on its business as such business is now (or as was then) being carried on by it, has (or had) all requisite corporate power, authority and capacity to execute and deliver each Document to which it is party and to perform its obligations thereunder, has taken all necessary corporate action, as applicable, to authorize the execution and delivery of each Document to which it is a party and the performance of its obligations thereunder, and has duly executed and delivered each Document to which it is a party and each Document to which it is a party is a legal, valid and binding obligation of such party enforceable against it in accordance with its terms.

6. The completeness, truth and accuracy of all facts set forth in the Officer's Certificates.
7. The completeness, truth and accuracy of all facts set forth in official public records and certificates and other documents supplied by public officials.
8. Value has been given by each of the parties (other than Project Co, the Construction Contractor and the OM&R Provider) to Project Co, the Construction Contractor and the OM&R Provider.

Opinions

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

Incorporation and Existence

9. Project Co is a corporation incorporated under the laws of **[the Province of Ontario]** and has not been dissolved.
10. The Construction Contractor is a corporation incorporated under the laws of **[the Province of Ontario]** and has not been dissolved.
11. The OM&R Provider is a corporation incorporated under the laws of **[the Province of Ontario]** and has not been dissolved.

Corporate Power and Capacity

12. 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.
13. 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.
14. The OM&R Provider has the corporate power and capacity to own or lease its properties and assets, to carry on its business as it is currently being conducted and as it is contemplated to be conducted under the Documents, and to enter into and perform its obligations under each of the Documents to which it is a party.

Corporate Authorization

15. 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.
16. 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.

17. The OM&R Provider has taken all necessary corporate action to authorize the execution and delivery of, and the performance of its obligations under, each of the Documents to which it is a party.

Execution and Delivery

18. Project Co has duly executed and delivered each of the Documents to which it is a party.
19. The Construction Contractor has duly executed and delivered each of the Documents to which it is a party.
20. The OM&R Provider has duly executed and delivered each of the Documents to which it is a party.

Enforceability

21. 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.
22. 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.
23. Each of the Documents to which the OM&R Provider is a party constitutes a legal, valid and binding obligation of the OM&R Provider, enforceable against it in accordance with its terms.

No Breach or Default

24. 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.
25. 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.
26. The execution and delivery by the OM&R Provider of the Documents to which it is a party does not, and the performance by the OM&R Provider of its obligations under each such Document in accordance with its terms will not, breach or constitute a default under (i) its articles, by-laws or unanimous shareholders' agreement, or (ii) the provisions of any law, statute, rule or regulation to which the OM&R Provider is subject.

Regulatory Approvals

27. 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.

28. 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.
29. 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 OM&R Provider of the Documents to which it is a party and the performance of its obligations thereunder.

Qualifications

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

30. 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.
31. 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.
32. 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.
33. 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.
34. 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.
35. A court may not treat as conclusive those certificates and determinations which the Documents state are to be so treated.
36. 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.
37. The ability to recover or claim for certain costs or expenses may be subject to judicial discretion.

38. 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.
39. Any requirement in any of the Documents that interest be paid at a higher rate after than before default may not be enforceable.
40. 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.
41. 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.
42. 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.
43. Any award of costs is in the discretion of a court of competent jurisdiction.
44. The enforceability of rights of indemnity set out in the Documents may be limited under applicable law to the extent that they directly or indirectly relate to liabilities imposed by law on HMQ for which it would be contrary to public policy to require Project Co to indemnify HMQ or to the extent that they constitute the indirect enforcement of a foreign revenue or penal law.

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

Yours very truly,

[INSERT NAME OF LAW FIRM]

APPENDIX D

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

TO: CASSELS BROCK & BLACKWELL LLP

AND TO: 407 EAST DEVELOPMENT GROUP GENERAL PARTNERSHIP (“Project Co”)

AND TO: DAVIES WARD PHILLIPS VINEBERG LLP

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

AND TO: OSLER, HOSKIN & HARCOURT LLP

RE: Project Agreement (as amended, supplemented or modified from time to time, the “Project Agreement”) dated the 15th day of May, 2012 between Her Majesty The Queen in Right of Ontario, as represented by the Minister of Infrastructure, as represented by the Corporation 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 is 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 Highway 407 East Extension (the “**Project Resolutions**”). The Project Resolutions are the only resolutions of the Corporation pertaining to the subject matter thereof and the same are in full force and effect, unamended as of the date hereof.
3. To the knowledge of the undersigned, after due inquiry as of the date hereof, the Minister of Infrastructure (the “**Minister**”) has not given a direction pursuant to Subsection 4(3) of the *Ontario Infrastructure and Lands Corporation Act, 2011*, S.O. 2011, c.9, Schedule 32, as amended (the “**Act**”) that limits the scope of the objects of the Corporation as they are set out in Subsection 4(1) of the Act.

4. The following named persons, on or as of the date hereof, are duly elected or appointed officers of the Corporation, as evidenced by the holding of the office or offices set forth opposite their names, are proper signing officers of the Corporation and are authorized to execute and deliver Project Documents (as such a term is defined in the Execution Resolutions referenced in Item 1(i) above) relating to the Highway 407 East Extension on behalf of the Corporation. The signatures set forth opposite their respective names are the true signatures of those persons.

<u>NAME</u>	<u>POSITION</u>	<u>SIGNATURE</u>
[●]	_____	_____
[●]	_____	_____
[●]	_____	_____
[●]	_____	_____

DATED this _____ day of _____, 2012.

Name: [●]

Title: Secretary

APPENDIX E

FORM OF DECLARATION OF MANAGEMENT

ONTARIO INFRASTRUCTURE AND LANDS CORPORATION

("the Corporation")

DECLARATION OF MANAGEMENT

WHEREAS Her Majesty The Queen in Right of Ontario, as represented by the Minister of Infrastructure, as represented by the Corporation and 407 East Development Group General Partnership propose to enter into a Project Agreement relating to the Highway 407 East Extension (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 _____, 2012, 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 _____, 2012.

Name: [•]
Title: Secretary

FOR INFORMATION ONLY

SCHEDULE 3

CUSTODY AGREEMENT

THIS AGREEMENT is made as of the 15th day of May, 2012

BETWEEN:

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

(“**HMQ**”)

AND:

407 EAST DEVELOPMENT GROUP GENERAL PARTNERSHIP,
[REDACTED]

(“**Project Co**”)

AND:

[REDACTED]

(the “**Custodian**”)

AND:

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

(the “**Lenders’ Agent**”)

WHEREAS:

- A. HMQ and Project Co (collectively, the “**PA Parties**” and each, a “**PA Party**”) have entered into the Project Agreement.
- B. Pursuant to the terms of the Project Agreement, the PA Parties wish to appoint the Custodian, and the Custodian wishes to accept such appointment, to perform certain services in connection with the Project Agreement.
- C. The PA Parties and the Custodian wish to enter into this Custody Agreement in order to record the terms by which the Custodian shall perform such services.

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

1. Definitions

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

- (a) **“HMQ Signatory”** has the meaning given in Section 6(a)(i).
- (b) **“Lenders’ Agent”** means [REDACTED], acting as agent for and on behalf of the Lenders.
- (c) **“Material”** means hard and electronic copies of the Financial Model.
- (d) **“PA Parties”** means both HMQ and Project Co, and **“PA Party”** means either HMQ or Project Co, as the context requires.
- (e) [REDACTED].
- (f) **“Party”** means HMQ, the Custodian, Project Co or the Lenders’ Agent, and **“Parties”** means HMQ, the Custodian, Project Co and the Lenders’ Agent.
- (g) **“Project Agreement”** means the project agreement made on or about May 15th, 2012 between HMQ and Project Co.
- (h) **“Project Co”** means [REDACTED], and any successor or permitted assigns.
- (i) **“Project Co Signatory”** has the meaning given in Section 6(a)(ii).
- (j) **“Step-Out Date”** has the meaning given in Section 14(e).

2. Interpretation

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

- (a) The headings in this Custody Agreement are for convenience of reference only, shall not constitute a part of this Custody Agreement, and shall not be taken into consideration in the interpretation of, or affect the meaning of, this Custody Agreement.
- (b) Unless the context otherwise requires, references to specific Sections, Paragraphs, Subparagraphs, and other divisions are references to such Sections, Paragraphs, Subparagraphs, or divisions of this Custody Agreement and the terms **“Section”** and **“Section”** are used interchangeably and are synonymous.

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

- (m) Whenever the terms “will” or “shall” are used in this Custody Agreement they shall be construed and interpreted as synonymous and to read “shall”.

3. Project Co’s Duties and Warranties

- (a) HMQ will, together with Project Co, verify the identity and consistency of two copies of the Material, which shall be delivered by Project Co to the Custodian on the date of this Custody Agreement.
- (b) Project Co shall at all times ensure that the Material as delivered to the Custodian is capable of being used to generate the latest version of the Financial Model issued to HMQ and shall deliver further copies of the Material to the Custodian as and when necessary.
- (c) Upon creation of any new versions of the Financial Model and within 30 days from receipt of a notice served upon it by the Custodian under the provisions of Section 4(a)(v), the replacement copy of the Material shall be verified by the PA Parties in accordance with Section 3(a) and delivered by Project Co to the Custodian.
- (d) Project Co warrants that:
- (i) it owns the Intellectual Property Rights in the Material and has authority to enter into this Custody Agreement;
 - (ii) the use of the Materials by HMQ under the terms of this Custody Agreement shall not infringe any Intellectual Property Rights of any person; and
 - (iii) the Material delivered under Section 3(a) shall contain all information in human-readable form and on suitable media to enable a reasonably skilled programmer or analyst to understand, maintain and correct the Material without the assistance of any other person.

4. Custodian’s Duties

- (a) The Custodian shall:
- (i) hold in safe custody all versions of the Financial Model delivered to it pursuant to the terms hereof, and the provisions of this Custody Agreement shall apply (with any necessary changes being made) to any revised Financial Model;
 - (ii) hold the Material in a safe and secure environment;
 - (iii) inform Project Co and HMQ of the receipt of any copy of the Material;
 - (iv) at all times retain a copy of the latest verified deposit of the Material; and
 - (v) promptly notify Project Co and HMQ if it becomes aware at any time during the term of this Custody Agreement that any copy of the Material held by it has been lost, damaged or destroyed.

- (b) The Custodian shall not be responsible for procuring the delivery of the Material in the event of failure by Project Co to do so.
- (c) In accordance with Section 10, the Custodian shall allow the PA Parties, the Lenders' Agent and the auditor retained by the Lenders' Agent to inspect and audit the Financial Model from time to time.

5. Payment

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

6. Release Events

- (a) The Custodian shall hold the Material to the order of the PA Parties and shall honour the instructions and signatures of:
 - (i) the President & CEO and designated signing officers of IO or such other person nominated by it and notified to the Custodian and Project Co in writing (the "**HMQ Signatory**"); and
 - (ii) the President & CEO and designated signing officers of Project Co or such other person nominated by it and notified to the Custodian and HMQ in writing (the "**Project Co Signatory**");

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

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

7. Records

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

8. Confidentiality

- (a) The Material shall remain the confidential property of Project Co and, in the event that the Custodian provides a copy of the Material to HMQ, HMQ shall be permitted to use the Material

only in accordance with the intellectual property and confidentiality obligations in the Project Agreement.

- (b) The Custodian agrees for itself, its directors, officers, employees, sub-contractors and agents, to maintain all information and/or documentation in whatever form coming into its possession or to its knowledge under or in connection with this Custody Agreement in strictest confidence and secrecy. The Custodian further agrees not to make use of such information and/or documentation other than for the purposes of this Custody Agreement and will not disclose or release it other than in accordance with the terms of this Custody Agreement.
- (c) In the event that the Material is released under Section 6, HMQ shall:
 - (i) use the Material only for the purpose of understanding, maintaining and correcting the Financial Model exclusively on behalf of HMQ;
 - (ii) not use the Material for any other purpose nor disclose it to any person, save such of its employees or contractors who need to know the same in order to understand, maintain and correct the Financial Model exclusively on behalf of HMQ;
 - (iii) hold all media containing the Material in a safe and secure environment when not in use; and
 - (iv) forthwith destroy the same should HMQ cease to be entitled to use the Financial Model.

9. Intellectual Property Rights

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

10. Inspection

- (a) Subject to the following provisions of this Section 10, the Custodian shall bear no obligation or responsibility to any person, firm, company or entity whatsoever to determine the existence, relevance, completeness, accuracy, effectiveness or any other aspect of the Financial Model.
- (b) The PA Parties shall be entitled, at reasonable hours and upon giving the Custodian reasonable notice, to inspect and audit or to procure the inspection and audit of the Financial Model in accordance with this Section 10.
- (c) The Custodian shall, upon receiving duly signed instructions from both of the PA Parties (but only upon receiving such instructions), provide facilities for HMQ and/or Project Co and/or such person identified in the duly signed written instructions to inspect and audit the Financial Model.
- (d) The Custodian shall maintain a record of any inspection and audit made pursuant to Section 10(b), including details of the person who made the inspection and/or audit and the date of the same.

11. Custodian's Liability

- (a) The Custodian shall not be liable for any loss or damage caused to Project Co or HMQ either jointly or severally except to the extent that such loss or damage is caused by the negligent acts or omissions of or a breach of any contractual duty by the Custodian, its employees, agents or sub-contractors, and in such event, the Custodian's total liability in respect of all claims arising under or by virtue of this Custody Agreement shall not (except in the case of claims for personal injury or death) exceed the sum of \$[REDACTED] (index-linked).
- (b) The Custodian shall in no circumstances be liable to Project Co or HMQ for indirect or consequential loss of any nature whatsoever whether for loss of profit, loss of business or otherwise.
- (c) Subject to complying with the provisions of Section 6, and save in the case of manifest error, the Custodian shall be protected in acting upon any written request, waiver, consent, receipt or other document furnished to it pursuant to this Custody Agreement, not only in assuming its due execution and the validity and effectiveness of its provisions but also as to the truth and acceptability of any information contained in it, which the Custodian in good faith believes to be genuine and what it purports to be.
- (d) The duties, responsibilities and obligations of the Custodian shall be limited to those expressly set forth herein and no duties, responsibilities or obligations shall be inferred or implied. The Custodian shall not be subject to, nor required to comply with, any other agreement between or among any or all of the other Parties or to which any Party is a party, even though reference thereto may be made herein, or to comply with any direction or instruction (other than those contained herein or delivered in accordance herewith). The Custodian shall not be required to expend or risk any of its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder except ordinary corporate costs incurred in the performance of such duties.
- (e) If at any time the Custodian is served with any judicial or administrative order, judgment, decree, writ or other form of judicial or administrative process which in any way affects the Material (including, but not limited to, orders of attachment or garnishment or other forms of levies or injunctions or stays relating to the transfer of property), the Custodian is authorized to comply therewith in any manner as it or its legal counsel deems appropriate, acting reasonably; provided that the Custodian, when so served, shall promptly notify Project Co and HMQ, in writing, of such process and the Custodian's intended action in order to provide Project Co and HMQ a reasonable opportunity to intervene or challenge such process in a court or tribunal of competent jurisdiction.
- (f) The Custodian may consult with legal counsel at the expense of Project Co and HMQ as to any matter relating to this Custody Agreement, and the Custodian shall not incur any liability in acting in good faith in accordance with any advice from such counsel. All reasonable fees and disbursements incurred by the Custodian shall be added to the fees otherwise payable hereunder.
- (g) The Custodian shall not incur any liability for not performing any act or fulfilling any duty, obligation or responsibility hereunder by reason of any occurrence beyond the control of the Custodian (including, but not limited to, any act or provision of any present or future law or

regulation or governmental authority, any act of God or war, or the unavailability of any wire or communication facility).

- (h) The Custodian shall not be responsible in any respect for the form or content of the Material delivered to it hereunder.
- (i) In the event of any ambiguity or uncertainty hereunder or in any notice, instruction or other communication received by the Custodian hereunder, the Custodian shall notify Project Co and HMQ in writing of such ambiguity or uncertainty and request instructions to eliminate such ambiguity or uncertainty. The Custodian may, acting reasonably, refrain from taking any action other than to retain possession of the Material, unless the Custodian receives written instructions, signed by Project Co and HMQ, which eliminates such ambiguity or uncertainty.
- (j) In the event of any dispute between or conflicting claims by or among the PA Parties and/or any other person or entity with respect to the Material, the Custodian shall be entitled, acting reasonably, to refuse to comply with any and all claims, demands or instructions with respect to the Material so long as such dispute or conflict shall continue, and the Custodian shall promptly notify Project Co and HMQ of its intention to do so. In such circumstances, the Custodian shall not be or become liable in any way to Project Co or HMQ for failure or refusal to comply with such conflicting claims, demands or instructions. The Custodian shall be entitled to refuse to act until, acting reasonably, either (i) such conflicting or adverse claims or demands shall have been determined by a final order, judgment or decree of a court of competent jurisdiction, which order, judgment or decree is not subject to appeal, or settled by agreement between the conflicting parties as evidenced in writing satisfactory to the Custodian or (ii) the Custodian shall have received security or an indemnity satisfactory to it acting reasonably sufficient to hold it harmless from and against any and all losses which it may incur by reason of so acting. The Custodian may, in addition, elect, acting reasonably, to commence an interpleader action or seek other judicial relief or orders as it may deem, acting reasonably, necessary, including, without limiting the generality of the foregoing, depositing all or any part of the Material into court. The costs and expenses (including reasonable attorneys' fees and expenses) incurred in connection with such proceeding shall be paid by, and shall be deemed a joint and several obligation of, Project Co and HMQ.
- (k) Each of Project Co and HMQ shall provide to the Custodian an incumbency certificate setting out the names and sample signatures of persons authorized to give instructions to the Custodian hereunder. The Custodian shall be entitled to rely on such certificate until a revised certificate is provided to it hereunder. The Custodian shall be entitled to refuse to act upon any instructions given by a party which are signed by any person other than a person described in the incumbency certificate provided to it pursuant to this section.
- (l) The Custodian shall be entitled to rely, and act upon, on any direction, order, instruction, notice or other communication provided to it hereunder which is sent to it by facsimile transmission.
- (m) This Section 11 shall survive the termination of this Custody Agreement.

12. Indemnity

- (a) Save for any claim falling within the provisions of Section 11(a), Project Co and HMQ, on a joint and several basis, shall be liable for and shall indemnify and hold harmless the Custodian, and its officers, directors and employees, from and against any and all claims, losses, liabilities, costs, damages or expenses (including reasonable attorneys' fees and expenses) arising from or in connection with or related to this Custody Agreement or acting as Custodian hereunder (including, but not limited to, losses incurred by the Custodian in connection with its successful defense of any claim of negligence or willful misconduct on its part), provided, however, that nothing contained herein shall require the Custodian to be indemnified for losses caused by its negligence or willful misconduct.
- (b) Claims made by a third person against a party having, or claiming to have, the benefit of an indemnity pursuant to this Custody Agreement, shall be conducted in accordance with the conduct of claims procedure described in Appendix A – Conduct of Claims to this Custody Agreement.

13. Termination

- (a) The Custodian may terminate this Custody Agreement for failure by Project Co to pay any outstanding fee provided for herein within 30 days of receipt of written notice in respect thereof.
- (b) The Custodian may terminate this Custody Agreement by giving 120 days prior written notice to Project Co and HMQ. In that event, Project Co and HMQ shall appoint a mutually acceptable new custodian on terms similar to those contained in this Custody Agreement.
- (c) If the Custodian is not notified of the new custodian within the notice period given in Section 13(b), the Custodian will destroy the Material.
- (d) HMQ may terminate this Custody Agreement by giving 30 days prior written notice to the Custodian and Project Co.
- (e) Project Co may, with the prior written consent of HMQ, terminate this Custody Agreement by giving 30 days prior written notice to the Custodian and HMQ.
- (f) This Custody Agreement shall terminate upon release of the Material to HMQ in accordance with Section 6(c).
- (g) Upon termination under the provisions of Sections 13(d) or 13(e), the Custodian will deliver the Material to Project Co. If the Custodian is unable to trace Project Co within 60 days of writing to the last registered address notified by Project Co to the Custodian, the Custodian will destroy the Material.
- (h) Upon termination under the provisions of Section 13(a), the Material will be available for collection by Project Co from the Custodian for 60 days from the date of termination. After such 60-day period, the Custodian will destroy the Material.

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

14. Step-In Rights

- (a) The Custodian shall, from time to time:
 - (i) permit HMQ to perform or discharge any obligation of Project Co under this Custody Agreement, where Project Co is in breach of the same;
 - (ii) permit Project Co to perform or discharge any obligation of HMQ under this Custody Agreement, where HMQ is in breach of the same; and
 - (iii) following notification by the Lenders' Agent (who at the same time shall provide a copy of any such notification to HMQ), permit the Lenders' Agent or another person specified in such notice with effect from the date specified in the same to perform or discharge all the obligations of Project Co under this Custody Agreement, provided that the Lenders' Agent shall have the benefit of and be entitled to enforce against the Custodian any and all of the Custodian's obligations to Project Co under this Custody Agreement and the Custodian undertakes to perform such obligations in favour of the Lenders' Agent.
- (b) Project Co consents to the performance or discharge of its obligations by HMQ pursuant to Section 14(a)(i).
- (c) HMQ consents to the performance or discharge of its obligations by Project Co pursuant to Section 14(a)(ii).
- (d) The PA Parties consent to the performance or discharge of Project Co's obligations by the Lenders' Agent pursuant to Section 14(a)(iii).
- (e) HMQ or the Lenders' Agent shall be entitled to terminate the Lenders' Agent's obligations pursuant to Section 14(a)(iii) on giving the Custodian prior notice (HMQ or the Lenders' Agent at the same time shall provide a copy of any such notification to the other party) of at least 15 Business Days. On and from the date of expiry of such notice (the "**Step-Out Date**"), the Lenders' Agent shall be automatically released from all obligations pursuant to this Custody

Agreement, except for any which have fallen due for performance or discharge on or before the Step-Out Date and which have not been fully and unconditionally performed or discharged.

- (f) The occurrence of the Step-Out Date shall not affect the continuation of Project Co's obligations towards the Custodian under this Custody Agreement.
- (g) The Lenders' Agent is a Party to this Custody Agreement solely for the purposes of taking the benefit of its rights under Section 4(c) of this Custody Agreement and this Section 14 and shall have no rights or obligations or liabilities hereunder, except pursuant to the operation of Section 4(c) of this Custody Agreement and this Section 14.

15. Assignment

- (a) This Custody Agreement shall be binding on, and enure to the benefit of, the Custodian, Project Co and HMQ and their respective successors and permitted transferees and assigns.
- (b) Project Co may assign, transfer or otherwise dispose of the benefit of this Custody Agreement to any person to whom Project Co assigns, transfers or otherwise disposes of its interest in the Project Agreement pursuant to Section 59.1 of the Project Agreement.
- (c) HMQ may assign, transfer or otherwise dispose of the benefit of this Custody Agreement to any person to whom HMQ assigns, transfers or otherwise disposes of its interest in the Project Agreement pursuant to Section 59.2 of the Project Agreement.
- (d) The Custodian shall not, without the prior written consent of the PA Parties assign, transfer or otherwise dispose of the benefit of this Custody Agreement to any person.
- (e) The Custodian acknowledges that Project Co has granted a security interest over its rights under this Custody Agreement to the Lenders' Agent.

16. Notices

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

If to HMQ:

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

Fax: [REDACTED]
Attn.: [REDACTED]

With a copy to:

Ministry of Transportation
1201 Wilson Avenue

Building D, 7th Floor
Toronto, Ontario
M3M 1J8

Fax: [REDACTED]

Attn.: [REDACTED]

If to Project Co:

[REDACTED]

E-mail: [REDACTED]

Fax: [REDACTED]

Attn.: [REDACTED]

With a copy to:

[REDACTED]

Fax: [REDACTED]

Attn.: [REDACTED]

And a copy to:

[REDACTED]

Fax: [REDACTED]

Attn.: [REDACTED]

With electronic copies to:

[REDACTED]

[REDACTED]

[REDACTED]

If to the Custodian:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Fax: [REDACTED]

Attn.: [REDACTED]

If to the Lenders' Agent:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Fax: [REDACTED]

Attn.: [REDACTED]

- (b) Where any notice is provided or submitted to a Party via facsimile, an original of the notice sent via facsimile shall promptly be sent by regular mail or registered mail. For greater certainty, a notice given via facsimile shall not be invalid by reason only of a Party's failure to comply with this Section 16(b).
- (c) Any Party to this Custody Agreement may, from time to time, change any of its contact information set forth in Section 16(a) by prior notice to the other Parties, and such change shall be effective on the Business Day that next follows the recipient Party's receipt of such notice unless a later effective date is given in such notice.
- (d) Subject to Sections 16(e), 16(f) and 16(g):
 - (i) a notice given by registered mail shall be deemed to have been received on the third Business Day after mailing;
 - (ii) a notice given by hand delivery shall be deemed to have been received on the day it is delivered; and
 - (iii) a notice given by facsimile shall be deemed to have been received on the day it is transmitted by facsimile.
- (e) If the Party giving the notice knows or ought reasonably to know of difficulties with the postal system which might affect negatively the delivery of mail, any such notice shall not be mailed but shall be made or given by personal delivery or by facsimile transmission in accordance with this Section 16.
- (f) If any notice delivered by hand or transmitted by facsimile is so delivered or transmitted, as the case may be, either on a day that is not a Business Day or on a Business Day after 4:00 p.m. (recipient's local time), then such notice shall be deemed to have been received by such recipient on the next Business Day.
- (g) A notice given by facsimile shall be deemed to have been received by the recipient on the day it is transmitted only if a facsimile transmission report (maintained by the sender) indicates that the transmission of such notice was successful.

17. Right to Designate

- (a) At any time and from time to time, HMQ may designate any ministry, branch, agency, division, department or office of the Government of Ontario to carry out administrative responsibility for the rights and obligations of HMQ under this Custody Agreement and Project Co, the Custodian and the Lenders' Agent may deal exclusively with the designated person in respect of all such matters and are entitled to rely on the actions, directions, requests, notices, consents, approvals, waivers, comments relating to the review of documentation and other administrative matters and decisions determined by such designated person from time to time, until HMQ has notified Project Co, the Custodian and the Lenders' Agent in writing that such designated person is no longer the person designated by HMQ 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. HMQ shall advise Project Co, the Custodian and the Lenders' Agent in writing of any designation hereunder. The

rights and obligations of the Parties to this Custody Agreement shall be in no way affected by reason of any such designation. Project Co, the Custodian and the Lenders' Agent acknowledge the right of HMQ to delegate administrative responsibilities hereunder as set forth in this Section 17.

18. Amendments

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

19. Waiver

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

20. Relationship Between the Parties

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

21. Entire Agreement

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

22. Severability

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

promptly negotiate new provisions to eliminate such invalidity, unenforceability or illegality and to restore this Custody Agreement as near as possible to its original intent and effect.

23. Enurement

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

24. Governing Law and Jurisdiction

- (a) This Custody Agreement shall be governed by and construed in accordance with the laws of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract, without regard to conflict of laws principles.
- (b) The Parties agree that the courts of the Province of Ontario and all courts competent to hear appeals therefrom shall have exclusive jurisdiction to hear and settle any action, suit, proceeding or dispute in connection with this Custody Agreement and hereby irrevocably attorn to the exclusive jurisdiction of such courts.
- (c) Nothing in this Custody Agreement affects the rights, protections and immunities of the Crown under the *Proceedings Against the Crown Act* (Ontario).

25. Further Assurance

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

26. Language of Agreement

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

27. Proof of Authority

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

28. Counterparts

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

29. Copyright Notice

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

30. Joint and Several Liability

- (a) Each [REDACTED] hereby acknowledges and agrees to and in favour of each of HMQ, the Custodian and the Lenders' Agent, that [REDACTED] are jointly and severally liable for the due and punctual payment of all indebtedness of, and performance and discharge of all covenants, obligations, agreements and undertakings (including indemnity obligations) of, Project Co under or pursuant to this Custody Agreement now or hereafter existing.

[SIGNATURE PAGES IMMEDIATELY FOLLOW]

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

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

Per: _____

Name:

Title:

Per: _____

Name:

Title:

I/We have authority to bind the corporation.

**407 EAST DEVELOPMENT GROUP GENERAL
PARTNERSHIP, [REDACTED]:**

[REDACTED]

Per:

Name:
Title:

Per:

Name:
Title:

I/We have authority to bind the corporation.

[REDACTED]

Per:

Name:
Title:

Per:

Name:
Title:

I/We have authority to bind the corporation.

[REDACTED], in its capacity as Custodian

Per: _____

Name:

Title:

Per: _____

Name:

Title:

I/We have authority to bind the corporation.

**[REDACTED], in its capacity as Collateral
Trustee**

Per: _____

Name:

Title:

Per: _____

Name:

Title:

I/We have authority to bind the corporation.

APPENDIX A

CONDUCT OF CLAIMS

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

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

- (i) the Indemnifier is not entitled to take conduct of the claim in accordance with Section (2); or
 - (ii) the Indemnifier fails to notify the Beneficiary of its intention to take conduct of the relevant claim as soon as reasonably practicable and in any event within 10 Business Days of the notice from the Beneficiary under Section (1) or the Indemnifier notifies the Beneficiary that the Indemnifier does not intend to take conduct of the claim.
- (5) The Beneficiary shall be free at any time to give notice to the Indemnifier that the Beneficiary is retaining or taking over, as the case may be, the conduct of any defence, dispute, compromise or appeal of any claim, or of any incidental negotiations, to which Section (2) applies. On receipt of such notice the Indemnifier shall promptly take all steps necessary to transfer the conduct of such claim to the Beneficiary, and shall provide to the Beneficiary all relevant documentation and all reasonable cooperation, access and assistance for the purposes of considering and resisting such claim. If the Beneficiary gives any notice pursuant to this Section (5), then the Indemnifier shall be released from any liabilities arising under the applicable indemnity hereunder in respect of the applicable claim.
- (6) If the Indemnifier pays to the Beneficiary an amount in respect of an indemnity and the Beneficiary subsequently recovers, whether by payment, discount, credit, saving, relief or other benefit or otherwise, a sum or anything else of value (the “**Recovery Amount**”), the Beneficiary shall forthwith repay to the Indemnifier whichever is the lesser of:
- (i) an amount equal to the Recovery Amount less any out-of-pocket costs and expenses properly incurred by the Beneficiary in recovering the same; and
 - (ii) the amount paid to the Beneficiary by the Indemnifier in respect of the claim under the relevant indemnity,
- provided that there shall be no obligation on the Beneficiary to pursue any Recovery Amount and that the Indemnifier shall be repaid only to the extent that the Recovery Amount, aggregated with any sum recovered from the Indemnifier, exceeds the loss sustained by the Beneficiary except, however, that if the Beneficiary elects not to pursue a Recovery Amount, the Indemnifier shall be entitled to require an assignment to it of the right to do so.
- (7) Any person taking any of the steps contemplated by this Appendix A shall comply with the requirements of any insurer who may have an obligation to provide an indemnity in respect of any liability arising under this Custody Agreement.

SCHEDULE 4

LENDERS' DIRECT AGREEMENT

THIS AGREEMENT is made as of the 15th day of May, 2012

BETWEEN:

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

(“**HMQ**”)

- AND -

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

(the “**Lenders' Agent**”)

- AND -

407 EAST DEVELOPMENT GROUP GENERAL PARTNERSHIP, [REDACTED]

(“**Project Co**”)

WHEREAS:

- A. HMQ and Project Co have entered into the Project Agreement.
- B. The construction of the Extension will have a positive impact on the Province of Ontario by (i) providing a new transportation corridor to address transportation capacity deficiencies, (ii) providing a comprehensive freeway network through the Regional Municipality of Durham, Ontario to improve mobility, network flexibility and provide an alternative emergency/detour freeway route in the Regional Municipality of Durham, Ontario, (iii) offering relief to congestion on local roads traffic as the Extension will provide an alternative route for through traffic, (iv) meeting infrastructure needs to address continued population and employment growth in the Regional Municipality of Durham, Ontario and eastern Greater Toronto Area, and (v) allowing for better and more efficient transportation and flow of goods between Toronto and eastern Ontario.
- C. Under the Lending Agreements, financing is to be provided to Project Co by the Lenders to finance the Project Operations, conditional on, among other things, Project Co granting the Security to the Lenders' Agent.

- D. The Lenders' Agent has agreed to enter into this lenders' direct agreement (the "**Lenders' Direct Agreement**") with HMQ in relation to the Security, the exercise of its rights under the Security Documents and the remedying of breaches by Project Co under the Project Agreement.
- E. With a view to ensuring that HMQ 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 HMQ throughout the Project Term.

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

1. DEFINITIONS

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

- (a) "**Affiliate**" has the meaning given in the Project Agreement.
- (b) "**Appointed Representative**" means any of the following to the extent so identified in an Appointed Representative Notice:
- (i) the Lenders' Agent, any Lender or any of their Affiliates;
 - (ii) a receiver or receiver and manager of Project Co appointed under the Security Documents;
 - (iii) a trustee in bankruptcy or court-appointed receiver of Project Co;
 - (iv) an administrator of Project Co;
 - (v) a person directly or indirectly owned or controlled by the Lenders' Agent and/or any of the Lenders; or
 - (vi) any other person approved by HMQ (such approval not to be unreasonably withheld or delayed).
- (c) "**Appointed Representative Notice**" has the meaning given in Section 8(b).
- (d) "**Business Day**" has the meaning given in the Project Agreement.
- (e) "**Construction Contract**" has the meaning given in the Project Agreement.
- (f) "**Construction Contractor**" has the meaning given in the Project Agreement.
- (g) "**Default Notice**" has the meaning given in Section 7(b)(i).
- (h) "**Direct Agreements**" has the meaning given in the Project Agreement.

- (i) **“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.
- (j) **“Enforcement Event”** means an event of default as defined in the Lending Agreements, or any other event which permits an Enforcement Action.
- (k) **“Equity Capital”** has the meaning given in the Project Agreement.
- (l) **“Exercise Date”** has the meaning given in Section 12(b).
- (m) **“Extension”** has the meaning given in the Project Agreement.
- (n) **“Failure Points”** has the meaning given in the Project Agreement.
- (o) **“Governmental Authority”** has the meaning given in the Project Agreement.
- (p) **“HMQ Party”** has the meaning given in the Project Agreement.
- (q) **“HMQ Project Documents”** means the Project Agreement and all other documents to which both HMQ and Project Co are parties pursuant to or in connection with the Project Agreement.
- (r) **“Indebtedness Notice”** has the meaning given in Section 7(b)(ii).
- (s) **“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.
- (t) **“Lenders”** has the meaning given in the Project Agreement.
- (u) **“Lenders’ Agent”** means [REDACTED], acting as agent for and on behalf of the Lenders, together with its successors and assigns.
- (v) **“Lenders’ Direct Agreement”** means this lenders’ direct agreement.
- (w) **“Lending Agreements”** has the meaning given in the Project Agreement.
- (x) **“Longstop Date”** has the meaning given in the Project Agreement.
- (y) **“Monitoring Notice”** has the meaning given in the Project Agreement.
- (z) **“Notice Period”** means the period starting on the date of delivery of a Default Notice and ending 120 days later.
- (aa) **“Novation Date”** has the meaning given in Section 10(a).
- (bb) **“Novation Notice”** has the meaning given in Section 10(a).

- (cc) “**OM&R Contract**” has the meaning given in the Project Agreement.
- (dd) “**OM&R Provider**” has the meaning given in the Project Agreement.
- (ee) **[REDACTED]**.
- (ff) “**Party**” means any of HMQ, Project Co or the Lenders’ Agent, and “**Parties**” means all of HMQ, Project Co and the Lenders’ Agent.
- (gg) “**Project**” has the meaning given in the Project Agreement.
- (hh) “**Project Agreement**” means the project agreement made on or about May 15th, 2012 between HMQ and Project Co.
- (ii) “**Project Co**” means 407 East Development Group General Partnership, **[REDACTED]**, and any successor or permitted assign.
- (jj) “**Project Co Event of Default**” has the meaning given in the Project Agreement.
- (kk) “**Project Co Party**” has the meaning given in the Project Agreement.
- (ll) “**Project Documents**” has the meaning given in the Project Agreement.
- (mm) “**Project Operations**” has the meaning given in the Project Agreement.
- (nn) “**Refinancing**” has the meaning given in the Project Agreement.
- (oo) “**Restricted Person**” has the meaning given in the Project Agreement.
- (pp) “**Security**” means the security interests granted by Project Co to the Lenders’ Agent pursuant to the Security Documents.
- (qq) “**Security Documents**” means all security granted by Project Co to the Lenders (or any trustee or agent thereof, including the Lenders’ Agent) pursuant to or in connection with the Lending Agreements, including but not limited to:
 - (i) the general security agreement made on or about the date hereof between Project Co and the Lenders’ Agent;
 - (ii) the Direct Agreements;
 - (iii) the blocked accounts agreement between **[REDACTED]**, Project Co and the Lenders’ Agent;
 - (iv) the securities pledge agreements given by **[REDACTED]** in favour of the Lenders’ Agent;
 - (v) the securities account control agreements given by **[REDACTED]** in favour of the Lenders’ Agent;

- (vi) the Insurance Trust Agreement;
- (vii) the assignment of the project documents given by Project Co in favour of the Lenders' Agent; and
- (viii) the assignment of the equity contribution agreement given by Project Co in favour of the Lenders' Agent.
- (rr) **“Step-In Date”** means the date on which HMQ receives a Step-In Notice from the Lenders' Agent.
- (ss) **“Step-In Notice”** means the notice given by the Lenders' Agent to HMQ pursuant to Section 8(a) stating that the Lenders' Agent is exercising its step-in rights under this Lenders' Direct Agreement.
- (tt) **“Step-In Period”** means the period from the Step-In Date up to and including the earlier of:
 - (i) the Step-Out Date;
 - (ii) the Termination Date (provided that HMQ 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 HMQ Project Documents to a Suitable Substitute pursuant to Section 10 becomes effective; and
 - (iv) if the Step-In Date occurs prior to the Substantial Completion Date, the earlier of:
 - (A) the date falling 180 days after the Longstop Date; or
 - (B) the date falling two years after the Step-In Date.
- (uu) **“Step-Out Date”** means the date falling 30 days after the date on which HMQ receives a Step-Out Notice.
- (vv) **“Step-Out Notice”** has the meaning given in Section 9(a).
- (ww) **“Subsequent Indebtedness Notice”** has the meaning given in Section 7(c).
- (xx) **“Substantial Completion Date”** has the meaning given in the Project Agreement.
- (yy) **“Suitable Substitute”** means a person, approved in writing by HMQ in accordance with Sections 10(b) and 10(c), which:
 - (i) has the legal capacity, power and authority to become a party to and perform the obligations of Project Co under the HMQ Project Documents; and

- (ii) employs individuals having the appropriate qualifications, experience and technical competence, and having the resources available to it (including committed financial resources and subcontracts) that are sufficient to enable it to perform the obligations of Project Co under the HMQ Project Documents.
- (zz) “**Termination Date**” has the meaning given in the Project Agreement.
- (aaa) “**Warning Notice**” has the meaning given in the Project Agreement.

2. INTERPRETATION

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

- (a) The headings in this Lenders’ Direct Agreement are for convenience of reference only, shall not constitute a part of this Lenders’ Direct Agreement, and shall not be taken into consideration in the interpretation of, or affect the meaning of, this Lenders’ Direct Agreement.
- (b) Unless the context otherwise requires, references to specific Sections, Clauses, Paragraphs, Subparagraphs, and other divisions are references to such Sections, Clauses, Paragraphs, Subparagraphs, or divisions of this Lenders’ Direct Agreement and the terms “Section” and “Clause” are used interchangeably and are synonymous.
- (c) Words importing persons or parties are to be broadly interpreted and include an individual, corporation, firm, partnership, joint venture, trust, unincorporated organization, Governmental Authority, unincorporated body of persons or association and any other entity having legal capacity, and the heirs, beneficiaries, executors, administrators or other legal representatives of a person in such capacity.
- (d) Unless the context otherwise requires, wherever used herein the plural includes the singular, the singular includes the plural, and each of the masculine, feminine and neuter genders include all other genders.
- (e) References to any standard, principle, agreement or document include (subject to all relevant approvals and any other provisions of this Lenders’ Direct Agreement concerning amendments) a reference to that standard, principle, agreement or document as amended, supplemented, restated, substituted, replaced, novated or assigned.
- (f) The words in this Lenders’ Direct Agreement shall bear their natural meaning.
- (g) References containing terms such as:
 - (i) “hereof”, “herein”, “hereto”, “hereinafter”, and other terms of like import are not limited in applicability to the specific provision within which such references are set forth but instead refer to this Lenders’ Direct Agreement taken as a whole; and

- (ii) “includes” and “including”, whether or not used with the words “without limitation” or “but not limited to”, shall not be deemed limited by the specific enumeration of items but shall, in all cases, be deemed to be without limitation and construed and interpreted to mean “includes without limitation” and “including without limitation”.
- (h) In construing this Lenders’ Direct Agreement, the rule known as the *ejusdem generis rule* shall not apply nor shall any similar rule or approach to the construction of this Lenders’ Direct Agreement and, accordingly, general words introduced or followed by the word “other” or “including” or “in particular” shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words.
- (i) Where this Lenders’ Direct Agreement states that an obligation shall be performed “no later than” or “within” or “by” a stipulated date or event which is a prescribed number of days after a stipulated date or event, the latest time for performance shall be 5:00 p.m. on the last day for performance of the obligation concerned, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- (j) Where this Lenders’ Direct Agreement states that an obligation shall be performed “on” a stipulated date, the latest time for performance shall be 5:00 p.m. on that day, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- (k) Any reference to time of day or date means the local time or date in Toronto, Ontario.
- (l) Unless otherwise indicated, time periods will be strictly construed.
- (m) Whenever the terms “will” or “shall” are used in this Lenders’ Direct Agreement they shall be construed and interpreted as synonymous and to read “shall”.

3. CONFLICT OF DOCUMENTS

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

4. TERM

- (a) This Lenders’ Direct Agreement shall terminate automatically on the earliest of:
 - (i) the date on which all amounts which may be or become owing to the Lenders under the Lending Agreements have been irrevocably paid in full;
 - (ii) the Termination Date (provided that HMQ 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 HMQ Project Documents to a Suitable Substitute pursuant to Section 10 becomes

effective and the agreements contemplated in Section 10(e)(iii) are executed and delivered by the parties thereto.

- (b) Within 30 days following its occurrence, the Lenders' Agent shall provide notice to HMQ of the date referred to in Section 4(a)(i).

5. AGREEMENTS AND SECURITY

- (a) Project Co and the Lenders' Agent shall not amend or modify the Lending Agreements, or any of them, except where Project Co is permitted to do so pursuant to Section 7.3(a) of the Project Agreement.
- (b) Project Co and HMQ shall not amend or modify the HMQ Project Documents (other than in accordance with the terms of those agreements) without the prior written consent of the Lenders' Agent, not to be unreasonably withheld or delayed, which consent shall not be withheld if the relevant amendment or modification shall not (i) materially adversely affect the ability of the Lenders to exercise their rights under the Security, (ii) materially adversely affect the value of the Security, or (iii) increase the liability of the Lenders or Project Co under the relevant agreement. The Lenders' Agent shall respond to any request for consent under this Section 5(b) within 30 days of receipt thereof.
- (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) HMQ acknowledges having received copies of the Lending Agreements, and confirms that they are in form and substance satisfactory to HMQ as at the date of Financial Close.
- (f) HMQ 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 HMQ Project Documents.
- (g) HMQ agrees that any enforcement by the Lenders' Agent of a security interest in the Equity Capital of Project Co granted in favour of the Lenders' Agent as part of the Security following an Enforcement Event shall not constitute a Change in Ownership, Change in Control or Project Co Event of Default under the Project Agreement.
- (h) Project Co and the Lenders' Agent hereby authorize and instruct HMQ (and HMQ agrees) to pay all sums payable to Project Co under the Project Agreement to the Bank of Montreal, 0002/1982-111, and Project Co and HMQ agree that upon the occurrence of an Enforcement Event, if so directed in writing by the Lenders' Agent upon giving reasonable notice, HMQ shall pay any sum which it is obliged to pay to Project Co under the Project Agreement to a bank account specified by the Lenders' Agent.
- (i) HMQ shall provide the Lenders' Agent with copies of any Warning Notice, Monitoring Notice or notice of default given to Project Co under the Project Agreement at the same time such notice is given to Project Co.

- (j) Prior to the irrevocable payment in full of all amounts owing to the Lenders under the Lending Agreements, HMQ shall not take any action to wind-up, liquidate, dissolve or appoint a receiver or receiver and manager of Project Co or to institute or sanction a voluntary arrangement or any other bankruptcy or insolvency proceedings in relation to Project Co.

6. ENFORCEMENT OF SECURITY BY LENDERS' AGENT

- (a) The Lenders' Agent shall promptly notify HMQ 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: (i) are inconsistent with HMQ's role (in HMQ's reasonable opinion) in the Province of Ontario; (ii) may compromise the reputation or integrity of any HMQ and/or any HMQ Party; or (iii) are inconsistent with the nature of the Province of Ontario's highway or the Province of Ontario's undertaking of any Tolling Activity, so as to affect public perception of that system or undertaking.
- (c) Any Lender may assign, transfer or otherwise dispose of any right, title or interest it may have in, or rights or obligations it may have pursuant to, the Lending Agreements in accordance with the terms of the Lending Agreements.

7. TERMINATION OF PROJECT AGREEMENT BY HMQ

- (a) Subject only to the rights expressly afforded to the Lenders' Agent pursuant to, and the restrictions set forth in, this Section 7, HMQ 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)), HMQ shall not exercise any right it may have to terminate or serve notice terminating the Project Agreement for a Project Co Event of Default unless:
 - (i) HMQ 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, HMQ delivers written notice (an “**Indebtedness Notice**”) to the Lenders’ Agent setting out:
 - (A) all amounts owed by Project Co to HMQ and any other existing liabilities and unperformed obligations of Project Co to HMQ of which HMQ is aware (having made reasonable enquiry), in each case, as of the date on which HMQ sent the Default Notice; and
 - (B) all amounts which will become owing by Project Co to HMQ and any other liabilities and obligations of Project Co to HMQ of which HMQ 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 HMQ sends an Indebtedness Notice but before HMQ receives a Step-In Notice, if HMQ discovers amounts that have become owing by Project Co to HMQ or any other liabilities or obligations of Project Co to HMQ that have come due but which were not included in the Indebtedness Notice, HMQ shall deliver written notice (a “**Subsequent Indebtedness Notice**”) to the Lenders’ Agent setting out those amounts, liabilities or obligations.
- (d) During the Step-In Period, HMQ shall not terminate the Project Agreement on grounds:
 - (i) that the Lenders’ Agent has served a Step-In Notice or enforced any Security Document; or
 - (ii) arising prior to the Step-In Date of which HMQ was aware (having made due inquiry) and whether or not continuing at the Step-In Date unless:
 - (A) the grounds arose prior to the Substantial Completion Date, and the Substantial Completion Date does not occur on or before the date falling 180 days after the Longstop Date; or
 - (B) the grounds arose after the Substantial Completion Date, and neither the Appointed Representative nor Project Co, as the case may be, is diligently proceeding to cure any breach of the Project Agreement that:
 - (1) arose prior to the Step-In Date;
 - (2) is continuing and capable of being cured; and
 - (3) would have entitled HMQ to terminate the Project Agreement; or
 - (C) the grounds (whenever they first arose) did not give rise to any right to terminate the Project Agreement until after the Step-In Date; or
 - (iii) arising solely in relation to Project Co.

- (e) HMQ shall be entitled to terminate the Project Agreement by written notice to Project Co and the Appointed Representative:
 - (i) if any amount referred to in Section 7(b)(ii)(A) has not been paid to HMQ on or before the Step-In Date;
 - (ii) if any amount referred to in Section 7(b)(ii)(B) has not been paid on or before the last day of the Notice Period;
 - (iii) if amounts included in a Subsequent Indebtedness Notice have not been paid on or before the date falling 30 days after the date on which the Subsequent Indebtedness Notice is delivered to the Lenders' Agent; or
 - (iv) on grounds arising after the Step-In Date in accordance with the terms of the Project Agreement, provided that, except as otherwise provided in Section 10, Failure Points and/or Warning Notices that arose prior to the Step-In Date shall not be taken into account during the Step-In Period but such Failure Points and Warning Notices (to the extent applicable under the terms of the Project Agreement) shall be taken into account after the Step-Out Date.

8. STEP-IN RIGHTS

- (a) Subject to Section 8(b) and without prejudice to rights of the Lenders' Agent to enforce the Security, the Lenders' Agent may give HMQ a Step-In Notice at any time:
 - (i) during which a Project Co Event of Default is subsisting (whether or not a Default Notice has been served);
 - (ii) during the Notice Period; or
 - (iii) during which an Enforcement Event is subsisting.
- (b) At least 5 Business Days before the Lenders' Agent delivers a Step-In Notice, the Lenders' Agent shall deliver written notice (an "**Appointed Representative Notice**") to HMQ of:
 - (i) its intention to deliver a Step-In Notice; and
 - (ii) the identity of its proposed Appointed Representative.
- (c) Upon issuance of a Step-In Notice, the Appointed Representative shall assume, jointly with Project Co, all of Project Co's rights under the HMQ Project Documents.
- (d) During the Step-In Period, HMQ shall deal with the Appointed Representative instead of Project Co in connection with all matters related to the HMQ Project Documents. Project Co agrees to be bound by all such dealings between HMQ and the Appointed Representative to the same extent as if they had been between HMQ and Project Co.

9. STEP-OUT RIGHTS

- (a) The Appointed Representative may, at any time during the Step-In Period, deliver written notice (a “**Step-Out Notice**”) to HMQ to terminate the Step-In Period on the Step-Out Date.
- (b) On expiry of the Step-In Period:
 - (i) the rights and obligations of the Appointed Representative in relation to HMQ under the HMQ Project Documents arising prior to the expiry of the Step-In Period will be assumed by Project Co to the exclusion of the Appointed Representative;
 - (ii) HMQ will no longer deal with the Appointed Representative and will deal with Project Co in connection with all matters related to the HMQ Project Documents; and
 - (iii) the Appointed Representative and HMQ shall be and hereby are released from all obligations and liabilities to one another under the HMQ Project Documents.
- (c) There will not be more than one Step-In Period in respect of any one Default Notice.

10. NOVATION TO SUITABLE SUBSTITUTE

- (a) Subject to Section 10(b), at any time:
 - (i) after an Enforcement Event has occurred;
 - (ii) during the Notice Period; or
 - (iii) during the Step-In Period,

the Lenders’ Agent may deliver to HMQ and any Appointed Representative written notice (a “**Novation Notice**”) that it wishes to transfer Project Co’s rights and obligations under the HMQ Project Documents to a proposed transferee, together with all information reasonably necessary for HMQ to decide whether the proposed transferee is a Suitable Substitute. The Novation Notice shall specify a Business Day not less than 30 days from the date on which HMQ receives the Novation Notice (“**Novation Date**”) for the transfer of Project Co’s rights and obligations under the HMQ Project Documents to the proposed transferee in accordance with the provisions of Section 10(e).

- (b) HMQ shall promptly notify the Lenders’ Agent of any additional information it requires in order to assess whether the proposed transferee is a Suitable Substitute. HMQ shall notify the Lenders’ Agent, in writing, as to whether the person to whom the Lenders’ Agent proposes to transfer Project Co’s rights and liabilities under the HMQ Project Documents is approved by HMQ as a Suitable Substitute, on or before the date falling 30 days after the later of the date of receipt by HMQ of the Novation Notice and the date of receipt of any additional information requested by HMQ. For greater certainty, if HMQ

fails to respond within such period, HMQ shall be deemed not to have approved the proposed transferee.

- (c) HMQ shall not unreasonably withhold or delay its approval of a proposed transferee as a Suitable Substitute, but it shall, without limitation, be reasonable for HMQ 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 HMQ, acting reasonably, in respect of such breaches;
 - (ii) the proposed transferee is a Restricted Person or other person who is not permitted to be a Project Co Party pursuant to the Project Agreement; or
 - (iii) the proposed security interests to be granted by the Suitable Substitute to the Lender Representative are materially different from the Security, materially adversely affect the ability of the Suitable Substitute to perform under the HMQ Project Documents or have the effect of increasing any liability of HMQ, whether actual or potential.
- (d) If HMQ 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 HMQ, acting reasonably, provided that only one Novation Notice may be outstanding at any one time.
- (e) On the Novation Date:
 - (i) Project Co and HMQ will be released from their obligations under the HMQ Project Documents to each other, and the Suitable Substitute and HMQ will assume those same obligations towards each other;
 - (ii) each of the rights of Project Co against HMQ under the HMQ Project Documents and the rights of HMQ against Project Co under the HMQ Project Documents will be cancelled, and the Suitable Substitute and HMQ will acquire those same rights against each other;
 - (iii) the Parties will enter into, and the Lenders' Agent shall cause the Suitable Substitute and the Lender Representative to enter into, all such agreements or other documents as are reasonably necessary to give effect to the foregoing, including:
 - (A) an agreement between HMQ and the Suitable Substitute, on substantially the same terms as the Project Agreement; and

- (B) an agreement among HMQ, the Suitable Substitute and the Lender Representative on substantially the same terms as this Lenders' Direct Agreement;
- (iv) any Failure Points and Warning Notices that arose prior to the Novation Date shall be cancelled, provided that, where HMQ was entitled to make Deductions under Schedule 20 - Payment Mechanism arising from such Failure Points and Warning Notices and those Deductions have not yet been made against any payments to Project Co preceding the Novation Date, those outstanding Deductions shall still apply; and
- (v) any subsisting ground for termination by HMQ of the Project Agreement will be deemed to have no effect and any subsisting Default Notice will be automatically revoked.

11. TRANSFERS

HMQ shall, at Project Co's cost and expense, take whatever action the Lenders' Agent, the Appointed Representative or a Suitable Substitute may reasonably require for perfecting any assumption or transfer of or release pursuant to Sections 8, 9 or 10, including the execution of any transfer or assignment, and the giving of any notice, order or direction and the making of any registration which, in each case, the Lenders' Agent, the Appointed Representative or the Suitable Substitute reasonably requires.

12. DIRECT AGREEMENTS

- (a) Notwithstanding any provision in the Direct Agreements, HMQ hereby undertakes that it will not exercise any rights it may have under or arising out of any of the Direct Agreements, except as provided in Sections 12(b) to 12(e) inclusive.
- (b) Following termination of the Project Agreement (other than as a result of a novation pursuant to this Lenders' Direct Agreement) in accordance with this Lenders' Direct Agreement, HMQ shall from such date (the "**Exercise Date**") be entitled to exercise its rights under the Direct Agreements to step into and/or novate the Construction Contract and/or the OM&R Contract in accordance with the Direct Agreements.
- (c) Following the Exercise Date, HMQ shall not do anything to prejudice the rights which are not transferred to it pursuant to the Direct Agreements.
- (d) Where all amounts which may be or become owing by Project Co to the Lenders under the Lending Agreements have been irrevocably paid in full, the Lenders' Agent shall promptly release and discharge all Security in respect of any Construction Contract or OM&R Contract assumed or novated by HMQ pursuant to a Direct Agreement.
- (e) Notwithstanding the terms of the Direct Agreements and any other provisions of this Section 12, each of the Construction Contractor and the OM&R Provider (and any guarantors thereof) shall remain responsible, and be liable, to Project Co in respect of all costs, claims, damages, losses and liabilities which shall have arisen out of or in

connection with the Construction Contract and/or the OM&R Contract in respect of the period prior to the Exercise Date.

- (f) Without prejudice to Sections 12(a) to 12(e) inclusive, HMQ shall not, prior to the date on which this Lenders' Direct Agreement terminates:
 - (i) claim, recover, retain or receive (or seek to claim, recover, retain or receive) any amount under the Direct Agreements (and/or the Construction Contract and/or the OM&R Contract) from the Construction Contractor or the OM&R Provider;
 - (ii) take any action to wind-up, liquidate, dissolve or appoint a receiver or receiver and manager of the Construction Contractor and/or the OM&R Provider or to institute or sanction a voluntary arrangement or any other bankruptcy or insolvency proceedings in relation to the Construction Contractor and/or the OM&R Provider; or
 - (iii) compete with the rights of the Lenders' Agent on a winding-up or other insolvency or bankruptcy of the Construction Contractor or the OM&R Provider, nor claim to be subrogated to any rights of the Lenders' Agent or any Lender.

HMQ 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. ASSIGNMENT

- (a) No Party to this Lenders' Direct Agreement may assign, transfer or otherwise dispose of any part of its rights or obligations under this Lenders' Direct Agreement save as provided in this Section 13.
- (b) Project Co may assign, transfer or otherwise dispose of the benefit of this Lenders' Direct Agreement to any person to whom Project Co assigns, transfers or otherwise disposes of its interest in the Project Agreement pursuant to Section 59.1 of the Project Agreement and the provisions of the Lending Agreements, and shall provide written notice to HMQ and the Lenders' Agent of such assignment, transfer or other disposition. Such assignee, as a condition precedent to any such assignment, transfer or other disposition, shall assume the obligations and acquire the rights of Project Co under this Lenders' Direct Agreement pursuant to an assumption agreement with, and in form and substance satisfactory to, HMQ and the Lenders' Agent, each acting reasonably. HMQ and the Lenders' Agent shall, at Project Co's cost and expense, do all things and execute all further documents as may be necessary in connection therewith.
- (c) HMQ may assign, transfer or otherwise dispose of the benefit of the whole or part of this Lenders' Direct Agreement to any person to whom HMQ assigns, transfers or otherwise disposes of its interest in the Project Agreement pursuant to Section 59.2 of the Project Agreement, and shall provide written notice to Project Co and the Lenders' Agent of such assignment, transfer or other disposition.

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

14. NOTICES

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

If to HMQ:

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

Fax: [REDACTED]
Attn.: [REDACTED]

With a copy to:

Ministry of Transportation
1201 Wilson Avenue
Building D, 7th Floor
Toronto, Ontario
M3M 1J8

Fax: [REDACTED]
Attn.: [REDACTED]

If to the Lenders' Agent:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Fax: [REDACTED]
Attn.: [REDACTED]

If to Project Co: [REDACTED]

E-mail: [REDACTED]

Fax: [REDACTED]

Attn.: [REDACTED]

With a copy to: [REDACTED]

Fax: [REDACTED]

Attn.: [REDACTED]

And a copy to: [REDACTED]

Fax: [REDACTED]

Attn.: [REDACTED]

With electronic copies to: [REDACTED]
[REDACTED]
[REDACTED]

- (b) Any Party to this Lenders' Direct Agreement may, from time to time, change any of its contact information set forth in Section 14(a) by prior notice to the other Parties, and such change shall be effective on the Business Day that next follows the recipient Party's receipt of such notice unless a later effective date is given in such notice.
- (c) Subject to Sections 14(d) and 14(e):
 - (i) a notice given by registered mail shall be deemed to have been received on the third Business Day after mailing; and
 - (ii) a notice given by hand delivery shall be deemed to have been received on the day it is delivered.
- (d) If the Party giving the notice knows or ought reasonably to know of difficulties with the postal system which might affect negatively the delivery of mail, any such notice shall not be mailed but shall be made by personal delivery in accordance with this Section 14.
- (e) If any notice delivered by hand is so delivered either on a day that is not a Business Day or on a Business Day after 4:00 p.m. (recipient's local time), then such notice shall be deemed to have been received by such recipient on the next following Business Day.

15. HMQ DESIGNATE

At any time and from time to time, HMQ may designate any ministry, branch, agency, division, department or office of the Government of Ontario to carry out administrative responsibility for the rights and obligations of HMQ 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 HMQ has notified Project Co and the Lenders' Agent in writing that such designated person is no longer the person designated by HMQ 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. HMQ 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 HMQ to delegate administrative responsibilities hereunder as set forth in this Section 15.

16. AMENDMENTS

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

17. WAIVER

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

18. RELATIONSHIP BETWEEN THE PARTIES

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

19. ENTIRE AGREEMENT

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

20. SEVERABILITY

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

21. ENUREMENT

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

22. GOVERNING LAW AND JURISDICTION

- (a) This Lenders' Direct Agreement shall be governed by and construed in accordance with the laws of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract, without regard to conflict of laws principles.
- (b) The Parties agree that the courts of the Province of Ontario and all courts competent to hear appeals therefrom shall have exclusive jurisdiction to hear and settle any action, suit, proceeding or dispute in connection with this Lenders' Direct Agreement and hereby irrevocably attorn to the exclusive jurisdiction of such courts.
- (c) Nothing in this Lenders' Direct Agreement affects the rights, protections and immunities of the Crown under the *Proceedings Against the Crown Act* (Ontario).

23. DISPUTE RESOLUTION PROCEDURE

The Parties agree that the dispute resolution procedure provided for in Schedule 27 - Dispute Resolution Procedure to the Project Agreement shall not apply to any dispute under this Lenders' Direct Agreement.

24. FURTHER ASSURANCE

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

25. LANGUAGE OF AGREEMENT

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

26. COUNTERPARTS

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

27. CONFIDENTIALITY

The Lenders' Agent agrees to comply with the obligations imposed on Project Co by the provisions of Section 52 of the Project Agreement, *mutatis mutandis*, provided that the Lenders' Agent will be permitted to disclose to any relevant regulatory authority only such Confidential Information (as defined in the Project Agreement) as is necessary for the Lenders' Agent to comply with Applicable Law.

28. 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.

29. JOINT AND SEVERAL LIABILITY

Each [REDACTED] hereby acknowledges and agrees to and in favour of each of HMQ and the Lenders' Agent that [REDACTED] are jointly and severally liable for the due and punctual payment of all indebtedness of, and performance and discharge of all covenants, obligations, agreements and undertakings (including indemnity obligations) of, Project Co under or pursuant to this Lenders' Direct Agreement now or hereafter existing.

[SIGNATURE PAGES IMMEDIATELY FOLLOW]

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

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

By: _____
Name:
Title:

By: _____
Name:
Title:

I/We have authority to bind the corporation.

[REDACTED]

By: _____
Name:
Title:

By: _____
Name:
Title:

I/We have authority to bind the corporation.

**407 EAST DEVELOPMENT GROUP
GENERAL PARTNERSHIP,
[REDACTED]**

[REDACTED]

By:

Name:
Title:

By:

Name:
Title:

I/We have authority to bind the corporation.

[REDACTED]

By:

Name:
Title:

By:

Name:
Title:

I/We have authority to bind the corporation.

SCHEDULE 5-1

CONSTRUCTION CONTRACTOR'S DIRECT AGREEMENT

THIS AGREEMENT is made as of the 15th day of May, 2012

BETWEEN:

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

(**HMQ**)

- AND -

407 EAST DEVELOPMENT GROUP GENERAL PARTNERSHIP,
[REDACTED]

(**Project Co**)

- AND -

[REDACTED]

(the "**Construction Contractor**")

- AND -

[REDACTED]

- AND -

[REDACTED]

(the "**Construction Guarantors**")

WHEREAS:

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

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

1. DEFINITIONS

In this Construction Contractor's Direct Agreement, unless the context otherwise requires:

- (a) **"Business Day"** has the meaning given in the Project Agreement.
- (b) **"Construction Contract"** has the meaning given in the Project Agreement.
- (c) **"Construction Contractor"** means [REDACTED], engaged by Project Co to perform the Initial Works (as such term is defined in the Project Agreement) and any substitute construction contractor engaged by Project Co as may be permitted by the Project Agreement.
- (d) **"Construction Guarantors"** means [REDACTED], and **"Construction Guarantor"** means any one of them.
- (e) [REDACTED].
- (f) **"Default Notice"** has the meaning given in Section 5(a).
- (g) **"Governmental Authority"** has the meaning given in the Project Agreement.
- (h) **"Lenders"** has the meaning given in the Project Agreement.
- (i) **"Lenders' Direct Agreement"** has the meaning given in the Project Agreement.
- (j) [REDACTED].
- (k) **"Party"** means HMQ, the Construction Contractor, the Construction Guarantors or Project Co, and **"Parties"** means HMQ, the Construction Contractor, the Construction Guarantors and Project Co.
- (l) **"Project"** has the meaning given in the Project Agreement.
- (m) **"Project Agreement"** means the project agreement made on or about May 15th, 2012 between HMQ and Project Co.
- (n) **"Project Co"** means 407 East Development Group General Partnership, [REDACTED], and any successor or permitted assigns.
- (o) **"Step-In Notice"** has the meaning given in Section 6(a).
- (p) **"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, firm, partnership, joint venture, trust, unincorporated organization, Governmental Authority, unincorporated body of persons or association and any other entity having legal capacity, and the heirs, beneficiaries, executors, administrators or other legal representatives of a person in such capacity.
- (d) Unless the context otherwise requires, wherever used herein the plural includes the singular, the singular includes the plural, and each of the masculine, feminine and neuter genders include all other genders.
- (e) References to any standard, principle, agreement or document include (subject to all relevant approvals and any other provisions of this Construction Contractor's Direct Agreement concerning amendments) a reference to that standard, principle, agreement or document as amended, supplemented, restated, substituted, replaced, novated or assigned.
- (f) The words in this Construction Contractor's Direct Agreement shall bear their natural meaning.
- (g) References containing terms such as:
 - (i) "hereof", "herein", "hereto", "hereinafter", and other terms of like import are not limited in applicability to the specific provision within which such references are set forth but instead refer to this Construction Contractor's Direct Agreement taken as a whole; and
 - (ii) "includes" and "including", whether or not used with the words "without limitation" or "but not limited to", shall not be deemed limited by the specific enumeration of items but shall, in all cases, be deemed to be without limitation and construed and interpreted to mean "includes without limitation" and "including without limitation".
- (h) In construing this Construction Contractor's Direct Agreement, the rule known as the *ejusdem generis* rule shall not apply nor shall any similar rule or approach to the

construction of this Construction Contractor's Direct Agreement and, accordingly, general words introduced or followed by the word "other" or "including" or "in particular" shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words.

- (i) Where this Construction Contractor's Direct Agreement states that an obligation shall be performed "no later than" or "within" or "by" a stipulated date or event which is a prescribed number of days after a stipulated date or event, the latest time for performance shall be 5:00 p.m. on the last day for performance of the obligation concerned, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- (j) Where this Construction Contractor's Direct Agreement states that an obligation shall be performed "on" a stipulated date, the latest time for performance shall be 5:00 p.m. on that day, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- (k) Any reference to time of day or date means the local time or date in Toronto, Ontario.
- (l) Unless otherwise indicated, time periods will be strictly construed.
- (m) Whenever the terms "will" or "shall" are used in this Construction Contractor's Direct Agreement they shall be construed and interpreted as synonymous and to read "shall".

3. CONFLICT IN DOCUMENTS

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

4. AGREEMENTS

- (a) Project Co and the Construction Contractor shall not amend, modify, or depart from the terms of the Construction Contract without the prior written consent of HMQ, acting reasonably, which consent shall not be withheld or delayed where such amendment, modification or departure does not materially and adversely affect the ability of Project Co to perform its obligations under this Construction Contractor's Direct Agreement and does not have the effect of increasing any liability of HMQ, whether actual or potential. Project Co and the Construction Contractor shall provide to HMQ a written copy of all such amendments, modifications or departures. The Parties acknowledge and agree that this Section 4(a) shall not apply to Variations provided for under the Project Agreement.
- (b) Each of the Parties acknowledges having received a copy of the Project Agreement and the Construction Contract.

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

5. NO TERMINATION BY CONSTRUCTION CONTRACTOR WITHOUT DEFAULT NOTICE

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

- (a) the Construction Contractor first delivers a written notice (a "**Default Notice**") to HMQ setting out in reasonable detail the default(s) on which the Construction Contractor intends to rely in terminating the Construction Contract or to treat it as having been repudiated by Project Co or to discontinue the Construction Contractor's performance thereunder; and
- (b) within a period of 5 Business Days of HMQ receiving the Default Notice:
 - (i) the default(s) on which the Construction Contractor intends to rely in terminating the Construction Contract or to treat it as having been repudiated by Project Co or to discontinue the Construction Contractor's performance thereunder have not been remedied; and
 - (ii) the Construction Contractor has not received a Step-In Notice from HMQ,

provided that if, within such period of 5 Business Days, HMQ agrees to pay the Construction Contractor's reasonable costs of continued performance, such period of 5 Business Days shall be extended to 45 days.

6. STEP-IN RIGHTS

- (a) HMQ may at any time:
 - (i) within 5 Business Days or, if such period has been extended in accordance with Section 5, 45 days of HMQ receiving a Default Notice; or
 - (ii) if HMQ has not received a Default Notice and if HMQ's right to terminate the Project Agreement has arisen and is continuing,

deliver a notice (a "**Step-In Notice**") electing to replace Project Co under the Construction Contract either with HMQ or a third party designated by HMQ in the Step-In Notice (the "**Substitute**"), provided that HMQ can demonstrate to the Construction Contractor, acting reasonably, that the Substitute shall have sufficient financial resources, or shall be supported by a satisfactory guarantee, to carry out the obligations of the Substitute under the Construction Contract.

- (b) Subject to Section 6(d), upon receipt by the Construction Contractor of a Step-In Notice:
- (i) Project Co and the Construction Contractor will be deemed to be released from their existing and future obligations under the Construction Contract to each other (except with respect to any and all indemnities from Project Co or the Construction Contractor to the other in respect of the period prior to the receipt of the Step-In Notice), and HMQ or the Substitute, as applicable, and the Construction Contractor will be deemed to assume those same existing and future obligations towards each other (except in respect of the aforesaid indemnities);
 - (ii) the existing and future rights of Project Co against the Construction Contractor under the Construction Contract and vice versa will be deemed to be cancelled (except with respect to any and all indemnities from Project Co or the Construction Contractor to the other in respect of the period prior to the receipt of the Step-In Notice), and HMQ or the Substitute, as applicable, and the Construction Contractor will be deemed to acquire those same existing and future rights against each other (except in respect of the aforesaid indemnities), subject to any applicable credit from the Construction Contractor to HMQ if HMQ pays for the Construction Contractor's reasonable costs of continued performance pursuant to Section 5;
 - (iii) any guarantee, bond or covenant in favour of Project Co from any third party in respect of any term, provision, condition, obligation, undertaking or agreement on the part of the Construction Contractor to be performed, observed or carried out by the Construction Contractor as contained in, referred to, or inferred from the Construction Contract shall be assigned, novated or granted, as required by HMQ or the Substitute, as applicable, each acting reasonably, to HMQ 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 or covenant, provided however that where Project Co 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 Construction Contractor, the assignment, novation or grant of the guarantee, bond or covenant to the extent of any such obligations to Project Co shall be conditional on the satisfaction of those obligations to Project Co; and
 - (iv) at HMQ's request, the Construction Contractor shall enter into, and shall cause the Construction Guarantors and any other guarantor, covenantor or surety under any guarantee, bond or covenant referred to in Section 6(b)(iii) to enter into, and HMQ shall or shall cause the Substitute to enter into, as applicable, all such agreements or other documents as reasonably necessary to give effect to the foregoing, including, without limitation, an agreement between HMQ or the Substitute, as applicable, and the Construction Contractor, acceptable to HMQ and the Construction Contractor, each acting reasonably, on substantially the same terms as the Construction Contract.
- (c) Subject to Section 6(d), Project Co shall, at its own cost, cooperate fully with HMQ and the Substitute in order to achieve a smooth transfer of the Construction Contract to HMQ

or the Substitute, as applicable, and to avoid or mitigate in so far as reasonably practicable any inconvenience, including the administration of the Construction Contract, ongoing supervisory activities and scheduling.

- (d) The rights granted by Sections 6(b) and 6(c) shall be of no force or effect if, at any time the Construction Contractor receives a Step-In Notice, the Construction Contractor has already received notice in writing from another entity entitled to the benefit of step-in rights relating to the Construction Contract that it is or has validly exercised those step-in rights. If the Construction Contractor receives any such notice on the same day as a Step-In Notice, the Step-In Notice shall be effective, except where the other notice is given by the Lenders, in which case such other notice and not the Step-In Notice shall be effective.
- (e) If HMQ gives a Step-In Notice within the time provided hereunder at any time after the Construction Contractor has terminated the Construction Contract or treated it as having been repudiated by Project Co or discontinued the Construction Contractor's performance thereunder in accordance with the terms of this Construction Contractor's Direct Agreement, the Construction Contractor agrees that the Construction Contract shall be reinstated and deemed to have continued despite any termination or treatment as having been repudiated, and HMQ shall pay the Construction Contractor's reasonable costs for re-commencing the obligations it has under the Construction Contract and the Construction Contractor shall be entitled to reasonable compensation and/or relief for re-commencing such obligations, having regard to the additional costs and delays incurred as a result of having terminated the Construction Contract or having treated it as being repudiated by Project Co or having discontinued its performance thereunder.

7. CONSTRUCTION CONTRACTOR LIABILITY

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

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

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

8. PROJECT CO AS PARTY

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

9. CONSTRUCTION GUARANTOR AS PARTY

Each Construction Guarantor agrees with HMQ that the Construction Guarantor has entered into a guarantee or covenant referred to in Section 6(b)(iii), hereby consents to the assignment, novation or grant (including any conditional assignment, novation or grant) as provided herein immediately upon receipt by the Construction Contractor of a Step-In Notice and without the requirement of any further action on the part of HMQ, 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. Each Construction Guarantor enters into this Construction Contractor's Direct Agreement solely for the purposes of this Section 9.

10. ASSIGNMENT

- (a) Project Co shall not, without the prior written consent of HMQ, assign, transfer, charge, subcontract, subparticipate or otherwise dispose of any interest in this Construction Contractor's Direct Agreement except to the extent entitled to do so under the Project Agreement.
- (b) HMQ may assign or otherwise dispose of the benefit of the whole or part of this Construction Contractor's Direct Agreement to any person to whom HMQ may assign or otherwise dispose of its interest in the Project Agreement pursuant to Section 59.2 of the Project Agreement but only in conjunction therewith, and shall provide written notice to Project Co and the Construction Contractor of such assignment or disposition.
- (c) The Construction Contractor shall not, without the prior written consent of HMQ and Project Co, assign, transfer, charge, subcontract, subparticipate or otherwise dispose of any interest in this Construction Contractor's Direct Agreement except as may be permitted under the Construction Contract.

11. NOTICES

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

If to HMQ:

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

Fax: [REDACTED]

Attn.: [REDACTED]

With a copy to:

Ministry of Transportation
1201 Wilson Avenue
Building D, 7th Floor
Toronto, Ontario
M3M 1J8

Fax: [REDACTED]

Attn.: [REDACTED]

If to Project Co:

[REDACTED]

E-mail: [REDACTED]

Fax: [REDACTED]

Attn.: [REDACTED]

With a copy to:

[REDACTED]

Fax: [REDACTED]

Attn.: [REDACTED]

And a copy to:

[REDACTED]

Fax: [REDACTED]

Attn.: [REDACTED]

With electronic copies to:

[REDACTED]

[REDACTED]

[REDACTED]

If to the Construction Contractor:

[REDACTED]

Fax: [REDACTED]

Attn.: [REDACTED]

With a copy to:

[REDACTED]

Fax: [REDACTED]

Attn.: [REDACTED]

And a copy to:

[REDACTED]

Fax: [REDACTED]

Attn.: [REDACTED]

With electronic copies to:

[REDACTED]
[REDACTED]

If to the Construction Guarantors:

[REDACTED]

Fax: [REDACTED]
Attn.: [REDACTED]
Attn.: [REDACTED]

With electronic copies to:

[REDACTED]
[REDACTED]

[REDACTED]

Fax: [REDACTED]
Attn.: [REDACTED]

- (b) Where any notice is provided or submitted to a Party via facsimile, an original of the notice sent via facsimile shall promptly be sent by regular mail or registered mail. For greater certainty, a notice given via facsimile shall not be invalid by reason only of a Party's failure to comply with this Section 11(b).
- (c) Any Party to this Construction Contractor's Direct Agreement may, from time to time, change any of its contact information set forth in Section 11(a) by prior notice to the other Parties, and such change shall be effective on the Business Day that next follows the recipient Party's receipt of such notice unless a later effective date is given in such notice.
- (d) Subject to Sections 11(e), 11(f) and 11(g):
 - (i) a notice given by registered mail shall be deemed to have been received on the third Business Day after mailing;
 - (ii) a notice given by hand delivery shall be deemed to have been received on the day it is delivered; and
 - (iii) a notice given by facsimile shall be deemed to have been received on the day it is transmitted by facsimile.
- (e) If the Party giving the notice knows or ought reasonably to know of difficulties with the postal system which might affect negatively the delivery of mail, any such notice shall not be mailed but shall be made or given by personal delivery or by facsimile transmission in accordance with this Section 11.
- (f) If any notice delivered by hand or transmitted by facsimile is so delivered or transmitted, as the case may be, either on a day that is not a Business Day or on a Business Day after

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

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

12. AMENDMENTS

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

13. WAIVER

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

14. RELATIONSHIP BETWEEN THE PARTIES

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

15. ENTIRE AGREEMENT

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

16. SEVERABILITY

Each provision of this Construction Contractor's Direct Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Construction Contractor's Direct Agreement is declared invalid, unenforceable or illegal by the courts of a competent jurisdiction, such

provision may be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Construction Contractor's Direct Agreement. If any such provision of this Construction Contractor's Direct Agreement is invalid, unenforceable or illegal, the Parties shall, acting in good faith, promptly negotiate new provisions to eliminate such invalidity, unenforceability or illegality and to restore this Construction Contractor's Direct Agreement as near as possible to its original intent and effect.

17. ENUREMENT

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

18. GOVERNING LAW AND JURISDICTION

- (a) This Construction Contractor's Direct Agreement shall be governed by and construed in accordance with the laws of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract, without regard to conflict of laws principles.
- (b) The Parties agree that the courts of the Province of Ontario and all courts competent to hear appeals therefrom shall have exclusive jurisdiction to hear and settle any action, suit, proceeding or dispute in connection with this Construction Contractor's Direct Agreement and hereby irrevocably attorn to the exclusive jurisdiction of such courts.
- (c) Nothing in this Construction Contractor's Direct Agreement affects the rights, protections and immunities of the Crown under the *Proceedings Against the Crown Act* (Ontario).

19. HMQ DESIGNATE

At any time and from time to time, HMQ may designate any ministry, branch, agency, division, department or office of the Government of Ontario to carry out administrative responsibility for the rights and obligations of HMQ under this Construction Contractor's Direct Agreement and Project Co, the Construction Contractor and the Construction Guarantors may deal exclusively with the designated person in respect of all such matters and is entitled to rely on the actions, directions, requests, notices, consents, approvals, waivers, comments relating to the review of documentation and other administrative matters and decisions determined by such designated person from time to time, until HMQ has notified Project Co, the Construction Contractor and the Construction Guarantors in writing that such designated person is no longer the person designated by HMQ 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. HMQ shall advise Project Co, the Construction Contractor and the Construction Guarantors in writing of any designation hereunder. The rights and obligations of the parties to this Construction Contractor's Direct Agreement shall be in no way affected by reason of any such designation. Project Co, the Construction Contractor and each of the Construction Guarantors acknowledge the right of HMQ to delegate administrative responsibilities hereunder as set forth in this Section 19.

20. FURTHER ASSURANCE

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

21. LANGUAGE OF AGREEMENT

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

22. COUNTERPARTS

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

23. COPYRIGHT NOTICE

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

24. JOINT AND SEVERAL LIABILITY

- (a) Each [REDACTED] hereby acknowledges and agrees to and in favour of each of HMQ, the Construction Contractor and the Construction Guarantors that [REDACTED] are jointly and severally liable for the due and punctual payment of all indebtedness of, and performance and discharge of all covenants, obligations, agreements and undertakings (including indemnity obligations) of, Project Co under or pursuant to this Construction Contractor's Direct Agreement now or hereafter existing.
- (b) Each of [REDACTED] hereby acknowledges and agrees to and in favour of each of HMQ, Project Co and the Construction Guarantors that [REDACTED] are jointly and severally liable for the due and punctual payment of all indebtedness of, and performance and discharge of all covenants, obligations, agreements and undertakings (including indemnity obligations) of, the Construction Contractor under or pursuant to this Construction Contractor's Direct Agreement now or hereafter existing.

[SIGNATURE PAGES IMMEDIATELY FOLLOW]

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

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

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have authority to bind the corporation.

**407 EAST DEVELOPMENT GROUP GENERAL
PARTNERSHIP, [REDACTED]**

[REDACTED]

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have authority to bind the corporation.

[REDACTED]

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have authority to bind the corporation.

**407 EAST CONSTRUCTION GENERAL
PARTNERSHIP, [REDACTED]**

[REDACTED]

Per: _____
Name: _____
Title: _____

Per: _____
Name: _____
Title: _____

I/We have authority to bind the corporation.

[REDACTED]

Per: _____
Name: _____
Title: _____

Per: _____
Name: _____
Title: _____

I/We have authority to bind the corporation.

[REDACTED]

Per: _____
Name: _____
Title: _____

Per: _____
Name: _____
Title: _____

I/We have authority to bind the corporation.

[REDACTED]

Per: _____

Name:

Title:

Per: _____

Name:

Title:

I/We have authority to bind the corporation.

SCHEDULE 5-2

OM&R PROVIDER'S DIRECT AGREEMENT

THIS AGREEMENT is made as of the 15th day of May, 2012

BETWEEN:

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

(**'HMQ'**)

- AND -

407 EAST DEVELOPMENT GROUP GENERAL PARTNERSHIP,
[REDACTED]

(**'Project Co'**)

- AND -

[REDACTED]

(the **'OM&R Provider'**)

- AND -

[REDACTED]

- AND -

[REDACTED]

(the **'OM&R Guarantors'**)

WHEREAS:

- A. HMQ and Project Co have entered into the Project Agreement, which requires Project Co to enter into, and to cause the OM&R Provider and the OM&R Guarantors to enter into, this OM&R Provider's Direct Agreement with HMQ.
- B. Project Co and the OM&R Provider have entered into the OM&R Contract, which requires the OM&R Provider and the OM&R Guarantors to enter into this OM&R Provider's Direct Agreement with HMQ.

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 OM&R Provider's Direct Agreement, unless the context otherwise requires:

- (a) **'Business Day'** has the meaning given in the Project Agreement.
- (b) **'Default Notice'** has the meaning given in Section 5(a).
- (c) **'Governmental Authority'** has the meaning given in the Project Agreement.
- (d) **'Lenders'** has the meaning given in the Project Agreement.
- (e) **'Lenders' Direct Agreement'** has the meaning given in the Project Agreement.
- (f) **'OM&R Contract'** has the meaning given in the Project Agreement.
- (g) **'OM&R Guarantors'** means [REDACTED], and **"OM&R Guarantor"** means any one of them.
- (h) [REDACTED].
- (i) **'OM&R Provider'** means [REDACTED], engaged by Project Co to perform the OM&R Work (as such term is defined in the Project Agreement) and any substitute OM&R provider engaged by Project Co as may be permitted by the Project Agreement.
- (j) [REDACTED].
- (k) **'Party'** means HMQ, the OM&R Provider, the OM&R Guarantors or Project Co, and **"Parties"** means HMQ, the OM&R Provider, the OM&R Guarantors and Project Co.
- (l) **'Project'** has the meaning given in the Project Agreement.
- (m) **'Project Agreement'** means the project agreement made on or about May 15th, 2012 between HMQ and Project Co.
- (n) **'Project Co'** means 407 East Development Group General Partnership, [REDACTED], and any successor or permitted assigns.
- (o) **'Step-In Notice'** has the meaning given in Section 6(a).
- (p) **'Substitute'** has the meaning given in Section 6(a).

2. INTERPRETATION

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

- (a) The headings in this OM&R Provider's Direct Agreement are for convenience of reference only, shall not constitute a part of this OM&R Provider's Direct Agreement, and shall not be taken into consideration in the interpretation of, or affect the meaning of, this OM&R Provider's Direct Agreement.
- (b) Unless the context otherwise requires, references to specific Sections, Clauses, Paragraphs, Subparagraphs, and other divisions are references to such Sections, Clauses, Paragraphs, Subparagraphs, or divisions of this OM&R Provider's Direct Agreement and the terms "Section" and "Clause" are used interchangeably and are synonymous.
- (c) Words importing persons or parties are to be broadly interpreted and include an individual, corporation, firm, partnership, joint venture, trust, unincorporated organization, Governmental Authority, unincorporated body of persons or association and any other entity having legal capacity, and the heirs, beneficiaries, executors, administrators or other legal representatives of a person in such capacity.
- (d) Unless the context otherwise requires, wherever used herein the plural includes the singular, the singular includes the plural, and each of the masculine, feminine and neuter genders include all other genders.
- (e) References to any standard, principle, agreement or document include (subject to all relevant approvals and any other provisions of this OM&R Provider's Direct Agreement concerning amendments) a reference to that standard, principle, agreement or document as amended, supplemented, restated, substituted, replaced, novated or assigned.
- (f) The words in this OM&R Provider's Direct Agreement shall bear their natural meaning.
- (g) References containing terms such as:
 - (i) "hereof", "herein", "hereto", "hereinafter", and other terms of like import are not limited in applicability to the specific provision within which such references are set forth but instead refer to this OM&R Provider's Direct Agreement taken as a whole; and
 - (ii) "includes" and "including", whether or not used with the words "without limitation" or "but not limited to", shall not be deemed limited by the specific enumeration of items but shall, in all cases, be deemed to be without limitation and construed and interpreted to mean "includes without limitation" and "including without limitation".
- (h) In construing this OM&R Provider's Direct Agreement, the rule known as the *ejusdem generis* rule shall not apply nor shall any similar rule or approach to the construction of this OM&R Provider's Direct Agreement and, accordingly, general words introduced or followed by the word "other" or "including" or "in particular" shall not be given a

restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words.

- (i) Where this OM&R Provider's Direct Agreement states that an obligation shall be performed "no later than" or "within" or "by" a stipulated date or event which is a prescribed number of days after a stipulated date or event, the latest time for performance shall be 5:00 p.m. on the last day for performance of the obligation concerned, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- (j) Where this OM&R Provider's Direct Agreement states that an obligation shall be performed "on" a stipulated date, the latest time for performance shall be 5:00 p.m. on that day, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- (k) Any reference to time of day or date means the local time or date in Toronto, Ontario.
- (l) Unless otherwise indicated, time periods will be strictly construed.
- (m) Whenever the terms "will" or "shall" are used in this OM&R Provider's Direct Agreement they shall be construed and interpreted as synonymous and to read "shall".

3. CONFLICT IN DOCUMENTS

- (a) In the event of ambiguities, conflicts or inconsistencies between or among this OM&R Provider's Direct Agreement, the Project Agreement and the OM&R Contract, this OM&R Provider's Direct Agreement shall prevail.
- (b) In the event of ambiguities, conflicts or inconsistencies between or among this OM&R Provider's Direct Agreement and the Lenders' Direct Agreement, the Lenders' Direct Agreement shall prevail.

4. AGREEMENTS

- (a) Project Co and the OM&R Provider shall not amend, modify, or depart from the terms of the OM&R Contract without the prior written consent of HMQ, 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 OM&R Provider's Direct Agreement and does not have the effect of increasing any liability of HMQ, whether actual or potential. Project Co and the OM&R Provider shall provide a written copy of all such amendments, modifications or departures. The Parties acknowledge and agree that this Section 4(a) shall not apply to Variations provided for under the Project Agreement.
- (b) Each of the Parties acknowledges having received a copy of the Project Agreement and the OM&R Contract.
- (c) If the OM&R Provider gives Project Co any notice of any default(s) under the OM&R Contract that may give the OM&R Provider a right to terminate the OM&R Contract or to treat it as having been repudiated by Project Co or to discontinue the OM&R

Provider's performance thereunder, then the OM&R Provider shall concurrently provide HMQ with a copy of such notice and set out in reasonable detail the default(s).

5. NO TERMINATION BY OM&R PROVIDER WITHOUT DEFAULT NOTICE

The OM&R Provider shall not exercise any right it may have to terminate the OM&R Contract or to treat it as having been repudiated by Project Co or to discontinue the OM&R Provider's performance thereunder unless:

- (a) the OM&R Provider first delivers a written notice (a **"Default Notice"**) to HMQ setting out in reasonable detail the default(s) on which the OM&R Provider intends to rely in terminating the OM&R Contract or to treat it as having been repudiated by Project Co or to discontinue the OM&R Provider's performance thereunder; and
- (b) within the period ending 30 days after the OM&R Provider notifies HMQ of the expiry of any relevant period for the exercise of step-in or similar rights by the Lenders, or, if the Lenders have no such step-in or similar rights, then 30 days after the later of HMQ receiving Default Notice or the expiry of the applicable cure period under the OM&R Contract:
 - (i) the default(s) on which the OM&R Provider intends to rely in terminating the OM&R Contract or to treat it as having been repudiated by Project Co or to discontinue the OM&R Provider's performance thereunder have not been remedied; and
 - (ii) the OM&R Provider has not received a Step-In Notice from HMQ,

provided that, until such time as HMQ gives the OM&R Provider a notice that HMQ will not be exercising its step-in rights, HMQ shall pay the OM&R Provider's reasonable costs of continued performance.

6. STEP-IN RIGHTS

- (a) HMQ may at any time:
 - (i) within the period referred to in Section 5(b); or
 - (ii) if HMQ has not received a Default Notice and if HMQ'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 OM&R Contract either with HMQ or a third party designated by HMQ in the Step-In Notice (the **"Substitute"**), provided that HMQ can demonstrate to the OM&R Provider, acting reasonably, that the Substitute shall have sufficient financial resources, or shall be supported by a satisfactory guarantee, to carry out the obligations of the Substitute under the OM&R Contract.

- (b) Subject to Section 6(d), upon receipt by the OM&R Provider of a Step-In Notice:

- (i) Project Co and the OM&R Provider will be deemed to be released from their existing and future obligations under the OM&R Contract to each other (except with respect to any and all indemnities from Project Co or the OM&R Provider to the other in respect of the period prior to the receipt of the Step-In Notice), and HMQ or the Substitute, as applicable, and the OM&R Provider will be deemed to assume those same existing and future obligations towards each other (except in respect of the aforesaid indemnities);
 - (ii) the existing and future rights of Project Co against the OM&R Provider under the OM&R Contract and vice versa will be deemed to be cancelled (except with respect to any and all indemnities from Project Co or the OM&R Provider to the other in respect of the period prior to the receipt of the Step-In Notice), and HMQ or the Substitute, as applicable, and the OM&R Provider will be deemed to acquire those same existing and future rights against each other (except in respect of the aforesaid indemnities), subject to any applicable credit from the OM&R Provider to HMQ if HMQ pays for the OM&R Provider's reasonable costs of continued performance pursuant to Section 5;
 - (iii) any guarantee, bond or covenant 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 OM&R Provider to be performed, observed or carried out by the OM&R Provider as contained in, referred to, or inferred from the OM&R Contract shall be assigned, novated or granted, as required by HMQ or the Substitute, as applicable, each acting reasonably, to HMQ or the Substitute, as applicable, and the OM&R Provider 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 Project Co shall continue to hold, or shall continue to be entitled to have rights under, such guarantee, bond or covenant as security for any obligations of the OM&R Provider, the assignment, novation or grant of the guarantee, bond or covenant to the extent of any such obligations to Project Co shall be conditional on the satisfaction of those obligations to Project Co; and
 - (iv) at HMQ's request, the OM&R Provider shall enter into, and shall cause the OM&R Guarantors and any other guarantor, covenantor or surety under any guarantee, bond or covenant referred to in Section 6(b)(iii) to enter into, and HMQ shall or shall cause the Substitute to enter into, as applicable, all such agreements or other documents as reasonably necessary to give effect to the foregoing, including, without limitation, an agreement between HMQ or the Substitute, as applicable, and the OM&R Provider, acceptable to HMQ and the OM&R Provider, each acting reasonably, on substantially the same terms as the OM&R Contract.
- (c) Subject to Section 6(d), Project Co shall, at its own cost, cooperate fully with HMQ and the Substitute in order to achieve a smooth transfer of the OM&R Contract to HMQ or the Substitute, as applicable, and to avoid or mitigate in so far as reasonably practicable any inconvenience, including the administration of the OM&R 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 OM&R Provider receives a Step-In Notice, the OM&R Provider has already received notice in writing from another entity entitled to the benefit of step-in rights relating to the OM&R Contract that it is or has validly exercised those step-in rights. If the OM&R Provider receives any such notice on the same day as a Step-In Notice, the Step-In Notice shall be effective, except where the other notice is given by the Lenders, in which case such other notice and not the Step-In Notice shall be effective.
- (e) If HMQ gives a Step-In Notice within the time provided hereunder at any time after the OM&R Provider has terminated the OM&R Contract or treated it as having been repudiated by Project Co or discontinued the OM&R Provider's performance thereunder in accordance with the terms of this OM&R Provider's Direct Agreement, the OM&R Provider agrees that the OM&R Contract shall be reinstated and deemed to have continued despite any termination or treatment as having been repudiated, and HMQ shall pay the OM&R Provider's reasonable costs for re-commencing the obligations it has under the OM&R Contract and the OM&R Provider shall be entitled to reasonable compensation and/or relief for re-commencing such obligations, having regard to the additional costs and delays incurred as a result of having terminated the OM&R Contract or having treated it as being repudiated by Project Co or having discontinued its performance thereunder.

7. OM&R PROVIDER LIABILITY

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

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

- (b) In the event HMQ delivers a Step-In Notice, the OM&R Provider shall have no greater liability to HMQ or any Substitute than it would have had to Project Co under the OM&R Contract, and the OM&R Provider shall be entitled in any proceedings by HMQ or any Substitute to rely on any liability limitations in the OM&R Contract.

8. PROJECT CO AS PARTY

Project Co acknowledges and agrees that the OM&R Provider shall not be in breach of the OM&R Contract by complying with its obligations hereunder.

9. OM&R GUARANTOR AS PARTY

Each OM&R Guarantor agrees with HMQ that the OM&R Guarantor has entered into a guarantee or covenant referred to in Section 6(b)(iii), hereby consents to the assignment, novation or grant (including any conditional assignment, novation or grant) as provided herein immediately upon receipt by the OM&R Provider of a Step-In Notice and without the requirement of any further action on the part of HMQ, and agrees that the OM&R Guarantor shall in accordance with Section 6 enter into all such agreements or other documents as reasonably necessary to give effect to the foregoing. Each OM&R Guarantor enters into this OM&R Provider's Direct Agreement solely for the purposes of this Section 9.

10. ASSIGNMENT

- (a) Project Co shall not, without the prior written consent of HMQ, assign, transfer, charge, subcontract, subparticipate or otherwise dispose of any interest in this OM&R Provider's Direct Agreement except to the extent entitled to do so under the Project Agreement.
- (b) HMQ may assign or otherwise dispose of the benefit of the whole or part of this OM&R Provider's Direct Agreement to any person to whom HMQ may assign or otherwise dispose of its interest in the Project Agreement pursuant to Section 59.2 of the Project Agreement but only in conjunction therewith, and shall provide written notice to Project Co and the OM&R Provider of such assignment or disposition.
- (c) The OM&R Provider shall not, without the prior written consent of HMQ and Project Co, assign, transfer, charge, subcontract, subparticipate or otherwise dispose of any interest in this OM&R Provider's Direct Agreement, except as may be permitted under the OM&R Contract.

11. NOTICES

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

If to HMQ:

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

Fax: [REDACTED]
Attn.: [REDACTED]

With a copy to:

Ministry of Transportation
1201 Wilson Avenue
Building D, 7th Floor
Toronto, Ontario

M3M 1J8

Fax: [REDACTED]

Attn.: [REDACTED]

If to Project Co:

[REDACTED]

E-mail: [REDACTED]

Fax: [REDACTED]

Attn.: [REDACTED]

With a copy to:

[REDACTED]

Fax: [REDACTED]

Attn.: [REDACTED]

And a copy to:

[REDACTED]

Fax: [REDACTED]

Attn.: [REDACTED]

With electronic copies to:

[REDACTED]

[REDACTED]

[REDACTED]

If to the OM&R Provider:

[REDACTED]

Fax: [REDACTED]

Attn.: [REDACTED]

E-mail: [REDACTED]

With an electronic copy to each of the following:

[REDACTED]

[REDACTED]

With a copy to:

[REDACTED]

Fax: [REDACTED]

Attn.: [REDACTED]

With an electronic copy to each of the following:

[REDACTED]

[REDACTED]

And a copy to:

[REDACTED]

Fax: [REDACTED]
Phone: ([REDACTED])
Attn.: [REDACTED]

With an electronic copy to:
[REDACTED]

If to the OM&R Guarantors:

[REDACTED]

Fax: [REDACTED]
Attn.: [REDACTED]
Attn.: [REDACTED]

With an electronic copy to each of the following:
[REDACTED]
[REDACTED]

[REDACTED]

Fax: [REDACTED]
Attn.: [REDACTED]

With an electronic copy:
[REDACTED]

- (b) Where any notice is provided or submitted to a Party via facsimile, an original of the notice sent via facsimile shall promptly be sent by regular mail or registered mail. For greater certainty, a notice given via facsimile shall not be invalid by reason only of a Party's failure to comply with this Section 11(b).
- (c) Any Party to this OM&R Provider's Direct Agreement may, from time to time, change any of its contact information set forth in Section 11(a) by prior notice to the other Parties, and such change shall be effective on the Business Day that next follows the recipient Party's receipt of such notice unless a later effective date is given in such notice.
- (d) Subject to Sections 11(e), 11(f) and 11(g):
- (i) a notice given by registered mail shall be deemed to have been received on the third Business Day after mailing;
 - (ii) a notice given by hand delivery shall be deemed to have been received on the day it is delivered; and
 - (iii) a notice given by facsimile shall be deemed to have been received on the day it is transmitted by facsimile.

- (e) If the Party giving the notice knows or ought reasonably to know of difficulties with the postal system which might affect negatively the delivery of mail, any such notice shall not be mailed but shall be made or given by personal delivery or by facsimile transmission in accordance with this Section 11.
- (f) If any notice delivered by hand or transmitted by facsimile is so delivered or transmitted, as the case may be, either on a day that is not a Business Day or on a Business Day after 4:00 p.m. (recipient's local time), then such notice shall be deemed to have been received by such recipient on the next Business Day.
- (g) A notice given by facsimile shall be deemed to have been received by the recipient on the day it is transmitted only if a facsimile transmission report (maintained by the sender) indicates that the transmission of such notice was successful.

12. AMENDMENTS

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

13. WAIVER

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

14. RELATIONSHIP BETWEEN THE PARTIES

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

15. ENTIRE AGREEMENT

Except where provided otherwise in this OM&R Provider's Direct Agreement, this OM&R Provider's Direct Agreement constitutes the entire agreement between the Parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings,

whether oral, written, express or implied, concerning the subject matter of this OM&R Provider's Direct Agreement.

16. SEVERABILITY

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

17. ENUREMENT

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

18. GOVERNING LAW AND JURISDICTION

- (a) This OM&R Provider's Direct Agreement shall be governed by and construed in accordance with the laws of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract, without regard to conflict of laws principles.
- (b) The Parties agree that the courts of the Province of Ontario and all courts competent to hear appeals therefrom shall have exclusive jurisdiction to hear and settle any action, suit, proceeding or dispute in connection with this OM&R Provider's Direct Agreement and hereby irrevocably attorn to the exclusive jurisdiction of such courts.
- (c) Nothing in this OM&R Provider's Direct Agreement affects the rights protections and immunities of the Crown under the *Proceedings Against the Crown Act* (Ontario).

19. HMQ DESIGNATE

At any time and from time to time, HMQ may designate any ministry, branch, agency, division, department or office of the Government of Ontario to carry out administrative responsibility for the rights and obligations of HMQ under this OM&R Provider's Direct Agreement and Project Co, the OM&R Provider and the OM&R Guarantors may deal exclusively with the designated person in respect of all such matters and is entitled to rely on the actions, directions, requests, notices, consents, approvals, waivers, comments relating to the review of documentation and other administrative matters and decisions determined by such designated person from time to time, until HMQ has notified Project Co, the OM&R Provider and the OM&R Guarantors in writing that such designated person is no longer the person designated by HMQ 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. HMQ shall advise Project Co, the OM&R Provider and the OM&R Guarantors in writing of any designation hereunder. The rights and obligations of the parties to this OM&R Provider's Direct Agreement shall be in no way affected by reason of any

such designation. Project Co, the OM&R Provider and each of the OM&R Guarantors acknowledge the right of HMQ 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 OM&R Provider's Direct Agreement.

21. LANGUAGE OF AGREEMENT

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

22. COUNTERPARTS

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

23. COPYRIGHT NOTICE

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

24. JOINT AND SEVERAL LIABILITY

- (a) Each [REDACTED] hereby acknowledges and agrees to and in favour of each of HMQ, the OM&R Provider and the OM&R Guarantors that [REDACTED] are jointly and severally liable for the due and punctual payment of all indebtedness of, and performance and discharge of all covenants, obligations, agreements and undertakings (including indemnity obligations) of, Project Co under or pursuant to this OM&R Provider's Direct Agreement now or hereafter existing.
- (b) Each of the OM&R Partners hereby acknowledges and agrees to and in favour of each of HMQ, Project Co and the OM&R Guarantors that the OM&R Partners are jointly and severally liable for the due and punctual payment of all indebtedness of, and performance and discharge of all covenants, obligations, agreements and undertakings (including indemnity obligations) of, the OM&R Provider under or pursuant to this OM&R Provider's Direct Agreement now or hereafter existing.

[SIGNATURE PAGES IMMEDIATELY FOLLOW]

IN WITNESS WHEREOF the Parties have executed this OM&R Provider's Direct Agreement as of the date first above written.

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

Per: _____
Name: _____
Title: _____

Per: _____
Name: _____
Title: _____

I/We have authority to bind the corporation.

**407 EAST DEVELOPMENT GROUP GENERAL
PARTNERSHIP, [REDACTED]**

[REDACTED]

Per: _____
Name: _____
Title: _____

Per: _____
Name: _____
Title: _____

I/We have authority to bind the corporation.

[REDACTED]

Per: _____
Name: _____
Title: _____

Per: _____
Name: _____
Title: _____

I/We have authority to bind the corporation.

[REDACTED]

[REDACTED]

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have authority to bind the corporation.

[REDACTED]

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have authority to bind the corporation.

[REDACTED]

Per:

Name:
Title:

Per:

Name:
Title:

I/We have authority to bind the corporation.

[REDACTED]

Per:

Name:
Title:

Per:

Name:
Title:

I/We have authority to bind the corporation.

SCHEDULE 6

INDEPENDENT CERTIFIER AGREEMENT

THIS AGREEMENT is made as of the 15th day of May, 2012

BETWEEN:

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

(“**HMQ**”)

AND

407 EAST DEVELOPMENT GROUP GENERAL PARTNERSHIP, [REDACTED]

(“**Project Co**”)

AND

[REDACTED]

(the “**Independent Certifier**”)

WHEREAS:

- A. HMQ 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.

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

1. DEFINITIONS

1.1 Definitions

- (a) In this Independent Certifier Agreement, including the recitals and appendices, unless the context indicates a contrary intention, terms which are defined in the Project Agreement (and not otherwise defined in this Independent Certifier Agreement) shall have meanings given to them in the Project Agreement and the following terms shall have the following meanings:
- (i) **“Certification Services”** means:
 - (A) all of the functions and obligations described in the Project Agreement as being the responsibility of the Independent Certifier;
 - (B) all of the functions and obligations conferred on the Independent Certifier under this Independent Certifier Agreement, including the functions described in Appendix A to this Independent Certifier Agreement; and
 - (C) all other things or tasks which the Independent Certifier must do to comply with its obligations under this Independent Certifier Agreement.
 - (ii) **“Certification Services Variation”** is any change to the Certification Services.
 - (iii) **“Contract Material”** means all material:
 - (A) provided to the Independent Certifier or created or required to be created by either PA Party; and
 - (B) provided by or created or required to be created by the Independent Certifier as part of, or for the purpose of, performing the Certification Services,including documents, equipment, reports, technical information, plans, charts, drawings, calculations, tables, schedules and data (stored and recorded by any means).
 - (iv) **“Fee”** means the fees payable by HMQ and Project Co to the Independent Certifier for the Certification Services, as such fees are specified and made payable in Appendix B to this Independent Certifier Agreement.
 - (v) **“HST”** means the value-added tax payable and imposed pursuant to Part IX of the *Excise Tax Act* (Canada), and any successor legislation thereto.
 - (vi) **“Intellectual Property”** means any and all intellectual property rights, whether subsisting now or in the future, including rights of any kind in inventions, patents, copyright, trademarks, service marks, industrial designs, integrated circuit topography rights, applications for registration of any of the foregoing, and know-how, trade secrets, confidential information and trade or business names.
 - (vii) **“PA Parties”** means both HMQ and Project Co, and **“PA Party”** means either HMQ or Project Co, as the context requires.

(viii) [REDACTED].

(ix) “**Project Agreement**” means that certain project agreement made on or about the date hereof between HMQ and Project Co with respect to the design, construction, financing and facilities management of the Extension.

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 Initial 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 Section 9.4 and 9.5 of this Independent Certifier Agreement.

3.2 Acknowledgement of Independent Certifier

- (a) The Independent Certifier hereby acknowledges in favour of the PA Parties that it has received a copy of the Project Agreement.

3.3 Standard of Care

- (a) The Independent Certifier must exercise the standard and skill, care and diligence in the performance of the Certification Services that would be expected of an expert professional experienced in providing services in the nature of the Certification Services for projects similar to the Project.

3.4 Duty of Independent Judgment

- (a) In exercising its Certification Services, the Independent Certifier must:
 - (i) act impartially, honestly and independently in representing the interests of both PA Parties in accordance with the terms of the Project Agreement and this Independent Certifier Agreement;
 - (ii) act reasonably and professionally;
 - (iii) act in a timely manner;

- (A) in accordance with the times prescribed in this Independent Certifier Agreement and the Project Agreement; or
- (B) where no times are prescribed, within 10 days or such earlier time so as to enable the PA Parties to perform their respective obligations under the Project Agreement; and
- (iv) act in accordance with the joint directions of the PA Parties provided that the directions are not inconsistent with the other terms of this Independent Certifier Agreement or the terms of the Project Agreement and do not vary or prejudice the Independent Certifier's authority or responsibilities or the exercise by the Independent Certifier of its professional judgment under this Independent Certifier Agreement.
- (b) Although the Independent Certifier may take account of any opinions or representations made by the PA Parties, the Independent Certifier shall not be bound to comply with any opinions or representations made by either of them in connection with any matter on which the Independent Certifier is required to exercise its professional judgment.
- (c) The Independent Certifier acknowledges that the PA Parties may rely on the Certification Services, including determinations, findings and certifications made by the Independent Certifier, and accordingly, the Independent Certifier will use its best skill and judgment in providing the Certification Services.

3.5 Authority to Act

- (a) The Independent Certifier:
 - (i) is an independent consultant and is not, and must not purport to be, a partner, joint venturer or agent of either PA Party;
 - (ii) other than as expressly set out in this Independent Certifier Agreement or the Project Agreement, has no authority to give any directions to a PA Party or its officers, directors, members, employees, contractors, consultants or agents; and
 - (iii) has no authority to waive or alter any terms of the Project Agreement, nor to discharge or release a party from any of its obligations under the Project Agreement unless jointly agreed by the PA Parties in writing.

3.6 Knowledge of the PA Parties' Requirements

- (a) The Independent Certifier warrants that:
 - (i) it has informed and will be deemed to have informed itself fully of the requirements of the Project Agreement;
 - (ii) it will inform itself fully of the requirements of such other documents and materials as may become relevant from time to time to the performance of the Certification Services;
 - (iii) without limiting Sections 3.6(a)(i) or 3.6(a)(ii), it has and will be deemed to have informed itself fully of all time limits and other requirements for any Certification

Service which the Independent Certifier carries out under the Project Agreement and this Independent Certifier Agreement;

- (iv) it has and will be deemed to have informed itself completely of the nature of the work necessary for the performance of the Certification Services and the means of access to and facilities at the Extension and Site including restrictions on any such access or protocols that are required; and
- (v) it has satisfied itself as to the correctness and sufficiency of its proposal for the Certification Services and that the Fee covers the cost of complying with all of the obligations under this Independent Certifier Agreement and of all matters and things necessary for the due and proper performance and completion of the Certification Services.

3.7 Co-ordination and Information by Independent Certifier

- (a) The Independent Certifier must:
 - (i) fully cooperate with the PA Parties;
 - (ii) carefully co-ordinate the Certification Services with the work and services performed by the PA Parties;
 - (iii) without limiting its obligations under Sections 3.4 and 3.7(a)(ii), perform the Certification Services so as to avoid unreasonably interfering with, disrupting or delaying the work and services performed by the PA Parties; and
 - (iv) provide copies to the PA Parties of all reports, communications, certificates and other documentation that it provides to either PA Party.

3.8 Conflict of Interest

- (a) The Independent Certifier warrants that:
 - (i) at the date of this Independent Certifier Agreement, no conflict of interest exists or is likely to arise in the performance of its obligations under this Independent Certifier Agreement, and the Independent Certifier further warrants that it has not been retained as technical advisor to the Lenders or as an advisor to either of the PA Parties or any of their respective related entities in respect of the Project Agreement (including, but not limited to, acting as a transaction advisor to either PA Party); and
 - (ii) if, during the term of this Independent Certifier Agreement, any such conflict or risk of conflict of interest arises, the Independent Certifier will notify the PA Parties immediately in writing of that conflict or risk of conflict and take such steps as may be required by either of the PA Parties to avoid or mitigate that conflict or risk.

3.9 Independent Certifier Personnel

- (a) The Independent Certifier shall make reasonable efforts to ensure that the individuals listed in Appendix C remain involved in the performance of the Certification Services and, in particular,

will not, for the duration of this Independent Certifier Agreement, require or request any such person to be involved in any other project on behalf of the Independent Certifier if, in the reasonable opinion of the PA Parties, such involvement would have a material adverse effect on the performance of the Certification Services.

- (b) The Independent Certifier shall ensure that its personnel providing the Certification Services in respect of the Project Co Commissioning shall:
 - (i) possess a current professional designation of not less than membership in Professional Engineers Ontario, the Ontario Association of Certified Engineering Technicians and Technologists or such similar professional designation recognized in North America;
 - (ii) have demonstrated competence in the commissioning of comparable facilities and in having completed or monitored the commissioning of a comparable highway;
 - (iii) have an understanding of the appropriate MTO standards, guidelines and policies related to commissioning for highways, as well as other applicable highway commissioning standards; and
 - (iv) have an understanding of any documentation to be provided pursuant to this Independent Certifier Agreement and the Project Agreement, including not only the start-up procedures but any pre-commissioning and post-commissioning activities.
- (c) The Independent Certifier shall furnish HMQ with evidence satisfactory to HMQ of any such personnel's compliance with the foregoing requirements within a reasonable time prior to the proposed commencement of the Project Co Commissioning.

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 Initial 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 Section Substantial Completion and Section Final Completion of each of the Crossing Roads Section and the Main Line Section and Substantial Completion and Final Completion have occurred, and shall provide copies of all such information, documents and particulars to the other party hereto.

4.4 Additional Information

- (a) If any information, documents or particulars are reasonably required to enable the Independent Certifier to perform the Certification Services and have not been provided by the PA Parties, then:
 - (i) the Independent Certifier must give notice in writing to the Project Co Representative or the HMQ Representative, as the case may be, of the details of the information, documents or particulars demonstrating the need and the reasons why they are required; and
 - (ii) Project Co or HMQ, as the case may be, must arrange the provision of the required information, documents or particulars.

4.5 Right to Enter and Inspect

- (a) Upon giving reasonable notice to the Project Co Representative, the Independent Certifier (and any person authorized by it) may enter and inspect the Site, Extension or Initial Works at any reasonable time in connection with the exercise or proposed exercise of rights under this Independent Certifier Agreement, subject to:
 - (i) observance of the reasonable rules of Project Co as to safety and security for the Site, the Extension and the Initial Works;
 - (ii) not causing unreasonable delay to the carrying out of the Initial Works by reason of its presence at the Site, the Extension and the Initial Works; and
 - (iii) not causing any damage to the Site, the Extension or the Initial Works.

4.6 PA Parties Not Relieved

- (a) Neither PA Party shall be relieved from performing or observing its obligations, or from any other liabilities, under the Project Agreement as a result of either the appointment of, or any act or omission by, the Independent Certifier.

4.7 PA Parties not Liable

- (a) On no account will a PA Party be liable to another PA Party for any act or omission by the Independent Certifier whether under or purportedly under a provision of the Project Agreement, this Independent Certifier Agreement or otherwise, provided that any such act or omission shall not extinguish, relieve, limit or qualify the nature or extent of any right or remedy of either PA Party against or any obligation or liability of either PA Party to the other PA Party which would have existed regardless of such act or omission.

5. CERTIFICATION QUALITY PLAN**5.1 Certification Quality Plan**

- (a) The Independent Certifier must:
- (i) develop and implement a certification quality plan identifying the processes and outcomes of the Certification Services that complies with all requirements of the Independent Certifier's quality assurance accreditation, and is otherwise satisfactory to each of the HMQ Representative and the Project Co Representative;
 - (ii) within 14 days after the date of this Independent Certifier Agreement, provide such certification quality plan to each of the HMQ Representative and the Project Co Representative;
 - (iii) if satisfactory to each of the HMQ Representative and the Project Co Representative, implement such certification quality plan; and
 - (iv) if not satisfactory to each of the HMQ Representative and the Project Co Representative, within 7 days after receiving notice thereof from either PA Party to that effect, revise and resubmit the certification quality plan to each of the HMQ Representative and the Project Co Representative, and implement it if satisfactory to each of the HMQ Representative and the Project Co Representative.

5.2 Certification Quality Plan not to Relieve Independent Certifier

- (a) The Independent Certifier will not be relieved of any responsibilities or obligations in respect of the performance of the Certification Services and will remain solely responsible for them notwithstanding:
- (i) the obligation of the Independent Certifier to develop and implement a certification quality plan; or
 - (ii) any comment or direction upon, review or acceptance of, approval to proceed with or request to vary any part of the certification quality plan by either the HMQ Representative or the Project Co Representative.

6. SUSPENSION**6.1 Notice**

- (a) The Certification Services (or any part) may be suspended at any time by the PA Parties:
- (i) if the Independent Certifier fails to comply with its obligations under this Independent Certifier Agreement, immediately by the PA Parties giving joint notice in writing to the Independent Certifier; or
 - (ii) in any other case, by the PA Parties giving 7 days joint notice in writing to the Independent Certifier.

6.2 Costs of Suspension

- (a) The Independent Certifier will:
 - (i) subject to the Independent Certifier complying with Article 9, be entitled to recover the extra costs incurred by the Independent Certifier by reason of a suspension directed under Section 6.1(a)(ii) valued as a Certification Services Variation under Section 9; and
 - (ii) have no entitlement to be paid any costs, expenses, losses or damages arising from a suspension under Section 6.1(a)(i).

6.3 Recommencement

- (a) The Independent Certifier must immediately recommence the carrying out of the Certification Services (or any part) on receipt of a joint written notice from the PA Parties requiring it to do so.

7. INSURANCE AND LIABILITY

7.1 Independent Certifier's Insurance

- (a) The Independent Certifier must have in place at all times during the term of this Independent Certifier Agreement:
 - (i) professional liability insurance:
 - (A) in the amount of \$[REDACTED] per claim and \$[REDACTED] in the aggregate, a deductible of not more than \$[REDACTED] per claim and from an insurer and on terms satisfactory to each of the PA Parties; and
 - (B) covering liability which the Independent Certifier might incur as a result of a breach by it of its obligations owed by the Independent Certifier in a professional capacity to the PA Parties, or either of them, under or in connection with this Independent Certifier Agreement or the provision of the Certification Services; and
 - (ii) commercial general liability insurance in the amount of \$[REDACTED] per claim and in the aggregate, no deductible for personal injury or bodily injury, a deductible of not more than \$[REDACTED] per occurrence for property damage and from an insurer and on terms satisfactory to each of the PA Parties.
- (b) The Independent Certifier must provide copies of its insurance policies to each of the PA Parties upon execution of this Independent Certifier Agreement, and, at least 5 Business Days prior to the expiry date of any such insurance policy, the Independent Certifier must provide evidence of the renewal of any such insurance policy satisfactory to the PA Parties, acting reasonably.

7.2 Workers' Compensation Insurance

- (a) The Independent Certifier must, at its own cost and at all times during the term of this Independent Certifier Agreement, insure its liability (including its common law liability) as

required under any applicable workers compensation statute or regulation in relation to its employees engaged in the Certification Services.

8. PAYMENT FOR SERVICES

8.1 Payment of Fee

- (a) In consideration of the Independent Certifier performing the Certification Services in accordance with this Independent Certifier Agreement, each PA Party shall pay [REDACTED] of the Fee to the Independent Certifier in accordance with the payment schedule specified in Appendix B.
- (b) The obligation of each PA Party to pay [REDACTED] of the Fee to the Independent Certifier is a several obligation, and neither PA Party shall have any liability in respect of the non-payment by the other PA Party of any fees or costs payable by such other PA Party under this Independent Certifier Agreement.
- (c) The Fee includes all taxes (except for HST), overheads and profit to perform the Certification Services.
- (d) The PA Parties acknowledge and agree that if any approved amount due and payable by the PA Parties to the Independent Certifier in excess of \$[REDACTED] is outstanding for more than 60 days, the Independent Certifier shall not have any obligation to make any certification under the Project Agreement.

9. CERTIFICATION SERVICES VARIATIONS

9.1 Notice of Certification Services Variation

- (a) If the Independent Certifier believes, other than a “Certification Services Variation Order” under Section 9.4(c), that any direction by the PA Parties constitutes or involves a Certification Services Variation it must:
 - (i) within 7 days after receiving the direction and before commencing work on the subject matter of the direction, give notice to the PA Parties that it considers the direction constitutes or involves a Certification Services Variation; and
 - (ii) within 21 days after giving the notice under Section 9.1(a)(i), submit a written claim to each of the HMQ Representative and the Project Co Representative which includes detailed particulars of the claim, the amount of the claim and how it was calculated.
- (b) Regardless of whether the Independent Certifier considers that such a direction constitutes or involves a Certification Services Variation, the Independent Certifier must continue to perform the Certification Services in accordance with this Independent Certifier Agreement and all directions, including any direction in respect of which notice has been given under this Section 9.1.

9.2 No Adjustment

- (a) If the Independent Certifier fails to comply with Section 9.1, the Fee will not be adjusted as a result of the relevant direction.

9.3 External Services

- (a) In the event that external personnel or consultants are required for expert opinion with respect to a Certification Services Variation, then, with the prior written approval of the PA Parties, any additional fees relating to such external personnel or consultants will be payable by the PA Parties at the agreed upon amount.

9.4 Certification Services Variation Procedure

- (a) The HMQ Representative and the Project Co Representative may jointly issue a document titled “Certification Services Variation Price Request” to the Independent Certifier which will set out details of a proposed Certification Services Variation which the PA Parties are considering.
- (b) Within 7 days after the receipt of a “Certification Services Variation Price Request”, the Independent Certifier must provide each of the HMQ Representative and the Project Co Representative with a written notice in which the Independent Certifier sets out the effect which the proposed Certification Services Variation will have on the Fee.
- (c) Each of the HMQ Representative and the Project Co Representative may then jointly direct the Independent Certifier to carry out a Certification Services Variation by written document titled “Certification Services Variation Order” which will state either that:
 - (i) the Fee is adjusted as set out in the Independent Certifier’s notice; or
 - (ii) the adjustment (if any) to the Fee will be determined under Section 9.5.

9.5 Cost of Certification Services Variation

- (a) Subject to Section 9.2, the Fee will be adjusted for all Certification Services Variations or suspensions under Section 6.1(a)(ii) carried out by the Independent Certifier by:
 - (i) the amount (if any) stated in the “Certification Services Variation Order” in accordance with Section 9.4(c);
 - (ii) if Section 9.5(a)(i) is not applicable, an amount determined pursuant to the fee schedule in Appendix B; or
 - (iii) where such rates or prices are not applicable, a reasonable amount to be agreed between the PA Parties and the Independent Certifier or, failing agreement, determined by the HMQ Representative and the Project Co Representative jointly.
- (b) Any reductions in the Fee shall be calculated on the same basis as any increases.

10. TERM AND TERMINATION

10.1 Term

- (a) Subject to earlier termination, this Independent Certifier Agreement will commence on the date of the Project Agreement and continue in full force until:
 - (i) the completion of the Initial Works and the performance of the Certification Services set forth herein; or
 - (ii) such other date as may be mutually agreed between the PA Parties and the Independent Certifier.

10.2 Notice of Breach

- (a) If the Independent Certifier commits a breach of this Independent Certifier Agreement, the PA Parties may give written notice to the Independent Certifier:
 - (i) specifying the breach; and
 - (ii) directing its rectification in the period specified in the notice being a period not less than 7 days from the date of service of the notice.

10.3 Termination for Breach

- (a) If the Independent Certifier fails to rectify the breach within the period specified in the notice issued under Section 10.2, the PA Parties may, without prejudice to any other rights of the PA Parties or either of them, immediately terminate this Independent Certifier Agreement.

10.4 Termination for Financial Difficulty or Change in Control

- (a) The PA Parties may, without prejudice to any other rights which the PA Parties or either of them may have, terminate this Independent Certifier Agreement immediately if:
 - (i) events have occurred or circumstances exist which, in the opinion of the PA Parties, may result in or have resulted in an insolvency or a Change in Control of the Independent Certifier; or
 - (ii) the Independent Certifier has communications with its creditors with a view to entering into, or enters into, any form of compromise, arrangement or moratorium of any debts whether formal or informal, with its creditors.

10.5 Termination for Convenience

- (a) Notwithstanding anything to the contrary in this Independent Certifier Agreement, the PA Parties may, at any time, jointly terminate this Independent Certifier Agreement upon 30 days written notice to the Independent Certifier. The PA Parties and the Independent Certifier agree that, notwithstanding the 30 days' notice of termination, the Independent Certifier shall continue on a day-to-day basis thereafter until a new Independent Certifier is appointed.

10.6 Independent Certifier's Rights upon Termination for Convenience

- (a) Upon a termination under Section 10.5, the Independent Certifier will:

- (i) be entitled to be reimbursed by the PA Parties for the value of the Certification Services performed by it to the date of termination; and
- (ii) not be entitled to any damages or other compensation in respect of the termination and (without limitation) any amount in respect of:
 - (A) the lost opportunity to earn a profit in respect of the Certification Services not performed at the date of termination; and
 - (B) any lost opportunity to recover overheads from the turnover which would have been generated under this Independent Certifier Agreement but for it being terminated.

10.7 Procedure upon Termination

- (a) Upon completion of the Independent Certifier's engagement under this Independent Certifier Agreement or earlier termination of this Independent Certifier Agreement (whether under Section 10.3, 10.4 or 10.5 or otherwise), the Independent Certifier must:
 - (i) cooperate with the PA Parties with respect to the transition of the Certification Services to a replacement certifier;
 - (ii) deliver to the PA Parties all Contract Material and all other information concerning the Project held or prepared by the Independent Certifier during the execution of work under this Independent Certifier Agreement; and
 - (iii) as and when required by the PA Parties, meet with them and such other persons nominated by them with a view to providing them with sufficient information to enable the PA Parties to execute the Project or the persons nominated to provide the Certification Services.

10.8 Effect of Termination

- (a) Except as otherwise expressly provided in this Independent Certifier Agreement, termination of this Independent Certifier Agreement shall be without prejudice to any accrued rights and obligations under this Independent Certifier Agreement as at the date of termination (including the right of the PA Parties to recover damages from the Independent Certifier).

10.9 Survival

- (a) Termination of this Independent Certifier Agreement shall not affect the continuing rights and obligations of the PA Parties and the Independent Certifier under Sections 7, 8, 10.6, 10.7, 10.8, 11, 12.7, 12.8 and this Section 10.9 or under any other provision which is expressed to survive termination or which is required to give effect to such termination or the consequences of such termination.

11. INDEMNITY

11.1 PA Parties to Save Independent Certifier Harmless

- (a) The PA Parties hereby indemnify and save the Independent Certifier completely harmless from any actions, causes of action, suits, debts, costs, damages, expenses, claims and demands whatsoever, at law or in equity, arising directly or indirectly in whole or in part out of any action taken by the Independent Certifier within the scope of its duties or authority hereunder.
- (b) The indemnity provided under this Section 11.1 shall not extend:
 - (i) to any breach of this Independent Certifier Agreement, or any part or parts hereof, by the Independent Certifier, its employees, servants, agents or persons for whom it is in law responsible, or any negligent or unlawful act or omission or willful misconduct of the Independent Certifier, its employees, servants or persons for whom it is in law responsible (in respect of which the Independent Certifier shall indemnify the PA Parties, as referred to in Section 11.2);
 - (ii) to any action taken by the Independent Certifier outside the scope of authority set forth in this Independent Certifier Agreement, or any part or parts hereof; or
 - (iii) to any debt, cost, expense, claim or demand for which insurance proceeds are recoverable by the Independent Certifier.
- (c) This indemnity shall survive the termination of this Independent Certifier Agreement.

11.2 Independent Certifier to Save PA Parties Harmless

- (a) The Independent Certifier hereby indemnifies and saves the PA Parties, and their affiliated entities, subsidiaries and their respective directors, officers, employees, agents, permitted successors and assigns, completely harmless from any actions, causes of action, suits, debts, costs, damages, expenses, claims and demands whatsoever, at law or in equity, arising directly or indirectly in whole or in part out of any breach of this Independent Certifier Agreement, or any part or parts hereof, by the Independent Certifier, its employees, servants, agents or persons for whom it is in law responsible, or any negligent or unlawful act or omission or willful misconduct of the Independent Certifier, its employees, servants or persons for whom it is in law responsible.
- (b) The indemnity provided under this Section 11.2 to a PA Party shall not extend:
 - (i) to any negligent or unlawful act or omission or willful misconduct of such PA Party, its employees, servants or persons for whom it is in law responsible (in respect of which such PA Parties shall indemnify the Independent Certifier, as referred to in Section 11.1); or
 - (ii) to any debt, cost, expense, claim or demand for which insurance proceeds are recoverable by such PA Party.
- (c) This indemnity shall survive the termination of this Independent Certifier Agreement.

11.3 Conduct of Claims

- (a) Claims made by a third person against a party having, or claiming to have, the benefit of an indemnity pursuant to this Independent Certifier Agreement shall be conducted in accordance

with the conduct of claims procedure described in Appendix D – Conduct of Claims to this Independent Certifier Agreement.

12. GENERAL

12.1 Entire Agreement

- (a) Except where provided otherwise in this Independent Certifier Agreement, this Independent Certifier Agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings, whether oral, written, express or implied, concerning the subject matter of this Independent Certifier Agreement.

12.2 Negation of Employment

- (a) The Independent Certifier, its officers, directors, members, employees, servants and agents and any other persons engaged by the Independent Certifier in the performance of the Certification Services will not by virtue of this Independent Certifier Agreement or the performance of the Certification Services become in the service or employment of the PA Parties for any purpose.
- (b) The Independent Certifier will be responsible for all matters requisite as employer or otherwise in relation to such officers, directors, members, employees, servants and agents and other persons who are engaged by the Independent Certifier.

12.3 Waiver

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

12.4 Notices

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

If to HMQ:

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

Fax: [REDACTED]
Attn.: [REDACTED]

With a copy to:

Ministry of Transportation
1201 Wilson Avenue
Building D, 7th Floor
Toronto, Ontario
M3M 1J8

Fax: [REDACTED]
Attn.: [REDACTED]

If to Project Co:

[REDACTED]

E-mail: [REDACTED]
Fax: [REDACTED]
Attn.: [REDACTED]

With a copy to:

[REDACTED]

Fax: [REDACTED]
Attn.: [REDACTED]

And a copy to:

[REDACTED]

Fax: [REDACTED]
Attn.: [REDACTED]

With electronic copies to:

[REDACTED]
[REDACTED]
[REDACTED]

If to the Independent Certifier:

[REDACTED]

Fax: [REDACTED]
Attn.: [REDACTED]

- (b) Where any notice is provided or submitted to a party via facsimile, an original of the notice sent via facsimile shall promptly be sent by regular mail or registered mail. For greater certainty, a notice given via facsimile shall not be invalid by reason only of a party's failure to comply with this Section 12.4(b).
- (c) Any party to this Independent Certifier Agreement may, from time to time, change any of its contact information set forth in Section 12.4(a) by prior notice to the other Parties, and such

change shall be effective on the Business Day that next follows the recipient party's receipt of such notice unless a later effective date is given in such notice.

- (d) Subject to Sections 12.4(e), 12.4(f) and 12.4(g):
 - (i) a notice given by registered mail shall be deemed to have been received on the third Business Day after mailing;
 - (ii) a notice given by hand delivery shall be deemed to have been received on the day it is delivered; and
 - (iii) a notice given by facsimile shall be deemed to have been received on the day it is transmitted by facsimile.
- (e) If the party giving the notice knows or ought reasonably to know of difficulties with the postal system which might affect negatively the delivery of mail, any such notice shall not be mailed but shall be made or given by personal delivery or by facsimile transmission in accordance with this Section 12.4.
- (f) If any notice delivered by hand or transmitted by facsimile is so delivered or transmitted, as the case may be, either on a day that is not a Business Day or on a Business Day after 4:00 p.m. (recipient's local time), then such notice shall be deemed to have been received by such recipient on the next Business Day.
- (g) A notice given by facsimile shall be deemed to have been received by the recipient on the day it is transmitted only if a facsimile transmission report (maintained by the sender) indicates that the transmission of such notice was successful.

12.5 Transfer and Assignment

- (a) The Independent Certifier:
 - (i) must not assign, transfer, mortgage, charge or encumber any right or obligation under this Independent Certifier Agreement without the prior written consent of the PA Parties, which each PA Party may give or withhold in its absolute discretion; and
 - (ii) agrees that any assignment, transfer, mortgage, charge or encumbrance will not operate to release or discharge the Independent Certifier from any obligation or liability under this Independent Certifier Agreement.
- (b) For the purposes of this Section 12.5, an assignment will be deemed to have occurred where there is a Change in Control of the Independent Certifier after the date of this Independent Certifier Agreement.
- (c) Each of the PA Parties may assign, transfer, mortgage, charge or encumber any right or obligation under this Independent Certifier Agreement in accordance with the terms of the Project Agreement.

12.6 Governing Laws and Jurisdictions

- (a) This Independent Certifier Agreement shall be governed by and construed in accordance with the laws of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract, without regard to conflict of laws principles.
- (b) The PA Parties and the Independent Certifier agree that the courts of the Province of Ontario and all courts competent to hear appeals therefrom shall have exclusive jurisdiction to hear and settle any action, suit, proceeding or dispute in connection with this Independent Certifier Agreement and hereby irrevocably attorn to the exclusive jurisdiction of such courts.
- (c) Nothing in this Independent Certifier Agreement affects the rights, protections and immunities of the Crown under the *Proceedings Against the Crown Act* (Ontario).

12.7 HMQ Designate

- (a) At any time and from time to time, HMQ may designate any ministry, branch, agency, division, department or office of the Government of Ontario to carry out administrative responsibility for the rights and obligations of HMQ 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 HMQ has notified Project Co and the Independent Certifier in writing that such designated person is no longer the person designated by HMQ 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. HMQ 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 HMQ to delegate administrative responsibilities hereunder as set forth in this Section 12.7.

12.8 Confidentiality

- (a) The Independent Certifier must ensure that:
 - (i) neither it nor any of its officers, directors, members, employees, servants and agents disclose, or otherwise make public, any Contract Material or any other information or material acquired in connection with or during the performance of the Certification Services without prior written approval of the PA Parties; and
 - (ii) no Contract Material is used, copied, supplied or reproduced for any purpose other than for the performance of the Certification Services under this Independent Certifier Agreement.
- (b) The PA Parties may at any time require the Independent Certifier to give and to arrange for its officers, directors, members, employees, servants and agents engaged in the performance of the Certification Services to give written undertakings, in the form of confidentiality agreements on terms required by the PA Parties, relating to the non disclosure of confidential information, in which case the Independent Certifier must promptly arrange for such agreements to be made.

12.9 Contract Material

- (a) The PA Parties and the Independent Certifier agree that the Independent Certifier does not and will not have any rights, including any Intellectual Property, in any Contract Material provided to the Independent Certifier or created or required to be created by either PA Party.
- (b) As between the PA Parties and the Independent Certifier, all title and ownership, including all Intellectual Property, in and to the Contract Material created or required to be created by the Independent Certifier as part of, or for the purposes of performing the Certification Services, is hereby assigned jointly to the PA Parties on creation, or where such title, ownership and Intellectual Property cannot be assigned before creation of the Contract Material, it will be assigned to the PA Parties on creation. In addition, to the extent that copyright may subsist in such Contract Material so created by the Independent Certifier, the Independent Certifier hereby waives all past, present and future moral rights therein and the Independent Certifier shall ensure that any agent or employee of Independent Certifier shall have waived all such moral rights. The PA Parties acknowledge and agree that as between the PA Parties, title, ownership and other rights to the foregoing shall be governed by the Project Agreement.
- (c) The Independent Certifier will do all such things and execute all such documents as reasonably requested by either of the PA Parties in order to confirm or perfect the assignment of Intellectual Property in the Contract Material referred to in Section 12.9(b).

12.10 Amendment

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

12.11 Severability

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

12.12 Enurement

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

12.13 Counterparts

- (a) This Independent Certifier Agreement may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all the parties shall constitute a full, original and binding agreement for all purposes. Counterparts may be executed either in

original or faxed form provided that any party providing its signature in faxed form shall promptly forward to such party an original signed copy of this Independent Certifier Agreement which was so faxed.

12.14 Copyright Notice

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

12.15 Joint and Several Liability

- (a) Each [REDACTED] hereby acknowledges and agrees to and in favour of each of HMQ and the Independent Certifier that [REDACTED] are jointly and severally liable for the due and punctual payment of all indebtedness of, and performance and discharge of all covenants, obligations, agreements and undertakings (including indemnity obligations) of, Project Co under or pursuant to this Independent Certifier Agreement now or hereafter existing.

[SIGNATURE PAGES IMMEDIATELY FOLLOW]

IN WITNESS WHEREOF the parties have executed this Independent Certifier Agreement as of the date first above written.

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

Per: _____
Name: _____
Title: _____

Per: _____
Name: _____
Title: _____

I/We have authority to bind the corporation.

407 EAST DEVELOPMENT GROUP GENERAL PARTNERSHIP, [REDACTED]

[REDACTED]

Per: _____
Name: _____
Title: _____

Per: _____
Name: _____
Title: _____

I/We have authority to bind the corporation

[REDACTED]

Per: _____
Name: _____
Title: _____

Per: _____
Name: _____
Title: _____

I/We have authority to bind the corporation

[REDACTED]

Per: _____

Name:

Title:

I/We have authority to bind the corporation.

FOR INFORMATION ONLY

APPENDIX A

CERTIFICATION SERVICES

Without limiting the other provisions of this Independent Certifier Agreement and the Project Agreement, the Independent Certifier shall provide the following:

- (a) Receive and monitor drawings and documents related to the development of the design as necessary for the Independent Certifier to be informed as to the progress of the Initial Works and to provide an opinion in the event of a Dispute related to the development of the design.
- (b) Receive and monitor progress reports as necessary for the Independent Certifier to be informed as to the progress of the Initial Works.
- (c) Review information relating to Delay Events and Compensation Events.
- (d) Review information relating to Variation Enquiries, Project Co Variation Notices, Variations, Estimates, claims for extension of time and compensation and consultation with the relevant party.
- (e) In accordance with Section 11.1(b) of the Project Agreement, attend meetings and participate, as necessary, in the activities of the Works Committee.
- (f) Prior to any certification, consider the views and comments of both Project Co and HMQ in relation to the satisfaction of the conditions for certification.
- (g) Conduct inspections of the Initial Works as necessary for the Independent Certifier to be satisfied that the Initial Works are proceeding in accordance with the requirements of the Project Agreement.
- (h) Review relevant documentation, including the Final Design Development Submittals, certificates and approvals, Permits, Licences and Approvals, certifications, test results, quality assurance audits, letters of assurance from professionals, schedules of equipment and staff profile schedules provided to the Independent Certifier pursuant to the Project Agreement.
- (i) Monitor the requirements, progress and results of all Project Co Commissioning.
- (j) Upon receipt of notice from Project Co requesting the issuance of a Section Substantial Completion Certificate or Section Final Completion Certificate in respect of each of the Crossing Roads Section or the Main Line Section, or the Substantial Completion Certificate or the Final Completion Certificate, as applicable, consider such request and, within the time period set out in the Project Agreement and in accordance with the Project Agreement, either:
 - (i) issue the applicable certificate; or
 - (ii) issue a report detailing the matters that the Independent Certifier considers are required to be performed prior to issuing the applicable certificate.
- (k) Upon notice from Project Co that the matters required to be performed prior to issuing the applicable certificate have been completed, re-inspect the Initial Works or re-consider the matters

specified to be performed, and repeat the procedures in Section (j) of this Appendix A until the issuance of the applicable certificate.

- (l) Prepare, in consultation with Project Co and HMQ, as soon as reasonably practicable and, in any event within, the time period specified in Section 26.4(a) of the Project Agreement, the Minor Deficiencies List, which Minor Deficiencies List will include an estimate of the cost and the time for rectifying the Minor Deficiencies and a schedule for the completion and rectification of the Minor Deficiencies.
- (m) Prior to Substantial Completion, review Project Co cash allowance expenditures against the installations in respect of the Cash Allowance Items and the Cash Allowance Amount.
- (n) After Substantial Completion, reconcile Project Co invoices for expenditure recovery against HMQ budgets and the Cash Allowance Amount.
- (o) Review and observe installation of all equipment, fixtures, information technology, communication equipment, telephone equipment and anything similar to the foregoing (collectively, the “**Installed Equipment**”) into the Extension by HMQ or any agent or contractor of HMQ either before or after Section Substantial Completion of each of the Crossing Roads Section and the Main Line Section and Substantial Completion and provide a report to HMQ and Project Co identifying any damage to the Extension which has been caused as a result of the installation of such Installed Equipment into the Extension by HMQ, its contractors and/or agents.
- (p) 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.
- (q) 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.
- (r) Develop and implement a certification quality plan identifying the processes and outcomes of the Certification Services.
- (s) Provide advice on other matters that may arise that both PA Parties may jointly require.

APPENDIX B

INDEPENDENT CERTIFIER FEE

1. Fee for all Certification Services (other than Certification Services identified in Item (s) of Appendix A to this Independent Certifier Agreement)

Breakdown of the Total Fixed Fee for all Certification Services (other than the Certification Services identified in Item (s) of Appendix A to this Independent Certifier Agreement).

	CERTIFICATION SERVICES (as a reference to items in Appendix A to this Independent Certifier Agreement)	Fixed Fee per section
1.	Item (a) of Appendix A to this Independent Certifier Agreement	\$[REDACTED]
2.	Item (b) of Appendix A to this Independent Certifier Agreement	\$[REDACTED]
3.	Item (c) of Appendix A to this Independent Certifier Agreement	\$[REDACTED]
4.	Item (d) of Appendix A to this Independent Certifier Agreement	\$[REDACTED]
5.	Item (e) of Appendix A to this Independent Certifier Agreement	\$[REDACTED]
6.	Item (f) of Appendix A to this Independent Certifier Agreement	\$[REDACTED]
7.	Item (g) of Appendix A to this Independent Certifier Agreement	\$[REDACTED]
8.	Item (h) of Appendix A to this Independent Certifier Agreement	\$[REDACTED]
9.	Item (i) of Appendix A to this Independent Certifier Agreement	\$[REDACTED]
10.	Item (j) of Appendix A to this Independent Certifier Agreement	\$[REDACTED]
11.	Item (k) of Appendix A to this Independent Certifier Agreement	\$[REDACTED]
12.	Item (l) of Appendix A to this Independent Certifier Agreement	\$[REDACTED]
13.	Item (m) of Appendix A to this Independent Certifier Agreement	\$[REDACTED]
14.	Item (n) of Appendix A to this Independent Certifier Agreement	\$[REDACTED]
15.	Item (o) of Appendix A to this Independent Certifier Agreement	\$[REDACTED]
16.	Item (p) of Appendix A to this Independent Certifier Agreement	\$[REDACTED]
17.	Item (q) of Appendix A to this Independent Certifier Agreement	\$[REDACTED]

18.	Item (r) of Appendix A to this Independent Certifier Agreement	\$[REDACTED]
	TOTAL FIXED FEE	\$[REDACTED] (excluding item ‘s’)

The fee for all Certification Services (other than the Certification Services identified at item (s) of Appendix A of this Independent Certifier Agreement) will be payable monthly in arrears, subject to the PA Parties receiving invoices reflecting the Certification Services which is in form and substance satisfactory to the PA Parties and subject to (i) the fee for all Certification Services (other than the Certification Services identified in item (s) of Appendix A to this Independent Certifier Agreement) not exceeding, in aggregate, the **Total Fixed Fee of Canadian \$[REDACTED]** (the “**Total Fixed Fee**”), and (ii) the fee for each individual Certification Service identified in items (a) through (and including) (r) of Appendix A to this Independent Certifier Agreement not exceeding, individually, the fee set forth above in respect of such individual Certification Service.

2. Hourly Rate for Certification Services Contemplated in Item (s) of Appendix A to the Independent Certifier Agreement for each Independent Certifier team member

TEAM MEMBER	HOURLY RATE
Director – Senior	\$[REDACTED] Dollars Canadian/hour excluding HST
Consultant – Technical Specialist	\$[REDACTED] Dollars Canadian/hour excluding HST
Consultant – Technical Support	\$[REDACTED] Dollars Canadian/hour excluding HST
Administration	\$[REDACTED] Dollars Canadian/hour excluding HST

The fee for the Certification Services identified in item (s) of Appendix A of this Independent Certifier Agreement will be payable monthly in arrears, subject to the PA Parties receiving invoices reflecting the performance of such Certification Services which is in form and substance satisfactory to the PA Parties.

3. Disbursements and Travel Related Expenses

Total Fixed Fee and Hourly Rates shall be all inclusive and include all labour and materials, insurance costs, disbursements (examples: duplicating, delivery and communications) and all other overhead including any fees or other charges required by law.

Project Co and HMQ shall not reimburse the vendor for any hospitality, food or incidental expenses incurred. If applicable and subject to prior approval, Project Co and HMQ shall reimburse the vendor for reasonable traveling expenses incurred in connection with the performance of the Services, such reimbursement to be made in accordance with the Government of Ontario’s Travel, Meal, and Hospitality Expenses Directive.

The aggregate of all disbursements and expenses shall not exceed [REDACTED]% of the total contract value.

APPENDIX C

INDEPENDENT CERTIFIER PERSONNEL

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

Name	Title / Role
[REDACTED]	Team Lead
[REDACTED]	Team Lead (Back-up)
[REDACTED]	Certification Manager
[REDACTED]	Technical Expert (Structures)
[REDACTED]	Scheduling / Dispute Resolution

APPENDIX D

CONDUCT OF CLAIMS

This Appendix D shall apply to the conduct of claims, made by a third person against a party having, or claiming to have, the benefit of an indemnity pursuant to this Independent Certifier Agreement. The party having, or claiming to have, the benefit of the indemnity is referred to as the “**Beneficiary**” and a party giving the indemnity is referred to as an “**Indemnifier**”.

- (1) If the Beneficiary receives any notice, demand, letter or other document concerning any claim for which it appears that the Beneficiary is, or may become entitled to, indemnification under Section 11 of the Independent Certifier Agreement, the Beneficiary shall give written notice to each Indemnifier potentially obligated in respect thereof, as soon as reasonably practicable and in any event within 10 Business Days of receipt of the same. Such notice shall specify with reasonable particularity, to the extent that information is available, the factual basis for the claim and the amount of the claim.
- (2) Subject to Sections (3), (4) and (5) of this Appendix D, on the giving of such notice by the Beneficiary, where it appears that the Beneficiary is or may be entitled to indemnification from an Indemnifier in respect of all, but not part only, of the liability arising out of the claim, such Indemnifier shall (subject to providing the Beneficiary with a secured indemnity to the Beneficiary’s reasonable satisfaction against all costs and expenses that the Beneficiary may incur by reason of such action) be entitled to dispute the claim in the name of the Beneficiary at the Indemnifier’s own expense and take conduct of any defence, dispute, compromise, or appeal of the claim and of any incidental negotiations. The Beneficiary shall give such Indemnifier all reasonable cooperation, access and assistance for the purposes of considering and resisting such claim. The Beneficiary shall have the right to employ separate counsel in respect of such claim and the reasonable fees and expenses of such counsel shall be to the account of the Indemnifier only where representation of both the Indemnifier and the Beneficiary by common counsel would be inappropriate due to any actual or potential conflicting interests between the Indemnifier and the Beneficiary. If and to the extent that both HMQ 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 this Section (3) relates.
- (4) The Beneficiary shall be free to pay or settle any such claim on such terms as it thinks fit and without prejudice to its rights and remedies under this Independent Certifier Agreement if:

- (i) none of the Indemnifiers is entitled to take conduct of the claim in accordance with Section (2);
 - (ii) none of the Indemnifiers notifies the Beneficiary of its intention to take conduct of the relevant claim as soon as reasonably practicable and in any event within 10 Business Days of the notice from the Beneficiary under Section (1) or each of the Indemnifiers notifies the Beneficiary that it does not intend to take conduct of the claim; or
 - (iii) none of the Indemnifiers complies in any material respect with Section (3).
- (5) The Beneficiary shall be free at any time to give notice to the applicable Indemnifier that the Beneficiary is retaining or taking over, as the case may be, the conduct of any defence, dispute, compromise or appeal of any claim, or of any incidental negotiations, to which Section (2) applies. For greater certainty, the Independent Certifier acknowledges and agrees that where HMQ is the Beneficiary, HMQ may retain or take over such conduct in any matter involving Personal Information (as it is defined in the Project Agreement) or any matter involving public policy. On receipt of such notice 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 this Section (5), 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.

SCHEDULE 9

KEY INDIVIDUALS

A. Key Individuals – Initial Works

Project Co Party	Position/Function	Name and Contact Information
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

B. Key Individuals – OM&R Work

Project Co Party	Position/Function	Name and Contact Information
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

C. Key Individuals – Initial Works and OM&R Work

Project Co Party	Position/Function	Name and Contact Information
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]r	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

SCHEDULE 10**REVIEW PROCEDURE****PART A – INITIAL WORKS****1. WORKS SUBMITTALS**

- 1.1** The provisions of Part A of this Schedule 10 shall apply to the Design Development Submittals, the Construction Document Submittals, the Design Data and any and all items, documents and anything else required or specified by this Project Agreement, including all Works Submittals listed in Appendix A to this Schedule 10, in respect of the Initial Works to be submitted to, reviewed or otherwise processed by HMQ in accordance with the Review Procedure prior to or after Section Substantial Completion of each of the Crossing Roads Section and the Main Line Section and Substantial Completion in respect of the completion of Minor Deficiencies, including any and all subsequent revisions, amendments and changes thereto (collectively and individually, “**Works Submittal**” or “**Works Submittals**” as applicable in Part A of this Schedule 10).

2. SCHEDULE FOR WORKS SUBMITTALS

- 2.1** The Works Schedule shall provide for a progressive and orderly flow of Works Submittals from Project Co to the HMQ Representative to allow sufficient time for review of each Works Submittal by the HMQ Representative taking into account both the resources necessary to be available to the HMQ Representative to conduct such review and whether delay in the review of the subject matter of the Works Submittal shall have a material impact on Project Co’s ability to progress future anticipated Works Submittals and the Initial Works in accordance with the Works Schedule.
- 2.2** The Works Schedule and any amendment to the Works Schedule shall allow a period of 10 Business Days (or such longer period as the Parties may agree) from the date of receipt for review of and response to each Works Submittal, provided that if Project Co has made major changes to the grouping and volume of Works Submittals, such period of time shall be adjusted by Project Co, acting reasonably, taking into account the factors set forth in Section 2.1 of this Schedule 10.
- 2.3** Project Co shall, in scheduling Works Submittals and in the performance of the Project Operations, allow adequate time prior to performing the Project Operations that are the subject of the Works Submittals, for review of the Works Submittals and for Project Co to make changes to Works Submittals that may be required if comments are received on the Works Submittals, such review and required changes to be in accordance with Part A of this Schedule 10.
- 2.4** If the Works Schedule indicates that a large number of Works Submittals will be made at one time, the HMQ Representative may, at the HMQ Representative’s discretion, request a longer period for review or a staggering of the Works Submittals, and Project Co shall review and revise the Works Schedule accordingly, taking into account both the resources necessary to be available to the HMQ Representative to conduct such review and whether delay in the review of the subject matter of the Works Submittal shall have a material impact on Project Co’s ability to progress future anticipated Works Submittals and the Initial Works in accordance with the Works Schedule.

- 2.5** Project Co shall submit all Works Submittals to HMQ in accordance with the current Works Schedule.

3. GENERAL REQUIREMENTS FOR WORKS SUBMITTALS

- 3.1** Unless otherwise specified by the HMQ Representative, Project Co shall issue 3 printed copies of all Works Submittals to HMQ, together with an electronic copy in a format agreed by the Parties acting reasonably and one printed copy of each Works Submittal to the Independent Certifier.
- 3.2** Project Co shall compile and maintain a register of the date and contents of the submission of all Works Submittals and the date of receipt and content of all returned Works Submittals and comments thereon.
- 3.3** All Works Submittals shall be in English.
- 3.4** All Works Submittals required by this Project Agreement or by Applicable Law to be signed or sealed by persons with professional designations (including, where applicable, by registered professional engineers or architects) shall, where applicable, be so signed and sealed.
- 3.5** All Works Submittals shall include copies of all documents to be reviewed and shall clearly identify the purpose of the Works Submittal and Project Co's proposed course of action relating to the Works Submittal and the Project Operations that are the subject of the Works Submittal.
- 3.6** All Works Submittals shall, where applicable, refer to the relevant provisions of the Output Specifications, any other applicable Schedule to the Project Agreement and to any Design Data that has previously been subject to review.
- 3.7** All Works Submittals shall be clearly identified as a Works Submittal and shall be delivered with appropriate covering documentation, which shall include a list of all attached Works Submittals and for each Works Submittal:
- (a) the document number(s) or drawing number(s);
 - (b) revision numbers (if applicable);
 - (c) document or drawing title(s);
 - (d) name of entity that prepared the Works Submittal;
 - (e) the Works Submittal history showing date and delivery information and/or log number of all previous submissions of that Works Submittal; and
 - (f) identification of any previous Works Submittal superseded by the current Works Submittal.

4. COMMENTS

- 4.1** The HMQ Representative shall review and respond to each Works Submittal in accordance with the time periods specified in Section 2.2 of this Schedule 10. The HMQ Representative shall

return Works Submittals to Project Co with a copy to the Independent Certifier and assign one of the following 3 comments:

- (a) “REVIEWED”;
- (b) “REVIEWED AS NOTED”; or
- (c) “REJECTED”.

- 4.2** The comment “REVIEWED” will be assigned to those Works Submittals that, in the opinion of the HMQ Representative, conform to the requirements of this Project Agreement. Project Co shall comply with and implement such Works Submittals.
- 4.3** The comment “REVIEWED AS NOTED” will be assigned to those Works Submittals that, in the opinion of the HMQ Representative, generally conform to the requirements of this Project Agreement, but in which immaterial deficiencies have been found by the HMQ Representative’s review. Project Co shall correct these Works Submittals and provide a copy of the corrected Works Submittals to the HMQ Representative. Project Co shall comply with and implement such Works Submittals after correction, including in accordance with the comments. If at any time it is discovered that Project Co has not corrected the deficiencies on Works Submittals stamped “REVIEWED AS NOTED”, then Project Co will be required to modify the Works Submittals and Project Operations, including the Extension if applicable, as required to ensure that the Initial Works comply with the Output Specifications, any other applicable Schedule to the Project Agreement, and the Project Co Proposal Extracts and Project Co may be required, at the HMQ Representative’s discretion, to resubmit relevant Works Submittals. In such circumstances the HMQ Representative shall act promptly in considering whether such deficiencies have been corrected. No extension of time will be given or additional compensation paid in respect of any such modification or re-submittal.
- 4.4** The comment “REJECTED” will be assigned to those Works Submittals that, in the opinion of the HMQ Representative, contain significant deficiencies or do not generally conform with the requirements of this Project Agreement, including this Schedule 10. Project Co shall correct and re-submit these Works Submittals within 10 Business Days after the comment has been provided to Project Co, or such longer period as Project Co may reasonably require, and (unless the Works Submittal is re-submitted within 5 Business Days) shall give the HMQ Representative not less than 5 Business Days’ notice of when the Works Submittals shall be resubmitted. The HMQ Representative will then review such re-submitted Works Submittals and assign a comment to the corrected Works Submittal. The Works Submittals shall be corrected, revised and resubmitted as often as may be required to obtain a comment that permits Project Co to proceed. No extension of time will be given or additional compensation paid in respect of any such modification or re-submittal.
- 4.5** Where the HMQ Representative issues the comment “REVIEWED AS NOTED” or “REJECTED”, the HMQ Representative shall provide reasons for the comment, referencing the particulars of the Section(s) of this Project Agreement that the Works Submittal fails to satisfy, and, if requested by the Project Co Representative, the HMQ Representative shall meet with the Project Co Representative to discuss the reasons for the comment.

- 4.6** If, at any time after assigning any comment to a Works Submittal, the HMQ Representative or Project Co discovers any significant deficiencies or any failure to conform to the requirements of this Project Agreement, the HMQ Representative may revise the comment assigned to any Works Submittal. If the Parties agree or it is determined in accordance with Section 5 of this Schedule 10 that the revised comment is correct, Project Co shall make all such corrections to the Works Submittals and the Project Operations. No extension of time will be given or additional compensation paid in respect of any such modification or re-submittal.
- 4.7** For the purpose of facilitating and expediting the review and correction of Works Submittals, the HMQ Representative and the Project Co Representative shall meet as may be mutually agreed to discuss and review any outstanding Works Submittals and any comments thereon.
- 4.8** Where a Works Submittal is voluminous, the HMQ Representative at his or her discretion may elect to stamp only the cover page or first sheet of the Works Submittal with the appropriate comment, if any, and return to Project Co the cover page or first page together with individual pages or sheets on which comments are made, together with an explanation of the status of all pages not returned to Project Co. Any pages returned without such an explanation as to their status shall be deemed to be “REVIEWED” by HMQ.
- 4.9** In lieu of returning a Works Submittal, the HMQ Representative may by letter notify Project Co of the comment assigned to the Works Submittal and if such comment is “REVIEWED AS NOTED” or “REJECTED” the letter shall contain comments in sufficient detail for Project Co to identify the correction sought.

5. DISPUTES

- 5.1** If Project Co disputes any act of HMQ or the HMQ Representative in respect of a Works Submittal under this Part A, Project Co shall promptly notify the HMQ Representative and the Independent Certifier of the details of such Dispute and shall submit the reasons why Project Co believes a different comment should be assigned, together with appropriate supporting documentation. The HMQ Representative shall review the Works Submittal, the reasons and supporting documentation and within 5 Business Days after receipt thereof shall either confirm the original comment or notify Project Co of a revised comment. If the HMQ Representative confirms the original comment, Project Co may request the Independent Certifier to resolve the Dispute and render a decision within 5 Business Days of such request.
- 5.2** If either Party is not satisfied, acting reasonably, with the resolution of the Independent Certifier, subject to Section 10.2 of this Schedule 10, either Party may refer the matter for determination in accordance with Schedule 27 - Dispute Resolution Procedure.
- 5.3** Notwithstanding the provisions of Sections 5.1 and 5.2, HMQ may direct that Project Co to revise the Works Submittals in accordance with the comments of HMQ and proceed to perform and complete the Initial Works on the basis of such revised Works Submittals. For clarity, such direction shall be considered a Dispute and Project Co may proceed in accordance with Section 58 and Schedule 27 - Dispute Resolution Procedure of the Project Agreement.

6. EFFECT OF REVIEW

- 6.1** Any review and comment by HMQ or the HMQ Representative of any Works Submittals is for general conformity to the obligations and requirements of this Project Agreement, and any such review and comment shall not relieve Project Co of the risk and responsibility for the Project Operations and for meeting all of its obligations under and requirements of this Project Agreement, and shall not create any new or additional obligations or liabilities for HMQ. 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 Initial Works under this Project Agreement or exclude or limit HMQ's rights in respect of the Initial Works under this Project Agreement.

7. WORKS SUBMITTAL EXPLANATION

- 7.1** At any time, the HMQ Representative may, acting reasonably, require Project Co or any Project Co Parties, including Project Co's consultants and any other relevant personnel, at no additional cost to HMQ, to explain to the HMQ Representative and HMQ's advisors the intent of Project Co's Works Submittals, including in relation to any design and any associated documentation and as to its satisfaction of the Output Specifications or any other Schedule to the Project Agreement, as applicable.

8. REVISIONS

- 8.1** Project Co shall ensure that Works Submittals keep the same, unique reference number throughout the review process, and that subsequent revisions of the same Works Submittal are identified by a sequential revision number. Correspondence related to such Works Submittal shall reference the reference number and revision number.
- 8.2** Re-submittals shall clearly show all revisions from the previous Works Submittal. Bound documents, including reports and manuals, shall contain a preface that clearly states how revisions are marked and the previous revision number against which the revisions have been marked. A consistent format for mark-ups of documents shall be used (e.g. deletions struck out and additions underscored). Revised portions of drawings shall be clearly marked (with appropriate means to visually distinguish between the parts of the drawing that are revised and the parts that are not revised) and the revision number and description of the revision shall be included on the drawing.
- 8.3** All revisions on print media shall be initialled by hand by the individual designer, design checker and, where applicable, by the drafter and the drafting checker and shall identify the persons who initialled the Works Submittal. Electronic versions of the Works Submittal shall identify the persons who initialled the revisions to the printed version of the Works Submittal. All such revisions must be able to be integrated into the As Built Drawings.
- 8.4** Project Co shall keep all Design Data current. If any Design Data is revised as part of a Works Submittal, all other Design Data relying on or based on that Design Data shall also be revised accordingly. All such revised Design Data shall also be submitted with the Works Submittal to which it relates.

9. AUDIT BY THE HMQ REPRESENTATIVE

- 9.1** Without limiting any other right under this Project Agreement, the HMQ Representative shall have the right to audit all Works Submittals, including comparing all Works Submittals to previous Works Submittals.
- 9.2** If during an audit or at any other time it is discovered by HMQ or Project Co (or resolved pursuant to Section 9.3 of this Schedule 10) that any Works Submittals were not correctly implemented, Project Co shall at its sole cost immediately take all necessary steps to correct and modify the applicable Works Submittals and the Project Operations to which they relate and shall advise the HMQ Representative of all such corrections and modifications.
- 9.3** Any Dispute concerning the implementation of a Works Submittal, subject to Section 5.1 of this Schedule 10, shall be referred in the first instance to the Independent Certifier for resolution.

10. VARIATIONS

- 10.1** No alteration or modification to the design, quality and quantity of the Project Operations arising from the development of detailed design or from the co-ordination of the design in connection with any Works Submittal shall be construed or regarded as a Variation.
- 10.2** If, having received comments from the HMQ Representative on any Works Submittal, Project Co considers that compliance with those comments would amount to a Variation, Project Co shall, within 10 Business Days of receipt of and before complying with the comments, provide written notice to HMQ of the same and, if it is agreed by the Parties that a Variation would arise if the comments were complied with, HMQ may, at its election, (a) issue a Variation Enquiry and it shall be dealt with in accordance with Schedule 22 - Variation Procedure or (b) amend its comment on the Works Submittal. If the Parties do not agree that a Variation would arise if the comments were complied with, either party may proceed to resolve the matter in accordance with Section 5.3 of this Schedule 10 including for clarity, the exercise by HMQ of its rights under Section 5.3 of this Schedule 10. Subject to the foregoing sentence, any failure by Project Co to notify HMQ in accordance with this Section 10.2 that Project Co considers compliance with any comments of the HMQ Representative would amount to a Variation shall constitute an irrevocable acceptance by Project Co that any compliance with the HMQ Representative's comments shall be without cost to HMQ and without any extension of time.

SCHEDULE 10**REVIEW PROCEDURE****PART B – OPERATIONAL PERIOD****11. OM&R SUBMITTALS**

- 11.1** The provisions of Part B of this Schedule 10 shall apply to any and all items, documents and anything else required or specified by this Project Agreement, other than the Design Development Submittals, the Construction Document Submittals and the Design Data, to be submitted to, reviewed or otherwise processed by HMQ in accordance with the Review Procedure in respect of the Main Line Section or the West Durham Link Section, after Section Substantial Completion of the Main Line Section or the West Durham Link Section, respectively, and in respect of the entire Extension, after Substantial Completion, except in respect of the completion of Minor Deficiencies, including any and all subsequent revisions, amendments and changes thereto (collectively and individually, “OM&R Submittal” or “OM&R Submittals” as applicable in Part B of this Schedule 10).
- 11.2** Project Co shall allow a period of 10 Business Days (or such longer period as the Parties may agree) from the date of receipt for review of and response to each OM&R Submittal.
- 11.3** Project Co shall, in scheduling OM&R Submittals and in the performance of the Project Operations, allow adequate time prior to performing the Project Operations that are the subject of the OM&R Submittals, for review of the OM&R Submittals and for Project Co to make changes to OM&R Submittals that may be required if comments are received on the OM&R Submittals, such review and required changes to be in accordance with Part B of this Schedule 10.

12. GENERAL REQUIREMENTS FOR OM&R SUBMITTALS

- 12.1** Unless otherwise specified by the HMQ Representative, Project Co shall issue 3 printed copies of all OM&R Submittals to HMQ, together with an electronic copy in a format agreed by the Parties acting reasonably.
- 12.2** Project Co shall compile and maintain a register of the date and contents of the submission of all OM&R Submittals and the date of receipt and content of all returned OM&R Submittals and comments thereon.
- 12.3** All OM&R Submittals shall be in English.
- 12.4** All OM&R Submittals required by this Project Agreement or by Applicable Law to be signed or sealed by persons with professional designations (including, where applicable, by registered professional engineers or architects) shall, where applicable, be so signed and sealed.
- 12.5** All OM&R Submittals shall include copies of all documents to be reviewed and shall clearly identify the purpose of the OM&R Submittal and Project Co’s proposed course of action relating to the OM&R Submittal and the Project Operations that are the subject of the OM&R Submittal.

- 12.6** All OM&R Submittals shall, where applicable, refer to the relevant provisions of the Output Specifications and/or any other applicable Schedule to the Project Agreement.
- 12.7** All OM&R Submittals shall be clearly identified as an OM&R Submittal and shall be delivered with appropriate covering documentation, which shall include a list of all attached OM&R Submittals and for each OM&R Submittal:
- (a) the document number(s) or drawing number(s);
 - (b) revision numbers (if applicable);
 - (c) document or drawing title(s);
 - (d) name of entity that prepared the OM&R Submittal;
 - (e) the OM&R Submittal history showing date and delivery information and/or log number of all previous submissions of that OM&R Submittal; and
 - (f) identification of any previous OM&R Submittal superseded by the current OM&R Submittal.

13. COMMENTS

- 13.1** The HMQ Representative shall review and respond to each OM&R Submittal in accordance with the time periods specified in Section 11.2 of this Schedule 10. The HMQ Representative shall return OM&R Submittals to Project Co and assign one of the following 3 comments:
- (a) “REVIEWED”;
 - (b) “REVIEWED AS NOTED”; or
 - (c) “REJECTED”.
- 13.2** The comment “REVIEWED” will be assigned to those OM&R Submittals that, in the opinion of the HMQ Representative, conform to the requirements of this Project Agreement. Project Co shall comply with and implement such OM&R Submittals.
- 13.3** The comment “REVIEWED AS NOTED” will be assigned to those OM&R Submittals that, in the opinion of the HMQ Representative, generally conform to the requirements of this Project Agreement, but in which immaterial deficiencies have been found by the HMQ Representative’s review. Project Co shall correct these OM&R Submittals and provide a copy of the corrected OM&R Submittals to the HMQ Representative. Project Co shall comply with and implement such OM&R Submittals after correction, including in accordance with the comments. If at any time it is discovered that Project Co has not corrected the deficiencies on OM&R Submittals stamped “REVIEWED AS NOTED”, then Project Co will be required to modify the OM&R Submittals and Project Operations as required to ensure that the Project Operations comply with the Output Specifications and Project Co may be required, at the HMQ Representative’s discretion, to resubmit relevant OM&R Submittals. In such circumstances the HMQ Representative shall act promptly in considering whether such deficiencies have been corrected.

No extension of time will be given or additional compensation paid in respect of any such modification or re-submittal.

- 13.4** The comment “REJECTED” will be assigned to those OM&R Submittals that, in the opinion of the HMQ Representative, contain significant deficiencies or do not generally conform with the requirements of this Project Agreement, including this Schedule 10. Project Co shall correct and re-submit these OM&R Submittals within 10 Business Days after the comment has been provided to Project Co, or such longer period as Project Co may reasonably require, and (unless the OM&R Submittal is re-submitted within 5 Business Days) shall give the HMQ Representative not less than 5 Business Days’ notice of when the OM&R Submittals shall be resubmitted. The HMQ Representative will then review such re-submitted OM&R Submittals and assign a comment to the corrected OM&R Submittal. The OM&R Submittals shall be corrected, revised and resubmitted as often as may be required to obtain a comment that permits Project Co to proceed. No extension of time will be given or additional compensation paid in respect of any such modification or re-submittal.
- 13.5** Where the HMQ Representative issues the comment “REVIEWED AS NOTED” or “REJECTED”, the HMQ Representative shall provide reasons for the comment, referencing the particulars of the Section(s) of this Project Agreement that the OM&R Submittal fails to satisfy, and, if requested by the Project Co Representative, the HMQ Representative shall meet with the Project Co Representative to discuss the reasons for the comment.
- 13.6** If, at any time after assigning any comment to an OM&R Submittal, the HMQ Representative or Project Co discovers any significant deficiencies or any failure to conform to the requirements of this Project Agreement, the HMQ Representative may revise the comment assigned to any OM&R Submittal. If the Parties agree or it is determined in accordance with Section 14 of this Schedule 10 that the revised comment is correct, Project Co shall make all such corrections to the OM&R Submittals and the Project Operations. No extension of time will be given or additional compensation paid in respect of any such modification or re-submittal.
- 13.7** For the purpose of facilitating and expediting the review and correction of OM&R Submittals, the HMQ Representative and the Project Co Representative shall meet as may be mutually agreed to discuss and review any outstanding OM&R Submittals and any comments thereon.
- 13.8** Where a OM&R Submittal is voluminous, the HMQ Representative at his or her discretion may elect to stamp only the cover page or first sheet of the OM&R Submittal with the appropriate comment, if any, and return to Project Co the cover page or first page together with individual pages or sheets on which comments are made, together with an explanation of the status of all pages not returned to Project Co. Any pages returned without such an explanation as to their status shall be deemed to be “REVIEWED” by HMQ.
- 13.9** In lieu of returning an OM&R Submittal, the HMQ Representative may by letter notify Project Co of the comment assigned to the OM&R Submittal and if such comment is “REVIEWED AS NOTED” or “REJECTED” the letter shall contain comments in sufficient detail for Project Co to identify the correction sought.

14. DISPUTES

14.1 If Project Co disputes any act of HMQ or the HMQ Representative in respect of an OM&R Submittal under this Part B, Project Co shall promptly notify the HMQ Representative of the details of such Dispute and shall submit the reasons why Project Co believes a different comment should be assigned, together with appropriate supporting documentation. The HMQ Representative shall review the OM&R Submittal, the reasons and supporting documentation and within 5 Business Days after receipt thereof shall either confirm the original comment or notify Project Co of a revised comment.

14.2 If after such review by the HMQ Representative Project Co disputes the comment on an OM&R Submittal, subject to Section 19.1 of this Schedule 10 Project Co may refer the matter for determination in accordance with Schedule 27 - Dispute Resolution Procedure.

15. EFFECT OF REVIEW

15.1 Any review and comment by HMQ or the HMQ Representative of any OM&R Submittals is for general conformity to the obligations and requirements of this Project Agreement, and any such review and comment shall not relieve Project Co of the risk and responsibility for the Project Operations and for meeting all of its obligations under and requirements of this Project Agreement, and shall not create any new or additional obligations or liabilities for HMQ. Without limiting the generality of the foregoing any and all errors or omissions in OM&R Submittals or of any review and comment shall not exclude or limit Project Co's obligations or liabilities under this Project Agreement in respect of matters related to the OM&R Submittal or exclude or limit HMQ's rights under this Project Agreement in respect of matters related to the OM&R Submittal.

16. OM&R SUBMITTAL EXPLANATION

16.1 At any time, the HMQ Representative may, acting reasonably, require Project Co or any Project Co Parties, including Project Co's consultants and any other relevant personnel, at no additional cost to HMQ, to explain to the HMQ Representative and HMQ's advisors the intent of Project Co's OM&R Submittals, including as to its satisfaction of the Output Specifications.

17. REVISIONS

17.1 Project Co shall ensure that OM&R Submittals keep the same, unique reference number throughout the review process, and that subsequent revisions of the same OM&R Submittal are identified by a sequential revision number. Correspondence related to such OM&R Submittal shall reference the reference number and revision number.

17.2 Re-submittals shall clearly show all revisions from the previous OM&R Submittal. Bound documents, including reports and manuals, shall contain a preface that clearly states how revisions are marked and the previous revision number against which the revisions have been marked. A consistent format for mark-ups of documents shall be used (e.g. deletions struck out and additions underscored). Revised portions of drawings shall be clearly marked (with appropriate means to visually distinguish between the parts of the drawing that are revised and the parts that are not revised) and the revision number and description of the revision shall be included on the drawing.

- 17.3** All revisions on print media shall be initialled by hand by the individual designer, design checker and, where applicable, by the drafter and the drafting checker and shall identify the persons who initialled the OM&R Submittal. Electronic versions of the OM&R Submittal shall identify the persons who initialled the revisions to the printed version of the OM&R Submittal.

18. AUDIT BY THE HMQ REPRESENTATIVE

- 18.1** Without limiting any other right under this Project Agreement, the HMQ Representative shall have the right to audit all OM&R Submittals, including comparing all OM&R Submittals to previous OM&R Submittals.
- 18.2** If during an audit or at any other time it is discovered by HMQ or Project Co that any OM&R Submittals were not correctly implemented, Project Co shall at its sole cost immediately take all necessary steps to correct and modify the applicable OM&R Submittals and the Project Operations to which they relate and shall advise the HMQ Representative of all such corrections and modifications.

19. VARIATIONS

- 19.1** If, having received comments from the HMQ Representative on any OM&R Submittal, Project Co considers that compliance with those comments would amount to a Variation, Project Co shall, within 10 Business Days of receipt of and before complying with the comments, provide written notice to HMQ of the same and, if it is agreed by the Parties, or is determined pursuant to Schedule 27 - Dispute Resolution Procedure, that a Variation would arise if the comments were complied with, HMQ may at its election, either issue a Variation Enquiry and it shall be dealt with in accordance with Schedule 22 - Variation Procedure or amend its comment on the OM&R Submittal. Any failure by Project Co to notify HMQ in accordance with this Section 19.1 that Project Co considers compliance with any comments of the HMQ Representative would amount to a Variation shall constitute an irrevocable acceptance by Project Co that any compliance with the HMQ Representative's comments shall be without cost to HMQ and without any extension of time.

APPENDIX A**MINIMUM DESIGN AND CONSTRUCTION****SUBMITTAL REQUIREMENTS****1. TECHNICAL APPRAISAL FORMS****1.1 Submission Requirements**

- (a) Each Final Design Development Submittal and Construction Document Submittal package submitted by Project Co shall be accompanied by a completed Technical Appraisal Form (TAF).
- (b) In any case where submitted Design Data involves any mechanical or electrical and/or intelligent transportation system functions, or similar specialization, Project Co shall submit to the HMQ Representative in accordance with the Review Procedure a TAF in respect of such data and functions.
- (c) In any case where the Works involves the complete or partial demolition of an existing Structure, Project Co shall submit to the HMQ Representative in accordance with the Review Procedure a TAF in respect of such complete or partial demolition.

1.2 TAF Form and Content

Each TAF submitted by Project Co pursuant to Section 1.1 of this Appendix A shall be in the format shown in Attachment 1 - Sample Contents for a Structural TAF to this Schedule and shall:

- (a) for Final Design Development Submittals, include the relevant design criteria, environmental and ground considerations, and interface requirements, together with a listing of the design documentation included in the design package; and
- (b) be signed by:
 - (i) the Project Co Representative; and
 - (ii) the designer(s) and constructor(s), or their respective principal(s), as necessary.

1.3 TAF Variation

Any variation to a TAF which has been subject to the Review Procedure during design, assessment or any Construction Activity shall be submitted in accordance with the Review Procedure as an addendum to the TAF.

2. DESIGN SUBMISSIONS, REVIEW AND REPORTS

2.1 Format of Design Submissions

- (a) Project Co shall provide two hard copies and one electronic copy of each Pre-final Design Development Submittal and Final Design Development Submittal.
- (b) Drawings shall be in a format in accordance with the requirements of MTO standards. Project Co shall confirm drawing conventions and standards, including AutoCAD and InRoads standards, title block and stationing convention, with the HMQ Representative prior to commencing design drawing production.
- (c) Drawings for the New Municipal Infrastructure to be constructed by Project Co shall be in accordance with the applicable standards of the relevant municipality.

2.2 Pre-final and Final Design Review

Final designs from all design disciplines shall be submitted to the HMQ Representative in accordance with the Review Procedure and shall consist of the relevant TAF(s) together with all final design drawings, supporting Design Data and calculations required in accordance with this Appendix A.

2.3 Objection to Design Data

If the HMQ Representative objects to any Design Data in accordance with the Review Procedure, the HMQ Representative shall so notify Project Co and Project Co shall, unless Project Co disputes the objection by the HMQ Representative to such Design Data in accordance with the Dispute Resolution Procedure, either:

- (a) cause to be made such alterations and additions as may be necessary such that the Design Data accords with the project requirements and all other requirements of this Project Agreement, all in accordance with the Review Procedure; or
- (b) subject to the other provisions of this Project Agreement, submit an Innovation Proposal.

2.4 Issued for Construction Drawings

Project Co shall submit copies of all drawings that are “issued for construction”, together with manuals, instructions to the Construction Contractor and other relevant information as requested by the HMQ Representative, to the HMQ Representative and to the Independent Certifier.

2.5 Temporary Works

- (a) As a minimum, design submissions for Temporary Works shall include those items intended for public use and/or potentially affecting public safety. Final designs for these Temporary Works shall be submitted to the HMQ Representative in accordance with the Review Procedure.

- (b) Design Data relating to any Temporary Works shall be checked as follows:
 - (i) any such Design Data prepared by or on behalf of the Construction Contractor requires an independent check by the designer; and
 - (ii) any such Design Data prepared by the designer requires an independent check by a Checking Team which may be from the designer but shall be independent of the Design Team.
- (c) In performing the check referred to in paragraph (a) above, the designer shall satisfy itself that:
 - (i) the Design Data meets the project requirements and otherwise complies with the requirements of the Project Agreement;
 - (ii) the Temporary Works (as a whole and the constituent parts) are satisfactory for the safe and proper discharge of Project Co's relevant obligations; and
 - (iii) the Design Data reflects the requirements of the relevant governmental authorities for all affected highways or other roads or areas used by or accessible to the public other than the New Extension Infrastructure.
- (d) Where any Temporary Works may endanger public safety on other road or area used by or accessible to the public other than the New Extension Infrastructure, Project Co shall consult the relevant governmental authority and the Design Data shall reflect the requirements of such authority.

3. FINAL DESIGN DEVELOPMENT SUBMITTALS

3.1 General

- (a) Final Design Development Submittals shall be prepared and shall have indexes and sectional dividers. The design folders shall contain pertinent correspondence, shall be arranged by subject matter in chronological order, and shall include design calculations and backup information. Design submissions shall include, without limitation, copies of all approvals, design reports, correspondence and calculations.
- (b) Final design drawings and reports shall be signed and sealed by the responsible engineer, who shall be a duly experienced Professional Engineer of an appropriate discipline.

3.2 Roadway Design

The Final Design Development Submittals shall, without limitation:

- (a) contain all signed and sealed drawings, including complete laning and geometrics, profiles, typical and template cross-sections, and drainage;
- (b) address any comments of the HMQ Representative from the Design Review Meetings, internal design reviews, quality control, and design reports; and

- (c) include revisions, stakeholder issues, plans for utility relocations, critical constructability and traffic handling considerations, environmental issues and mitigation plans.

3.3 Drainage Design

The Final Design Development Submittals shall, without limitation:

- (a) contain all signed and sealed drainage drawings
- (b) include a stormwater management plan and drainage design report;
- (c) address any comments of the HMQ Representative from the Design Review Meetings, internal design reviews, quality control, and design reports; and
- (d) include revisions, stakeholder issues, environmental issues and mitigation plans.

3.4 Structures, Culvert, Submerged Culverts, and Overhead Sign Support Structure

The Final Design Development Submittals shall contain, without limitation, the following:

- (a) all design drawings;
- (b) a geotechnical report for the Structures;
- (c) environmental mitigation/compensation plans;
- (d) resolution of all issues identified during Pre-final Design Development Submittal reviews;
- (e) any special provisions for the construction of the Structures (including deck replacement methodology for new Structures);
- (f) a neat, bound, indexed set of design calculations for the Structures initialled by the responsible engineer, who shall be a duly experienced Professional Engineer of the appropriate discipline;
- (g) for proprietary precast Culverts the responsible engineer, who shall be a duly experienced Professional Engineer of the appropriate discipline shall certify the design and construction of the precast Culverts; and
- (h) for proprietary pedestrian bridges the responsible engineer, who shall be a duly experienced Professional Engineer of the appropriate discipline shall certify the design and construction of the pedestrian bridges.

3.5 Retaining Wall Design

- (a) The Final Design Development Submittals shall contain, without limitation, the following:

- (i) final geotechnical foundation report for the walls;
 - (ii) descriptions of aesthetic treatment for all walls;
 - (iii) descriptions of maintenance considerations for walls;
 - (iv) resolution of all issues identified during Pre-final Design Development Submittals reviews;
 - (v) all final design drawings; and
 - (vi) a neat, bound, indexed set of design calculations for the walls initialled by the responsible engineer, who shall be a duly experienced Professional Engineer of the appropriate discipline.
- (b) For proprietary retaining walls, the responsible engineer, who shall be a duly experienced Professional Engineer of the appropriate discipline, shall certify the design and construction of the retaining walls.

3.6 Geotechnical Foundation Design

- (a) For the Final Design Development Submittals Project Co shall prepare a comprehensive geotechnical report for the Project that covers existing geotechnical information and known site conditions, new investigations performed for the Project, geotechnical engineering analysis, geotechnical design assumptions and design parameters (and the basis for these) and geotechnical design recommendations. The report shall be submitted to the HMQ Representative at the pre-final design completion level and updated and resubmitted with final design.
- (b) In addition, the Final Design Development Submittals shall, without limitation, contain:
- (i) a summary of any additional work and subsurface investigations that have been completed since the interim progress report, including drafted drill summary logs in MTO format;
 - (ii) final recommendations for foundation systems, allowable loads and estimates of total and differential settlements at 2, 5, 10, 20, 40 and 75 years following construction;
 - (iii) geotechnical design recommendations for retaining structures;
 - (iv) geotechnical design recommendations for Pavements;
 - (v) design of high fill embankments, including fill stages and consolidation period between each fill stage;
 - (vi) design details to time-rate-of-settlement control measures such as prefabricated vertical drains, lightweight fills, and preload/surcharge;

- (vii) estimates of total and differential settlement of embankments and roadways at 2, 5, 10, 20, 40 and 75 years following construction;
- (viii) a monitoring and instrumentation plan along with details of instrumentation to be installed, monitoring requirements, and instrumentation reading threshold values at which construction is halted or resumed;
- (ix) requirements for ground improvement measures necessary to meet the static and seismic performance requirements for foundations, cut and fill slopes, embankments and retaining structures;
- (x) an assessment of the stability of approach embankments, road embankments, cut slopes and fill slopes under static and seismic loading conditions and the ability of these to meet the seismic performance requirements;
- (xi) reduced size (11" x 17") drawings showing the road alignment in plan and profile with drill hole locations shown on the plan and simplified summary logs shown on the profile (design notes are to be shown along the bottom of the drawings); and
- (xii) a final geotechnical progress report for the structures with reduced size (11" x 17") drawings showing the general arrangements for Structures, including Bridge, pedestrian bridge, Culvert, Retaining Wall, and Overhead Sign Support Structure in plan and profile, with drill locations shown in plan and simplified summary logs shown in profile.

3.7 Electrical, Signing and Pavement Markings Design

- (a) The Final Design Development Submittals shall include electrical (including signals, lighting and telecommunications), signing and both Temporary and Permanent Pavement Marking Plans (as defined in Schedule 15-1 – Output Specifications – Definitions and Reference Documents).
- (b) Design drawings for all electrical systems shall contain, without limitation, the following:
 - (i) electrical equipment and all associated support structure locations;
 - (ii) lighting calculations where appropriate;
 - (iii) service locations; and
 - (iv) schematics showing electrical wiring layout.
- (c) Design drawings for the telecommunications conduit network shall contain, without limitation, the following:
 - (i) network diagram showing conduit locations; and
 - (ii) design drawings showing the locations for all interconnection points.

- (d) The Final Design Development Submittals shall include resolution of all issues identified during Design Review Meetings or Pre-final Design Development Submittals.
- (e) Sign design sheets shall be submitted for all custom guide signs.
- (f) All cantilever and sign bridge Structures submissions shall be undertaken in accordance with the MTO Sign Support Manual.
- (g) PHM-125 signal drawings shall be submitted for all temporary and permanent signals and shall contain, without limitation, the following:
 - (i) All regulatory signs that assist in the signal operations (to be included in a legend);
 - (ii) Signal hardware excluding underground provisions and electrical wiring;
 - (iii) Vehicle detection and nearby accesses;
 - (iv) MTO PHM-125 standard template; and
 - (v) Electronic copies in AutoCAD format.

3.8 Landscaping and Site Restoration

The Final Design Development Submittals shall contain detailed landscape drawings that reflect any highway design changes and incorporate comments made on the interim submissions. Project Co shall document changes and describe the design work that has been completed since the Pre-final Design Development Submittals, and document public consultation conducted as part of the development of the landscape drawings. Drawings shall be of a suitable scale for legibility, and provide enlarged detailing where needed.

3.9 Traffic Engineering

The Final Design Development Submittals shall contain, without limitation, the following:

- (a) traffic engineering analysis and associated reports and files in accordance with Article 2 (Highway Geometrics Design Criteria) of Part 2 of the Design and Construction Specifications;
- (b) signal timing sheets associated with the design of signalized intersections;
- (c) the assigned traffic volumes, along with the signal timing sheets for opening day operation of signalized intersections; and
- (d) traffic engineering analysis and signal timing sheets whenever traffic signal timings are adjusted after opening day.

3.10 Environmental Design

The Final Design Development Submittals shall contain, without limitation, the following:

- (a) applicable construction drawings that include:
 - (i) ecological restoration areas including Species-at-Risk and any environmentally sensitive areas, and all restoration areas;
 - (ii) all fisheries compensation plan areas to secure Fisheries Act Authorizations from Fisheries and Oceans Canada;
 - (iii) all remaining built heritage features;
 - (iv) all noise barrier and/or berm locations;
 - (v) all drainage and stormwater management pond areas;
 - (vi) all archaeological features; and
 - (vii) erosion and sediment control measures;
- (b) riparian restoration and terrestrial reclamation/revegetation drawings that, as a minimum, describe timing requirements, seed mixes and applications rates of hydroseeding and site specific restoration plans, including species type, size and spacing for riparian areas, areas of higher sensitivity, and areas prone to erosion or shallow slope movement;
- (c) environmental design drawings that show environmental mitigation and compensation features and any environmental features to be constructed;
- (d) environmental design documentation including:
 - (i) regulatory agency review and acceptance documentation for the Environmental Management System specific to the work designed;
 - (ii) all licenses, notifications, permits, authorisations and approvals specific to the work designed; and
 - (iii) all assessments, studies, surveys, monitoring reports, and plans specific to the work designed;
- (e) an environmental design criteria checklist that lists general environmental commitments and assurances, environmental design commitments, site specific environmental features and environmental mitigation/compensation plans including all commitments, assurances and plans relating to archaeological features;
- (f) Resolution of all issues identified during Design Review Meetings and Pre-final Design Development Submittal reviews; and

- (g) Contract drawings as required and in conformity to Design and Construction Reports (DRC).

3.11 Maintenance Facilities Design

The Final Design Development Submittals shall contain, without limitation, the following:

- (a) applicable construction drawings that include:
 - (i) all design drawings signed and sealed by a Professional Engineer of an appropriate discipline (drawings shall include all applicable disciplines for the Maintenance Facility);
 - (ii) a geotechnical report for the structural portion of the Maintenance Facility;
 - (iii) environmental mitigation/compensation plans, as applicable;
 - (iv) resolution of all issues identified during Pre-final Design Development Submittal review;
 - (v) any special provisions for the construction of the Maintenance Facility structures; and
 - (vi) a neat, bound, indexed set of design calculations for the Maintenance Facility structures.

4. CHECKING OF STRUCTURAL DESIGN

- 4.1 In accordance with Article 4.2 (General Requirements) of Part 2 of the Design and Construction Specifications and Article 18 of Part 2 of the Design and Construction Specifications, for relevant design submissions submitted in accordance with the Review Procedure, Project Co shall submit an Independent Structural Design Check Certificate, in the form provided as Attachment 2 to this Appendix A.

ATTACHMENT 1

Sample Contents for a Structural TAF

FOR INFORMATION ONLY

SAMPLE CONTENTS FOR A STRUCTURAL TAF

Ref. No.....

1. PROJECT DESCRIPTION

- 1.1 Name and location of structure
- 1.2 Permitted traffic speed (for a Bridge give over and/or under)

2. PROPOSED STRUCTURE

- 2.1 Description of Structure
- 2.2 Structural type *(Include reasons for choice)*
- 2.3 Foundation type *(Include reasons for choice)*
- 2.4 Span arrangements *(Include reasons for choice)*
- 2.5 Barrier type
- 2.6 Proposed arrangements for inspection and maintenance
- 2.7 Materials and finishes

3. DESIGN/ASSESSMENT CRITERIA

- 3.1 Live Loading, Clearances
 - 3.1.1 Bridge code loading
 - 3.1.2 Design vehicle
 - 3.1.3 Other live loading
 - 3.1.4 Provision for exceptional abnormal loads:
 - 3.1.4.1 Gross weight
 - 3.1.4.2 Axle load and spacing
 - 3.1.4.3 Location of vehicle track on deck cross-section
 - 3.1.5 Any special loading not covered above
 - 3.1.6 Minimum clearances provided (vertical and horizontal)
 - 3.1.7 Authorities consulted and any special conditions required

- 3.2 List of relevant design documents

4. STRUCTURAL ANALYSIS

- 4.1 Methods of analysis proposed for superstructure, substructure and foundations
- 4.2 Description and diagram of structure to be used for analysis
- 4.3 Assumptions intended for calculation of structural element property and stiffness
- 4.4 Proposed earth pressure coefficients (k_a , k_o , or k_p) to be used in design of earth retaining elements

5. GROUND CONDITIONS

- 5.1 Acceptance of interpretative recommendations of the soils report to be used in the design and reasons for any proposed departures
- 5.2 Describe foundations fully including the reasons for adoption of allowable and proposed bearing pressures/pile loads, strata in which foundations are located, provision for skin friction effects on piles and for lateral pressures due to compression of underlying strata, etc.
- 5.3 Differential settlement to be allowed for in design of structure
- 5.4 Anticipated ground movements or settlement due to embankment loading, flowing water, and measures proposed to deal with these defects as far as they affect the structure
- 5.5 Results of tests of ground water (e.g. pH value, chloride or sulphate content) and any counteracting measures proposed (as applicable)
- 5.6 Anticipated ground movements or settlement due to seismic loading, measures proposed to deal with these impacts as far as they affect the structure

6. CHECKING

- 6.1 Name of proposed Checking Team

7. DRAWINGS AND DOCUMENTS

- 7.1 List of drawings (including numbers) and documents accompanying the submission. To include (without limitation):
 - 7.1.1 a location plan;
 - 7.1.2 a preliminary general arrangement drawing; and
 - 7.1.3 relevant parts of the ground investigation report.

8. THE ABOVE DESIGN AND CONSTRUCTION PROPOSALS ARE SUBMITTED FOR REVIEW.

Signed:

Design/Construction Manager

Name:

Engineering Qualifications:.....

Date:

Professional Registration Number:

Affix Professional Seal

Signed:.....

Project Co Representative

Name:.....

Date:.....

Professional Registration Number:

Affix Professional Seal

ATTACHMENT 2

Certificate Form

Certificate Ref. No []

INDEPENDENT STRUCTURAL DESIGN CHECK CERTIFICATE

Defined terms and expressions used in this Certificate have the same meanings in given in the agreement between HMQ and Project Co dated • (“the Project Agreement”) relating to the Project.

Form of certificate to be used by the Checking Team for certifying the design of structures incorporated in the Extension, in accordance with Part 2 of the Design and Construction Specifications to the Project Agreement.

1. We certify that we have the requisite professional qualifications, skill and experience to perform an independent check of the Design Data referred to herein in accordance with the requirements of the Project Agreement.
2. We certify that we have performed an independent check (as required by the Project Agreement for significant and complex Structures) of the Design Data for [.....] **[Name of the Structure and list of all elements of the Structure included in the Design Data]** listed in the Schedule hereto and utilizing the standards of care, skill and diligence that, in accordance with the standards of our profession, are required of experienced professionals undertaking such an independent check, and that in our professional opinion:
 - i. the said Design Data meets performance expectations outlined in the Project Agreement, **[including Technical Appraisal Form]** No. [.....] dated [.....], as amended by the following:

[List, if any, the changes made and any addenda to the foregoing Technical Appraisal Form]; and
 - ii. the design, methodologies and assumptions are consistent with Good Industry Practice.

SCHEDULE

[Include here drawing numbers and titles and reports, calculations, etc.]

Signed:

Checking Team (Principal)

Name:

Title:

Date:

Professional Registration Number:

Affix Professional Seal

Signed:

Project Co Representative

Name:

Date:

FOR INFORMATION ONLY

SCHEDULE 11
QUALITY MANAGEMENT
[REDACTED]

FOR INFORMATION ONLY

SCHEDULE 13

PROJECT CO PROPOSAL EXTRACTS

[REDACTED]

FOR INFORMATION ONLY

SCHEDULE 14
COMMISSIONING
[REDACTED]

FOR INFORMATION ONLY

SCHEDULE 15-1

DEFINITIONS AND REFERENCE DOCUMENTS

[REDACTED]

FOR INFORMATION ONLY

SCHEDULE 15-2

DESIGN AND CONSTRUCTION

[REDACTED]

FOR INFORMATION ONLY

SCHEDULE 15-3

OPERATION, MAINTENANCE, AND REHABILITATION SPECIFICATIONS (OM&R)

[REDACTED]

FOR INFORMATION ONLY

SCHEDULE 16**TITLE ENCUMBRANCES**

For purposes of this Schedule 16, the defined term “Lands” shall include any portion of the Lands.

General Title Encumbrances

Any of the following in existence as of the date of the Project Agreement:

1. Liens, charges or prior claims for taxes (which term includes charges, rates and assessments) or utilities (including levies or imposts for sewers and other municipal utility services) not yet due or if due, the validity of which is being contested in good faith, and liens or charges for the excess of the amount of any past due taxes or utilities charges for which a final assessment or account has not been received over the amount of such taxes or utilities charges as estimated and paid by HMQ.
2. 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 HMQ pursuant to the *Construction Lien Act* (Ontario) or otherwise or any lien or charge, a claim for which, although registered, or notice of which, although given, relates to obligations not overdue or delinquent and in respect of any of the foregoing cases, HMQ has, where applicable, complied with the holdback or other similar provisions or requirements of the relevant construction contracts.
3. The rights reserved to or vested in the public or any municipality or governmental or other public authority by any statutory provision.
4. Any subsisting reservations, limitations, provisions and conditions contained in any grants from the Crown of any land or interests therein, including without limitation, reservations of under-surface rights to mines and minerals of any kind including rights to enter, prospect and remove the same.
5. Zoning (including, without limitation, airport zoning regulations), use and building by-laws and ordinances, and federal, provincial or municipal by-laws and regulations.
6. Requirements under all Applicable Laws relating to a King’s Highway in Ontario.
7. 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.
8. The Project Agreement, any Ancillary Documents and other agreements relating thereto approved or agreed to by Project Co or entered into pursuant to the Project Agreement, and any interests thereunder.
9. 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 which do not materially interfere with the use of the Lands for the purposes of the Project Operations.

Confidential – Economic Interests of Ontario

10. Agreements with any municipal, provincial or federal governments or authorities and any public utilities or private suppliers of services, provided such agreements have been complied with or if not complied with, that any non-compliance does not materially interfere with the use of the Lands for the purposes of the Project Operations.
11. Unregistered agreements, authorizations, consents, postponements, subordinations, licences or instruments entered into provided that they have been complied with or if not complied with, that any non-compliance does not materially interfere with the use of the Lands for the purposes of the Project Operations.
12. Easements, rights of way, rights to use, restrictions, restrictive covenants and similar rights in real property or any interest therein which do not materially interfere with the use of the Lands for the purposes of the Project Operations.
13. Minor imperfections of title.
14. Statutory exceptions to title and any rights reserved to or vested in any person by any statutory provision.
15. 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.
16. The rights of any person entitled to any portion of the Lands through length of adverse possession or prescription.

Title Encumbrances shall also include any Encumbrances or other matters described in paragraphs 5, 7, 9-11, 13, 15 and 16 above, which arise after the date of the Project Agreement, in each case, provided that they do not materially interfere with the use of the Lands for the purposes of the Project Operations.

Title Encumbrances shall also include any Encumbrances or other matters described in paragraphs 1-4, 6, 8 and 14, which arise after the date of the Project Agreement.

Specific Title Encumbrances

All Encumbrances 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 those Encumbrances included in the Background Information as of the date of the Project Agreement and including those Encumbrances 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. Notwithstanding the preceding sentence, any Encumbrances referred to in that sentence which are registered after the date of the Project Agreement will not be Title Encumbrances if they:

- (a) materially interfere with the use of the Lands for the purposes of the Project Operations;
- (b) have not been consented to by HMQ; or

- (c) are Encumbrances which Project Co is obliged to remove, vacate or discharge under the Project Agreement.

SCHEDULE 17

ENVIRONMENTAL OBLIGATIONS

[REDACTED]

FOR INFORMATION ONLY

SCHEDULE 18**COMMUNICATIONS PROTOCOL****1. GENERAL****1.1 Communications Principles**

The Project represents an important infrastructure commitment by HMQ. Accordingly, a comprehensive communications and stakeholder relations plan is required to ensure the public is informed and engaged where necessary and to meet HMQ's communications requirements. This plan will support effective communications between Project Co and HMQ, and with HMQ stakeholders and the communities of the Regional Municipality of Durham, the Town of Ajax, the City of Oshawa, the Town of Whitby and the City of Pickering.

2. HMQ RESPONSIBILITIES**2.1 Lead Communications Role**

HMQ will assume the lead communications role. HMQ will take primary responsibility for all communications matters and will be responsible for:

- (a) providing identified, dedicated lead communications contacts with applicable skills and experience with 24/7 availability on applicable aspects of communications and issues management;
- (b) providing an identified, dedicated media-trained lead media spokesperson, with back-up media-trained personnel, as required with 24/7 availability on applicable aspects of communications;
- (c) acting as primary media contact for the Project;
- (d) providing final review and approval of all public communications materials;
- (e) communicating promptly with all relevant parties on crisis issues and communicating within 24 hours on general issues;
- (f) review and approve Project Co's Project website content and updates; and
- (g) providing coordinated updates to internal/ external stakeholders, as required.

2.2 HMQ Communications Responsibilities During the Initial Works

In respect of each Section, in the period up to the Section Substantial Completion Date of the relevant Section, HMQ will be responsible for the following matters:

- (a) Communications: To develop a comprehensive communications strategy and program that includes community relations, media relations, marketing, special events, employee communications and government relations regarding issues related to the Project.

- (b) Crisis Communications: To undertake, in cooperation with Project Co, required planning for potential crisis issues related to the Project. A plan will be developed within 30 days following Financial Close outlining the roles and responsibilities of both HMQ and Project Co during a crisis situation.
- (c) Extension Related Communication: To provide all communications related to the provision of MTO Activities and to lead all communications otherwise related to the Extension.
- (d) Performance Review: To review, on a periodic basis, Project Co's performance in providing communications support as outlined in Section 3 of this Schedule 18.

2.3 Communications Responsibilities of HMQ and Project Co During the Operational Term

- (a) No later than 30 days prior to the earliest Scheduled Section Substantial Completion Date, the Parties will agree on a communications protocol to apply during the Operational Term.
- (b) To the extent the communications activities described in Section 3.2 apply to the OM&R Work, the communications protocol described in Section 2.3(a) shall assign to Project Co the responsibilities set forth in Section 3.2 during the Operational Term.

3. PROJECT CO RESPONSIBILITIES

3.1 Support Communications Role

Project Co will assume a supporting role with respect to communications related to the Project. Project Co will be responsible for:

- (a) providing an identified, dedicated media-trained lead media spokesperson (with back-up media-trained personnel, as required) with 24/7 availability on applicable aspects of communications and providing a communications manager experienced in developing and implementing communications and community consulting plans for infrastructure development, such communications manager satisfactory to HMQ;
- (b) responding to communications issues in accordance with agreed timeframes;
- (c) maintaining and updating Project Co's Project website, as required subject to review and approval by HMQ;
- (d) reviewing and/ or providing communications and/ or technical materials reasonably requested by HMQ;
- (e) updating, in collaboration with HMQ, internal/ external stakeholders, as required, including involvement and participation in community events;
- (f) providing the public/ media reasonable access to the Site for milestone events;

- (g) directing all media enquiries and interview requests to HMQ's lead communications contact;
- (h) maintaining a written record of all material public enquiries, complaints and communications and providing copies to HMQ's lead communications contact on a weekly basis (or immediately if urgent);
- (i) reporting to HMQ on communications matters on an agreed upon basis;
- (j) participating in HMQ communications meetings and assigning a communications representative and/or a project manager, for the Project's Communications Sub-Committee, as required;
- (k) during a crisis situation, ensuring and making available sufficient resources to work effectively with HMQ and proactively manage and perform its communications responsibilities; and
- (l) developing a communications protocol in respect of Project Co's responsibilities set out in this section 3.1 and in respect of the communications plan provided pursuant to section 3.2, which protocol shall be submitted by Project Co and reviewed by HMQ pursuant to Schedule 10 – Review Procedure prior to the commencement of any public information open houses with respect to the Project.

3.2 Project Co Communications Responsibilities During the Initial Works

- (a) Within 30 days following Financial Close and in collaboration with HMQ, Project Co will develop, maintain and implement a construction liaison and communications plan for review pursuant to Schedule 10 – Review Procedure that supports and meets Project Co's obligations under this Project Agreement including, for greater certainty, Project Co's community consultation obligations and reporting requirements in connection with Schedule 17 – Environmental Obligations, and which communications plan shall also include:
 - (i) a description of Project Co's approach to all communications aspects of the Project;
 - (ii) a description of Project Co's communications team, including the roles and responsibilities for each team member and any Project Co Party who will provide any aspect of the communications program;
 - (iii) the identification of proposed communication tools to be used to partner and report to HMQ, for coordinated media and community relations, coordinated issues management, complaints management, dispute resolution and crisis communications with the objective of keeping the community and other stakeholders informed with respect to the progress of the Project; and

- (iv) a description of the objectives, strategies and tactics, including proposed timelines to complete and implement the identified tactics, such timelines and tactics subject to the approval of HMQ.
- (b) In respect of each Section, in the period up to the Section Substantial Completion Date of the relevant Section, Project Co will
 - (i) update the construction liaison and communications plan on an annual basis or as reasonably requested by HMQ;
 - (ii) coordinate with HMQ in the implementation of the construction liaison and communications plan;
 - (iii) provide a dedicated representative who will attend regular meetings with HMQ to discuss communication issues and developments;
 - (iv) produce monthly progress reports, which will include information on activities, public and media enquiries, any emerging issues, and actions taken in response to issues;
 - (v) in coordination with HMQ, provide regular updates to the immediately affected property owners and neighbourhoods on Initial Works related issues with particular attention to communicating the scope, schedule and status of the Initial Works. This will include processes to proactively address any Initial Works related enquiries and issues (e.g., public enquiries and complaints re noise, hours of work, dust, etc.);
 - (vi) provide regular updates to HMQ related to the management of local traffic during the Initial Works;
 - (vii) as soon as practicable following Financial Close develop, in collaboration with HMQ, a crisis communication plan outlining roles and responsibilities for a list of potential crisis issues that could develop during the Initial Works; and
 - (viii) follow any guidelines provided by HMQ related to signage or advertising at the Site.

4. PUBLIC DISCLOSURE AND MEDIA RELEASES

4.1 Public Disclosure and Media Releases

- (a) Project Co shall not, and shall ensure that no Project Co Party shall, issue or disseminate any media release, public announcement or public disclosure (whether for publication in the press, on the radio, television, internet or any other medium) relating to the Project, this Project Agreement, the MTO Activities or any matters related thereto, without the prior written consent of HMQ, in its sole discretion, or, in the case of any media release, public announcement or public disclosure required by Applicable Law, without the prior written consent of HMQ.

- (b) Unless otherwise required by Applicable Law (but only to that extent), neither Party shall use the other Party's name or refer to the other Party, directly or indirectly, in any media release, public announcement or public disclosure (whether for publication in the press, on the radio, television, internet or any other medium) relating to the Project, this Project Agreement, the MTO Activities or any matter related thereto, without the prior written consent of the other Party.
- (c) Project Co shall comply, and shall ensure that all Project Co Parties comply, at all times, with HMQ's media release and publicity protocols or guidelines, as such protocols and/or guidelines are updated by HMQ from time to time.

5. CONSTRUCTION SIGNAGE

5.1 Construction Signage Guidelines

With respect to any information signage that may be erected and maintained at or on the Site or Project, Project Co, Project Co Parties and/or the Lenders, as applicable, shall:

- (a) include the Ontario logo on the sign;
- (b) comply with language requirements (English and French);
- (c) ensure that the signage is no larger than the larger of: (i) an existing government project sign on the Site; or (ii) 16 feet by 8 feet;
- (d) adhere to local by-laws including by-laws regarding placement and size;
- (e) consider signage material suitable for long-term outdoor exposure;
- (f) provide a mock-up of the signage to the HMQ Representative for approval prior to printing; and
- (g) be responsible for installation, maintenance and removal of the signage.

SCHEDULE 19

HERITAGE GUIDELINES AND PROTOCOLS

See attached.

FOR INFORMATION ONLY

**BEST PRACTICE GUIDELINES FOR THE
TREATMENT OF HUMAN SKELETAL REMAINS DISCOVERED OUTSIDE
A LICENSED CEMETERY**

The attached document is a “best practices” guideline describing the procedures for the treatment of human skeletal remains discovered outside a licensed cemetery. It reflects an agreement among members of the various ministries and agencies involved in the resolution of such burials (i.e., First Nations Burial Committee of Toronto; Toronto Police Service; Ministry of Citizenship, Culture and Recreation; Cemeteries Regulation Section of Ministry of Consumer and Commercial Relations; Ministry of Transportation; and The Office of the Chief Coroner) and reflects what is seen as the best practice.

The document is intended to serve as a guide to approval authorities as a discovery goes through the many different steps involved in a reburial to ensure that human remains are treated with respect and dignity and processed in a timely and efficient manner.

It is intended that this guide be reviewed periodically to reflect experiences with the topic. The signatories to this guideline have agreed to ensure that staffs within their jurisdictions have access to this guideline.

Should clarification be required, please refer to the *Cemeteries Act* (Revised) R.S.O.1990 or contact one of the signatories.

Signatories:

First Nations Burial Committee of Toronto
Toronto Police Service
Ministry of Citizenship, Culture and Recreation
Cemeteries Regulation Section of Ministry of Consumer and Commercial Relations
Ministry of Transportation
Office of the Chief Coroner

The Discovery of Human Remains - Best Practices

Introduction

The following is designed to assist all those involved in responding to and addressing discoveries of human skeletal remains outside of a licensed cemetery. The advice is presented as a series of best practices among the many overlapping interests and jurisdictions of several ministries, agencies, police services and other government bodies that are triggered when human skeletal remains are uncovered. This approach has been developed with the support and approval of the First Nations Burial Committee of Toronto. The practices outlined here are equally applicable to discoveries of human remains across Ontario.

These best practices support the existing regulatory and statutory mechanisms in Ontario. Responsibility for a burial passes through a number of jurisdictions (i.e., Police, Coroner, Cemeteries Regulation Section) and the intent of this document is to ensure this flow is effective and seamless. This information should be read along with the attached flow chart outlining the mandatory process to be followed under existing statutes. Although the flow chart describes the process as being linear, in many instances events can and do happen simultaneously.

A Note on Public Notification:

Getting through the entire discovery and disposition process when human remains are found will see the authority of the issue shift among several agencies. As such, until all investigations have been carried out and the disposition resolved, formal press releases or contacting the media should only occur if all affected authorities have concurred (i.e. police, coroner and Cemeteries Registrar). In addition, after all investigations have been completed, the concerns of the landowner and group acting as representative for the deceased (e.g. First Nation) should be considered before media contact. Premature media notification, particularly prior to having accurate identification of the deceased, will lead to misinformation, misplaced concerns being raised, and potentially a hardening of attitudes. This can make a final disposition agreement more difficult to reach.

Any media interest should be directed to the agency that has authority over the burial site at the time of the media contact (i.e. police, Coroner's Office or Cemeteries Registrar). Media photography of the remains should be avoided: a publicly displayed photograph of skeletal remains is both disrespectful to the deceased and offensive to representatives for the deceased.

A Note on Archaeology:

It is important to note that the discovery of human remains will occur in two basic contexts: either through accidental discovery by an individual in unexpected circumstances, or through discovery as part of an archaeological examination/excavation of a locale by a trained archaeologist, licensed by the Ministry of Citizenship, Culture & Recreation (MCzCR) under the *Ontario Heritage Act*. In the latter case, the archaeologist will possess the skills, knowledge and expertise to assist both the police and coroner in determining the age of the interment, as well as to assist the landowner in generating the information the Cemeteries Registrar will require to determine the nature, extent and cultural affiliation of the persons buried. His or her presence at the front end of the discovery process will greatly aid all

authorities in making quick and accurate determinations, and as such should be relied on as much as possible in such circumstances.

Under the *Coroner's Act*

1. A person finding skeletal material may first contact staff in an agency other than the police or coroner (e.g. MCzCR or Ministry of Consumer & Commercial Relations [MCCR] staff). When that occurs, the person is to be immediately instructed to report the find to the local police or coroner. An appropriate contact list (e.g. Regional Coroner's offices) should be maintained by all agencies that may be first contacted about such a discovery.

2. When the police are first contacted they will attend the scene, protect the site and contact the local coroner. The coroner, or the police on behalf of the coroner, will conduct an investigation to determine if: a) the skeletal material is human and b) if the site represents a crime scene. The investigators will need to obtain all the information required to make a determination. However, efforts should be made at this stage to minimize site disturbance. All bone and associated grave goods still embedded in the ground should not be disturbed unless removal is essential for the coroner to make a determination. Poking, pulling, and digging up the bone in an uncontrolled manner can quickly destroy critical data essential to making accurate identifications.

3. Whenever possible, the police and coroner should seek the assistance of an archaeologist in conducting the investigation. This is especially critical since burials are archaeological deposits in their own right, and are often found as part of more extensive archaeological deposits. As such, confirming an association of the burial with a surrounding archaeological site will help determine whether or not the remains are part of a crime scene. Also, the archaeologist can help ensure that the larger heritage resource is not destroyed or damaged during investigation of the skeletal material. MCzCR staff can sometimes be called on to visit the scene with the police.

4. Archaeologists will consider issues such as the condition and discoloration of the bone, presence of artefacts around the discovery site, and knowledge of known archaeological sites in the area to determine chronological (and cultural) associations. If intact deposits are examined, features such as the presence/absence of a coffin, depth of remains, position of body, presence of grave goods, etc., will also assist the determination.

5. When skeletal material is found and it is not readily obvious that this material is either a burial or crime scene, coroners will often employ the services of a physical anthropologist or osteologist to examine the bone in detail. While the coroner requires only a basic determination of age (i.e. recent vs. historic/ancient) and nature of the interment, the physical anthropologist's study can also determine cultural affiliation (based on the presence/absence of specific skeletal traits), age of the individual at death, sex, and even funerary practices. This information will be essential for both the Cemeteries Registrar's investigation, as well as for the deceased's representative in determining the appropriate re-interment requirements. As such, latitude in allowing the physical anthropologist to complete a full, basic descriptive analysis of the skeletal material as a part of the coroner's investigation will greatly aid in addressing remaining issues associated with this process.

6. When the Coroner is satisfied the discovery site is not a crime scene, it is essential that he/she notifies the Registrar of Cemeteries of the discovery, and passes along any relevant information (e.g.

contacts, results of any analyses, etc.). It is also essential that the landowner understand that he/she will need to preserve and protect the site from the point when the police are no longer involved, and until a disposition is made under the *Cemeteries Act*.

Under the *Cemeteries Act*

1. Under the *Cemeteries Act* the Registrar will be required to determine and formally declare what the locale is: either an irregular burial site (unintentional interment), or an unapproved cemetery or unapproved Aboriginal Peoples cemetery. When the information is not already in hand (i.e. based on archaeological findings or the results of the coroner's investigation) the landowner normally will be required to undertake an investigation. Such an investigation will generate the information necessary for the Registrar to make an accurate declaration.
2. In most cases, such investigations will be undertaken by a licensed and qualified archaeologist hired by the landowner. MCzCR ensures that the Cemeteries Registrar has a current list of such licensees which can be made available to the landowner.
3. The intent of the investigation is to provide the Cemeteries Registrar with, the data necessary to make a declaration. As such, burial investigations will minimize normal archaeological fieldwork and reporting requirements. It will be determined following the Registrar's declaration and disposition agreement reached between landowner and deceased's representative whether disinterment is necessary.
4. The investigation for the Registrar must determine whether or not the interment(s) were intentional, and the basis on which this is made, the cultural affiliation of the deceased, and the defined limits of the area containing burials, the style and manner in which the remains are interred, and a description of the artefacts determined to form part of the burial site. It may also be necessary to determine the exact number of discrete burials present in the area. Excavation methods should maximize recovery of this data, while minimizing disturbances to the remains. Recording should also be limited to that required by the Registrar (e.g. emphasis on mapping location of burials in relation to property lines, existing structures, or other reference points). MCzCR will advise licensed archaeologists of the appropriate archaeological methods.
5. During the investigation, the remains must be treated with respect and care. All artefacts found in the burial are to be considered grave goods, and should be treated as part of the burial, and kept with the skeletal remains. Burials must not be unnecessarily exposed to the elements or to casual viewing, and must be covered over as soon as possible following identification. The landowner continues to be responsible for preserving and protecting the site during this investigation, and until a disposition is made under the *Cemeteries Act*.
6. At the conclusion of the investigation a report must be submitted to the Registrar. This report will need to include the information required in Point 4. For sites that date to the last 200 years, historical research (e.g. land title search, newspapers, local informant interviews, etc.) may be required to answer some of the information points outlined in Point 4. This report will also serve to address the archaeologist's reporting requirements for the license issued by MCzCR under the *Ontario Heritage Act*.
7. Once the Registrar can make a declaration, and the locale is determined to be an unapproved cemetery, he/she will locate a representative for the deceased. If the locale is an unapproved Aboriginal

Peoples cemetery, the Registrar will contact the nearest First Nation Government. Another community of Aboriginal People whose members have a close cultural affinity to the interred person may also act as representative. As well, if agreed-to and established before-hand, a designated “Burials Committee” can serve as the first point of Aboriginal contact for the Registrar. If the burial is non-aboriginal, the Registrar will attempt to find a representative through media notification. Where no descendant is found, a representative of the same religious denomination as the person buried can act for the deceased.

8. The representative and landowner will agree to a disposition agreement outlining what is to be done with the burials. Where there is no agreement, binding arbitration is provided under the *Cemeteries Act*. Typically there are three options: 1) leave the remains intact and establish the site as a cemetery; 2) establish a cemetery nearby, remove the remains and re-inter them there; 3) remove the remains and reinter them in an existing cemetery. The option selected with respect to an unapproved cemetery or unapproved Aboriginal Peoples cemetery will be negotiated between the landowner and representative for the deceased.

9. If the discovery is declared to be an irregular burial site, there are three options: 1) leave the remains intact and establish the site as a cemetery; 2) establish a cemetery nearby, remove the remains and re-inter them there; 3) remove the remains and re-inter them into an existing cemetery. The landowner will decide which option and is responsible for all costs.

10. In respect to an unapproved cemetery or unapproved Aboriginal Peoples cemetery, if a disinterment/reburial option is selected, the burials will need to be fully uncovered, removed and reinterred with a minimum of damage and time. Costs associated with a disposition agreement will be negotiated by the landowner and representative. While the time it takes to complete this work will be subject to the wishes of the landowner and representative, factors such as the number and nature of interments, level of observations required by the representative for re-interment purposes, etc., will affect the length of time needed to complete the removal and reinterment. Consequently, in order to minimize time while maximizing care and documentation, this work is best done by a licensed archaeologist under the direction of the disposition agreement.

11. During removal, detailed observations will need to be made of the archaeological context of the burial to ensure that all associated remains and grave goods are fully recovered. Age at death and sex of the individual should also be noted. This information will assist in determining the appropriate methods of re-interment, as well as to assist in determining what specific ceremonies need to accompany the reburial. Basic mapping can be used to aid in making these observations. No scientific analysis of the skeletal remains or grave goods can occur during this process without the consent of the representative of the deceased.

12. Should the disposition agreement impact on adjacent archaeological remains, or should concerns be raised for these deposits during negotiations, MCzCR will advise and work closely with the Cemeteries Registrar and others concerned to determine what is the most appropriate course of action. MCzCR will also assist in mediating any issues that might arise between the licensed archaeologist and other parties.

July 15, 1998

SCHEDULE 20

PAYMENT MECHANISM

Part A: Definitions

Section 1. Definitions

- 1.1 “**Adjusted OM&R Payment**” means the amount that would be calculated for the relevant Contract Month in accordance with the formula set out in Section 1.1 of Part B of this Schedule 20 without deducting the sums represented by the symbols Σ AFD and Σ QFD.
- 1.2 “**Annual OM&R Payment**” means the sum in Canadian dollars calculated in accordance with the provisions set out in Section 2 of Part B of this Schedule 20.
- 1.3 “**Annual OM&R Payment Excluding Rehabilitation Payment**” means the Annual OM&R Payment excluding the Rehabilitation Payment for the relevant Contract Year as set out in Appendix C to this Schedule 20 for the period between the Section Substantial Completion Date for the **Main Line Section** and the Substantial Completion Date or as set out in Appendix D to this Schedule 20 for the period post Substantial Completion.
- 1.4 “**Availability Failure**” means, with respect to each Availability Segment, a Closure in that Availability Segment, at any time, of a Traffic Lane but excludes any:
- (a) Closure where Project Co has responded at the site of an Incident (as defined in Schedule 15-1 – Definitions and Reference Documents) or is actively removing Debris (as defined in Schedule 15-1 – Definitions and Reference Documents);
 - (b) Closure that is required for any works by a Governmental Authority or for any inspection, investigation or survey (whether carried out by Project Co, HMQ or any other Governmental Authority or any other person);
 - (c) Closure where any Emergency Service Provider or HMQ has instigated or directed that a Traffic Lane or Traffic Lanes be restricted from traffic;
 - (d) Project Co initiated Closure, applied for in accordance with Section 7.2 of Part 3 of the Design and Construction Specifications, that has been approved in writing by HMQ and where HMQ has explicitly indicated that such a Closure is not subject to an Availability Failure Deduction;
 - (e) Closure resulting from a build up of snow, ice or water resulting from an extreme weather event where Project Co has performed to the requirements of the Output Specifications, and in particular, met the Outcome Targets in Appendix A of the OM&R Specifications; or
 - (f) Closure on the Extension of two Traffic Lanes during the overnight periods set forth in Section 2.3(a) of Part C of this Schedule 20, where the centre Traffic Lane is closed for the purposes of maintenance or rehabilitation of that Traffic Lane and the Closure of the second Traffic Lane is necessary for safety purposes in accordance with Applicable Law,

and the scheduled Closure of both Traffic Lanes is documented in an approved Traffic Control Plan, or otherwise approved in writing by HMQ.

- 1.5 “**Availability Failure Deduction**” means the amount that would be calculated for the relevant Contract Month in accordance with the formula set out in Section 2.1 of Part C of this Schedule 20.
- 1.6 “**Availability Failure Points**” means the amount that would be calculated for the relevant Contract Month in accordance with the formula set out in Section 2.2 of Part C of this Schedule 20.
- 1.7 “**Availability Segment**” means a segment of the Extension, as identified in Appendix A of this Schedule 20.
- 1.8 “**Base Date**” means April 1, 2011.
- 1.9 “**Closure**” has the meaning given in Schedule 15-1 - Definitions and Reference Documents.
- 1.10 “**Contract Month**” means a calendar month, except with respect to the first Contract Month, which runs from the day after the Section Substantial Completion Date of the Main Line Section until the end of the calendar month in which such day falls, and the last Contract Month, which runs from the first day of the calendar month in which the Expiry Date falls until the Expiry Date.
- 1.11 “**Contract Year**” means the period of 12 calendar months that commences on April 1st of each calendar year and ends on the next ensuing March 31st, provided that:
 - (a) the first Contract Year shall be such period that commences on the first day of the first Contract Month and ends on the next ensuing March 31st; and
 - (b) the final Contract Year shall be such period that commences on April 1st that precedes the date on which the Project Agreement expires or is terminated, for whatever reason, and ends on the expiry or termination of the Project Agreement.
- 1.12 “**Deductible Availability Failure Points**” means the amount that would be determined for the relevant Availability Failure in accordance with the tables set out in Section 2.3 of Part C of this Schedule 20.
- 1.13 “**Deduction**” means a deduction made from a Monthly OM&R Payment in accordance with this Schedule 20.
- 1.14 “**Energy Utilities**” means energy/power including electricity and any other energy source used at the Extension.
- 1.15 “**Escalation Factor**” means the escalation factor calculated in accordance with Section 3.1 of Part B of this Schedule 20.

- 1.16 **“Failure Points”** means points allocated to Project Co in respect of the occurrence of Availability Failures and Quality Failures which are determined by the provisions set out in Part E of this Schedule 20.
- 1.17 **“Insurance Adjustment”** means the adjustment calculated in accordance with Schedule 25 - Insurance and Performance Security Requirements.
- 1.18 **“Insurance Review Date”** has the meaning given in Schedule 25 - Insurance and Performance Security Requirements.
- 1.19 **“Joint Insurance Cost Report”** has the meaning given in Schedule 25 - Insurance and Performance Security Requirements.
- 1.20 **“Monthly OM&R Payment”** means the sum in Canadian Dollars payable by HMQ to Project Co for the provision of the OM&R Work in accordance with the Project Agreement, as calculated in Section 1.1 of Part B of this Schedule 20.
- 1.21 **“Pass-Through Costs”** means the cost of consumption by Project Co of Energy Utilities at the Extension but does not include the cost of consumption by Project Co of Energy Utilities for the Re-Aligned Highway 401.
- 1.22 **“Quality Failure”** means any failure by Project Co to provide the OM&R Work in accordance with the descriptions in this Schedule 20, Schedule 11 - Quality Management, Schedule 15 - Output Specifications and Schedule 17 - Environmental Obligations of the level of performance that Project Co must achieve to attain compliance with the requirements of such schedules, to the extent such schedules provide for the awarding of Quality Failure Points as a result of such failure.
- 1.23 **“Quality Failure Deduction”** means the amount that would be calculated for the relevant Contract Month in accordance with the formula set out in Section 3.1 of Part C of this Schedule 20.
- 1.24 **“Quality Failure Points”** means, in respect of any Quality Failure, the number of Quality Failure Points specified in this Schedule 20 or in Schedule 11 - Quality Management, Schedule 15 - Output Specifications or Schedule 17 - Environmental Obligations, as applicable, to apply to that Quality Failure. The Quality Failure Points specified by these schedules are summarized for convenience of reference in Appendix B to this Schedule 20.
- 1.25 **“Rehabilitation Payment”** is as represented in the Financial Model and the Price Submission Form and should include no additional costs other than anticipated costs (and directly related contingencies and reserves) in respect of the rehabilitation of parts of the highway that have reached or are expected to reach the end of their useful operational life during the Project Term.
- 1.26 **“Statutory Holiday”** means 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.
- 1.27 **“Time of Day Period”** means a period of time indicated as a Time of Day Period in the tables in Section 2.3 of Part C of this Schedule 20.

- 1.28 “**Traffic Lane**” means all or part of any lane of traffic on the Extension within the Lands, but excludes the shoulders of the Extension.

FOR INFORMATION ONLY

Part B: Calculation of OM&R Payments

Section 1. Monthly OM&R Payment

- 1.1 The Monthly OM&R Payment payable in respect of any Contract Month shall be calculated in accordance with the following formula:

$$\text{MOM\&RP} = (\text{AOMn}/12) + (\text{RP}_{\text{Month}} \times \text{RPn}) - \Sigma\text{AFD} - \Sigma\text{QFD} + \text{PTC}$$

where:

MOM&RP is the Monthly OM&R Payment for the Contract Month for which the formula is to be applied;

AOMn is the applicable Annual OM&R Payment Excluding Rehabilitation Payment for the relevant Contract Year, calculated in accordance with the provisions set out in Section 2.1 of Part B of this Schedule 20;

RP_{Month} is the percentage (%) applicable to the Annual Rehabilitation Payment for the relevant Contract Month as set out in Appendix E, to this Schedule 20. For greater certainty, the sum of all RP_{Month} for a given Contract Year n is equal to 100%;

RPn is the applicable Annual Rehabilitation Payment for the relevant Contract Year, calculated in accordance with the provisions set out in Section 2.1 of Part B of this Schedule 20;

ΣAFD is the sum of Deductions in respect of the relevant Contract Month in relation to Availability Failures calculated in accordance with the provisions set out in Part C of this Schedule 20;

ΣQFD is the sum of Deductions in respect of the relevant Contract Month in relation to Quality Failures calculated in accordance with the provisions set out in Part C of this Schedule 20; and

PTC means any Pass-Through Costs.

- 1.2 With respect to the Contract Months in which the date of Section Substantial Completion occurs in respect of the Main Line Section and in which the date of Substantial Completion occurs, unless such date falls on the last day of the Contract Month, a pro rata adjustment shall be made to reflect the actual number of days after and excluding the Main Line Section Payment Commencement Date or the Substantial Completion Payment Commencement Date, as applicable, up to and including the last day of the relevant Contract Month. In the last Contract Month of the Project Term, a pro rata adjustment shall be made to reflect the actual number of days in that Contract Month from and including the first day of the Contract Month up to and including the last day of the Project Term. Additionally, in the Contract Months in which the Main Line Section Payment Commencement Date and the Substantial Completion Payment Commencement Date fall, the number of days in each such Contract Month shall be adjusted to include such number of calendar days after the relevant Section Substantial Completion Date and before the relevant Section Payment Commencement Date or the Substantial Completion Payment Commencement Date, as applicable, that Project Co has performed the OM&R Work in respect of the relevant Section.

- 1.3 Subject to approval by HMQ in accordance with Section 22.4(a) of the Project Agreement, if the Section Substantial Completion for the Main Line Section is achieved prior to the relevant Scheduled Section Completion Date or if Substantial Completion is achieved prior to the Scheduled Substantial Completion Date, such early Section Substantial Completion or Substantial Completion shall be at Project Co's sole cost and risk such that the total value of the Annual OM&R Payments in the applicable period shall not be increased. Whether or not there is an adjustment to the date of commencement of the Monthly OM&R Payments attributable to the relevant Contract Month and/or any adjustments to the amount thereof, and if implemented, the extent of any such adjustment shall be in the sole discretion of HMQ.
- 1.4 HMQ shall pay to Project Co the Monthly OM&R Payment in accordance with the provisions of this Schedule 20 and Section 34 of the Project Agreement.

Section 2. Annual OM&R Payment

- 2.1 The Annual OM&R Payment for any Contract Year shall be calculated in accordance with the following formula:

$$\mathbf{AOM\&RP_n = AOM_n + RP_n}$$

$$\mathbf{AOM_n = (AOMX_o \times (1 - PESC)) + (AOMX_o \times PESC \times ESC_n) + IA}$$

$$\mathbf{RP_n = RP_o \times ESC_n}$$

Where:

AOM&RP_n is the Annual OM&R Payment for the relevant Contract Year;

AOM_n is the Annual OM&R Payment Excluding Rehabilitation Payment for the relevant Contract Year;

RP_n is the Annual Rehabilitation Payment for the relevant Contract Year;

AOMX_o is the Annual OM&R Payment Excluding Rehabilitation Payment for the relevant Contract Year as set out in Appendix C or Appendix D, as applicable, to this Schedule 20;

PESC is [REDACTED]%;

IA is the Insurance Adjustment calculated in accordance with Schedule 25 - Insurance and Performance Security;

RP_o is the Annual Rehabilitation Payment for the relevant Contract Year as set out in Appendix C or Appendix D, as applicable, to this Schedule 20; and

ESC_n is the Escalation Factor for the relevant Contract Year as calculated in accordance with Section 3.1 of this Part B.

- 2.2 No later than 60 days prior to each Insurance Review Date, Project Co will require its insurance broker to prepare and submit to HMQ the Joint Insurance Cost Report. HMQ and Project Co, both acting reasonably, will agree on the Insurance Adjustment to be applied to the Annual OM&R Payment for the next Contract Year.
- 2.3 The Insurance Adjustment will constitute an adjustment to the Annual OM&R Payment on the Payment Commencement Date. On each Insurance Review Date thereafter, the Insurance Adjustment will be applied in accordance with Section 2.1 of this Part B.

Section 3. Escalation Factor

- 3.1 The Escalation Factor shall be calculated in accordance with the following formula:

$$ESC_n = CPI_n / CPI_o$$

Where:

ESC_n is the Escalation Factor applicable to the relevant Contract Year;

CPI_n is the value of CPI on April 1 of the relevant Contract Year “n”, to be determined by reference to the relevant index in the month immediately preceding the indexation date; and

CPI_o is the value of CPI on the Base Date, to be determined by reference to the relevant index in the month immediately preceding the Base Date.

Part C: Deductions from OM&R Payments

Section 1. Entitlement to Make Deductions

- 1.1 If at any time during the Operational Term a Quality Failure or Availability Failure shall occur, HMQ shall be entitled to make a Deduction from the relevant Monthly OM&R Payment in respect of that Quality Failure or Availability Failure.
- 1.2 The maximum aggregate of all Deductions that HMQ can make from a Monthly OM&R Payment in respect of any Contract Month shall be the Adjusted OM&R Payment relating to that Contract Month.
- 1.3 In the event that a Closure resulting from winter conditions pursuant to clause (e) of the definition Closure, as defined in Schedule 15-1 - Definitions and Reference Documents, constitutes an Availability Failure, the maximum Availability Failure Deduction per each Availability Failure is \$[REDACTED], multiplied by the Escalation Factor applicable to the relevant Contract Year.
- 1.4 In the event that a Closure resulting from a Relief Event, as defined under Section 43.1(a)(vii) of the Project Agreement, constitutes an Availability Failure, all Availability Failure Deductions made under this Schedule 20 with respect to such Availability Failure shall be reduced by [REDACTED]% and the maximum Availability Failure Deduction from the relevant Monthly OM&R Payment shall be \$[REDACTED], multiplied by the Escalation Factor applicable to the relevant Contract Year.

Section 2. Availability Failure Deductions

- 2.1 The “Availability Failure Deduction” in respect of a Contract Month, n , shall be calculated in accordance with the following formula:

$$AFD_n = \sum_{e=1}^x [AFP_{e,n} * AFPD_n]$$

where:

AFD_n = the Availability Failure Deduction applicable to Contract Month n

X = the number of Availability Failures in a Contract Month n

$AFP_{e,n}$ = the Availability Failure Points caused by an Availability Failure e , of Contract Month n

$AFPD_n$ = \$[REDACTED] multiplied by the Escalation Factor applicable to the relevant Contract Year

- 2.2 The Availability Failure Points in respect of an Availability Failure in any Contract Month shall be calculated in accordance with the following formula:

$$AFP_{e,n} = \sum_{i=1}^3 \sum_{j=1}^8 pt * d$$

where:

$AFP_{e,n}$ = the Availability Failure Points caused by an Availability Failure e , of Contract Month n

pt = the Deductible Availability Failure Points, if any, in respect of such Availability Failure during Time of Day Period j , affecting the number of Traffic Lanes i

d = the duration during such Time of Day Period of such Availability Failure measured in minutes (rounded up to the next full quarter-hour increment), divided by 60

i = the number of Traffic Lanes in a direction

j = the number of Time of Day Periods

2.3 The “Deductible Availability Failure Points” (points per 60 minutes) are set out in the following tables:

(a) **6 Lane Availability Segments**

Includes Availability Segments: A1, A2, A3, A4, B1, B2, B3, B4, E1, E2

Monday to Friday – Per 60 minutes					
	Time of Day Period (j)				
Number of Traffic Lanes in a direction that are subject to the Availability Failure (i)	6.01am–10.00am (1)	10.01am–3.00pm (2)	3.01pm–7.00pm (3)	7.01pm–10.00pm (4)	10.01pm–6.00am(5) ^a
1	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
3	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

^a Overnight periods beginning on a Friday and a day preceding a statutory holiday end at 8:00 am on Saturday morning or on the day of the statutory holiday, respectively. Overnight periods ending at 6:00 am on Monday or on the day following a statutory holiday begin at 10:01 pm on Sunday or the day following the statutory holiday, respectively.

Saturday, Sunday and Statutory Holidays – Per 60 minutes				
	Time of Day Period (j)			
Number of Traffic Lanes in a direction that are subject to the Availability Failure (i)	8.01am–11.00am (1)	11.01am–7.00pm (2)	7.01pm–10.00pm (3)	10.01pm–8.00am(4) ^b
1	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
3	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

^b Overnight periods beginning on a Sunday and the day of a statutory holiday end at 6:00 am on Monday morning or day following the statutory holiday, respectively. Overnight periods ending at 6:00 am on Saturday or on the first day of a statutory holiday begin at 10:01 pm on Friday or the day before the statutory holiday, respectively.

(b) **4-Lane Availability Segments**

Includes Availability Segments: A4, A5, A6, A7, A8, B4, B5, B6, B7, B8, C1, C2, D1, D2

Monday to Friday – Per 60 minutes					
	Time of Day Period (j)				
Number of Traffic Lanes in a direction that are subject to the Availability Failure (i)	6.01am–10.00am (1)	10.01am–3.00pm (2)	3.01pm–7.00pm (3)	7.01pm–10.00pm (4)	10.01pm–6.00am(5) ^a
1	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

^a Overnight periods beginning on a Friday and a day preceding a statutory holiday end at 8:00 am on Saturday morning or on the day of the statutory holiday, respectively. Overnight periods ending at 6:00 am on Monday or on the day following a statutory holiday begin at 10:01 pm on Sunday or the day following the statutory holiday, respectively.

Saturday, Sunday and Statutory Holidays – Per 60 minutes				
	Time of Day Period (j)			
Number of Traffic Lanes in a direction that are subject to the Availability Failure (i)	8.01am–11.00am (1)	11.01am–7.00pm (2)	7.01pm–10.00pm (3)	10.01pm–8.00am(4) ^b
1	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

^b Overnight periods beginning on a Sunday and the day of a statutory holiday end at 6:00 am on Monday morning or day following the statutory holiday, respectively. Overnight periods ending at 6:00 am on Saturday or on the first day of a statutory holiday begin at 10:01 pm on Friday or the day before the statutory holiday, respectively.

(c) **Interchange Ramps (2-Lane Availability Segments)**

Includes Availability Segments: A1, A4, B1, B4, D3

Monday to Friday – Per 60 minutes					
	Time of Day Period (j)				
Number of Traffic Lanes in a direction that are subject to the Availability Failure (i)	6.01am–10.00am (1)	10.01am–3.00pm (2)	3.01pm–7.00pm (3)	7.01pm–10.00pm (4)	10.01pm–6.00am(5) ^a
1	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

^a Overnight periods beginning on a Friday and a day preceding a statutory holiday end at 8:00 am on Saturday morning or on the day of the statutory holiday, respectively. Overnight periods ending at 6:00 am on Monday or on the day following a statutory holiday begin at 10:01 pm on Sunday or the day following the statutory holiday, respectively.

Saturday, Sunday and Statutory Holidays – Per 60 minutes				
	Time of Day Period (j)			
Number of Traffic Lanes in a direction that are subject to the Availability Failure (i)	8.01am–11.00am (1)	11.01am–7.00pm (2)	7.01pm–10.00pm (3)	10.01pm–8.00am(4) ^b
1	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

^b Overnight periods beginning on a Sunday and the day of a statutory holiday end at 6:00 am on Monday morning or day following the statutory holiday, respectively. Overnight periods ending at 6:00 am on Saturday or on the first day of a statutory holiday begin at 10:01 pm on Friday or the day before the statutory holiday, respectively.

2.4 The calculation of Availability Failure Deductions is illustrated in the following example:

An Availability Failure that occurs to one Traffic Lane on Monday between 6:30am and 7:00am along a 4 lane Availability Segment will incur [REDACTED] points (30 minutes / 60 minutes = 0.5 * [REDACTED] points). Therefore, the Availability Failure Deduction for such an Availability Failure will be \$[REDACTED] ([REDACTED] points x \$[REDACTED]).

Section 3. Quality Failure Deductions

- 3.1 The Quality Failure Deduction which may be applied to the Annual OM&R Payment in respect of a Contract Month shall be calculated in accordance with the following formula:

$$QFD_n = \sum_{d=1}^x [QFP_{d,n} * QFPD_n]$$

where:

QFD_n = the Quality Failure Deduction applicable to Contract Month *n*

X = the number of days in a Contract Month *n* on which there are one or more Quality Failures

QFP_{d,n} = the total Quality Failure Points on Day *d* of Contract Month *n* for all Quality Failures on Day *d*

QFPD_n = \$[REDACTED] multiplied by the Escalation Factor applicable to the relevant Contract Year

- 3.2 The calculation of Quality Failure Deductions is illustrated in the following example:

Should a collision occur on Tuesday at 2:00pm and Project Co does not submit a complete and accurate collision/incident report form until Thursday at 5:00pm, under performance measure 1006 of Schedule 15-3 Appendix A, Project Co would be assigned [REDACTED] point on Wednesday at 2:00pm and [REDACTED] points on Thursday at 2:00pm. The total Quality Failure Deduction for the Quality Failure would be \$[REDACTED] ([REDACTED] points x \$[REDACTED]).

Part D: Review of Availability Failure Points and /or Quality Failure Points

Section 1. Five Yearly Review

- 1.1 The amount of Availability Failure Points for each Availability Failure shall be reviewed by HMQ and Project Co at any time if requested by either Party but in any event shall be reviewed at least once in every five Contract Years.
- 1.2 The amount of Quality Failure Points for each Quality Failure shall be reviewed by HMQ and Project Co at any time if requested by either Party but in any event shall be reviewed at least once in every five Contract Years.
- 1.3 HMQ and Project Co shall act reasonably and diligently in carrying out the reviews.
- 1.4 For the avoidance of doubt, the Parties intend that any changes made as a result of such a review shall not alter the overall risk profile of the relevant OM&R Work or the likely magnitude of Availability Failure Deductions or Quality Failure Deductions. Where proposed changes would result in any such alteration, the matter shall be deemed to be a Variation and Schedule 22 - Variation Procedure shall apply.
- 1.5 HMQ and Project Co may in respect of each matter the subject of the review either:
 - (a) agree that the status of the relevant matter shall continue to apply unchanged in the Contract Year immediately following the review; or
 - (b) agree adjustments to the relevant matter to take effect in the Contract Year immediately following the review.
- 1.6 Any agreed adjustment pursuant to a review shall be effective from the commencement of the Contract Year immediately following the relevant review carried out in accordance with Section 1.1 of this Part D.

Part E: Quality Failure, Availability Failure and Failure Points

Section 1. Quality Failure and Availability Failure Points

- 1.1 Quality Failure Points and Availability Failure Points shall be awarded for every Quality Failure and Availability Failure, respectively, which occurs during the Operational Term of the Project Agreement, unless such Quality Failure Points and Availability Failure Points are cancelled pursuant to any other provision of the Project Agreement.

Section 2. Failure Points

- 2.1 Project Co shall be awarded one Failure Point for each Quality Failure Point and each Availability Failure Point awarded to it. For greater clarity, the number of Failure Points accrued in a given period shall be the sum of the total number of Quality Failure Points and Availability Failure Points accrued in that period.
- 2.2 The maximum number of Failure Points that may be awarded for a single Availability Failure is [REDACTED]. For greater certainty, there is no maximum to the number of Availability Failure Points that may be awarded to a single Availability Failure for the purpose of calculating the Availability Failure Deduction in accordance with Part C of this Schedule 20.

Part F: Failure by Project Co to Monitor or Report**Section 1. Failure by Project CO to Monitor or Report**

- 1.1 Subject to Sections 1.2 to 1.6 inclusive of this Part F, the Performance Monitoring Report produced by Project Co for any Contract Month shall be the source of the factual information regarding the performance of the OM&R Work for the relevant Contract Month for the purposes of calculating the relevant Monthly OM&R Payment, the number of Failure Points awarded and the number of Warning Notices awarded.
- 1.2 If there shall be any error or omission in the Performance Monitoring Report for any Contract Month, Project Co and HMQ shall agree the amendment to the Performance Monitoring Report or, failing agreement within 10 days of notification of the error or omission which shall not be made more than 2 calendar months following the relevant Performance Monitoring Report, except in the circumstances referred to in Section 1.5 of this Part F either party may refer the matter to the Dispute Resolution Procedure.
- 1.3 If Project Co fails to monitor or accurately report any Availability Failure or Quality Failure then, without prejudice to the Deduction to be made in respect of the relevant Availability Failure or Quality Failure, the failure to monitor or report shall be deemed to be a new Quality Failure, and Project Co shall be awarded [REDACTED] Quality Failure points for each occurrence of such Quality Failure, unless the circumstances set out in Section 1.5 of this Part F apply, in which case Project Co shall be awarded [REDACTED] Quality Failure Points for each such occurrence.
- 1.4 In the event that any inspection or investigation by HMQ of records made available pursuant to the Project Agreement reveals any further matters of the type referred to in Sections 1.2 and 1.3 above, those matters shall be dealt with in accordance with Section 1.2 or 1.3 of this Part F, as appropriate, and HMQ shall, in addition, be entitled to make Deductions in respect of any Availability Failure or Quality Failure in the manner prescribed in Part C of this Schedule 20. Any such Deductions shall be made from the Monthly OM&R Payment, payable in respect of the Contract Month in which the relevant matters were revealed by HMQ investigations or, to the extent that HMQ is unable to make any further deductions from the Monthly OM&R Payment in respect of that Contract Month by virtue of Section 1.2 of Part C of this Schedule 20, may be carried forward and deducted from Monthly OM&R Payments due in respect of subsequent Contract Months.
- 1.5 For the purposes of Sections 1.2 and 1.3 of this Part F the relevant circumstances are:
- (a) fraudulent action or inaction;
 - (b) deliberate misrepresentation; or
 - (c) gross misconduct or incompetence in each case on the part of Project Co or a Project Co Party.
- 1.6 The provisions of this Part F shall be without prejudice to any rights of HMQ pursuant to Sections 32, 45 and 60 of the Project Agreement.

APPENDIX A: AVAILABILITY SEGMENTS

Availability Segment No.	Description	From:	To:
Westbound			
A1	[Intentionally Deleted]	[Intentionally Deleted]	[Intentionally Deleted]
A2	Main Line westbound lanes	Brock Road Interchange Eastern Limit	700 m east of Westney Road
A3	Main Line westbound lanes	700 m east of Westney Road	Kinsale Road
A4	Main Line westbound lanes, Lake Ridge Road interchange (north side of Main Line), WDL interchange ramps (north side of Main Line)	Kinsale Road	Cochrane Street
A5	Main Line westbound lanes, Baldwin Street interchange (north side of Main Line)	Cochrane Street	Andersom Street
A6	Main Line westbound lanes, Thicksen Road interchange (north side of Main Line)	Anderson Street	1.0 km east of Thornton Road
A7	Main Line westbound lanes, Simcoe Street interchange (north side of Main Line)	1.0 km east of Thornton Road	Ritson Road
A8	Main Line westbound lanes, Harmony Road interchange (north side of Main Line)	Ritson Road	Harmony Road Interchange Eastern Limit
Eastbound			
B1	[Intentionally Deleted]	[Intentionally Deleted]	[Intentionally Deleted]
B2	Main Line eastbound lanes	Brock Road Interchange Easter Limit	700 m east of Westney Road
B3	Main Line eastbound lanes	700 m east of Westney Road	Kinsale Road

Availability Segment No.	Description	From:	To:
B4	Main Line eastbound lanes, Lake Ridge Road interchange (south side of Main Line), WDL interchange ramps (south side of Main Line), WDL northbound and southbound lanes to 0.5 km south of Highway 7 including interchange	Kinsale Road	Cochrane Street
B5	Main Line eastbound lanes, Baldwin Street interchange (south side of Main Line)	Cochrane Street	Andersom Street
B6	Main Line eastbound lanes, Thickson Road interchange (south side of Main Line)	Anderson Street	1.0km east of Thornton Road
B7	Main Line eastbound lanes, Simcoe Street interchange (south side of Main Line)	1.0 km east of Thornton Road	Ritson Road
B8	Main Line eastbound lanes, Harmony Road interchange (south side of Main Line)	Ritson Road	Harmony Road Interchange Eastern Limit
Southbound			
C1	WDL southbound lanes, Taunton interchange (west side of WDL)	0.5 km south of Highway 7	0.75 km south of Taunton Road
C2	WDL southbound lanes	0.75 km south of Taunton Road	0.5 km north of Dundas Street
Northbound			
D1	WDL northbound lanes, Taunton interchange (east side of WDL)	0.5 km south of Highway 7	0.75 km south of Taunton Road
D2	WDL northbound lanes	0.75 km south of Taunton Road	0.5 km north of Dundas Street
D3	WDL northbound and southbound lanes, Dundas Street interchange, WDL interchange ramps to Highway 401 bullnose	0.5 km north of Dundas Street	Re-Aligned Highway 401

Availability Segment No.	Description	From:	To:
Westbound Highway 401			
E1	Re-Aligned Highway 401 westbound lanes	2.25 km west of Re-Aligned Lake Ridge Road	3.0 km east of Re-Aligned Lake Ridge Road
Eastbound Highway 401			
E2	Re-Aligned Highway 401 eastbound lanes	2.25 km west of Re-Aligned Lake Ridge Road	3.0 km east of Re-Aligned Lake Ridge Road

APPENDIX B: QUALITY FAILURE POINTS

The following table is a summary of the Quality Failure Points specified for each Quality Failure in this Schedule 20 and in Schedule 11 - Quality Management, Schedule 15 - Output Specifications and Schedule 17 - Environmental Obligations. This table is for convenience of reference only and in the event of a discrepancy between this table, on the one hand, and the other provisions of this Schedule 20 or the provisions of Schedule 11 - Quality Management, Schedule 15 - Output Specifications or Schedule 17 - Environmental Obligations, as applicable, on the other hand, the latter shall take precedence to the extent of such discrepancy.

SCHEDULE 11 – QUALITY MANAGEMENT				
Table 2.5.1: Schedule of Plans and Reports (Response Time Measures)				
Perf. Measure*	Deliverable Name	Specification Reference	Due Date	Consequences for Non-Conformance
PQ5.1	Quality Audit Plans	<p>Section 5.1- Performance Measures (Effective, in respect of each Section, after the relevant Section Substantial Completion Date)</p> <p>PQ5.1 Project Co shall provide an updated Quality Audit Plan at twelve month intervals following submission of the its initial Quality Audit Plan</p> <p>At each occurrence of Project Co failing to provide an updated Quality Audit Plan at the required interval, Project Co shall be assigned one Quality Failure Point each day until the failure is rectified.</p>	At twelve month intervals following Quality Audit Plan submittal	[REDACTED] QF Point
PQ5.2a	Project Co's Quality Audits	<p>Performance Measures (Effective, in respect of each Section, after the relevant Section Substantial Completion Date). The Quality Director shall schedule Internal Quality Audits and External Quality Audits at least annually</p> <p>At each occurrence of Project Co failing to meet the required audit schedule, Project Co shall be assigned one Quality Failure Point each day until the failure is rectified.</p>	At each occurrence of Project Co failing to meet the required audit schedule, Project Co shall be assigned one Quality Failure Point each day until the failure is rectified.	[REDACTED] QF Point

SCHEDULE 11 – QUALITY MANAGEMENT				
Table 2.5.1: Schedule of Plans and Reports (Response Time Measures)				
Perf. Measure*	Deliverable Name	Specification Reference	Due Date	Consequences for Non-Conformance
PQ5.2b	Project Co's Quality Audits	Section 5.2- Within 14 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 the HMQ Representative upon request. At each occurrence of Project Co failing to document results within 14 days of completion, Project Co being shall be assigned one Quality Failure Point each day until the failure is rectified.	Submitted 14 days following completion of Quality Audit	[REDACTED] QF Point
PQ5.3	HMQ's Quality Audits	Section 5.3 - Performance Measures (Effective, in respect of each Section, after the relevant Section Substantial Completion Date) PQ5.3 Project Co shall prepare a Corrective Action plan, and, if appropriate, a Preventative Action plan, and submit it to the HMQ Representative within 20 Business Days of the closing meeting referred to in Section 5.3(d)(i)(B) of this Schedule. At each occurrence of Project Co failing to prepare a Corrective Action plan or Preventative Action Plan within the required time period, Project Co shall be assigned one Quality Failure Point each day until the failure is rectified.	Submitted 20 within Business Days following the closing meeting	[REDACTED] QF Point
PQ6.9	Monthly Quality Management System reports	Section 6.9 - For each month of the Project Term, Project Co shall prepare, and submit to the HMQ Representative within 15 Business Days of the start of the following month, a comprehensive Quality Management System report. At each occurrence of Project Co failing to submit a Quality Management System report within the required time period will result in Project Co being assigned one Quality Failure Point each day until the failure is rectified.	within 15 days of each month (in respect of previous month)	[REDACTED] QF Point

SCHEDULE 11 – QUALITY MANAGEMENT				
Table 2.5.1: Schedule of Plans and Reports (Response Time Measures)				
Perf. Measure*	Deliverable Name	Specification Reference	Due Date	Consequences for Non-Conformance
PQ7.3	Performance Measures (Effective, in respect of each Section, after the relevant Section Substantial Completion Date)	Section 7.3 - Project Co shall resolve Non-Conformances within the response time specified on the Non-Conformance reports. Failure to resolve a Non-Conformance within the time specified on the Non-Conformance report	within the response time specified on the Non-Conformance Reports	[REDACTED] QF Point

* Effective, in respect of each Section, after Section Substantial Completion of the relevant Section

SCHEDULE 15-3 APPENDIX A - Operations and Maintenance Performance Requirements

TABLE 5.2: Schedule of Documentation - Response Time Measures

Perf. Measure	Name	Reference	Due Date	Submitted under the Review Procedure	Consequences for Non-Conformance*
POMP1	Operation and Maintenance Plan (First Submission)	5.4	Submitted 60 days prior to Substantial Completion Date	Yes	[REDACTED] QF Points
POMP2	Operation and Maintenance Plan (Updates)	5.4	June 1st annually	Yes	[REDACTED] QF Points
POMP3	Monthly Reports	5.5	By 10th of each month	Yes	[REDACTED] QF Points
POMP4	Safety Management Plan	5.6	June 1st annually	Yes	[REDACTED] QF Points
POMP5	Emergency Response Plan	5.7	June 1st annually	Yes	[REDACTED] QF Points

* At each occurrence of Project Co failing to meet the performance measure, Project Co shall be assigned the indicated number of QF Points each day until the failure has been either rectified or a disposition has been accepted by the HMQ Representative in accordance with Part 7 (Non-Conformances) of Schedule 11 - Quality Management.

SCHEDULE 15-3 APPENDIX A - Operations and Maintenance Performance Requirements			
Feature	Outcome Target	Consequences for Non-Conformance	
		Initial	Subsequent
1004.06-Traffic Data Collection –Outcome Targets			
Classification Counts	All data required to be collected as stated in 1004.04.03.03 shall be delivered to HMQ within twenty (20) days of the completion of the counts.	[REDACTED] QF Point for each of the three (3) Classification Count Cycles that is not submitted on time or meets the submission requirements	[REDACTED] QF Point per day per each additional day, beyond 15 days of initial failure, for any of the three (3) Classification Count Cycle that is not complete and submitted
	All data collected in 1004.04.03.03 shall be submitted as stated and shall be [REDACTED]% Accurate.	[REDACTED] QF Point for failure for each data not meeting the accuracy requirement	[REDACTED] QF Point per day for each additional day, beyond 15 days of initial failure notification, for each of the three (3) Classification Count Cycle that is not Accurate
Turning Movement (TM) Counts	All data required to be collected as stated in 1004.04.03.04 shall be delivered to HMQ within twenty (20) days of the completion of the counts.	[REDACTED] QF Point for each Turning Movement Count that is not submitted on time or meets the submission requirements	[REDACTED] QF Point per day per each additional day, beyond 15 days of initial failure, for each Turning Movement Count that is not complete and submitted
	All data collected in 1004.04.03.04 shall be submitted as stated and shall be [REDACTED]% Accurate.	[REDACTED] QF Point for failure for each data not meeting the accuracy requirement	[REDACTED] QF Point per day for each additional day, beyond 15 days of initial failure notification, for each Turning Movement Count that is not Accurate

SCHEDULE 15-3 APPENDIX A - Operations and Maintenance Performance Requirements			
Feature	Outcome Target	Consequences for Non-Conformance	
		Initial	Subsequent
Ramp Counts	All data required to be collected as stated in 1004.04.03.05 shall be delivered to HMQ within twenty (20) days of the completion of the counts, and shall be at a minimum [REDACTED] % Accurate	[REDACTED] QF Point for each Ramp Count that is not submitted on time, or is Accurate, or meets the submission requirements	[REDACTED] QF Point per day per each additional day, beyond 15 days of initial failure, for each Ramp Count that is not complete, submitted on time, Accurate, or meets the submission requirements.
Ball Bank Curve Studies	All data collected in 1004.04.03.06 shall be submitted as stated and shall be at a minimum [REDACTED] % Accurate	[REDACTED] QF Point for each Ball Bank Curve Study that is not submitted on time, or is Accurate, or meets the submission requirements	[REDACTED] QF Point per day per each additional day, beyond 15 days of initial failure, for each Ball Bank Curve Study that is not complete, submitted on time, Accurate, or meets the submission requirements
Travel Time Studies	All data collected in 1004.04.03.07 shall be submitted as stated and shall be at a minimum [REDACTED] % Accurate	[REDACTED] QF Point for each Travel Time Study that is not submitted on time, or is Accurate, or meets the submission requirements	[REDACTED] QF Point per day per each additional day, beyond 15 days of initial failure, for each Travel Time Study that is not complete, submitted on time, Accurate, or meets the submission requirements
1005.06-Information Management –Outcome Targets			
Contact Information	[REDACTED] % of requirements of contact information in Section 1005.04.01 met	[REDACTED] QF Point per occurrence for contact information requirements not met	[REDACTED] QF Point per additional week until contact information requirements are met

SCHEDULE 15-3 APPENDIX A - Operations and Maintenance Performance Requirements			
Feature	Outcome Target	Consequences for Non-Conformance	
		Initial	Subsequent
Project Identification Signs	All Project identification signs installed at specified locations	[REDACTED] QF Point for each Project identification signs not installed at specified locations beyond 15 days of the start of the Project until the Expiry Date	[REDACTED] QF Point per sign per additional week until Signs are installed
	Signs conform to GS-22 sign layout	[REDACTED] QF Point for each sign not on conformance	[REDACTED] QF Point per sign per additional week until signs are in conformance
HMQ Information Requests and Requirements	[REDACTED]% of information provided within the specified timeframe for the situation	[REDACTED] QF Point per occurrence of the information not submitted within specified time	[REDACTED] QF Point per additional day until received
	[REDACTED]% of information is Complete and Accurate	[REDACTED] QF Point per occurrence of the information not being Complete or Accurate	None
Public Complaints/Inquiries	[REDACTED]% of complaints/ inquiries responded to within 48 hours	[REDACTED] QF Point for any complaint or inquiry not responded to within 48 hours	[REDACTED] QF Point for each additional 24 hours or portion thereof beyond 60 hours after the complaint or inquiry received and not responded to
	Complaint logs submitted to HMQ biweekly	[REDACTED] QF Point for the complaint log not submitted to HMQ by the specified time	[REDACTED] QF Point for each additional day until submitted
Radio Communications	[REDACTED]% of all required information is Complete, Timely and Accurate	[REDACTED] QF Point per occurrence for information that is not Complete, Timely and Accurate	None

SCHEDULE 15-3 APPENDIX A - Operations and Maintenance Performance Requirements			
Feature	Outcome Target	Consequences for Non-Conformance	
		Initial	Subsequent
Summer Patrol Diaries	Summer patrol diaries submitted within seven (7) days after biweekly period	[REDACTED] QF Point per occurrence of summer patrol diaries not submitted within seven (7.0) days after the end of each biweekly period.	[REDACTED] QF Point per additional day until received
	[REDACTED]% of summer patrol diaries provided are Complete and Accurate	[REDACTED] QF Point per occurrence for information that is not Complete or Accurate	None
Automated Locator Requirements	All identified vehicles equipped with onboard AMDCS units at all times	[REDACTED] QF Point per vehicle not equipped with an AMDCS unit	[REDACTED] QF Point per day until unit is installed
	[REDACTED]% of all AMDCS units operational [REDACTED]% of the time	[REDACTED] QF Point per occurrence of less than [REDACTED]% of AMDCS units fully operational	[REDACTED] QF Point per unit per day below the [REDACTED]% total required until [REDACTED]% is achieved
	No loss of data due to network service loss	[REDACTED] QF Point per AMDCS unit per occurrence of data loss of more than one (1) hour/day	[REDACTED] QF Point per unit/day until data is restored
	HMQ provided with all electronic data on a biweekly basis	[REDACTED] QF Point per occurrence of not providing electronic data to HMQ at specified times	[REDACTED] QF point per week commencing one week after the original due date
Corridor Management	Notification provided to HMQ of work observed that does not have an approved permit or does not comply with permit conditions.	[REDACTED] QF Point per occurrence of not notifying MTO of work observed that does not have an approved permit does not apply with permit conditions	None.
1006.06-Incident Response –Outcome Targets			

SCHEDULE 15-3 APPENDIX A - Operations and Maintenance Performance Requirements			
Feature	Outcome Target	Consequences for Non-Conformance	
		Initial	Subsequent
Response Time	Response to all Incidents in 30 minutes.	[REDACTED] QF Points for each instance where the response time of 30 minutes was not met	[REDACTED] QF Point for each 15 minute period beyond the initial 30 minutes that Project Co is not at the Incident site
Collision/Incident Report	Collision/Incident Reports completed and submitted to HMQ within 24 hours of an Incident	[REDACTED] QF Point for failing to provide Complete and Accurate Collision/Incident report form within 24 hours	[REDACTED] QF Point for each additional 24 hours
Incident Log	Incident log completed and submitted to HMQ within 15 days of month's end.	[REDACTED] QF Point for failing to provide Complete and Accurate Incident Log within 15 days of month end.	[REDACTED] QF Point for each additional 24 hours
Notice to Central Dispatch and CTOC upon arrival and departure at all Incidents	Notification of Central Dispatch and CTOC immediately upon arrival at and departure from the Incident site and relay any operations or information that may impact Emergency Services Providers' response times.	[REDACTED] QF Point per occurrence of not notifying CTOC of either arrival at or departure from the Incident site.	None
2001.06-Pavement Maintenance –Outcome Targets			
Asphalt and Concrete Pavement Surfaces			
Debris	Accumulation of gravel on paved driving surfaces and intersection aprons is removed upon Detection or being Made Aware	[REDACTED] QF Point for each occurrence of accumulation of gravel that is not removed from paved driving surfaces and intersection	[REDACTED] QF Point for each additional day or portion thereof beyond 24 hours after detection or being Made Aware that the gravel accumulation is not Addressed

SCHEDULE 15-3 APPENDIX A - Operations and Maintenance Performance Requirements			
Feature	Outcome Target	Consequences for Non-Conformance	
		Initial	Subsequent
	Accumulation of winter sand from paved driving surfaces, fully paved Shoulders including medians, intersection aprons, curb and gutter, paved traffic islands, commuter parking lots shall be removed by May 15 of every year	[REDACTED] QF Point if winter sand not removed by 15th of June of every year	[REDACTED] QF Point for each additional day beginning on June 16 until sand is removed
Potholes	No single Pothole that is deeper than 7.5 cm and greater than 0.04 m ²	[REDACTED] QF Points for each Pothole deeper than 7.5 cm and greater than 0.04 m ²	[REDACTED] QF Point for each four (4)-hour segment or portion thereof until the Pothole is repaired
	No more than three (3) Potholes greater than 0.04m ² within an area of 20 m ²	[REDACTED] QF Points for each occurrence of more than three Potholes greater than 0.04 m ² within an area of 20 m ²	[REDACTED] QF Point for each four (4)-hour segment or portion thereof until Potholes are repaired
	No more than ten (10) Potholes per lane km	[REDACTED] QF Point for each occurrence of 10 or more Potholes per lane km	[REDACTED] QF Point per occurrence for each additional day that the Potholes are left uncorrected
Cracking	All concrete joint failures exceeding a differential of 5 cm are signed and repaired within 60 days of Detection or being Made Aware	[REDACTED] QF Point per occurrence of cracks exceeding a width of 12 mm for concrete Pavement or 6 mm for composite pavement or 19 mm for 'D' cracks without implementation of Good Industry Practice to maintain the Pavement structure	[REDACTED] QF Point for each additional week left without implementing Good Industry Practice to maintain the Pavement structure
	No cracks to exceed 12 mm width. If Pavement is composite no cracks to exceed 6 mm width	[REDACTED] QF Point per occurrence of an unsigned crack/joint failure exceeding a differential of 5 cm or more	[REDACTED] QF Point for each additional day left unsigned

SCHEDULE 15-3 APPENDIX A - Operations and Maintenance Performance Requirements			
Feature	Outcome Target	Consequences for Non-Conformance	
		Initial	Subsequent
		[REDACTED] QF Point per occurrence of an unrepaired crack/joint after 60 days of being Made Aware	[REDACTED] QF Point for each additional day left unrepaired
Joint Failure	All bumps or depressions with a differential of 5 cm or more are signed and repaired within 60 days of Detection or being Made Aware	[REDACTED] QF Point per occurrence of an unsigned crack/joint failure exceeding a differential of 5 cm or more	[REDACTED] QF Point for each additional day left unsigned
		[REDACTED] QF Point per occurrence of an unrepaired crack/joint after 60 days of being Made Aware	[REDACTED] QF Point for each additional day left unrepaired
Distortion	All bumps or depressions with a differential of 5 cm or more over a 3 m length are signed and repaired within 60 days of Detection or being Made Aware	[REDACTED] QF Point per occurrence of an unsigned bump or depression with a differential of 5 cm or more over a 3 m length	[REDACTED] QF Point for each additional day left unsigned
		[REDACTED] QF Point per occurrence of an unrepaired distortion after 60 days of being Made Aware	[REDACTED] QF Point for each additional day left unrepaired
Skid Resistance (Not applicable to carpool parking facilities)	No Pavement area shall fall below the minimum friction value as prescribed in Appendix B of this Schedule. In the event the friction value is suspected to or has fallen below the minimum friction value and/or it has become evident that the desirable skid resistant features of the Pavement no longer exist, Project Co shall sign and conduct repairs to the Pavement area	As per Schedule 15-3, Appendix B, in non-Hazard situations	As per Schedule 15-3, Appendix B, in non-Hazard situations

SCHEDULE 15-3 APPENDIX A - Operations and Maintenance Performance Requirements			
Feature	Outcome Target	Consequences for Non-Conformance	
		Initial	Subsequent
	In case of Hazard, immediate correction action shall be taken	In case of a condition causing a Hazard, [REDACTED] QF Points per occurrence of an unrepaired Pavement area of which has insufficient skid resistance after 30 days of being Made Aware (Note: Hazardous conditions must be addressed immediately with temporary repairs as per this table under Hazard	In case of a condition causing a Hazard, [REDACTED] QF Point for each additional day the Pavement area of which has insufficient skid resistance is unrepaired (Note: Hazardous conditions must be addressed immediately with temporary repairs as per this table under Hazard
Pavement Edge Surface Loss	No Pavement edge surface loss that extends more than 15 cm inward from the edge of Pavement	[REDACTED] QF Points per occurrence of a Pavement edge surface loss that extends more than 15 cm inward from the edge of Pavement	[REDACTED] QF Point per occurrence for each additional day left uncorrected after Detection or being Made Aware
Concrete Cracking	No longitudinal, diagonal, corner, edge crescent, meandering, or transverse cracks to exceed 12 mm width	[REDACTED] QF Point per occurrence of a concrete cracking greater than 12mm width	[REDACTED] QF Point for each additional week left without implementing Good Industry Practice to maintain the Pavement structure
	No 'D' cracks to exceed 19 mm width	[REDACTED] QF Point per occurrence of any "D" cracks greater than 19 mm width	[REDACTED] QF Point for each additional week left without implementing Good Industry Practice to maintain the Pavement structure

SCHEDULE 15-3 APPENDIX A - Operations and Maintenance Performance Requirements			
Feature	Outcome Target	Consequences for Non-Conformance	
		Initial	Subsequent
Faulting	No differential vertical displacement of abutting slabs at joints or cracks to exceed 6 mm	[REDACTED] QF Point per occurrence of a differential vertical displacement of abutting slabs at joints or cracks exceeding 6mm	[REDACTED] QF Point for each additional week left without implementing Good Industry Practice to maintain the Pavement structure
Shoulders			
Washouts	No washout of 15 cm or deeper and measuring an area greater than 1 m ²	[REDACTED] QF Point per occurrence of a washout of 15 cm or deeper and measuring an area greater than 1 m ² .	[REDACTED] QF Point for each additional day after Detection or being Made Aware
	No washout of 15 cm or deeper and measuring an area greater than 0.5 m ² within 1 m of the travelled portion of the Roadway	[REDACTED] QF Point per occurrence of a washout of 15 cm or deeper and measuring an area greater than 0.5 m ² within 1 m of the travelled portion of the Roadway	[REDACTED] QF Point for each additional day after Detection or being Made Aware
Debris	Debris greater than 0.010 m ³ is removed Immediately upon Detection or being Made Aware	[REDACTED] QF Point per occurrence of Debris greater than 0.010 m ³ which is not removed immediately upon Detection or being Made Aware	[REDACTED] QF Points for each additional 30 minutes or portion thereof beyond two and one half (2.5) hours after Detection or being Made Aware that the Debris is not removed
	A maximum of five (5) pieces of Debris measuring more than 0.001 m ³ and less than 0.010 m ³ over a distance of one (1) km	[REDACTED] QF Point per occurrence of more than five (5) pieces of Debris measuring more than 0.001 m ³ and less than 0.010 m ³ over a distance of one (1) km	[REDACTED] QF Point for each additional day after Detection or being Made Aware

SCHEDULE 15-3 APPENDIX A - Operations and Maintenance Performance Requirements			
Feature	Outcome Target	Consequences for Non-Conformance	
		Initial	Subsequent
Drainage	No preventable condition that impedes the Shoulder drainage to function as designed	[REDACTED] QF Points per occurrence of a Preventable Condition, including windrow or berm that impedes the Shoulder drainage to function as designed	[REDACTED] QF Point for each additional day left uncorrected after Detection or being Made Aware
Drop Off	No drop-off exceeding 7.5 cm in depth	[REDACTED] QF Points per occurrence of a drop-off exceeding 7.5 cm in depth	[REDACTED] QF Point for each additional 30 minutes or portion thereof beyond 2.5 hours after Detection or being Made Aware that the drop-off is not repaired
General			
Hazards	Address any Hazard Immediately upon Detection or being Made Aware	[REDACTED] QF Points per occurrence	[REDACTED] QF Point for every 15 minute segment or portion thereof beyond 2.2 hours after Detection or being Made Aware until Addressed

SCHEDULE 15-3 APPENDIX A - Operations and Maintenance Performance Requirements			
Feature	Outcome Target	Consequences for Non-Conformance	
		Initial	Subsequent
2002.06-Winter Maintenance –Outcome Targets			
Prior to Winter Event			
Deployment for salting operations during Winter Transition Periods	[REDACTED]% of the full winter complement of the assigned Spreaders shall be deployed within 30 minutes after the Start of a Winter Event on any Route as measured by Weather Information	[REDACTED] QF Points per Route per occurrence of failing to meet the Outcome Target	[REDACTED] QF Point for each additional 15 minutes or portion thereof beyond 45 minutes of the Start of Winter Event until [REDACTED]% of the transition period Spreaders on the assigned Route are Deployed
Deployment for salting operations during Winter Season	[REDACTED]% of the full winter complement of the assigned Spreaders shall be deployed within 30 minutes after the Start of a Winter Event on any Route as measured by Weather Information	[REDACTED] QF Points per Route per occurrence of failing to meet the Outcome Target	[REDACTED] QF Point for each additional 15 minutes or portion thereof beyond 45 minutes of the Start of a Winter Season Spreaders on the assigned Route are Deployed
Deployment for plowing operations during Winter Transition Periods	[REDACTED]% of the full winter complement of the assigned Winter Vehicles excluding Spreaders shall be deployed upon accumulation of two (2) cm of snow or slush on the road surface on any Route	[REDACTED] QF Points per Route per occurrence of failing to meet the Outcome Target	[REDACTED] QF Point for each additional 30 minutes or portion thereof after the accumulation of snow or slush on the Roadway reaches more than (2) cm until [REDACTED]% of the transition period Winter Vehicles excluding Spreaders on the assigned Route are Deployed

SCHEDULE 15-3 APPENDIX A - Operations and Maintenance Performance Requirements			
Feature	Outcome Target	Consequences for Non-Conformance	
		Initial	Subsequent
Deployment for plowing operations during Winter Season	[REDACTED]% of the full winter complement of the assigned Winter Vehicles excluding Spreaders shall be deployed upon accumulation of two (2) cm of snow or slush on the road surface on any Route.	[REDACTED] QF Points per Route per occurrence of failing to meet the Outcome Target	[REDACTED] QF Point for each additional 30 minutes of portion thereof after the accumulation of snow or slush on the Roadway reaches more than two (2) cm until [REDACTED]% of the Winter Season Winter Vehicles excluding Spreaders on the assigned Route are Deployed
Ground Frost during Winter Transition Periods	No Ground Frost on Roadway causing slippery conditions during Winter Transition Periods	[REDACTED] QF Points per occurrence if no proactive action taken to prevent Ground Frost causing slippery conditions	[REDACTED] QF Point for each additional 30 minutes or portion thereof beyond 30 minutes after Detection or being Made Aware of ground frost until slippery condition has been removed
Isolated Slippery Conditions	Isolated Slippery Conditions Addressed Immediately [REDACTED]% of the time	[REDACTED] QF Points per occurrence of failing to Address Isolated Slippery Conditions Immediately	[REDACTED] QF Point for every 30 minutes or portion thereof beyond the initial two (2) hours) until condition is Addressed
During a Winter Event			
Circuit Times	Meeting the total Circuit Time for Salting of 1.6 hours on any Class 1 Highway Route on every circuit	[REDACTED] QF Points per occurrence and per Spreader not meeting the allowable circuit time specified	[REDACTED] QF Point for every 10-minute segment or portion thereof beyond 1.8 hours on Class 1 Route

SCHEDULE 15-3 APPENDIX A - Operations and Maintenance Performance Requirements			
Feature	Outcome Target	Consequences for Non-Conformance	
		Initial	Subsequent
	Meeting the total Circuit Time for Salting of 2.2 hours on any Class 2 Highway Route on every circuit	[REDACTED] QF Points per occurrence and per Spreader not meeting the allowable circuit time specified	[REDACTED] QF Point for every 13-minute segment or portion thereof beyond 2.4 hours on class 2 Routes
	Meeting the total Circuit Time for Salting of 3.3 hours on any Class 3 Highway Route on every circuit	[REDACTED] QF Points per occurrence and per Spreader not meeting the allowable circuit time specified	[REDACTED] QF Point for every 20-minute segment or portion thereof beyond 3.6 hours on Class 3 Routes
	Meeting the total Circuit Time for Plowing of 1.6 hours on any Class 1 Highway Route on every circuit	[REDACTED] QF points per occurrence and per plow and/or combination unit not meeting the allowable circuit time	[REDACTED] QF Point for every 10-minute segment or portion thereof beyond 1.8 hours on Class 1 Route
	Meeting the total Circuit Time for Plowing of 2.2 hours on any Class 2 Highway Route on every circuit	[REDACTED] QF points per occurrence and per plow and/or combination unit not meeting the allowable circuit time	[REDACTED] QF Point for every 13-minute segment or portion thereof beyond 2.4 hours on Class 2 Routes
	Meeting the total Circuit Time for Plowing of 3.3 hours on any Class 3 Highway Route on every circuit	[REDACTED] QF points per occurrence and per plow and/or combination unit not meeting the allowable circuit time	[REDACTED] QF Point for every 20-minute segment portion thereof beyond 3.6 hours on Class 3 Routes
Winter Equipment Utilization	Providing continuous winter operations using all Winter Vehicles available until prescribed level of service has been achieved on any Route	[REDACTED] QF Point per plow, Spreader and/or combination unit not fully utilized to achieve level of service as quickly as possible per occurrence	[REDACTED] QF Point per hour or portion thereof that the plow, Spreader or combination unit should have been utilized including Winter Event cleanup

SCHEDULE 15-3 APPENDIX A - Operations and Maintenance Performance Requirements			
Feature	Outcome Target	Consequences for Non-Conformance	
		Initial	Subsequent
Sand/Salt Application Rates	Application of salt and/or sand at or over the prescribed minimum application rates specified in this Performance Requirement [REDACTED]% of the time	[REDACTED] QF Point per Spreader for rates outside the allowable minimum application rate per occurrence	None
Calibration Rates	[REDACTED]% of spreader units within [REDACTED]% of calibration settings	[REDACTED] QF Point per Spreader per calibration test outside of [REDACTED]% measured rate per occurrence	[REDACTED] QF Point per day or portion thereof after 24 hour period after notification until calibration has been corrected
Continuous Plowing	Continuous plowing to maintain the established level of service [REDACTED]% of the time	[REDACTED] QF Point per plow truck not used continuously and impacting level of service per occurrence	[REDACTED] QF Point per hour or portion thereof that the plow should have been utilized including Winter Event cleanup
Echelon Plowing	Echelon plowing performed [REDACTED]% of the time when through lanes are plowed to the right on multi-lane Highways	[REDACTED] QF Points per occurrence for echelon plowing not performed	None
Snow accumulation	Snow accumulation adjacent to median barrier walls removed prior to the End of the Winter Event	[REDACTED] QF point per occurrence of failing to meet the Outcome Target	[REDACTED] QF Point for each four (4) hour segment or portion thereof beyond four (4) hours after the end of the Winter Event until accumulation is removed
After The Winter Event			

SCHEDULE 15-3 APPENDIX A - Operations and Maintenance Performance Requirements			
Feature	Outcome Target	Consequences for Non-Conformance	
		Initial	Subsequent
Level of Service	Achieve Bare Pavement on any Route on Class 1 Highways within eight (8) hours after the End of the Winter Event	[REDACTED] QF point per occurrence of failing to meet the Outcome Target of achieving Bare Pavement within eight (8) hours after the End of the Winter Event	[REDACTED] QF Points for each hour or portion thereof until Bare Pavement is regained on Class 1 Highways
	Achieve Bare Pavement on any Route on Class 2 Highways within 16 hours after the End of the Winter Event	[REDACTED] QF point per occurrence of failing to meet the Outcome Target of achieving Bare Pavement within sixteen (16) hours after the End of the Winter Event	[REDACTED] QF Points for each hour or portion thereof until Bare Pavement is regained on Class 2 Highways
	Achieve Bare Pavement on any Route on Class 3 Highways within 24 hours after the End of the Winter Event	[REDACTED] QF point per occurrence of failing to meet the Outcome Target of achieving Bare Pavement within twenty four (24) hours after the End of the Winter Event	[REDACTED] QF Point for each hour or portion thereof until Bare Pavement is regained on Class 3 Highways
Snowbanks	Snow accumulation at any location impairing visibility removed or lowered within 48 hours after Detection or being Made Aware	[REDACTED] QF Point per occurrence of failing to meet the Outcome Target	[REDACTED] QF Point for each 12-hour segment or portion thereof beyond 60 hours after Detection or being Made Aware until visibility is required
Snow accumulation	Snow accumulation that could cause ramping at any location removed or in the process of being removed within four (4) hours after Detection or being Made Aware	[REDACTED] QF Point per occurrence of failing to meet the Outcome Target	[REDACTED] QF Point for each four (4)-hour segment or portion thereof beyond eight (8) hours after Detection or being Made Aware until accumulation is removed

SCHEDULE 15-3 APPENDIX A - Operations and Maintenance Performance Requirements			
Feature	Outcome Target	Consequences for Non-Conformance	
		Initial	Subsequent
Shoulders/Medians, Median Cross Over's, and carpool parking facilities	Fully plowed within 24 hours of the End of Winter Event	[REDACTED] QF Point per occurrence Shoulders/median crossovers not plowed within 24 hours of the End of Winter Event	[REDACTED] QF Point for each four (4)-hour segment or portion thereof beyond 28 hours after the End of the Winter Event until plowed and slated/sanded
General			
Winter Equipment Lighting	[REDACTED]% of lighting on Winter Vehicles conforming to specifications in attachments of this performance requirement.	[REDACTED] QF Point per occurrence of failing to meet the Outcome Target	[REDACTED] QF Point per day or portion thereof until specifications are conformed to
Hazards	Address any Hazard Immediately upon Detection or being Made Aware	[REDACTED] QF Points per occurrence of failing to meet the Outcome Target	[REDACTED] QF Point for every 15 minute segment or portion thereof beyond 2.2 hours after Detection or being Made Aware until Addressed
Equipment Breakdowns	Any Route not serviced for more than two (2) hours due to equipment breakdown or redeployment	[REDACTED] QF Points per Winter Vehicle per occurrence of failing to meet the Outcome Target	[REDACTED] QF Point per Winter Vehicle for each 15-minute segment or portion thereof beyond 2.3 hours until Route becomes
Salt/Sand Storage	Salt/sand stored in covered buildings at all times	[REDACTED] QF Point per occurrence of failing to meet the Outcome Target	[REDACTED] QF Point for each or portion thereof beyond two (2) hours until material is returned to storage

SCHEDULE 15-3 APPENDIX A - Operations and Maintenance Performance Requirements			
Feature	Outcome Target	Consequences for Non-Conformance	
		Initial	Subsequent
Winter Drainage	No flooding on Roadway caused by snow and/or ice impeding drainage through or to Culverts and ditches	[REDACTED] QF Point per occurrence of failing to meet the Outcome Target	All costs of repairs to return Extension Infrastructure to original condition prior to flooding
Reporting Requirements	All reporting requirements identified in Section 2002.04.07 are Accurate, and Complete 100% of the time	[REDACTED] QF Point per occurrence of information not being Accurate and Complete	None
	All reporting requirements identified in Section 2002.04.07 are submitted on time 100% of the time.	[REDACTED] QF Point per occurrence for information not submitted in prescribed time	[REDACTED] QF point per subsequent week or portion thereof until submitted
Pathways	Pathways must be essentially bare to accommodate pedestrians and wheeled traffic within 8 hours of the conclusion of a Winter Event	[REDACTED] QF Point per occurrence at each pathway not being bare within 8 hours of the conclusion of a Winter Event	[REDACTED] QF Point for each four (4)-hour segment or portion thereof not corrected
2003.06-Pavement Marking –Outcome Targets			
Retroreflectivity *	No Pavement Markings less than reflectivity readings identified in Table 2003-1 –Minimum Reflectivity Requirements (mcd/m2lx) averaged over any 1 km segment at anytime	[REDACTED] QF Points per each 1km segment that fails to meet the minimum retroreflectivity readings on Pavement Markings (Minimum assessment is 1QF Point for segments less than 1km)	[REDACTED] QF Point per day the deficiency remains after 10 days following the Initial QF Points assessment
	No 100 metre segment of Pavement Marking shall be less than 100 mcd/m2lx for white markings, and 75 mcd/m2lc) for yellow (excluding full width surface treated roadways)	[REDACTED] QF Points per 100m segment that fails to meet the minimum retroreflectivity readings on Pavement Markings	[REDACTED] QF Point per day the deficiency remains after 10 days following the Initial QF Points assessment

SCHEDULE 15-3 APPENDIX A - Operations and Maintenance Performance Requirements			
Feature	Outcome Target	Consequences for Non-Conformance	
		Initial	Subsequent
	No Pavement Marking Symbol less than reflectivity readings identified in Table 2003-1 –Minimum reflectivity requirements (mcd/m2lx) averaged on any one symbol at any time	[REDACTED] QF Point per Pavement Marking Symbol that fails to meet the minimum retroreflectivity readings	[REDACTED] QF Point per day the deficiency remains after 10 days following the Initial QF Points assessment
Durability *	No more than [REDACTED]% material losses on any 100 m segment of Pavement Markings at any time.	[REDACTED] QF Points per 100m segment of Pavement Markings exceeding 25% material loss	[REDACTED] QF Point per day the deficiency remains after 10 days following the Initial QF Points assessment
	No more than [REDACTED]% material losses on any Pavement Marking Symbol at any time	[REDACTED] QF Point per Pavement Marking Symbol exceeding 25% material loss	[REDACTED] QF Point per day the deficiency remains after 10 days following the Initial QF Points assessment
Visibility *	Visibility readings meeting the requirements of Table 2003-2 (Pavement Marking Visibility) on all Pavement Markings and Pavement Marking Symbols at all times	[REDACTED] QF Points per occurrence of not meeting the visibility requirements	[REDACTED] QF Point per day the deficiency remains after 10 days following the Initial QF Points assessment
Colour *	Chromaticity meets the requirements of the Chromaticity Coordinates in Section 2003.04.06 of this Performance Requirement at all times	[REDACTED] QF Points per occurrence for not meeting the colour requirements	[REDACTED] QF Point per day the deficiency remains after 10 days following the Initial QF Points assessment

SCHEDULE 15-3 APPENDIX A - Operations and Maintenance Performance Requirements			
Feature	Outcome Target	Consequences for Non-Conformance	
		Initial	Subsequent
Daytime Luminance Factor *	Daytime luminance factor meets a minimum of [REDACTED]% for white and [REDACTED]% for yellow as measured by ASTM E-1347 at all times	[REDACTED] QF Points per occurrence for not meeting the luminance requirements	[REDACTED] QF Point per day the deficiency remains after 10 days following the Initial QF Points assessment
Submission and Documentation	The required documents specified in Section 2003.04.11 are Accurate, Timely and Complete [REDACTED]% of the time	[REDACTED] QF Point per occurrence of each document not being Accurate, Timely and Complete	[REDACTED] QF Point per day the deficiency remains after 15 days following the Initial QF Points assessment
Appearance	All lines are straight and true at all times	[REDACTED] QF Points per occurrence of lines not straight and true)	[REDACTED] QF Point per day the Initial QF Points assessment until corrected
	Severe tracking and splatter corrected within five (5) days after Detection or being Made Aware	[REDACTED] QF Points per occurrence of splatter and/or tracking not corrected within 5 days of Detection or being Made Aware	[REDACTED] QF Point per each additional day beyond the initial 5 days period until corrected
	OTM Book 11 complied with [REDACTED]% of the time	[REDACTED] QF Points per occurrence of non-compliance to OTM Book 11 (does not apply to carpool parking facilities	[REDACTED] QF Point per day until compliance to Book 11 is achieve

SCHEDULE 15-3 APPENDIX A - Operations and Maintenance Performance Requirements			
Feature	Outcome Target	Consequences for Non-Conformance	
		Initial	Subsequent
2111.06-Asset Condition Data Collection-Pavements –Outcome Targets			
DMI	As prescribed in this Section, Project Co shall collect data and report DMI values along with all supporting information for each Roadway Section	[REDACTED] QF Point for each occasion that Project Co fails to collect data and report DMI values along with all supporting information for each Roadway Section	
	Each year Project Co’s DMI values for all Roadway Sections are within 0.5 DMI point from HMQ’s calculated DMI value	[REDACTED] QF Point for each occasion that Project Co’s DMI values for any one Roadway Section is not within 0.5 DMI point of HMQ’s calculated DMI value	
	[REDACTED]% of the DMI information is provided to HMQ by the specified date annually	[REDACTED] QF Point if [REDACTED]% of the DMI information is not provided to HMQ by the specified date annually	
PCI	As prescribed in this Section, Project Co shall report PCI values for each Roadway Section	[REDACTED] QF Point for each occasion that Project Co fails to collect data and report PCI values for each Roadway Section	
	Each year Project Co’s PCI values for all Roadway Sections are within 3 PCI points from HMQ’s calculated PCI value	[REDACTED] QF Point for each occasion that Project Co’s PCI values for all Roadway Sections are not within3 PCI points from HMQ’s calculated PCI value	
	[REDACTED]% of the PCI information is provided to HMQ by the specified date annually	[REDACTED] QF Point if [REDACTED]% of the PCI information is not provided to HMQ by the specified date annually	

SCHEDULE 15-3 APPENDIX A - Operations and Maintenance Performance Requirements			
Feature	Outcome Target	Consequences for Non-Conformance	
		Initial	Subsequent
3001.06-Structure Maintenance –Outcome Targets			
General			
Structure Cleaning	All Structures and components are cleaned and washed by June 15 of every year	[REDACTED] QF Point if any Structure and components are not cleaned and washed by June 15 of every year	[REDACTED] QF Point for each additional day until corrected
Structure Inspections	All Structures and components are inspected and reports are made available to HMQ	[REDACTED] QF Point per occurrence of a Structure or a component that is not inspected and reported	[REDACTED] QF Point for each additional day until corrected
Overpasses			
Washouts	Washouts are signed and the area secured immediately upon Detection or being Made Aware	[REDACTED] QF Point per occurrence of washouts not signed immediately upon Detection or being Made Aware	[REDACTED] QF point per additional day until corrected
	Washouts are repaired within seven (7) days upon Detection or being Made Aware	[REDACTED] QF Point per occurrence of washouts not repaired within seven (7) days upon Detection or being Made Aware	[REDACTED] QF point per additional day until corrected
Handrails	Temporary repairs to handrails completed immediately upon Detection or being Made Aware	[REDACTED] QF Point per occurrence of temporary repairs to handrails not completed Immediately upon Detection or being Made Awa	[REDACTED] QF point per additional day until corrected
	Permanent Repairs to handrails completed within seven (7) days upon Detection or being Made Aware	[REDACTED] QF Point per occurrence of Permanent Repairs to handrail not completed within seven (7) days upon Detection or being Made Aware	[REDACTED] QF Point per additional day until corrected

SCHEDULE 15-3 APPENDIX A - Operations and Maintenance Performance Requirements			
Feature	Outcome Target	Consequences for Non-Conformance	
		Initial	Subsequent
Bridge Surfaces			
Distortion	All sharp vertical displacements of more than 20 mm are signed	[REDACTED] QF Point per occurrence of sharp vertical displacement of more than 20 mm are not signed	[REDACTED] QF Point for each additional day that is left uncorrected
Settlement	All settlements of the approach slabs by more than 100 mm are signed	[REDACTED] QF Point per occurrence of settlements of the approach slabs by more than 100mm that are not signed	[REDACTED] QF Point for each additional day that is left uncorrected
Cracks	All cracks in the asphalt surface wider than 25 mm are repaired	[REDACTED] QF Points per occurrence of cracks in the asphalt surface wider than 25mm that are not repaired	[REDACTED] QF Point for each additional day that is left uncorrected
Potholes	All Potholes exceeding 20 mm on asphalt or concrete surfaces are repaired	[REDACTED] QF Points per occurrence of Potholes exceeding 20 mm and greater than 0.04 m2 on concrete surfaces that are not repaired upon Detection or being Made Aware	[REDACTED] QF Point for each additional day that is left uncorrected
Obstructions to Water Flow			
Debris	Logs, trees, ice and other Debris shall be removed after high water levels have returned to normal depths. Subsequent significant build up shall be removed before September 1 of each year	[REDACTED] QF Points for not removing logs, trees, ice and other debris after high water levels have returned to normal depths	[REDACTED] QF Point for each additional day that is left uncorrected
	In conditions where accumulation of Debris or ice causes flooding and erosion or distress to the Structure, removal of the obstruction shall be undertaken Immediately	[REDACTED] QF Points if subsequent significant build up is not removed before September 1 of every year	[REDACTED] QF Point for each additional day that is left uncorrected
		[REDACTED] QF Points for not immediately removing obstructions causing conditions, where accumulation of debris or ice causes flooding and erosion or distress to the Structure	[REDACTED] QF point for each additional day that is left uncorrected

SCHEDULE 15-3 APPENDIX A - Operations and Maintenance Performance Requirements			
Feature	Outcome Target	Consequences for Non-Conformance	
		Initial	Subsequent
Drainage	No preventable condition that impedes the drainage function as designed	[REDACTED] QF Points per occurrence of not correcting conditions that impede the drainage to function as designed	[REDACTED] QF Point per day if not corrected within 14 days upon Detection or being Made Aware
	Prevent scouring or erosion near or at Structure supports	[REDACTED] QF Points per occurrence of not correcting the causes of scouring or erosion near or at Bridge supports	[REDACTED] QF Point per day if not corrected within 14 days upon Detection or being Made Aware
Expansion Joints and Bearings			
Expansion Joints	All expansion joint components are in place, secured and functioning in a proper operating manner	[REDACTED] QF Points per occurrence of loose, broken, missing or misaligned joint components not scheduled for immediate corrective action	[REDACTED] QF Point for each additional day that is left uncorrected
Bearings	All Bearing components are clean from the accumulation of Debris that restrict movement	[REDACTED] QF Point per occurrence of a Bearing component that is restricted from movement by the accumulation of debris	[REDACTED] QF Point for each additional day that is left uncorrected
Erosion Control			
Wingwalls	Washouts or erosion at the ends of wingwalls are repaired within seven (7) days upon Detection or being Made Aware	[REDACTED] QF Point per occurrence of washouts not corrected within seven (7) days upon Detection or being Made Aware	[REDACTED] QF Point for each additional day that is left uncorrected
Deck Drain Outlets	Washouts or erosion at the deck drain outlets are repaired within 30 days of Detection or being Made Aware	[REDACTED] QF Point per occurrence washouts not corrected within 30 days upon Detection or being Made Aware	[REDACTED] QF point for each additional day that is left uncorrected

SCHEDULE 15-3 APPENDIX A - Operations and Maintenance Performance Requirements			
Feature	Outcome Target	Consequences for Non-Conformance	
		Initial	Subsequent
Retaining Walls			
Vertical Alignment	The differential rotation of all Retaining Walls shall not exceed [REDACTED]% of the as-built wall batter	[REDACTED] QF Points per occurrence of differential rotation greater than 50% of the as-built wall batter	[REDACTED] QF Points for each day per occurrence if not corrected within 12 months upon Detection or being Made Aware
	Project Co shall implement corrective actions in accordance with Section 6.4 of Appendix B of this schedule in the event this target is not met		
4001.06-Roadside Features –Outcome Targets			
Barriers and Energy Absorbing Systems			
Cable Guide Rail	No frayed and/or broken cables, no cable height exceeding the design standard by more than 5 cm, no exposed anchors or missing hardware	[REDACTED] QF Points per occurrence of frayed and/or missing cables, or cable height exceeding the design standard by more than 5 cm or exposed anchors or missing hardware	[REDACTED] QF Point for each additional day that is left uncorrected
	When ground is not frozen, all damaged posts are repaired within 21 days upon Detection or being Made Aware	[REDACTED] QF Points per occurrence of damaged posts not repaired within 21 days (when ground is not frozen) upon Detection or being Made Aware	[REDACTED] QF Point for each additional day that is left uncorrected
	When ground is frozen, temporary repairs are to be completed. All temporary repairs and all damaged posts, cables and hardware are permanently repaired by the May 15 in every calendar year	[REDACTED] QF Points per occurrence of temporary repairs (which have been performed when ground is frozen) that remain in place past June 15 in every calendar year	[REDACTED] QF Point for each additional day that is left uncorrected
	No missing or damaged reflectorized strips	[REDACTED] QF Point per each occurrence of more than three consecutive damaged or missing reflectorized strips	[REDACTED] QF Point for each additional day that is left uncorrected

SCHEDULE 15-3 APPENDIX A - Operations and Maintenance Performance Requirements			
Feature	Outcome Target	Consequences for Non-Conformance	
		Initial	Subsequent
Steel Beam Guide Rail	No more than two consecutive posts that are missing, broken, excessively split or cracked or generally unsound	[REDACTED] QF points per occurrence of more than two (2) consecutive missing, broken, excessively split, cracked, or generally unsound posts	[REDACTED] QF Point for each additional day that is left uncorrected
	No more than [REDACTED]% of the posts in the system (terminal to terminal) missing, broken, excessively split or cracked or generally unsound	[REDACTED] QF Points per occurrence of more than [REDACTED]% of the posts in a system (terminal to terminal) missing, broken, excessively split, cracked or generally unsound posts	[REDACTED] QF Point for each additional day that is left uncorrected
	All rails or channels that are dented, bent, twisted or rusted affecting the integrity and effectiveness of the system are repaired or replaced within seven (7) days for median installations and 21 days for Shoulder installations	[REDACTED] QF Point per occurrence of rails or channels that are dented, bent, twisted or excessively rusted and affect the integrity and effectiveness of the system that are not repaired within seven (7) days (for Median Installations) upon Detection or being Made Aware	[REDACTED] QF Point for each additional day that is left uncorrected
	Any broken post repaired within 30 days upon Detection or being Made Aware	None	[REDACTED] QF Point per day for non-repair of any broken post (s) beyond 30 days upon Detection or being Made Aware
Temporary Concrete Barriers	Any two adjacent sections of temporary/modular barriers are misaligned by more than 7.5 cm or longitudinally separated by greater than 2.5 cm	[REDACTED] QF Points per occurrence of two adjacent sections of temporary/modular concrete barriers that are misaligned by more than 7.5 cm or longitudinally separated by greater than 2.5cm	[REDACTED] QF Point for each additional day that is left uncorrected

SCHEDULE 15-3 APPENDIX A - Operations and Maintenance Performance Requirements			
Feature	Outcome Target	Consequences for Non-Conformance	
		Initial	Subsequent
	All temporary repairs are removed and are permanently repaired between April 1 and October 1 of each year	[REDACTED] QF Point per occurrence of temporary repairs that are not removed and permanently repaired between April 1 and October 1 of each year	[REDACTED] QF Point for each additional day that is left uncorrected
	Any “break out” area is secured within 24 hours of occurrence and repaired within seven (7) days	[REDACTED] QF Points per occurrence of a “break out” area that is not secured within 24 hours	[REDACTED] QF Point for each additional day that is left uncorrected
Concrete Barriers	Any “break out” area is secured within 24 hours of occurrence and repaired within seven (7) days	[REDACTED] QF Point per occurrence of temporary repairs that are not removed and permanently repaired between April 1 and October 1 of each year	[REDACTED] QF Point for each additional day that is left uncorrected
Energy Absorbing Systems	All damaged Energy Absorbing Systems (EAS's) which compromise the integrity and effectiveness of the system are repaired or replaced within seven (7) days upon Detection or being Made Aware	[REDACTED] QF Points per occurrence of damaged Energy Absorbing System that affect the integrity and effectiveness of the system that are not repaired or replaced within seven (7) days after Detection or being Made Aware	[REDACTED] QF Point for each additional day that is left uncorrected
	All Energy Absorbing Systems which have shifted or moved out of original position are realigned within seven (7) days upon Detection or being Made Aware	[REDACTED] QF Point per occurrence of Energy Absorbing Systems that have shifted or moved out of original position and that are not realigned within seven (7) days after detection or being Made Aware	[REDACTED] QF Point for each additional day that is left uncorrected
	All systems that contain moving parts are cleaned by June 1 every year	[REDACTED] QF Point per occurrence of systems that contain moving parts which are not cleaned by June 1 of every year	[REDACTED] QF Point for each additional day that is left uncorrected
Anti Glare Screens	All damaged or missing anti-glare screens are repaired or replaced	[REDACTED] QF Point per occurrence of damaged or missing anti-glare screens that are not acted on within 14 days after Detection or being Made Aware	[REDACTED] QF Point for each additional day that is left uncorrected

SCHEDULE 15-3 APPENDIX A - Operations and Maintenance Performance Requirements			
Feature	Outcome Target	Consequences for Non-Conformance	
		Initial	Subsequent
Noise Barriers	All damaged or missing components are repaired or replaced	[REDACTED] QF Points per occurrence of damaged Noise Barriers that affect the integrity and effectiveness of such barriers as designed that are not repaired or replaced within seven (7) days after Detection or being Made Aware	[REDACTED] QF Point for each additional day that is left uncorrected
	All Noise Barriers which have shifted or moved out of original location are realigned within seven (7) days upon Detection or being Made Aware	[REDACTED] QF Point per occurrence of Noise Barriers that have shifted or moved out of original position and that are not realigned within seven (7) days after detection or being Made Aware	[REDACTED] QF Point for each additional that is left uncorrected
	The vertical alignment of all Noise Barriers shall not differ by more than 50 mm/linear metre from vertical	[REDACTED] QF point per occurrence that the vertical alignment of a Noise Barrier or part thereof differs by more than 50 mm/linear metre from vertical	[REDACTED] QF Point for each additional day that is left uncorrected
	All components that contain moving parts are cleaned and maintained in accordance with manufacturer's recommendations and Good Industry Practice by June 1 every year	[REDACTED] QF Point per occurrence of systems that contain moving parts which are not cleaned by June 1 of every year	[REDACTED] QF Point for each additional day that is left uncorrected
	All Noise Barriers or part thereof shall meet the acoustic and aesthetic design requirements specified elsewhere in this Project Agreement	[REDACTED] QF Points per occurrence that the Noise Barrier or part thereof fails to meet the design requirements	[REDACTED] QF Point for each day the Noise Barrier or part thereof is left uncorrected

SCHEDULE 15-3 APPENDIX A - Operations and Maintenance Performance Requirements			
Feature	Outcome Target	Consequences for Non-Conformance	
		Initial	Subsequent
Signs			
Signs (General)	Missing, damaged, illegible, obscured, twisted or deflected Stop and Yield Signs, Advanced Stop and Advanced Yield Signs, and Checkerboard Signs replaced/repaird Immediately upon Detection or being Made Aware	[REDACTED] QF Points per occurrence (missing, damaged, illegible, obscured, reduced reflectivity, faded, twisted or deflected) Stop and Yield Signs, Advanced Stop and Advanced Yield Signs, and Checkerboard Signs not repaired/replaced Immediately	[REDACTED] QF Point for each additional 30 minutes or portion thereof beyond two and one half (2.5) hours after Detection or being Made Aware that the Sign is not repaired/replaced
Regulatory Signs	All other missing, damaged, illegible, obscured, reduced reflectivity, faded, twisted or deflected regulatory Signs not listed above, are Addressed within three (3) days upon Detection or being Made Aware	[REDACTED] QF Points per occurrence of other (missing, damaged, illegible, obscured, reduced reflectivity, faded, twisted or deflected) regulatory Signs, that are not Addressed within three (3) days after Detection or being Made Aware	[REDACTED] QF Point for each additional day that is left uncorrected
Warning Signs	Missing, damaged, illegible, obscured, reduced reflectivity, faded, twisted or deflected warning Signs are Addressed within seven (7) days upon Detection or being Made Aware	[REDACTED] QF Point per occurrence of missing, damaged, illegible, obscured, reduced reflectivity, faded, twisted or deflected warning Signs not Addressed within seven (7) days after Detection or being Made Aware	[REDACTED] QF Point for each additional day that is left uncorrected
	Missing, damaged, illegible, obscured, reduced reflectivity, faded, twisted or deflected delineators are Addressed within 30 days upon Detection or being Made Aware	[REDACTED] QF Point per occurrence of missing, damaged, illegible, obscured, reduced reflectivity, faded, twisted or deflected delineators not Addressed within 30 days after Detection or being Made Aware	[REDACTED] QF Point for each additional day that is left uncorrected

SCHEDULE 15-3 APPENDIX A - Operations and Maintenance Performance Requirements			
Feature	Outcome Target	Consequences for Non-Conformance	
		Initial	Subsequent
Information Signs (non extruded)	Missing, damaged, illegible, obscured, reduced reflectivity, faded, twisted or deflected warning Signs are Addressed within seven (7) days upon Detection or being Made Aware	[REDACTED] QF Point per occurrence of missing, damaged, illegible, obscured, reduced reflectivity, faded, twisted or deflected warning Signs not Addressed within seven (7) days after Detection or being Made Aware	[REDACTED] QF Point for each additional day that is left uncorrected
Information Signs (extruded)	Missing, damaged, illegible, obscured, reduced reflectivity, faded, twisted or deflected information Signs are Addressed within 30 days upon Detection or being Made Aware	[REDACTED] QF Point per occurrence of missing, damaged, illegible, obscured, reduced reflectivity, faded, twisted or deflected information signs not Addressed within 30 days after Detection or being Made Aware	[REDACTED] QF Point for each additional day that is left uncorrected
Sign Hardware	All missing /broken/loose/cracked/bent fastener and brackets are repaired or replaced within seven (7) days upon Detection or being Made Aware	[REDACTED] QF Point per occurrence of missing/broken/loose/cracked/bent fasteners and brackets not replaced within seven (7) days after Detection or being Made Aware	[REDACTED] QF Point for each additional day that is left uncorrected
Sign Posts	All twisted, cracked, out of plumb, bent, unsound posts or posts not solid in the ground are repaired or replaced within 60 days upon Detection or being Made Aware	[REDACTED] QF Point per occurrence of twisted, excessively cracked, out of plumb, bent, unsound posts or posts not solid in the ground if not repaired or replaced within 60 days after Detection or being Made Aware	[REDACTED] QF Point for each additional day that is left uncorrected
Sign Supports	All Debris against the Structure is removed upon Detection or being Made Aware	[REDACTED] QF Point per occurrence of Debris accumulated against the Structure which is not removed upon Detection or being Made Aware	[REDACTED] QF Points for each additional day that is left uncorrected
	Annual inspection reports completed for all Structures and submitted to HMQ by July 1 of every year.	[REDACTED] QF Point per occurrence of a Structure not inspected and reported by July 1 of every year	[REDACTED] QF Point for each additional day until corrected

SCHEDULE 15-3 APPENDIX A - Operations and Maintenance Performance Requirements			
Feature	Outcome Target	Consequences for Non-Conformance	
		Initial	Subsequent
Unauthorized Signs	All unauthorized Signs removed as Detected	[REDACTED] QF Point per occurrence of an unauthorized Sign not removed when Detected or being Made Aware	[REDACTED] QF Point for each additional day that is left uncorrected
Curb and Gutter			
Obstructions	All obstructions impeding proper drainage are removed	[REDACTED] QF Point per occurrence of Obstructions impeding proper drainage	[REDACTED] QF Point for each additional day that is left uncorrected
Gaps/Separation	Gaps between curb and gutter and Pavement surface not to exceed 5 cm	[REDACTED] QF Point per occurrence of Gaps between curb and gutter and Pavement surface that exceed 5 cm	[REDACTED] QF Point for each additional day that is left uncorrected
Erosion	Erosion damage to the Shoulder and embankment behind the curb where water may flow over the curb is repaired as Detected	[REDACTED] QF Point per occurrence of erosion damage on the Shoulder and embankment behind the curb as Detected or being Made Aware	[REDACTED] QF Point for each additional day that is left uncorrected
Drainage Systems			
Catch Basins and Maintenance Access Points, Stormwater Management facilities	All missing catch basins and maintenance access—frames or grates—are replaced Immediately	[REDACTED] QF Points per occurrence of missing catch basins and maintenance access-frames or grates-not replaced Immediately	[REDACTED] QF Point for each additional 30 minutes or portion thereof beyond two and one half (2.5) hours after Detection or being Made Aware that the frame or grate is not replaced
	All damaged catch basins and maintenance access—frames or grates—are repaired or replaced within seven (7) days upon Detection or being Made Aware	[REDACTED] QF Point per occurrence of damaged catch basins and maintenance access-frames or grates-not replaced within seven (7) days after Detection or being Made Aware	[REDACTED] QF Point for each additional day that is left uncorrected

SCHEDULE 15-3 APPENDIX A - Operations and Maintenance Performance Requirements			
Feature	Outcome Target	Consequences for Non-Conformance	
		Initial	Subsequent
	Sumps not filled to capacity	[REDACTED] QF Point per occurrence of a sump filled to capacity and impeding drainage	[REDACTED] QF Point for each additional day that is left uncorrected
	Roadside stormwater management facilities are inspected in the spring (by May 1) and fall (by October 15) of each year	[REDACTED] QF Point if the stormwater management facilities inspection reports are not submitted by June 1 (for spring inspections) and November 15 (for fall inspection) of each year	[REDACTED] QF Point for each day that each report is submitted past its due date
	Erosion damage reducing the storage capacity of any stormwater management facility by more than [REDACTED]% of the design capacity shall be eliminated within 30 days of being Made Aware or Upon Detection	[REDACTED] QF Points per occurrence for not repairing the damage and restoring capacity within 30 days	[REDACTED] QF Point for each day, commencing on day 32, that the repair is not completed and the capacity restored
Erosion Damage	All erosion damage is repaired and all obstructions to proper functioning of the drainage system are removed by October 1 of every year	[REDACTED] QF Point per occurrence of erosion damage which is not repaired of obstructions that are not removed by October 1 of every year	[REDACTED] QF Point for each additional day that is left uncorrected
Beaver Dams, Sub Drains, Storm Sewers	All beaver dams on the Lands removed as Detected	[REDACTED] QF Points per occurrence of beaver dams on the right-of-way that are not removed as Detected or being Made Aware	[REDACTED] QF Point for each additional day that is left uncorrected
	All obstructions impeding water flow are removed within 30 days	[REDACTED] QF Point if obstructions impeding water flow are not corrected within 30 days	[REDACTED] QF Point for each additional day that is left uncorrected
	All crushed or buried pipe ends are repaired or replaced within 30 days	[REDACTED] QF Point if crushed or buried pipe ends are not corrected within 30 days	[REDACTED] QF Point for each additional day that is left uncorrected

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Feature	Outcome Target	Consequences for Non-Conformance	
		Initial	Subsequent
	All missing and damaged rodent/wildlife screens are repaired or replaced within 60 days	[REDACTED] QF Point if missing rodent/wildlife screens are not corrected within 60 days	[REDACTED] QF Point for each additional day that is left uncorrected
Culverts			
Debris	All Debris causing blockage in Culverts is removed Immediately	[REDACTED] QF Points per occurrence of Debris causing blockage at Culvert inlets or outlets	[REDACTED] QF Point for each additional day that is left uncorrected
	All Debris restricting water flow through Culverts is removed when Detected	[REDACTED] QF Point per occurrence of Debris, that may restrict water flow at Culvert inlet or outlet, not removed within 30 days after Detection or being Made Aware	[REDACTED] QF Point for each additional day that is left uncorrected
Washout/Erosion	Washouts of Culvert backfill and erosion damage under or around the Culverts are repaired within 30 days	[REDACTED] QF Point per occurrence of washout of Culvert backfill or erosion damage not corrected within 30 days after Detection or being Made Aware	[REDACTED] QF Point for each additional day that is left uncorrected
Components	All damaged or missing bars, screens or grids installed for the prevention of entry by animals or unauthorized personnel are repaired or replaced within 14 days	[REDACTED] QF Point for missing bars, screens or grids installed for the prevention of entry by animals or unauthorized personnel not corrected within 14 days after Detection or being Made Aware	[REDACTED] QF Point for each additional day that is left uncorrected
Ditches			
Erosion/Slope Protection	Eroded or damaged ditch slopes, linings, back slopes and slope protection are repaired within 60 days	[REDACTED] QF Point if eroded or damaged ditch slopes, linings, back slopes and slope protection is not corrected within 60 days after Detection or being Made Aware	[REDACTED] QF Point for each additional day that is left uncorrected
Inlets/Outlets	Erosion of ditch inlets/outlets is repaired within 60 days	[REDACTED] QF Point if erosion of ditch inlets/outlet is not corrected within 60 days after Detection or being Made Aware	[REDACTED] QF Points for each additional day that is left uncorrected

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Feature	Outcome Target	Consequences for Non-Conformance	
		Initial	Subsequent
	Obstructions that may reduce flow capacity are removed within 60 days	[REDACTED] QF Point if obstructions that may reduce flow capacity are not removed within 60 days after Detection or being Made Aware	[REDACTED] QF Point for each additional day that is left uncorrected
Obstructions	All non-planned obstructions that stop, reroute, or reduce the free flow of water; or may cause flooding are addressed Immediately	[REDACTED] QF Points per occurrence of a non-planned obstruction that stops, reroutes or reduces the free flow of water; or cause flooding that is not Addressed Immediately	[REDACTED] QF Points for each additional day that is left uncorrected
Vegetation Control			
Sight Distance	Vegetation that impairs or obstructs sight visibility (hills, curves, intersections etc.) is removed	[REDACTED] QF Points per occurrence of vegetation that impairs or obstructs sight visibility (hills, curves, intersections etc)	[REDACTED] QF Point for each additional day that is left uncorrected
	Vegetation, trees or branches that impede traffic or obstruct regulatory Signs are removed Immediately Note: Table 1-Sight Visibility (Vegetation) below provides sight visibility distances	[REDACTED] QF Points per occurrence of vegetation, trees or branches that impede traffic or obscure regulatory Signs not removed Immediately upon Detection or being Made Aware	[REDACTED] QF Point for each additional 30 minutes or portion thereof beyond two and one half (2.5) hours after Detection or being Made Aware that the vegetation is not removed
Grass Mowing	Vegetation within 2 m of any shoulder edge not longer than 60 cm	[REDACTED] QF Point per occurrence of vegetation within 2 m of any shoulder edge that is longer than 60cm	[REDACTED] QF Point for each additional day that is left uncorrected
	Vegetation within the parking facility not longer than 12 cm	[REDACTED] QF Point per occurrence of vegetation within the parking facility that is longer than 12 cm	[REDACTED] QF Point for each additional day that is left uncorrected
Weed Control	Noxious weeds identified through a weed order eradicated as specified in the weed order	[REDACTED] QF Points per occurrence of noxious weeds identified through a weed order not eradicated as specified in weed order	[REDACTED] QF Point for each additional day that is left uncorrected

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Feature	Outcome Target	Consequences for Non-Conformance	
		Initial	Subsequent
Invasive Species Control	Remove or destroy Invasive Species causing a negative environmental impact or impacting the Extension Infrastructure within 30 days upon Detection or being Made Aware	[REDACTED] QF Point per occurrence of Invasive Species not removed or destroyed where causing a negative environmental impact or impacting the Extension Infrastructure that is not restored within 30 days upon Detection or being Made Aware	[REDACTED] QF Point for each additional day that is left uncorrected
Vandalism repair (Gateway Features)	Repair Gateway Features that have incurred vandalism within 14 days of Detection or being Made Aware	[REDACTED] QF Point per occurrence for not repairing Urban and Landscape Amenities or structures within 14 days of Detection or being Made Aware	[REDACTED] QF point for each additional day until corrected
Instream fisheries habitat features	Features in place and fully operational as designed and as per HADD or SAR permits unless contracted to another party as specified by MTO	[REDACTED] QF Point per occurrence for each feature not in place or not fully operational within 5 days of Detection or being Made Aware	[REDACTED] QF point for each additional day until corrected
Environmental monitoring equipment	All equipment shall be fully operational at all times as intended and required.	[REDACTED] QF Point per occurrence for each feature not being fully operational as intended and required if not repaired within 14 days upon detection of the failure or being Made Aware	[REDACTED] QF point for each additional day until the equipment is fully operational as intended
Concrete/Asphalt Joints	Vegetation between curb and asphalt joints in curb and gutter and between asphalt Shoulders and a concrete barrier is eradicated during the months of July and August every year	[REDACTED] QF Point per occurrence of vegetation between curb and asphalt joints in curb and gutter and between asphalt Shoulders and concrete barriers that are not eradicated during the months of July and August every year	[REDACTED] QF Point for each additional day that is left uncorrected
Fences, Barriers, Wildlife Passage Features			

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Feature	Outcome Target	Consequences for Non-Conformance	
		Initial	Subsequent
Fences, barriers and wildlife passage features	Damaged or missing fence, barrier or wildlife passage features allowing access to the Roadway is repaired (temporarily if necessary) Immediately	[REDACTED] QF Points per occurrence of damaged or missing fence allowing access to the Roadway that is not repaired (temporarily if necessary) Immediately	[REDACTED] QF Point for each additional 30 minutes or portion thereof beyond two and one half (2.5) hours after Detection or being Made Aware that the force is not repaired/replaced
	All other fences or wildlife gates and passage features damaged or missing are permanently repaired or replaced within fourteen (14) days after Detection or being Made Aware	[REDACTED] QF Points per occurrence of each feature damaged or missing that is not permanently repaired or replaced within 14 days after Detection or being Made Aware	[REDACTED] QF Point for each additional day for each feature commencing on the 15th day after Detection or being Made Aware until the feature is permanently repaired or replaced
General			
Graffiti	All graffiti visible by the public is as per manufacturers specification within 28 days upon Detection or being Made Aware	[REDACTED] QF Point per occurrence of visible graffiti not removed within 28 days after Detection or being Made Aware	[REDACTED] QF Point for each additional day that visible graffiti is not removed
	All offensive graffiti is removed within three (3) days of Detection or being Made Aware	[REDACTED] QF Point per occurrence of offensive graffiti that is not removed within three (3) days after Detection or being Made Aware	[REDACTED] QF Point for each additional day that offensive graffiti is not removed
Litter Control	All litter within the Extension measuring more than 0.015 m3 removed upon Detection or being Made Aware	[REDACTED] QF Point for not removing litter within the 407E within three (3) days after Detection or being Made Aware	[REDACTED] QF Point for each additional day that Non-Conformance is left uncorrected

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Feature	Outcome Target	Consequences for Non-Conformance	
		Initial	Subsequent
	Litter receptacles and containers are emptied and cleaned when full, or at a minimum once every 24 hours, whichever occurs first	[REDACTED] QF Point for not emptying and cleaning the litter receptacles and containers when they are full, or at a minimum once every 24 hours, whichever occurs first	[REDACTED] QF Point for each additional day that Non-Conformance is left uncorrected
Pumps and Pump Stations	Maintenance of pumps, Structure/houses, backup equipment and other features are regularly tested and/or maintained in accordance with the manufacturer's recommendation or Good Industry Practice	[REDACTED] QF Points per occurrence of mechanical failure of pumps and/or backup system resulting in insufficient water discharge causing flooding and/or damage to the Lands	[REDACTED] QF Point for each additional 30 minutes or portion thereof beyond two and one half (2.5) hours after Detection or being Made Aware that the pump is not repaired/replaced
	Inspection and associated reports are Accurate, Timely, and Complete [REDACTED]% of the time	[REDACTED] QF Point per occurrence that pump station features are not maintained in accordance with manufacturer's recommendations or Good Industry Practice	[REDACTED] QF Point per week or portion thereof until Non-Conformance is addressed
Dry Standpipes	Maintenance of Dry Standpipes and associated facilities are regularly tested and/or maintained in accordance with the requirements of the local Fire Department, the manufacturer's recommendation and Good Industry Practice	[REDACTED] QF Points per occurrence of mechanical failure of Dry Standpipe and/or associated facilities resulting in failure to perform as designed and intended	[REDACTED] QF point per day or portion thereof until the Dry Standpipe and/or associated facilities are functioning as designed
	Inspection and associated reports are Accurate, Timely and submitted to HMQ or the local fire department within 24 hours when requested	[REDACTED] QF Point per occurrence that a Dry Standpipe and/or associated facility inspection reports are not submitted in within 24 hours	[REDACTED] QF Point per week or portion thereof until Non-Conformance is addressed

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Feature	Outcome Target	Consequences for Non-Conformance	
		Initial	Subsequent
Hazards	Address any Hazard Immediately upon Detection or being Made Aware	[REDACTED] QF Point per occurrence	[REDACTED] QF Point for every 15 minute segment or portion thereof beyond 2.2 hours after Detection or being Made Aware until Addressed
Inspection and Reporting Requirements	Inspection and associated reports are Accurate, Timely and Complete [REDACTED]% of the time	[REDACTED] QF Point per occurrence of inspections not completed on time	[REDACTED] QF Point per week or portion thereof until inspection completed
		[REDACTED] QF Point per occurrence of reports not being Accurate and Complete	[REDACTED] QF Point per week or portion thereof until corrected
4101.06-Asset Condition Data Collection-Non-Structural Culverts –Outcome Targets			
Remaining Life Span Rating	Project Co meets all requirements that are specified to be taken when Project Co Detects or was Made Aware of, an imminent danger of a Culvert failure	[REDACTED] QF Points for each Culvert where Project Co fails to meet all requirements that are specified to be taken when Project Co Detects or was Made Aware of, an imminent danger of a Culvert failure	
	90% of the Below Minimum Tolerable life span ratings and the Poor remaining life span ratings that are reported in each Non-Structural Culvert condition assessment report are accurate assessments	[REDACTED] QF Points when HMQ's verification of each annual Non-Structural Culvert condition assessment report finds that the reported Below Minimum Tolerable remaining life span ratings and Poor remaining life span ratings are less than 90% accurate assessments	

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Feature	Outcome Target	Consequences for Non-Conformance	
		Initial	Subsequent
	70% of the Very Good remaining life span ratings, Good remaining life span ratings and Fair remaining life span ratings that are reported in each Non-structural Culvert condition assessment report are accurate assessments	[REDACTED] QF Point when HMQ's verification of each annual Non-Structural Culvert condition assessment report finds that the reported Very Good remaining life span ratings, Good remaining life span ratings and Fair remaining life span ratings are less than 70% accurate assessments	
Material, Shape, Capacity, Invert, Scour, Slope Erosion, and Settlement Ratings	90% of the Below Minimum Tolerable and the Poor Culvert condition ratings that are reported for each of the condition rating categories in each Non-Structural Culvert condition assessment report are accurate assessments	[REDACTED] QF Points when HMQ's verification of each annual Non-Structural Culvert condition assessment report finds the Below Minimum Tolerable and the Poor Culvert condition ratings that are reported for each of the condition rating categories in each Non-Structural Culvert condition assessment report are less than 90% accurate assessments	
	70% of the Very Good, the Good and the Fair Culvert condition ratings that are reported for each of the condition rating categories in each Non-structural Culvert condition assessment report are accurate assessments	[REDACTED] QF Point when HMQ's verification of each annual Non- Structural Culvert condition assessment report finds that the Very Good, the Good and the Fair Culvert condition ratings that are reported for each of the condition rating categories in each Non-Structural Culvert condition assessment report are less than 70% accurate assessments	
Non Structural Culvert Condition Assessment Report	Each annual Non-Structural Culvert condition assessment report is complete and is provided to HMQ at the specified time	[REDACTED] QF Points per occurrence that Project Co does not provide a complete Non-structural Culvert condition assessment report at the time specified	
5001.06-Electrical Maintenance –Outcome Targets			

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Feature	Outcome Target	Consequences for Non-Conformance	
		Initial	Subsequent
Extension Lighting	Response to all Critical Failures within two (2) hours of Detection or being Made Aware.	[REDACTED] QF Points per occurrence for not responding to Critical Failures within two (2) hours or failure to complete Permanent or Temporary Repairs while onsite	[REDACTED] QF Point for each additional hour beyond three (3) hours and/or failing to complete Permanent or Temporary Repairs while onsite
	Permanent or Temporary Repairs completed before leaving the site.	Continuous Lighting: [REDACTED] QF Point per occurrence where more than 30% of the luminaries per any kilometre of Highway are not functioning, or more than two (2) consecutive luminaries are not functioning	[REDACTED] QF Point for each day or portion thereof after two (2) days of being Made Aware of more than 30% of the luminaries per any kilometre of Highway are not functioning, or more than two (2) consecutive luminaries are not functioning
	Permanent Repairs completed within 10 days.	Partial Lighting: [REDACTED] QF Point per occurrence where more than 30% of the luminaries connected to a power supply are not functioning, or any luminaries not functioning for more than seven (7) days of being Made Aware or upon Detection	[REDACTED] QF Point for each day or portion thereof after two (2) days of being Made Aware of more than 30% of the luminaries connected to a power supply not functioning, or any luminaries not functioning for more than seven (7) days
	For continuous lighting, no more than 30% of the luminaries per any kilometre of Highway not functioning, and no more than two (2) consecutive luminaries not functioning	Partial Lighting: [REDACTED] QF Point per occurrence where more than 30% of the luminaries connected to a power supply are not functioning, or any luminaries not functioning for more than seven (7) days of being Made Aware or upon Detection	[REDACTED] QF Point per day until Permanent Repairs are complete

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Feature	Outcome Target	Consequences for Non-Conformance	
		Initial	Subsequent
	For partial lighting, no more than 30% of the luminaries connected to a power supply not functioning	[REDACTED] QF Point per occurrence of failing to complete Permanent Repairs within 10 days	[REDACTED] QF Point for each day or portion thereof after the initial consequence until repairs are made
	For any luminaire not functioning for more than seven (7) days of being Made Aware or upon Detection	[REDACTED] QF Point per occurrence for failing to repair/replace non functioning luminaire within specified time	[REDACTED] QF Point for each day or portion thereof after the initial consequence until repairs are made
Traffic Signals	Response to all Critical Failures within two (2) hours of Detection or being Made Aware	[REDACTED] QF Points per occurrence for not responding to Critical Failures within two (2) hours	[REDACTED] QF Points for each 15 minutes or portion thereof beyond the original 2 hour response time
	Permanent or Temporary Repairs completed before leaving the site	[REDACTED] QF Points per occurrence for not responding to Critical Failures to complete Permanent or Temporary Repairs while onsite	[REDACTED] QF Points for each 15 minutes or portion thereof that the Permanent or Temporary repairs are not completed as a result of Project Co leaving the site after initial response without repairs being completed
	Permanent Repairs completed within 10 days	[REDACTED] QF Points per occurrence for not completing Permanent Repairs within 10 days.	[REDACTED] QF Points for each day that Permanent Repairs are not completed
Flashing Beacons	Response to all Critical Failures within two (2) hours of Detection or being Made Aware	[REDACTED] QF Points per occurrence for not responding to Critical Failures within two (2) hours	[REDACTED] QF Points for each 15 minutes or portion thereof beyond the original 2 hour response time

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Feature	Outcome Target	Consequences for Non-Conformance	
		Initial	Subsequent
	Permanent or Temporary Repairs completed before leaving the site	[REDACTED] QF Points per occurrence for not responding to Critical Failures to complete Permanent or Temporary Repairs while onsite	[REDACTED] QF Points for each 15minutes or portion thereof that the Permanent or Temporary repairs are not completed as a result of Project Co leaving the site after initial response without repairs being completed
	Permanent Repairs completed within 10 days	[REDACTED] QF Points per occurrence for not completing Permanent Repairs within 10 days.	[REDACTED] QF Points for each day that Permanent Repairs are not completed
Maintenance and Inspection Reports	100% of all required information is Complete, Timely, and Accurate	[REDACTED] QF Point per occurrence of any report not submitted within specified time	[REDACTED] QF Point per additional day until received
		[REDACTED] QF Point per occurrence of any report not being Complete or Accurate	N/A
Qualified Personnel	A Qualified Personnel performing any work under this Performance Requirement 100% of the time	[REDACTED] QF Point per occurrence	N/A
Central Dispatch	Notifying CTOC on all non-routine calls	[REDACTED] QF Point per occurrence of failure to notify CTOC	N/A
7001.06-Intelligent Transportation Systems (ITS) –Outcome Targets			
VMS, AAS, PVMS & QWS Signs	Response to all Critical Failures within two (2) hours of Detection or being Made Aware	[REDACTED] QF points per occurrence for not responding to Critical Failures with Qualified Personnel within two (2) hours	[REDACTED] QF point for each additional 15 minutes beyond the two (2) hour required response time until Qualified Personnel are onsite

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Feature	Outcome Target	Consequences for Non-Conformance	
		Initial	Subsequent
	Permanent or Temporary Repairs completed before leaving the site	[REDACTED] QF points per occurrence for failing to complete Permanent or Temporary Repairs before leaving the site	[REDACTED] QF point for each additional 15 minutes after leaving the site until the Permanent or Temporary Repair is completed
	Permanent Repairs completed within 10 days	[REDACTED] QF points per occurrence for failure to complete Permanent repairs within 10 days	[REDACTED] QF point per day beyond the 10 days until Permanent repairs are completed
	Provide 95% availability as measured on a 30-day basis	[REDACTED] QF point per occurrence for failing to meet the monthly performance criteria	[REDACTED] QF point for each 24 hours or portion thereof that the device in question or Subsystem in question has not been repaired to bring the Subsystem back to Performance Requirement
CCTV system	Response to all Critical Failures within two (2) hours of Detection or being Made Aware	[REDACTED] QF points per occurrence for not responding to Critical Failures with Qualified Personnel within two (2) hours	[REDACTED] QF point for each additional 15 minutes beyond the two (2) hour required response time until Qualified Personnel are onsite
	Permanent or Temporary Repairs completed before leaving the site	[REDACTED] QF points per occurrence for failing to complete Permanent or Temporary Repairs before leaving the site	[REDACTED] QF point for each additional 15 minutes after leaving the site until the Permanent or Temporary Repair is completed

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Feature	Outcome Target	Consequences for Non-Conformance	
		Initial	Subsequent
	Permanent Repairs completed within 10 days	[REDACTED] QF points per occurrence for failure to complete Permanent repairs within 10 days	[REDACTED] QF point per day beyond the 10 days until Permanent repairs are completed
	Provide 95% availability as measured on a monthly basis	[REDACTED] QF point per occurrence for failing to meet the monthly performance criteria	[REDACTED] QF point for each 24 hours or portion thereof that the device in question or Subsystem in question has not been repaired to bring the Subsystem back to Performance Requirement
Detectors (including detectors for QWS) system	Response to all Critical Failures within two (2) hours of Detection or being Made Aware.	[REDACTED] QF points per occurrence for not responding to Critical Failures with Qualified Personnel within two (2) hours	[REDACTED] QF point for each additional 15 minutes beyond the two (2) hour required response time until Qualified Personnel are onsite
	Permanent or Temporary Repairs completed before leaving the site	[REDACTED] QF points per occurrence for failing to complete Permanent or Temporary Repairs before leaving the site	[REDACTED] QF point for each additional 15 minutes after leaving the site until the Permanent or Temporary Repair is completed
	Permanent Repairs completed within 10 days	[REDACTED] QF points per occurrence for failure to complete Permanent repairs within 10 days	[REDACTED] QF point per day beyond the 10 days until Permanent repairs are completed

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Feature	Outcome Target	Consequences for Non-Conformance	
		Initial	Subsequent
	Provide 95% availability as measured on a monthly basis	[REDACTED] QF point per occurrence for failing to meet the monthly performance criteria	[REDACTED] QF point for each 24 hours or portion thereof that the device in question or Subsystem in question has not been repaired to bring the Subsystem back to Performance Requirement
Communications system	Response to all Critical Failures within two (2) hours of Detection or being Made Aware	[REDACTED] QF points per occurrence for not responding to Critical Failures with Qualified Personnel within two (2) hours	[REDACTED] QF point for each additional 15 minutes beyond the two (2) hour required response time until Qualified Personnel are onsite
	Permanent or Temporary Repairs completed before leaving the site	[REDACTED] QF points per occurrence for failing to complete Permanent or Temporary Repairs before leaving the site	[REDACTED] QF point for each additional 15 minutes after leaving the site until the Permanent or Temporary Repair is completed
	Permanent Repairs completed within 10 days	[REDACTED] QF points per occurrence for failure to complete Permanent repairs within 10 days	[REDACTED] QF point per day beyond the 10 days until Permanent repairs are completed
	Provide 99.9% availability as measured on a monthly basis	[REDACTED] QF point per occurrence for failing to meet the monthly performance criteria	[REDACTED] QF point for each 24 hours or portion thereof that the device in question or Subsystem in question has not been repaired to bring the Subsystem back to Performance Requirement

SCHEDULE 15-3 APPENDIX A - Operations and Maintenance Performance Requirements			
Feature	Outcome Target	Consequences for Non-Conformance	
		Initial	Subsequent
Non Critical Failure Response Time	Respond by 16:00 hours of next Business Day	[REDACTED] QF Points per occurrence for not responding with Qualified Personnel to all Non-Critical failures by 16:00 hours of the following Business Day after Detection or being Made Aware	[REDACTED] QF Point for each additional hour beyond 16:00 hours of the following Business Day after Detection or being Made Aware
	Permanent or Temporary Repairs completed before leaving the site	[REDACTED] QF points per occurrence for failing to complete Permanent or Temporary Repairs before leaving the site	[REDACTED] QF point for each additional 15 minutes after leaving the site until the Permanent or Temporary Repair is completed
	Permanent Repairs completed within 10 days	[REDACTED] QF points per occurrence for failure to complete Permanent repairs within 10 days	[REDACTED] QF point per day beyond the 10 days until Permanent repairs are completed
Maintenance and inspection reports and other required documentation	100% of all required information is Complete, Timely, and Accurate	[REDACTED] QF points per occurrence of any report not submitted within the specified time	[REDACTED] QF point per day until the report is received
		[REDACTED] QF point per occurrence of any report not being complete or accurate	[REDACTED] QF point per day until the report is resubmitted complete and accurate
Damage to Existing ATMS Equipment	Damage to existing ATMS equipment	[REDACTED] QF points per occurrence	[REDACTED] QF points per each day of downtime
HMQ Notification for response to Critical and Non-critical Failures	For calls not originating from CTOC, notification must be given to HMQ immediately upon being Made Aware of the failure	[REDACTED] QF points per occurrence for failure to Notify HMQ on all Non-Routine Maintenance calls	N/A

SCHEDULE 15-3 APPENDIX A - Operations and Maintenance Performance Requirements			
Feature	Outcome Target	Consequences for Non-Conformance	
		Initial	Subsequent
	Notify HMQ on arrival/and on departure from the site	[REDACTED] QF Points for failure to Notify HMQ or arrival/and departure from site	N/A
HMQ Notification for Routine Maintenance	Notification must be given to HMQ 24 hours before proceeding with the work	[REDACTED] QF points for failure to Notify HMQ 24 hours before any routine work	N/A
	Notify HMQ on arrival/and on departure from the site	[REDACTED] QF Points for failure to Notify HMQ or arrival/and departure from site	N/A

SCHEDULE 15-3 APPENDIX B – Asset Preservation

Table 5.2: Schedule of Deliverable Reports and Records - Response Time Measures

Perf. Measure	Name	Ref.	Due Date	Submitted under the Review Procedure	Consequences for Non Conformance *
PREP1	Initial Asset Management Plan (including initial five (5)-year asset preservation schedule)	4.4	In respect of the Infrastructure in each Sections, 60 days prior to the relevant Section Substantial Completion Date	Yes	[REDACTED] QF Points
PREP2	Annual Asset Management Plan (including updated five (5)-year forward-looking asset preservation and rehabilitation schedule, and As-Built Drawings)	4.4	January 30 annually (updated annually)	Yes	[REDACTED] QF Points
PREP 3	Annual APPM Achievement Report (finalized copy to be included in the Annual Asset Management Plan)	4.5	November 30 annually (updated annually)	Yes	[REDACTED] QF Points
PREP4	Pavement Condition Data (finalized copy to be included in the Annual Asset Management Plan) To be provided according to Pavement Evaluation Manuals, SP-024 for flexible and SP-026 for rigid and composite Pavement and the requirements Appendix A, PERF 2111 Asset Condition Data Collection	4.6	September 30 annually (updated annual data delivered not more than 60 days following conducting the survey)	Yes	[REDACTED] QF Points
PREP5	Structures Superficial (maintenance) Inspection, Detailed Inspection and Condition Survey Data (finalized copy to be included in the Annual Asset Management Plan document)	4.7	September 30 annually (updated annual data delivered not more than 60 days following conducting the inspection)	Yes	[REDACTED] QF Points
PREP6	Other Asset Class and Facilities Condition Data (finalized copy to be included in the Annual Asset Management Plan document)	4.8	September 30 annually (updated annual data delivered not more than 60 days following conducting the survey)	Yes	[REDACTED] QF Points

SCHEDULE 15-3 APPENDIX B – Asset Preservation

Table 5.2: Schedule of Deliverable Reports and Records - Response Time Measures

Perf. Measure	Name	Ref.	Due Date	Submitted under the Review Procedure	Consequences for Non Conformance *
PREP7	Infrastructure Inventory Data (finalized copy to be included in the Annual Asset Management Plan document)	4.9	September 30 annually (updated annual data delivered not more than 60 days following conducting the survey)	Yes	[REDACTED] QF Points
PREP8	As Built Drawings (updated drawings for any rehabilitation undertaken to be included in the Annual Asset Management Plan document)	4.9	September 30 annually (updated annual data delivered not more than 60 days following conducting the survey)		[REDACTED] QF Points

* At each occurrence of Project Co failing to meet the performance measure, Project Co shall be assigned the indicated number of Quality Failure Points each day until the failure has been either rectified or a disposition has been accepted by the HMQ Representative in accordance with Part 7 (Non-Conformances) of Schedule 11- Quality Management.

SCHEDULE 15-3 APPENDIX B – Asset Preservation

Table 6.2.2: Highway Running Surfaces – Asset Preservation Performance Measures (APPMs)

APPM	Intervention Criteria	Action	Maximum Response Time	Basis of Measure	Consequences for Non Conformance *
PPAV1	Where Roughness exceeds the IRI limits shown over any traffic lane in each Roadway Section, excluding concrete bridge deck wearing surfaces.	Undertake asset preservation works to address non-compliance.	12 months	<p>Longitudinal profile Roughness measurements, expressed as International Roughness Index (IRI), collected for each wheel-path as per MTO survey specifications and averaged.</p> <p>Project Co is required to measure the condition for all Highway Running Surfaces (traffic lanes, crossing roads, and entrance and exit ramps) on all Roads on an annual basis.</p>	[REDACTED] QF Points
	Average IRI (m/km):				
	Extension:				
	Flexible				
	Rigid				
	OTHER:				
	Flexible				
	Rigid				
PPAV2	Where Roughness exceeds the IRI limits shown for any 50 metre length of traffic lane excluding concrete bridge deck wearing surfaces.	Undertake asset preservation works to address non-compliance.	12 months	<p>Longitudinal profile Roughness measurements, expressed as International Roughness Index (IRI), collected for each wheel-path as per MTO survey specifications and averaged.</p> <p>Project Co is required to measure the condition for all Highway Running Surfaces (traffic lanes, crossing roads, and entrance and exit ramps) on all Roads on an annual basis.</p>	[REDACTED] QF Points
	Average IRI (m/km):				
	Extension:				
	Flexible				
	Rigid				
	OTHER:				
	Flexible				
	Rigid				

SCHEDULE 15-3 APPENDIX B – Asset Preservation

Table 6.2.2: Highway Running Surfaces – Asset Preservation Performance Measures (APPMs)

APPM	Intervention Criteria	Action	Maximum Response Time	Basis of Measure	Consequences for Non Conformance *
PPAV3	Where the average Pavement Condition Index (PCI) is less than 65 over any traffic lane in each Roadway Section.	Undertake asset preservation works to address non-compliance.	12 months	<p>Pavement surface deterioration ratings performed in accordance with the appropriate Pavement Condition rating manual and the Pavement Condition Index (PCI).</p> <p>Project Co is required to measure the condition for all Highway Running Surfaces (traffic lanes, paved pullouts, crossing roads, and entrance and exit ramps) on all Roads on an annual basis.</p>	[REDACTED] QF Points
PPAV4	Where average Pavement Rutting exceeds 13 mm for any traffic lane in each Roadway Section.	Undertake asset preservation works to address non-compliance.	12 months	<p>Pavement Rutting ratings performed in accordance with the Pavement Condition rating manual.</p> <p>Project Co is required to measure the condition for all Highway Running Surfaces (traffic lanes, crossing roads, and entrance and exit ramps) on all Roads on an annual basis.</p>	[REDACTED] QF Points
PPAV5	Where average Pavement Rutting exceeds 20 mm for any 50 metre length of traffic lane.	Undertake asset preservation works to address non-compliance.	12 months	<p>Pavement Rutting ratings performed in accordance with the Pavement Condition rating manual.</p> <p>Project Co is required to measure the condition for all Highway Running Surfaces (traffic lanes, crossing roads, and entrance and exit ramps) on all Roads on an annual basis.</p>	[REDACTED] QF Points

SCHEDULE 15-3 APPENDIX B – Asset Preservation

Table 6.2.2: Highway Running Surfaces – Asset Preservation Performance Measures (APPMs)

APPM	Intervention Criteria	Action	Maximum Response Time	Basis of Measure	Consequences for Non Conformance *
PPAV6	Where the Friction Value is less than 30 (FV<30) when travelling at posted Roadway speed.	Undertake asset preservation works to address non-compliance.	12 months	Project Co is required to measure the condition for all Highway Running Surfaces (traffic lanes, crossing roads, and entrance and exit ramps) on all Roads on an annual basis.	[REDACTED] QF Points
PPAV7	Where the Distress Manifestation Index is worse than 7 (DMI<7) for any 50 metre length of paved Shoulder.	Undertake asset preservation works to address non-compliance.	12 months	Pavement surface deterioration ratings performed in accordance with the appropriate Pavement Condition rating manual and the Distress Manifestation Index (DMI).	[REDACTED] QF Points

* At each occurrence of Project Co failing to meet the performance measure, Project Co shall be assigned the indicated number of Quality Failure Points each day until the failure has been either rectified or a disposition has been accepted by the HMQ Representative in accordance with Part 7 (Non-Conformances) of Schedule 11- Quality Management.

SCHEDULE 15-3 APPENDIX B – Asset Preservation

Table 6.3.2: Structures – Asset Preservation Performance Measures (APPMs)

APPM	Structure Type	Intervention Criteria	Action	Maximum Response Time	Consequences for Non Conformance *
PSTR1	Bridges	In respect of the Structures in each Section, when BCI <90 within five (5) years of Section Substantial Completion of the relevant Section When BCI <70 When 10% of any Important Element is in Poor condition	Undertake Structure Rehabilitation or repair works to address deterioration and defects	12 months	[REDACTED] QF Points
PSTR2	Structural Culverts (including submerged Culverts)	In respect of the Structures in each Section, when BCI-C < 90 within five (5.0) years of Section Substantial Completion of the relevant Section Structural Culverts with a BCI-C <70	Undertake Structure Rehabilitation or repair works to address deterioration and defects	12 months	[REDACTED] QF Points
PSTR3	Retaining Walls	In respect of the Structures in each Section, when BCI-RW < 90 within five (5.0) years of Section Substantial Completion of the relevant Section Retaining Walls with a BCI-RW <70	Undertake Structure Rehabilitation or repair works to address deterioration and defects	12 months	[REDACTED] QF Points
PSTR4	Overhead Sign Support Structures	In respect of the Structures in each Section, when BCI-SS <90 within five (5.0) years of Section Substantial completion of the relevant Section Overhead Sign Support Structures with a BCI-SS <70	Undertake Structure Rehabilitation or repair works to address deterioration and defects	12 months	[REDACTED] QF Points

SCHEDULE 15-3 APPENDIX B – Asset Preservation

Table 6.3.2: Structures – Asset Preservation Performance Measures (APPMs)

APPM	Structure Type	Intervention Criteria	Action	Maximum Response Time	Consequences for Non Conformance *
PAS11	All Structures	<p>Additional inspection of the Extension Infrastructure under circumstances that affect the integrity of Extension Infrastructure which include, but are not limited to:</p> <ul style="list-style-type: none"> • Accident or vehicle collision with a structure; • Unusual/severe weather conditions or natural disasters; • Where a perceived problem exists; and <p>Flooding/ice jams</p>	<p>Project Co shall undertake inspection by qualified Professional Engineers and report the inspection results within seven (7) days of any significant natural event or other events impacting the integrity of Infrastructure or the safety of Extension Users</p> <p>At each occurrence of Project Co failing to undertake additional inspections within the time period indicated</p>	7 days	[REDACTED] QF Points

* At each occurrence of Project Co failing to meet the Asset Preservation Performance Measure, Project Co shall be assigned the indicated number of Quality Failure Points each day until the failure has been either rectified or a disposition has been accepted by the HMQ Representative in accordance with Part 7 (Non-Conformances) of Schedule 11- Quality Management.

SCHEDULE 15-3 APPENDIX B – Asset Preservation

Table 6.4.2: Drainage and Sedimentation Control Structures– Asset Preservation Performance Measures (APPMs)

APPM	Component	Intervention Criteria	Action	Maximum Response Time	Consequences for Non Conformance *
PDSC1	On Roadway - Curb/Gutter	Where more than 30% of the total length of curb and gutter has a Condition State worse than Fair for any rating attribute.	Undertake Rehabilitation or repair works to address deterioration and defects.	12 months	[REDACTED]] QF Points
PDSC2	On Roadway - Curb/Gutter	Where more than 30% of the total number of catch basins/manholes has a Condition State worse than Fair for any rating attribute.	Undertake Rehabilitation or repair works to address deterioration and defects.	12 months	[REDACTED]] QF Points
PDSC3	Under Roadway- Culverts	Where more than 20% of the total number of culverts has a Condition State worse than Fair.	Undertake Rehabilitation or repair works to address deterioration and defects.	12 months	[REDACTED]] QF Points
PDSC4	Under Roadway- Culverts	Where more than 5% of the total length of culverts has a Condition State worse than Fair for any rating attribute.	Undertake Rehabilitation or repair works to address deterioration and defects.	12 months	[REDACTED]] QF Points

* At each occurrence of Project Co failing to meet the Asset Preservation Performance Measure, Project Co shall be assigned the indicated number of Quality Failure Points each day until the failure has been either rectified or a disposition has been accepted by the HMQ Representative in accordance with Part 7 (Non-Conformances) of Schedule 11- Quality Management.

SCHEDULE 15-3 APPENDIX B – Asset Preservation

Table 6.6.2: Mechanical Systems – Asset Preservation Performance Measures (APPMs)

APPM	Component	Intervention Criteria	Action	Maximum Response Time	Consequences for Non Conformance *
PMEC1	Pumps and related control equipment in storm water lift stations	Maximum age of the pumps or controls exceeds 25 years during the Project Term	Undertake asset preservation work to correct the deficiency up to and including replacement of the component	12 months	[REDACTED] QF Points
PMEC2	Fire protection equipment	Maximum age of fire protection equipment exceeds five (5) years during the Project Term	Undertake asset preservation work to correct the deficiency up to and including replacement of the component	12 months	[REDACTED] QF Points

* At each occurrence of Project Co failing to meet the Asset Preservation Performance Measure, Project Co shall be assigned the indicated number of Quality Failure Points each day until the failure has been either rectified or a disposition has been accepted by the HMQ Representative in accordance with Part 7 (Non-Conformances) of Schedule 11- Quality Management.

Schedule 17-Environmental Obligations					
Table 3.4: Schedule of Plans, and Reports Submission Requirements					
Performance Measure *	Deliverable Name	Schedule 17 Specification Reference	Due Date	Deliverable Submission Period	Consequences for Non Conformance **
PE 3.5(c)	Environmental Management System (Updates)	Section 3.5 (c)	As applicable, and in any event no later than June 1st annually	Through Project Term	[REDACTED] QF Points
PE 3.4(d)	Monthly environmental reports	Section 3.4 (d)	14 days after the end of the month for which the report is prepared	During any period during which field activities are undertaken on the Extension	[REDACTED] QF Points
PE 3.4(e)	Environmental completion report(s) (prepared for each Section of the Extension)	Section 3.4 (e)	14 days prior to each Section Substantial Completion Date and the Substantial Completion Date	Until Substantial Completion	[REDACTED] QF Points
PE 3.4(g)	Independent environmental audit	Section 3.4 (g)	January 1 st annually	Until all conditions of MOE Notice of Approval have been satisfied	[REDACTED] QF Points
PE 3.4(m)	Annual Compliance Reports	Section 3.4 (m)	45 days prior to the due date prescribed in the MOE Notice of Approval section 5	Until all conditions of MOE Notice of Approval have been satisfied	[REDACTED] QF Points
PE 3.4(s)	Redside Dace ESA Permit compliance reports	Section 3.4(s)	45 days prior to the annual report due date prescribed in the Redside Dace ESA Permit	Until all conditions of the Redside Dace ESA Permit have been satisfied	[REDACTED] QF Points
PE 3.4(t)	Fisheries Act Authorizations compliance reports	Section 3.4(t)	45 days prior to the annual report due date prescribed in the Fisheries Act Authorizations	Until all conditions of the Fisheries Act Authorizations have been satisfied	[REDACTED] QF Points

Schedule 17-Environmental Obligations					
Table 3.4: Schedule of Plans, and Reports Submission Requirements					
Performance Measure *	Deliverable Name	Schedule 17 Specification Reference	Due Date	Deliverable Submission Period	Consequences for Non Conformance **
PE 3.4(x)	Vegetation restoration site monitoring reports	Section 3.4(x)	November 30 th annually	In accordance with the Vegetation Restoration Framework	[REDACTED] QF Points
PE 3.4(y)	Vegetation restoration annual report	Section 3.4(y)	November 30 th annually	In accordance with the Vegetation Restoration Framework	[REDACTED] QF Points
PE 3.4(z)	Bobolink ESA Permit monitoring reports	Section 3.4(z)	45 days prior to the annual monitoring report due date prescribed in the Bobolink ESA Permit	Until all conditions of the Bobolink ESA Permit have been satisfied	[REDACTED] QF Points
PE 3.4(aa)	Butternut ESA Permit monitoring reports	Section 3.4(aa)	45 days prior to the annual monitoring report due date prescribed in the Butternut ESA Permit	Until all conditions of the Butternut ESA Permit have been satisfied	[REDACTED] QF Points
PE 3.4(bb)	Wildlife Monitoring Annual Report	Section 3.4(bb)	November 30 th annually	In accordance with the Wildlife Monitoring Framework	[REDACTED] QF Points
PE 3.4(cc)	Barn Swallow ESA Permit monitoring reports	Section 3.4(cc)	45 days prior to the annual monitoring report due date prescribed in the Barn Swallow ESA Permit	Until all conditions of the Barn Swallow ESA Permit have been satisfied	[REDACTED] QF Points

*Effective, in respect of each Section, after Section Substantial Completion of the relevant Section.

**Quality Failure Points to be applied as defined in Schedule 17.

Schedule 20-Payment Mechanism		
Part F – Section 1 - Failure by Project CO to Monitor or Report		
Reference	Deliverable Name	Consequences for Non Conformance *
Section 1.3	If Project Co fails to monitor or accurately report any Availability Failure or Quality Failure then, without prejudice to the Deduction to be made in respect of the relevant Availability Failure or Quality Failure, the failure to monitor or report shall be deemed to be a new Quality Failure	[REDACTED] QF Points
Section 1.5	For the purposes of Sections 1.2 and 1.3 of this Part F the relevant circumstances are: a) fraudulent action or inaction; b) deliberate misrepresentation; or c) gross misconduct or incompetence in each case on the part of Project Co or a Project Co Party	[REDACTED] QF Points

*Quality Failure Points to be applied as defined in this Schedule 20 part F.

**APPENDIX C: ANNUAL OM&R PAYMENT FOR THE PERIOD AFTER THE SECTION
COMPLETION DATE FOR THE MAIN LINE SECTION AND PRIOR TO SUBSTANTIAL
COMPLETION**

Contract Year April – March	Annual OM&R Payment Excluding Rehabilitation Payments for the period after the Section Completion Date for the Main Line Section and prior to Substantial Completion (A)	Annual Rehabilitation Payments for the period after the Section Completion Date for the Main Line Section and prior to Substantial Completion (B)	Total Annual OM&R Payment for the period after the Section Completion Date for the Main Line Section and prior to Substantial Completion (C)
1.	\$[REDACTED]	\$[REDACTED]	\$[REDACTED]
2.	\$[REDACTED]	\$[REDACTED]	\$[REDACTED]
3.	\$[REDACTED]	\$[REDACTED]	\$[REDACTED]
TOTAL	\$[REDACTED]	\$[REDACTED]	\$[REDACTED]

APPENDIX D: ANNUAL OM&R PAYMENT POST SUBSTANTIAL COMPLETION

Contract Year April – March	Annual OM&R Payment Excluding Rehabilitation Payments for the period after Substantial Completion(A)	Annual Rehabilitation Payments for the period after Substantial Completion (B)	Total Annual OM&R Payment for the period after Substantial Completion (C)
1.	\$[REDACTED]	\$[REDACTED]	\$[REDACTED]
2.	\$[REDACTED]	\$[REDACTED]	\$[REDACTED]
3.	\$[REDACTED]	\$[REDACTED]	\$[REDACTED]
4.	\$[REDACTED]	\$[REDACTED]	\$[REDACTED]
5.	\$[REDACTED]	\$[REDACTED]	\$[REDACTED]
6.	\$[REDACTED]	\$[REDACTED]	\$[REDACTED]
7.	\$[REDACTED]	\$[REDACTED]	\$[REDACTED]
8.	\$[REDACTED]	\$[REDACTED]	\$[REDACTED]
9.	\$[REDACTED]	\$[REDACTED]	\$[REDACTED]
10.	\$[REDACTED]	\$[REDACTED]	\$[REDACTED]
11.	\$[REDACTED]	\$[REDACTED]	\$[REDACTED]
12.	\$[REDACTED]	\$[REDACTED]	\$[REDACTED]
13.	\$[REDACTED]	\$[REDACTED]	\$[REDACTED]
14.	\$[REDACTED]	\$[REDACTED]	\$[REDACTED]
15.	\$[REDACTED]	\$[REDACTED]	\$[REDACTED]
16.	\$[REDACTED]	\$[REDACTED]	\$[REDACTED]
17.	\$[REDACTED]	\$[REDACTED]	\$[REDACTED]
18.	\$[REDACTED]	\$[REDACTED]	\$[REDACTED]
19.	\$[REDACTED]	\$[REDACTED]	\$[REDACTED]
20.	\$[REDACTED]	\$[REDACTED]	\$[REDACTED]
21.	\$[REDACTED]	\$[REDACTED]	\$[REDACTED]
22.	\$[REDACTED]	\$[REDACTED]	\$[REDACTED]
23.	\$[REDACTED]	\$[REDACTED]	\$[REDACTED]

24.	\$[REDACTED]	\$[REDACTED]	\$[REDACTED]
25.	\$[REDACTED]	\$[REDACTED]	\$[REDACTED]
26.	\$[REDACTED]	\$[REDACTED]	\$[REDACTED]
27.	\$[REDACTED]	\$[REDACTED]	\$[REDACTED]
28.	\$[REDACTED]	\$[REDACTED]	\$[REDACTED]
29.	\$[REDACTED]	\$[REDACTED]	\$[REDACTED]
30.	\$[REDACTED]	\$[REDACTED]	\$[REDACTED]
31.	\$[REDACTED]	\$[REDACTED]	\$[REDACTED]
TOTAL	\$[REDACTED]	\$[REDACTED]	\$[REDACTED]

APPENDIX E: SCHEDULE OF MONTHLY REHABILITATION PAYMENTS (SHOWN AS A PERCENTAGE OF THE ANNUAL REHABILITATION PAYMENT FOR THE RELEVANT CONTRACT YEAR)

Contract Month	RP_{Month}
1	[REDACTED]%
2	[REDACTED]%
3	[REDACTED]%
4	[REDACTED]%
5	[REDACTED]%
6	[REDACTED]%
7	[REDACTED]%
8	[REDACTED]%
9	[REDACTED]%
10	[REDACTED]%
11	[REDACTED]%
12	[REDACTED]%
13	[REDACTED]%
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SCHEDULE 22

VARIATION PROCEDURE

1. VARIATIONS

1.1 Definitions

- (a) The following terms shall have the following meanings:
- (i) **“Direct Cost”** has the meaning given in Appendix A of this Schedule 22.
 - (ii) **“Estimate”** has the meaning given in Section 1.4(a) of this Schedule 22.
 - (iii) **“HMQ Work”** has the meaning given in Section 1.7(a) of this Schedule 22.
 - (iv) **“Project Co Variation Notice”** has the meaning given in Section 2.1(a) of this Schedule 22.
 - (v) **“Variation”** means a variation, addition, reduction, substitution, omission, modification, deletion, removal or other change to the whole or any part of the Project Operations, including in relation to the whole or any part of the Works or the OM&R Work.
 - (vi) **“Variation Confirmation”** has the meaning given in Section 1.8(a)(ii) of this Schedule 22.
 - (vii) **“Variation Directive”** means a written instruction which is issued on a form designated as a “Variation Directive Form” and signed by the HMQ Representative directing Project Co to immediately proceed with a Variation pending the finalization and issuance of a Variation Confirmation for that Variation.
 - (viii) **“Variation Enquiry”** has the meaning given in Section 1.3(a) of this Schedule 22.

1.2 General

- (a) HMQ 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 HMQ shall not be permitted to withdraw a Variation Enquiry (nor will a Variation Enquiry be deemed to have been withdrawn) with respect to those circumstances specified in the Project Agreement for which HMQ is obligated to proceed with a Variation.
- (b) HMQ shall be obligated to proceed with a Variation in certain circumstances specified in this Project Agreement, and any such Variation shall be subject to the provisions of this Schedule 22.
- (c) Project Co will not be entitled to any payment, compensation or extension of time for a Variation except to the extent provided in a Variation Confirmation or Variation Directive in accordance with this Schedule 22.

1.3 Variation Enquiry

- (a) If HMQ proposes or is obligated pursuant to the terms of this Project Agreement or Applicable Law to initiate a Variation it shall deliver to Project Co a written notice of the proposed Variation (a “**Variation Enquiry**”).
- (b) A Variation Enquiry shall:
 - (i) describe the proposed Variation with sufficient detail to enable Project Co to prepare a detailed Estimate;
 - (ii) in the event that the proposed Variation will require a Capital Expenditure, state whether HMQ intends to pay for the Variation by way of lump sum payment or payments, adjustment to the Monthly OM&R Payments (and, if applicable, with a request for Project Co to obtain financing for all or part of the Variation), or a combination thereof; and
 - (iii) provide a preliminary indication of any provisions of this Project Agreement (including the Output Specifications or the Project Co Proposal Extracts) that will be affected by the proposed Variation, as well as the amendments to this Project Agreement (including the Output Specifications or the Project Co Proposal Extracts) that may be necessary to accommodate the Variation.

1.4 Delivery of Estimate

- (a) As soon as practicable and in any event within 15 Business Days after receipt of a Variation Enquiry, or such longer period as the Parties agree acting reasonably, Project Co shall deliver its detailed breakdown, estimate and other information (an “**Estimate**”) prepared in accordance with and meeting the requirements of Section 1.6.

1.5 Project Co Grounds for Objection

- (a) Project Co may only refuse to deliver an Estimate if Project Co can demonstrate to HMQ’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 or Approvals required by Project Co to perform the Project Operations, and any such Permit, Licence or Approval is not, using commercially reasonable efforts, capable of amendment or renewal; or

- (C) require any new Permits, Licences or Approvals for Project Co to perform the Project Operations, any of which will not, using commercially reasonable efforts by Project Co or HMQ, as applicable, be obtainable;
- (iii) the proposed Variation would have a material and adverse effect on performance of the Project Operations (except those Project Operations which have been specified as requiring amendment in the Variation Enquiry) in a manner not compensated pursuant to this Schedule 22;
- (iv) the implementation of the Variation would be a departure from Good Industry Practice;
- (v) HMQ 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 Extension;
- (vii) the Variation Enquiry does not comply with the requirements of Section 1.3 (including a failure to include adequate information therein to enable Project Co to prepare an Estimate in respect thereof);
- (viii) in the case of a Variation relating to the Works, the time specified for commencement and/or completion of such Variation cannot be achieved by Project Co despite commercially reasonable efforts; or
- (ix) in the case of a Variation relating to the OM&R Work, the time specified for implementation of such Variation cannot be achieved by Project Co despite commercially reasonable efforts.
- (b) If Project Co refuses to provide an Estimate on the grounds set out in Section 1.5(a), Project Co shall, within the period for delivery of an Estimate specified or agreed pursuant to Section 1.4(a), deliver to HMQ a written notice specifying the grounds upon which Project Co rejects the Variation and the details thereof.

1.6 Estimate Requirements

- (a) Unless HMQ in a Variation Enquiry requires only specified limited information, each Estimate shall include the following information, sufficient to demonstrate to HMQ'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;
 - (ii) any impact on the Scheduled Section Substantial Completion Date of the Crossing Roads Section or the Main Line Section or on the Scheduled Substantial Completion Date, and any other schedule impact on the provision of the Extension and completion of the Initial Works (including for certainty, any impact of the proposed Variation after taking into consideration other Variations);

- (iii) any impact on the performance of the Project Operations and any other impact on this Project Agreement (including for certainty, any impact of the proposed Variation after taking into consideration other Variations);
- (iv) any impact on expected usage of utilities, including those identified in Schedule 20 - Payment Mechanism, for the current Contract Year and subsequent Contract Years;
- (v) any amendments to this Project Agreement (including Schedule 20 - Payment Mechanism) or any Project Document required as a consequence of the Variation, the objective of such amendments being to ensure that (save for the obligation of HMQ to make payments or altered payments in respect of the Variation) the Parties are in no better and no worse position in relation to the Project than they would have been in if the Variation had not been implemented and, in particular, that there will be no material adverse change to the risk profile of the Project as a result of the Variation;
- (vi) any impact on the Direct Costs of Project Co and each Subcontractor, including:
 - (A) any Capital Expenditure that will be incurred, reduced or avoided and the impact on Project Co's cash flows from incurring, reducing or avoiding such costs (whether financed by Project Co or HMQ); and
 - (B) any other costs that will be incurred, reduced or avoided and the impact on Project Co's cash flows from incurring, reducing or avoiding such costs;
- (vii) either:
 - (A) a confirmation that the proposed Variation will not affect Project Co's existing financing or that Project Co's existing financing is adequate to implement the Variation; or
 - (B) if new or additional financing is required to implement the Variation, an indication as to the availability of such new or additional financing and the cost and terms of such new or additional financing;
- (viii) Project Co's confirmation that the projected internal rate of return on any additional equity capital required to finance the Variation will be the Base Case Equity IRR;
- (ix) Project Co's preliminary indication of the potential increase or decrease, if any, of the Monthly OM&R Payments, with such amount calculated by reference to the relevant parts of the Financial Model to demonstrate the impact of the proposed Variation;
- (x) any Permits, Licences and Approvals that must be obtained or amended for the Variation to be implemented, and the latest date by which Project Co must receive a Variation Confirmation and Project Co or HMQ, as applicable, must obtain or amend such Permits, Licences and Approvals for the Estimate to remain valid; and
- (xi) the proposed methods of certification of any construction or operational aspect of the Project Operations required by the Variation if not covered by the provisions of this Project Agreement,

in each case, together with such supporting information and justification as is reasonably required.

- (b) In preparing its Estimate, Project Co shall include sufficient information to demonstrate to HMQ's satisfaction, acting reasonably, that:
 - (i) Project Co has used or has obliged each Subcontractor (or will oblige any Subcontractor not yet selected) to use commercially reasonable efforts, including the use of competitive quotes or tenders (if appropriate or required by Sections 1.6(c) and 1.6(e)), to minimize any increase in costs and to maximize any reduction in costs;
 - (ii) except as otherwise set out herein, all costs of Project Co and each Subcontractor are limited to Direct Costs;
 - (iii) Project Co, the Construction Contractor and the OM&R Provider shall charge only the margins for overhead and profit as set out in Appendix B hereto (such margins each calculated on the basis of the applicable Direct Costs so that no margin of Project Co, the Construction Contractor or the OM&R Provider is calculated on any other margin of Project Co, the Construction Contractor or the OM&R Provider), and no other margins or mark-ups;
 - (iv) the margins for overheads and profit as set out in Appendix B hereto as applicable to Project Co's Direct Costs shall only be chargeable on Direct Costs of Project Co, such that Project Co shall not charge any margins on any amounts charged by the Construction Contractor or the OM&R Provider;
 - (v) all costs of providing Project Operations, including Capital Expenditures, reflect:
 - (A) labour rates applying in the open market to providers of services similar to those required by the Variation;
 - (B) any and all changes in the Output Specifications arising out of the proposed Variation; and
 - (C) any and all changes in risk allocation;
 - (vi) the full amount of any and all expenditures that have been reduced or avoided (including for any Capital Expenditure) and that all such expenditures, including all applicable margins for overhead and profit anticipated to be incurred but for the Variation, have been taken into account and applied in total to reduce the amount of all costs; and
 - (vii) Project Co has mitigated or will mitigate the impact of the Variation, including on the Works Schedule, the performance of the Project Operations, the expected usage of utilities, and the Direct Costs to be incurred.
- (c) Project Co will use commercially reasonable efforts to obtain the best value for money when procuring any work, services, supplies, materials or equipment required by the Variation and will comply with all Good Industry Practice in relation to any such procurement, to a standard no less

than Project Co would apply if all costs incurred were to its own account without recourse to HMQ, including using commercially reasonable efforts to mitigate such costs.

- (d) As soon as practicable, and in any event not more than 15 Business Days after HMQ receives an Estimate, Project Co and HMQ shall discuss and seek to agree on the Estimate, including any amendments to the Estimate agreed to by the Parties.
- (e) If HMQ would be required by Applicable Law or any policy applicable to HMQ to competitively tender any contract in relation to the proposed Variation, HMQ may require Project Co to seek and evaluate competitive tenders for the proposed Variation in accordance with such Applicable Law or policy.
- (f) HMQ may modify a Variation Enquiry in writing at any time for any matter relating to the Estimate or the discussions in relation thereto, in which case Project Co shall, as soon as practicable and in any event not more than 10 Business Days after receipt of such modification, notify HMQ in writing of any consequential changes to the Estimate.
- (g) If the Parties cannot agree on an Estimate pursuant to Section 1.6(d), then any Dispute will be determined in accordance with Schedule 27 - Dispute Resolution Procedure.

1.7 HMQ's Right to Perform

- (a) In respect of the Crossing Roads Section or the Main Line Section, after the respective Section Substantial Completion and in respect of the entire Extension, after Substantial Completion, HMQ shall have the right to perform the subject matter of a proposed Variation (“**HMQ Work**”) itself, or through others contracting directly with HMQ, without compensation to Project Co, except as specifically stated herein.
- (b) HMQ shall indemnify and save Project Co harmless from and against any and all loss or expense which may be suffered, sustained or incurred by Project Co as a direct result of, in respect of, or arising out of the performance by HMQ, or any third party, of HMQ Work, including, without limitation, any loss or expense related to any adverse impacts on the Project Operations.

1.8 Variation Confirmation

- (a) As soon as practicable, and in any event within 15 Business Days after the later of the date the Estimate was delivered and the date the Estimate was either agreed to or any Dispute in respect thereof was determined in accordance with Schedule 27 - Dispute Resolution Procedure, HMQ shall either:
 - (i) subject to Section 1.2(b) and Section 1.8(e), withdraw the Variation Enquiry by written notice to Project Co; or
 - (ii) issue a written confirmation (the “**Variation Confirmation**”) of the Estimate, including any agreed modifications thereto or any modifications resulting for the determination of a Dispute in respect thereof, which Variation Confirmation may be subject to Project Co obtaining financing pursuant to Section 1.9.

- (b) If HMQ does not issue a Variation Confirmation within such 15 Business Days, then, subject to Section 1.8(e), the Variation Enquiry shall be deemed to have been withdrawn.
- (c) Upon the Variation Confirmation being issued, and if applicable upon Project Co obtaining financing pursuant to Section 1.9:
 - (i) the Parties shall as soon as practicable thereafter do all acts and execute all documents to amend this Project Agreement necessary to implement the Variation, including in respect of any required extension of time and including provision for payment to Project Co as provided in Section 1.10;
 - (ii) Project Co shall implement the Variation as provided for in the Variation Confirmation, and subject to amendments pursuant to Section 1.8(c)(i), all provisions of this Project Agreement applicable to the Project Operations shall apply to the Project Operations as thereby changed and no additional claim with respect to the Variation or Variation Confirmation will be considered; and
 - (iii) payment in relation to the Variation shall be as provided for in Section 1.10 and pursuant to any amendments pursuant to Section 1.8(c)(i).
- (d) If a Variation Confirmation is subject to Project Co obtaining financing pursuant to Section 1.9, then the Variation Confirmation shall not be effective until:
 - (i) Project Co obtains such financing acceptable to HMQ in its sole discretion; or
 - (ii) HMQ in its sole discretion waives such requirement.
- (e) Except as hereinafter provided, until a Variation Confirmation has been issued:
 - (i) the determination of whether or not to proceed with a Variation shall at all times be at HMQ'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) HMQ may at any time withdraw a Variation Enquiry and, subject to Section 1.8(f), HMQ shall not be obligated to Project Co in respect of a Variation until such time as HMQ in its sole discretion issues a Variation Confirmation and, if applicable, Project Co has obtained the financing requested by HMQ or HMQ has waived such requirement,
provided that HMQ may not withdraw a Variation Enquiry in circumstances where HMQ is obligated pursuant to the terms of this Project Agreement to proceed with a Variation. In such circumstances Schedule 27 - Dispute Resolution Procedure shall be employed to finalize any aspects of the Variation which cannot otherwise be agreed to in accordance with the terms of this Schedule 22.
- (f) If a Variation Confirmation is not issued for any Variation Enquiry in respect of which Project Co has used commercially reasonable efforts to produce a fair and accurate Estimate, HMQ shall reimburse Project Co for all Direct Costs reasonably and properly incurred by Project Co in connection with preparing the Estimate.

1.9 Financing

- (a) If Project Co in its Estimate confirms that existing financing is not available to pay for the proposed Variation and if HMQ 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, the Lenders and HMQ, provided that, prior to the Substantial Completion Date, Project Co shall not be required to seek financing from any source other than the Lenders.
- (b) If Project Co has used commercially reasonable efforts to obtain the requested financing but has been unable to obtain an offer of financing on terms reasonably satisfactory to Project Co and HMQ within 60 days of the date that HMQ 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 HMQ, in its sole discretion, waives the requirement for financing or unless HMQ is obligated to proceed with the Variation pursuant to the terms of this Project Agreement.
- (c) If Project Co obtains an offer of financing on terms reasonably satisfactory to Project Co, Project Co shall provide HMQ with details of such financing, and HMQ shall, in its sole discretion, determine whether Project Co should proceed with such financing. If HMQ 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 HMQ, in its sole discretion, waives the requirement for financing or unless HMQ is obligated to proceed with the Variation pursuant to the terms of this Project Agreement.
- (d) HMQ may at any time withdraw the requirement for Project Co to use commercially reasonable efforts to obtain financing, after which Project Co shall have no further obligation to obtain financing for the Variation and any Variation Confirmation subject to financing shall no longer have any effect unless HMQ in its sole discretion waives the requirement for financing or unless HMQ is obligated to proceed with the Variation pursuant to the terms of this Project Agreement.
- (e) If HMQ waives the requirement for financing or if Project Co has no further obligation to obtain financing for the Variation pursuant to Sections 1.9(b), 1.9(c) or 1.9(d), then Project Co shall proceed with the Variation as set out in the Variation Confirmation and HMQ shall pay for the Variation as provided for in Section 1.10(a)(ii).

1.10 Payment

- (a) If a Variation Confirmation has been issued and is not subject to financing, or if the requirement for financing has been satisfied by Project Co or has been waived by HMQ, a price adjustment for the Variation, as set out in the Estimate and as adjusted and confirmed by the Variation Confirmation, shall be made as follows:
 - (i) the Monthly OM&R Payments shall be adjusted as set out in the Variation Confirmation; and

- (ii) payment for Capital Expenditures as set out in the Variation Confirmation and not financed by Project Co shall be paid as follows:
 - (A) HMQ shall pay such Capital Expenditures in lump sum payments based on a payment schedule agreed by HMQ and Project Co, acting reasonably, to reflect the amount and timing of the Capital Expenditures to be incurred by Project Co in carrying out the Variation to the extent borne by HMQ; and
 - (B) where payment for part of the Variation reflects the carrying out of, or specific progress towards, an element within the Variation, Project Co shall provide satisfactory evidence confirming that the part of the Variation corresponding to each occasion when payment is due under the payment schedule has been duly carried out.

In the event HMQ and Project Co fail to agree as to the terms of the payment schedule, the payment schedule shall be determined in accordance with Schedule 27 - Dispute Resolution Procedure, provided that, where all or any part of the Variation is being carried out by a third party under a contract with Project Co, subject to the terms of any contract between Project Co and that third party in relation to the implementation of the Variation having been approved by HMQ (such approval not to be unreasonably withheld or delayed), the process under Schedule 27 - Dispute Resolution Procedure shall determine a payment schedule which would enable Project Co to be funded by HMQ in time to make payments to that third party in accordance with its contract with Project Co.

- (b) HMQ shall make payment to Project Co within 20 Business Days of receipt by HMQ of invoices presented to HMQ in accordance with the agreed payment schedule accompanied (where applicable) by the relevant evidence that the relevant part of the Variation has been carried out.
- (c) Payments by HMQ in respect of a Variation shall be subject to applicable holdback provisions of the *Construction Lien Act* (Ontario), as applicable.
- (d) Project Co shall not be entitled to any amount in excess of the amount of the Estimate confirmed in the Variation Confirmation.
- (e) Upon request by Project Co, HMQ shall provide to Project Co copies of any consent or approval issued by HMQ in connection with a proposed Variation.

1.11 Reduction in Project Operations

- (a) If a Variation involves any reduction in Project Operations which results in savings in Direct Costs to Project Co, such savings shall result in a reduction in the compensation payable to Project Co under this Project Agreement in an amount equal to such reduction in Direct Costs, and Project Co shall compensate HMQ by way of a reduction in the Monthly OM&R Payments.

1.12 Variation Directive

- (a) If an Estimate is not promptly agreed upon by HMQ and Project Co or if there is a Dispute in relation thereto or if HMQ, in its sole discretion, requires a Variation to be implemented prior to

issuing a Variation Confirmation, then HMQ may issue a Variation Directive and, following receipt of the Variation Directive:

- (i) Project Co shall promptly proceed with the Variation;
- (ii) the determination of the valuation and time extensions, if any, required in connection with such Variation, shall be made as soon as reasonably possible after commencement of the implementation of the Variation; and
- (iii) pending final determination of the valuation and time extensions, if any, required in connection with such Variation, the Independent Certifier (if such Variation is in respect of matters prior to Final Completion) or the HMQ Representative, as applicable and, in each case, acting reasonably, shall determine the valuation in accordance with Appendices A and B hereto, with any Dispute to be determined in accordance with Schedule 27 - Dispute Resolution Procedure,

provided that, HMQ shall fund all Variations implemented by way of a Variation Directive as provided for in Section 1.10(a)(ii).

2. PROJECT CO VARIATIONS

2.1 General

- (a) Project Co shall deliver to HMQ a written notice (a “**Project Co Variation Notice**”) for each Variation proposed by Project Co.

2.2 Project Co Variation Notice

- (a) A Project Co Variation Notice shall:
 - (i) set out details of the proposed Variation in sufficient detail to enable HMQ to evaluate it in full;
 - (ii) specify Project Co’s reasons for proposing the Variation;
 - (iii) indicate all reasonably foreseeable implications of the Variation, including whether there are any costs or cost savings to HMQ, and whether an adjustment to the Monthly OM&R Payments is required; and
 - (iv) indicate the latest date by which a Variation Enquiry must be issued.
- (b) If HMQ, in its sole discretion, elects to consider the Variation proposed by Project Co, HMQ may issue to Project Co a Variation Enquiry and the procedure set out in Section 1 will apply.

3. SMALL WORKS**3.1 General**

- (a) After the relevant Section Substantial Completion Date with respect to the Crossing Roads Section and the Main Line Section and after the Substantial Completion Date with respect to the entire Extension, Project Co shall carry out all Small Works requested by HMQ.
- (b) If Small Works are requested by HMQ, Project Co shall, within 10 Business Days of each such request and prior to carrying out the Small Works, provide HMQ with a price for carrying out the Small Works.
- (c) If Project Co's price is accepted by HMQ, in its sole discretion, Project Co shall carry out the Small Works for such price.
- (d) HMQ may at any time, in its sole discretion, including if HMQ does not accept the price proposed by Project Co pursuant to Section 3.1(b), issue a Variation Enquiry or Variation Directive in respect of such Small Works, in which event the provisions of this Schedule 22, other than this Section 3, shall apply.
- (e) Project Co's price shall include only its Direct Costs, as calculated in accordance with Appendix A, together with applicable margins as set out in Appendix B.

3.2 Project Co to Minimize Inconvenience

- (a) Project Co shall notify HMQ of the estimated duration of any Small Works so that HMQ and Project Co can agree upon a convenient time for carrying out the same, so as to minimize and mitigate inconvenience and disruption to HMQ. Project Co shall use commercially reasonable efforts to minimize the duration of any Small Works.

APPENDIX A

CALCULATION OF DIRECT COSTS

1. DIRECT COSTS

- 1.1 Subject to Section 1.2 of this Appendix A, the term “Direct Cost” means the cumulative total, without duplication, of only the following amounts, as paid or incurred by Project Co or each Subcontractor, as applicable, to the extent that they specifically relate to, and are attributable to, the Variation under which Project Co is expressly entitled to its Direct Cost and would not otherwise have been incurred:
- (i) wages and benefits paid for labour in the direct employ of Project Co or each Subcontractor while performing that part of the Project Operations on the Site;
 - (ii) salaries, wages and benefits of Project Co’s or each Subcontractor’s personnel when stationed at the Site office in whatever capacity employed, or personnel engaged at shops or on the road, in expediting the production or transportation of materials or equipment;
 - (iii) salaries, wages and benefits of Project Co’s or each Subcontractor’s office personnel engaged in a technical capacity;
 - (iv) without limiting Sections 1.1(i), 1.1(ii) and 1.1(iii) of this Appendix A, contributions, assessments or taxes incurred for such items as employment insurance, provincial health insurance, workers’ compensation, and Canada Pension Plan, insofar as such costs are based on the wages, salaries, or other remuneration paid to Project Co for employees pursuant to Sections 1.1(i), 1.1(ii) and 1.1(iii) of this Appendix A, but excluding for certainty all income taxes on such wages, salaries and other remuneration;
 - (v) travel and subsistence expenses of Project Co’s or each Subcontractor’s officers or employees referred to in Sections 1.1(i), 1.1(ii) and 1.1(iii) of this Appendix A;
 - (vi) the cost of materials (including hand tools which have a retail value of \$[REDACTED] or less), products, supplies, equipment, temporary services and facilities, including transportation and maintenance thereof, which are consumed in the performance of the Variation;
 - (vii) the rental costs of all tools (excluding hand tools which have a retail value of \$[REDACTED] or less), machinery, and equipment used in the performance of the Variation, whether rented from or provided by Project Co or others, including installation, minor repair and replacement, dismantling, removal, transportation and delivery costs thereof;
 - (viii) deposits lost;
 - (ix) the amount of all Subcontracts with Subcontractors;
 - (x) the amount paid for any design services;

- (xi) the cost of third party quality assurance required by HMQ, such as independent inspection and testing services;
- (xii) charges levied by Governmental Authorities, but excluding fines or penalties not related to the implementation of the Variation;
- (xiii) subject to Section 1.1(iv) of this Appendix A, Taxes (and without limiting the obligation of HMQ to pay HST payable by it under this Project Agreement), but excluding:
 - (A) HST;
 - (B) taxes imposed on Project Co or a Subcontractor based on or measured by income or profit or otherwise imposed under the Income Tax Act (Canada), the *Income Tax Act* (Ontario) or any similar statute in any other jurisdiction;
 - (C) capital taxes based on or measured by the capital of Project Co or a Subcontractor;
 - (D) taxes relating to withholdings on any payments by Project Co or a Subcontractor; and
 - (E) taxes relating to any business or activity other than the business or activities related to, and conducted for, the purposes of the Project Operations;
- (xiv) the cost of removal and disposal of contaminants, hazardous substances, waste products and debris for which Project Co is not responsible under this Project Agreement;
- (xv) termination payments which are required under Applicable Law to be made to employees of Project Co reasonably and properly incurred by Project Co arising as a direct result of any Variation reducing the scope of the Project Operations, except to the extent that such termination payments are provided for in contracts of employment, agreements or arrangements that were not entered into in the ordinary course of business and on commercial arm's length terms;
- (xvi) the cost of financing, including additional financing costs related to any delay caused by the implementation of the Variation;
- (xvii) the cost of competitively tendering any contract in relation to the proposed Variation which is required by Applicable Law or any policy applicable to HMQ;
- (xviii) the cost of any additional insurance or performance security required or approved by HMQ;
- (xix) the cost of obtaining all Project Co Permits, Licences and Approvals; and
- (xx) reasonable fees and disbursements of Project Co's legal advisors.

1.2 The Direct Cost otherwise payable shall be subject to and limited by the following:

- (i) the Direct Cost shall be net of all discounts, rebates and other price reductions and benefits, which relate to the Direct Cost incurred;
- (ii) the amount paid for materials, products, supplies and equipment incorporated into the Project Operations as a result of the Variation shall not exceed commercially competitive rates available in the Province of Ontario for such materials, products, supplies and equipment from arms-length third party suppliers;
- (iii) the amount paid for any design services included in the Direct Cost, whether provided by Project Co's personnel, consultants, manufacturers or manufacturers' consultants, for hourly paid personnel shall not exceed two times the actual salary received by those personnel (actual salary to be inclusive of all benefits, statutory remittances and holidays), and for salaried personnel, the actual salary per hour shall be calculated by dividing the annual salary (inclusive of all benefits, statutory remittances and holidays) by 2080 hours;
- (iv) the amount paid for machinery and equipment rental costs shall not exceed the prevailing competitive commercial rate for which such equipment or machinery can be obtained in the GTA; and
- (v) the Direct Cost shall not include any cost incurred due to the failure on the part of Project Co to exercise reasonable care and diligence in its attention to the prosecution of that part of the Project Operations.

APPENDIX B

APPLICABLE MARGINS

Party	Total Overhead and Profit Margin (as % of Direct Cost)		
	<i>For projects under \$[REDACTED]</i>	<i>For projects between \$[REDACTED] and \$[REDACTED]</i>	<i>For projects over \$[REDACTED]</i>
Project Co (Own Work)	[REDACTED]%	[REDACTED]%	[REDACTED]%
Construction Contractor (Own Work)	[REDACTED]%	[REDACTED]%	[REDACTED]%
Construction Contractor (Subcontracted Work)	[REDACTED]%	[REDACTED]%	[REDACTED]%
OM&R Provider (Own Work)	[REDACTED]%	[REDACTED]%	[REDACTED]%
OM&R Provider (Subcontracted Work)	[REDACTED]%	[REDACTED]%	[REDACTED]%

SCHEDULE 23

COMPENSATION ON TERMINATION

1. DEFINITIONS

1.1 Definitions

The following terms shall have the following meanings:

- (a) **“Adjusted Estimated Fair Value”** means the Estimated Fair Value adjusted as follows:
- (i) where, in respect of any Payment Period or part of a Payment Period from the Termination Date to the Compensation Date, the Post Termination Service Amount is a negative number, the aggregate amount by which all such negative Post Termination Service Amounts are negative shall be set off against and shall reduce the Estimated Fair Value (whether or not such amounts have been set off by HMQ pursuant to Section 3.3(f) of this Schedule 23);
 - (ii) the aggregate of the following amounts shall be deducted, without duplication, from the Estimated Fair Value;
 - (A) the Post Termination Service Amounts actually paid by HMQ to Project Co prior to the Compensation Date;
 - (B) the Tender Costs; and
 - (C) amounts that HMQ is entitled to set off or deduct; and
 - (iii) the aggregate of the following amounts shall be added, without duplication, to the Estimated Fair Value:
 - (A) all credit balances on any bank accounts held by or on behalf of Project Co on the date that the Estimated Fair Value is calculated; and
 - (B) any insurance proceeds and other amounts owing to Project Co (and which Project Co is entitled to retain), to the extent not included in Section 1.1(a)(iii)(A) of this Schedule 23,
to the extent that:
 - (C) Sections 1.1(a)(iii)(A) and 1.1(a)(iii)(B) of this Schedule 23 have not been directly taken into account in calculating the Estimated Fair Value; and
 - (D) HMQ has received such amounts in accordance with this Project Agreement.

- (b) **“Adjusted Highest Qualifying Tender Price”** means the price offered by the Qualifying Tenderer (if any) with the highest tender price, adjusted as follows:
- (i) where, in respect of any Payment Period or part of a Payment Period from the Termination Date to the Compensation Date, the Post Termination Service Amount is a negative number, the aggregate amount by which all such negative Post Termination Service Amounts are negative shall be set off against and shall reduce such highest tender price (whether or not such amounts have been set off by HMQ pursuant to Section 3.3(f) of this Schedule 23);
 - (ii) the aggregate of the following amounts shall be deducted, without duplication, from such highest tender price:
 - (A) the Post Termination Service Amounts actually paid by HMQ to Project Co prior to the Compensation Date;
 - (B) the Tender Costs; and
 - (C) amounts that HMQ is entitled to set off or deduct; and
 - (iii) the aggregate of the following amounts shall be added, without duplication, to such highest tender price:
 - (A) all credit balances on any bank accounts held by or on behalf of Project Co on the date that the highest priced Qualifying Tender is received; and
 - (B) any insurance proceeds and other amounts owing to Project Co (and which Project Co is entitled to retain), to the extent not included in Section 1.1(b)(iii)(A) of this Schedule 23,
to the extent that:
 - (C) Sections 1.1(b)(iii)(A) and 1.1(b)(iii)(B) of this Schedule 23 have not been directly taken into account in that Qualifying Tender; and
 - (D) HMQ has received such amounts in accordance with this Project Agreement.
- (c) **“Common Terms Agreement”** means the common terms and intercreditor agreement dated on or about Financial Close, among, *inter alia*, Project Co, [REDACTED] and Computershare Trust Company of Canada, in its capacity as collateral trustee and as indenture trustee under the Trust Indenture and [REDACTED], as administrative agent for the lenders under the Credit Agreement.
- (d) **“Compensation Date”** means either:
- (i) if Section 3.3 of this Schedule 23 applies, the earlier of:
 - (A) the date that the New Agreement is entered into; and

- (B) the date on which HMQ pays the Adjusted Highest Qualifying Tender Price to Project Co; or
- (ii) if Section 3.4 of this Schedule 23 applies, the date that the Adjusted Estimated Fair Value has been agreed or determined.
- (e) **“Credit Agreement”** means the credit agreement dated on or about Financial Close, among, *inter alia*, Project Co, [REDACTED] and [REDACTED], as administrative agent for the lenders thereunder.
- (f) **“Discount Rate”** means a rate equal to $((A + B) / C) + D$, where:
- A = the product of the outstanding principal amount of debt funded under the Lending Agreements on the date of calculation and the rate of interest applicable to such amount as shown in the Financial Model at Financial Close.
- B = the product of the Equity Capital as at Financial Close and the Base Case Equity IRR.
- C = the sum of the outstanding principal amount of debt funded under the Lending Agreements on the date of calculation and the Equity Capital as at Financial Close.
- D = the yield to maturity on a benchmark Government of Canada bond of the same maturity as the average life of the outstanding principal amount of debt funded under the Lending Agreements on the date of calculation, minus the yield to maturity on a benchmark Government of Canada bond of the same maturity as the average life of the outstanding principal amount of debt funded under the Lending Agreements as shown in the Financial Model at Financial Close.
- (g) **“Employee Termination Payments”** means termination payments which are required under Applicable Law to be made to employees of Project Co or any Project Co Party as a direct result of terminating this Project Agreement (provided that Project Co or the relevant Project Co Party shall take commercially reasonable steps to mitigate its loss) and provided that, in calculating such amount, no account should be taken of any liabilities and obligations of Project Co or the relevant Project Co Party arising out of:
- (i) contracts of employment or other agreements or arrangements entered into by Project Co or the relevant Project Co Party to the extent that such contracts of employment, agreements or arrangements were not entered into in connection with the Project; or
- (ii) contracts of employment or other agreements or arrangements entered into by Project Co or the relevant Project Co Party other than in the ordinary course of business and on commercial arm’s length terms, save to the extent that amounts would have arisen if such contracts or other agreements or arrangements had been entered into in the ordinary course of business and on commercial arm’s length terms.
- (h) **“Equity Contribution Agreement”** means the equity contribution agreement dated on or about Financial Close to be entered into between Project Co and each [REDACTED].
- (i) **“Estimated Fair Value”** means the amount determined in accordance with Section 3.4 of this Schedule 23.

- (j) **“HMQ Default Termination Sum”** has the meaning given in Section 2.1(b) of this Schedule 23.
- (k) **“Invoice Date”** means the date that is the later of:
- (i) the date on which HMQ receives an invoice from Project Co for the relevant termination sum; and
 - (ii) the date on which HMQ receives the supporting evidence required pursuant to Section 8.1(a) of this Schedule 23.
- (l) **“Junior Debt Amount”** means, at any time, the then outstanding principal amount of debt funded under the terms of the Lending Agreements by the Junior Lenders to Project Co, together with all interest accrued thereon at that time. For greater certainty, the Junior Debt Amount includes any amount funded under the terms of the Lending Agreements which has a fixed return without equity participation, step-up rights or rights to share in Project Co’s excess cash flow and a coupon equal to or less than [REDACTED]% of the coupon payable to the Senior Lenders and excludes the Junior Debt Makewhole.
- (m) **“Junior Debt Makewhole”** means, at any time, any amount (other than the Junior Debt Amount) then due and payable to the Junior Lenders under the Lending Agreements, including any “make whole” payments, breakage fees (less any breakage benefits) and all other fees, costs and expenses reasonably and properly incurred which Project Co is obligated to pay to the Junior Lenders pursuant to the Lending Agreements.
- (n) **“Lending Agreements”** means any or all of the agreements or instruments to be entered into by Project Co or any of its Affiliates relating to the financing of the Project Operations, including, for greater certainty, the Security Documents, any Hedging Agreement(s), the Equity Contribution Agreement, the Common Terms Agreement, the Credit Agreement, the Trust Indenture and any agreements or instruments to be entered into by Project Co or any of its Affiliates relating to the rescheduling of their indebtedness in respect of the financing of the Project Operations or the refinancing of the Project Operations.
- (o) **“Liquid Market”** means that there are 2 or more willing parties (each of whom is capable of being a Suitable Substitute and of meeting the Qualification Criteria) in the market for agreements in Canada for the provision of operation, maintenance and rehabilitation services (and if the Termination Date occurs prior to Substantial Completion, design and construction services) to highways under an alternative financing and procurement or similar model (where such agreements are the same as or similar to this Project Agreement) such that the retendering process in Section 3.3 of this Schedule 23 can reasonably be expected to result in a highest Qualifying Tender price broadly in the range of values that would reasonably be expected to be achieved calculating the Estimated Fair Value under Section 3.4 of this Schedule 23.
- (p) **“Market Value Availability Deduction Amount”** means for any Payment Period or part of a Payment Period, an amount equal to the Deductions for Availability Failures that were made from the Monthly OM&R Payment under the Payment Mechanism in the Payment Period immediately preceding the Termination Date, less an amount equal to Deductions for Availability Failures that were made for Extension Sections (as defined in Schedule 20 - Payment Mechanism) which were unavailable at the Termination Date but which have subsequently become available, whether as a result of HMQ incurring Rectification Costs or otherwise.

- (q) **“Maximum OM&R Payment”** means the Monthly OM&R Payments payable at any time before any Deductions under the Payment Mechanism but allowing for indexation under the Payment Mechanism.
- (r) **“New Agreement”** means an agreement on substantially the same terms and conditions as this Project Agreement as at the Termination Date, but with the following amendments:
 - (i) if this Project Agreement is terminated prior to the Substantial Completion Date, then the Longstop Date shall be extended by a period to allow a New Project Co to achieve Substantial Completion prior to such extended Longstop Date;
 - (ii) any accrued Failure Points shall be cancelled;
 - (iii) the term of such agreement shall be equal to the term from the Termination Date until the Expiry Date; and
 - (iv) any other amendments which do not adversely affect Project Co.
- (s) **“New Project Co”** means the person who has entered or who will enter into the New Agreement with HMQ.
- (t) **“Non-Default Termination Sum”** has the meaning given in Section 4.1(b) of this Schedule 23.
- (u) **“Post Termination Service Amount”** means, for the purposes of Section 3.3 of this Schedule 23, for the whole or any part of a Payment Period for the period from the Termination Date to the Compensation Date, an amount equal to the Maximum OM&R Payment which would have been payable under this Project Agreement had this Project Agreement not been terminated, less an amount equal to the aggregate (without double counting) of:
 - (i) the Market Value Availability Deduction Amount for that Payment Period; and
 - (ii) the Rectification Costs incurred by HMQ in that Payment Period.
- (v) **“Prohibited Acts Termination Sum”** has the meaning given to it in Section 5.1(b) of this Schedule 23.
- (w) **“Qualification Criteria”** means the criteria that HMQ requires tenderers to meet as part of the Tender Process, which (subject to compliance with Applicable Law) shall include the following:
 - (i) that the tenders confirm acceptance of the New Agreement terms;
 - (ii) that the tenderers have, and are able to demonstrate on an indicative basis on request, the financial ability to pay the lump sum tendered;
 - (iii) that tenderers may only bid on the basis of a single lump sum payment to be paid by the tenderer;
 - (iv) that the tenderer is experienced in performing the OM&R Work or similar services;

- (v) that the technical solution proposed by the tenderers is capable of delivery and the tenderer is technically capable of delivery of the Project Operations; and
- (vi) any other tender criteria established by HMQ, acting reasonably.
- (x) **“Qualifying Tender”** means a tender that meets all of the Qualification Criteria.
- (y) **“Qualifying Tenderer”** means a tenderer who submits a Qualifying Tender.
- (z) **“Rectification Costs”** means, for the purposes of any Termination Date that occurs after the Section Substantial Completion Date of the Main Line Section, an amount equal to the reasonable and proper costs incurred by HMQ in a particular Payment Period or part of a Payment Period in ensuring that the OM&R Work is carried out.
- (aa) **“Senior Debt Amount”** means, at any time, the then outstanding principal amount of debt funded under the terms of the Lending Agreements by the Senior Lenders to Project Co, together with all interest accrued thereon at that time, provided that at any time where any portion of the interest payable to the Senior Lenders is subject to the Hedging Agreement(s), accrued interest in respect of such portion of the interest payable to the Senior Lenders shall be calculated based on the fixed rate payable by Project Co under the Hedging Agreement(s) without regard to whether such fixed rate is payable directly to a Senior Lender or to the Hedge Provider(s) under the Hedging Agreement(s) and all references to interest payable to the Senior Lenders under this Project Agreement shall be construed accordingly. For greater certainty, the Senior Debt Amount excludes the Senior Debt Makewhole.
- (bb) **“Senior Debt Makewhole”** means, (i) at any time, any amount (other than the Senior Debt Amount) then due and payable to the Senior Lenders under the Lending Agreements with respect to the Senior Debt Amount, including any “make whole” payments, breakage costs (less any breakage benefits) and all other fees, costs and expenses reasonably and properly incurred which Project Co is obligated to pay to the Senior Lenders pursuant to the Lending Agreements with respect to the Senior Debt Amount; and (ii) any swap breakage costs (less breakage benefits), if any, then due and payable to the Hedge Provider(s) under the Hedging Agreement(s) entered into with respect to the Senior Debt Amount.
- (cc) **“Subcontractor Losses”** means, subject to Project Co’s obligations under this Project Agreement to limit any compensation to Subcontractors:
 - (i) the amount reasonably and properly payable by Project Co to the Construction Contractor under the terms of the Construction Contract as a direct result of the termination of this Project Agreement (including any reasonable commercial breakage fee), provided that such amount shall be reduced to the extent that Project Co or the Subcontractors fail to take commercially reasonable steps to mitigate such amount; and
 - (ii) the amount reasonably and properly payable by Project Co to the OM&R Provider under the terms of the OM&R Contract as a direct result of the termination of this Project Agreement (including any reasonable commercial breakage fee), provided that such amount shall be reduced to the extent that Project Co or the Subcontractors fail to take commercially reasonable steps to mitigate such amount,

provided that, in both cases, no account should be taken of any liabilities and obligations of Project Co to the Subcontractors arising out of:

- (iii) any loss of overhead or profit of such Subcontractor relating to any period or costs after the Termination Date (save to the extent the same are properly included in any reasonable commercial breakage fee set out in any of the Ancillary Documents);
 - (iv) agreements or arrangements entered into by Project Co or the Subcontractors to the extent that such agreements or arrangements were not entered into in connection with those parties' obligations in relation to the Project; or
 - (v) agreements or arrangements entered into by Project Co or the Subcontractors other than in the ordinary course of business and on commercial arm's length terms, save to the extent that amounts would have arisen if such agreements or arrangements had been entered into in the ordinary course of business and on commercial arm's length terms.
- (dd) **"Tender Costs"** means the reasonable and proper costs of HMQ incurred in carrying out the Tender Process or in connection with any calculation of the Estimated Fair Value.
- (ee) **"Tender Process"** means the process by which HMQ requests tenders from any parties interested in entering into a New Agreement, evaluates the responses from those interested parties and enters into a New Agreement with a new Project Co, in accordance with Section 3.3 of this Schedule 23.
- (ff) **"Tender Process Monitor"** has the meaning given in Section 3.3(g) of this Schedule 23.
- (gg) **"Trust Indenture"** means the trust indenture dated on or about Financial Close between Project Co, [REDACTED] and Computershare Trust Company of Canada, as indenture trustee thereunder.

2. COMPENSATION ON TERMINATION FOR HMQ DEFAULT OR CONVENIENCE

2.1 Compensation

- (a) If Project Co terminates this Project Agreement pursuant to Section 46 of this Project Agreement or HMQ terminates this Project Agreement pursuant to Section 47.3 of this Project Agreement, HMQ shall pay to Project Co the HMQ Default Termination Sum.
- (b) The "HMQ Default Termination Sum" shall be an amount equal to the aggregate of:
- (i) the Senior Debt Amount and the Senior Debt Makewhole;
 - (ii) the Junior Debt Amount and the Junior Debt Makewhole;
 - (iii) any amount payable by HMQ to Project Co in accordance with Sections 43.2(b) and 44.2(b) of this Project Agreement;
 - (iv) the Employee Termination Payments and the Subcontractor Losses;
 - (v) any reasonable costs properly incurred by Project Co to wind up its operations; and

- (vi) an amount which, if paid on the Termination Date and taken together with all dividends and other Distributions paid on or made in respect of the Equity Capital on or before the Termination Date and taking account of the actual timing of all such payments, but, in any event, excluding all amounts (whether for costs, overhead, profit or otherwise) after the Termination Date, gives a nominal internal rate of return to the Termination Date equal to the Base Case Equity IRR on the amount paid for the Equity Capital (to the extent that such Equity Capital has been applied by Project Co for the purposes of the Project);

LESS, the aggregate (without double counting) of the following, to the extent it is a positive amount:

- (vii) all credit balances on any bank accounts held by or on behalf of Project Co on the Termination Date and the value of any insurance proceeds due to Project Co or to which Project Co would have been entitled had insurance been maintained in accordance with the requirements of this Project Agreement (save where such insurance proceeds are to be applied in reinstatement, restoration or replacement, or, in the case of third party legal liability, in satisfaction of the claim, demand, proceeding or liability or where HMQ is required to procure insurances and to make proceeds available to Project Co under this Project Agreement and it has failed to do so) or sums due and payable from third parties other than sums wholly unrelated to the Project Operations, the Project and this Project Agreement (but only when received from third parties) but excluding any claims under any Subcontracts or claims against other third parties which have not been determined or have been determined but not yet paid, provided that, in such case, Project Co shall assign any such rights and claims under the Subcontracts or claims against other third parties (other than claims against other third parties wholly unrelated to the Project Operations, the Project and this Project Agreement) to HMQ and, at no additional cost to Project Co, give HMQ reasonable assistance in prosecuting such claims;
- (viii) to the extent realized before the Invoice Date, the market value of any other assets and rights of Project Co (other than those transferred to HMQ pursuant to this Project Agreement) less liabilities of Project Co properly incurred in carrying out its obligations under this Project Agreement as at the Termination Date, provided that no account should be taken of any liabilities and obligations of Project Co arising out of:
 - (A) agreements or arrangements entered into by Project Co to the extent that such agreements or arrangements were not entered into in connection with Project Co's obligations in relation to the Project; or
 - (B) agreements or arrangements entered into by Project Co other than in the ordinary course of business and on commercial arm's length terms, save to the extent that liabilities and obligations would have arisen if such agreements or arrangements had been entered into in the ordinary course of business and on commercial arm's length terms; and
- (ix) amounts which HMQ is entitled to set off pursuant to Section 34.13(a)(i) of this Project Agreement,

provided that the HMQ Default Termination Sum shall never be less than the aggregate of the Senior Debt Amount, the Senior Debt Makewhole, the Junior Debt Amount and the Junior Debt Makewhole.

- (c) To the extent that such assets and rights referred to in Section 2.1(b)(viii) are not realized and applied pursuant thereto, Project Co shall, on payment of the HMQ Default Termination Sum, assign such assets and rights to HMQ.
- (d) HMQ shall pay the HMQ Default Termination Sum in accordance with Section 8 of this Schedule 23.

3. COMPENSATION FOR PROJECT CO DEFAULT

3.1 Compensation

- (a) Save and except where Sections 5 or 6 of this Schedule 23 apply, if HMQ terminates this Project Agreement pursuant to Section 45 of this Project Agreement, HMQ shall pay to Project Co either the Adjusted Highest Qualifying Tender Price according to the retendering procedure set out in Section 3.3 of this Schedule 23 or the Adjusted Estimated Fair Value according to the no retendering procedure set out in Section 3.4 of this Schedule 23, as applicable.

3.2 Retendering Election

- (a) HMQ shall be entitled to retender the provision of the Project Operations in accordance with Section 3.3 of this Schedule 23 and the provisions thereof shall apply if:
 - (i) HMQ notifies Project Co on or before the date falling 30 days after the Termination Date; and
 - (ii) there is a Liquid Market,
 but, otherwise, HMQ shall require a determination in accordance with the no retendering procedure set out in Section 3.4 of this Schedule 23 and the provisions thereof shall apply.
- (b) Until it is determined that the basis for determining the compensation to Project Co will be the no retendering procedure set out in Section 3.4 of this Schedule 23, Project Co shall continue to perform the OM&R Work and HMQ shall pay Project Co in accordance with Section 3.3(e) of this Schedule 23.

3.3 Retendering Procedure

- (a) The objective of the Tender Process shall be to enter into a New Agreement with a Qualifying Tenderer.
- (b) HMQ shall commence the Tender Process promptly after delivering the notice pursuant to Section 3.2(a) of this Schedule 23 and use commercially reasonable efforts to complete the Tender Process as soon as practicable.

- (c) HMQ shall, as soon as reasonably practicable, notify Project Co of the Qualification Criteria and the other requirements and terms of the Tender Process, including the timing of the Tender Process and shall act reasonably in setting such requirements and terms.
- (d) Project Co authorizes the release of any information by HMQ under the Tender Process which would otherwise be prevented under Section 52 of this Project Agreement that is reasonably required as part of the Tender Process.
- (e) Project Co shall continue to perform the OM&R Work, and, for all or any part of a Payment Period falling within the period from the Termination Date to the Compensation Date, HMQ shall pay to Project Co:
 - (i) the Post Termination Service Amount for each completed Payment Period, on or before the date falling 20 Business Days after the end of that Payment Period; and
 - (ii) the Post Termination Service Amount for the period from the end of the last completed Payment Period until the Compensation Date, on or before the date falling 30 days after the Compensation Date.
- (f) If any Post Termination Service Amount is negative, then the amount by which the Post Termination Service Amount is negative shall be carried forward and may be set off against any future positive Post Termination Service Amounts.
- (g) Project Co may, at its own cost, appoint a person (the “**Tender Process Monitor**”) to monitor the Tender Process for the purpose of monitoring and reporting to Project Co and the Lenders on HMQ’s compliance with the Tender Process. The Tender Process Monitor shall enter into a confidentiality agreement with HMQ in a form acceptable to HMQ and shall be entitled to attend all meetings relating to the Tender Process, inspect copies of all the tender documentation and bids and make representations to HMQ as to compliance with the Tender Process. HMQ shall not be bound to consider or act upon such representations. The Tender Process Monitor will not disclose confidential information to Project Co or the Lenders but shall be entitled to advise Project Co and the Lenders on whether it considers that HMQ has acted in accordance with the Tender Process and correctly determined the Adjusted Highest Qualifying Tender Price.
- (h) As soon as practicable after tenders have been received, HMQ shall, acting reasonably, review and assess the Qualifying Tenders and shall notify Project Co of the Adjusted Highest Qualifying Tender Price.
- (i) If Project Co refers a Dispute relating to the Adjusted Highest Qualifying Tender Price to dispute resolution in accordance with Schedule 27 - Dispute Resolution Procedure, HMQ shall, irrespective of such Dispute, be entitled to enter into a New Agreement.
- (j) HMQ shall pay the Adjusted Highest Qualifying Tender Price in accordance with Section 8 of this Schedule 23.
- (k) HMQ may elect, by notice to Project Co at any time prior to HMQ ascertaining the Adjusted Highest Qualifying Tender Price, to follow the no retendering procedure set out in Section 3.4 of this Schedule 23. In addition, HMQ shall follow such no retendering procedure if:

- (i) only one Qualifying Tender is received; or
 - (ii) a New Agreement has not been entered into and compensation paid under Section 8.2 on or before the date falling 18 months after the Termination Date.
- (l) Project Co may give written notice to HMQ at any time after the Termination Date and prior to the date for receipt of Qualifying Tenders that a Liquid Market does not exist (or shall not exist on the date for receipt of Qualifying Tenders). If HMQ is in agreement with such notice, the provisions of Section 3.4 of this Schedule 23 shall apply. If HMQ provides a written response within 10 Business Days of receipt of such notice stating that it is in disagreement with that notice or if no written response is provided by HMQ within such 10 Business Day period, the matter shall be referred for determination in accordance with Schedule 27 - Dispute Resolution Procedure.

3.4 No Retendering Procedure

- (a) Subject to Section 3.4(b) of this Schedule 23, if the provisions of this Section 3.4 apply, Project Co shall not be entitled to receive any Post Termination Service Amount.
- (b) If HMQ elects to require a determination in accordance with this Section 3.4 after it has elected to follow the procedure set out in Section 3.3 of this Schedule 23, then HMQ shall continue to pay to Project Co each Post Termination Service Amount until the Compensation Date in accordance with Section 3.3 of this Schedule 23.
- (c) In determining the Estimated Fair Value, the Parties shall be obliged to follow the principles set out below:
 - (i) All forecast amounts should be calculated in nominal terms as at the Termination Date. Where relevant, adjustments for forecast inflation between the date of calculation and the forecast payment date(s), as set out in this Project Agreement, will be made and, if made, will use an assumed inflation rate of [REDACTED]% per annum.
 - (ii) The Estimated Fair Value shall be calculated using the following formula (without double counting):

$$(A - B - C) - D$$

Where:

A = the present value of the following payments to the extent that, as at the Termination Date, such payments have not yet been paid and are forecast to be made from the Termination Date to the Expiry Date, assuming that no Deductions will be made over that period, discounted at the Discount Rate: the Monthly OM&R Payments, the Crossing Roads Section Substantial Completion Payment, the Main Line Section Substantial Completion Payment, the Substantial Completion Payment and the TCI Cash Allowance Payment. For the purposes of this Schedule 23, the term “**TCI Cash Allowance Payment**” means the amount equal to the aggregate amount of the payments not yet made by HMQ to Project Co pursuant to Request for Payment Approvals relating to TCI Cash Allowance Items approved by HMQ pursuant to Section 23.1 of the Project

Agreement, and in respect of such TCI Cash Allowance Items, the requirements set forth in Section 23.1(j) of the Project Agreement in respect thereof have been satisfied as at the Termination Date, as determined by HMQ, acting reasonably.

B = a contingency amount based on a reasonable risk assessment of any cost overruns that may reasonably arise (including in respect of any matter referred to in this Section 3.4(c)(ii) of this Schedule 23) whether or not forecast in the relevant base case and represented in the Financial Model as of the date of Financial Close, discounted at the Discount Rate

C = the present value of the costs of obtaining or performing the OM&R Work reasonably forecast to be incurred by HMQ from the Termination Date to the Expiry Date to the standard required, discounted at the Discount Rate

D = any rectification costs (including Rectification Costs) reasonably required to deliver the Project Operations to the standard required, including, if applicable, to complete the Initial Works, any costs reasonably forecast to be incurred by HMQ for up-front finance fees and related costs (excluding principal and interest payments) that would not arise at the time or in the future had the termination not occurred, and any other additional operating costs required to restore operating services standards less (to the extent that such sums are included in any calculation of rectification costs (including Rectification Costs) for the purposes of this item D), the aggregate of:

- (A) any insurance proceeds received or which will be received pursuant to policies maintained in accordance with Schedule 25 - Insurance and Performance Security Requirements; and
- (B) amounts payable by HMQ in respect of Capital Expenditures under this Project Agreement which have not been paid,

discounted at the Discount Rate. For greater certainty, none of items B, C or D as defined in this Section 3.4(c)(ii) shall include amounts relating to the Tolling Civil Infrastructure (which shall be satisfied solely through the Tolling Civil Infrastructure Letter of Credit).

- (iii) The amount of $(A - B - C)$ as defined in Section 3.4(c)(ii) of this Schedule 23 shall be no greater than the Non-Default Termination Sum.
 - (iv) All costs referred to in Section 3.4(c)(ii) of this Schedule 23 are to be forecast at a level that will deliver the OM&R Work and other Project Operations to the standards required by this Project Agreement and to achieve the full Monthly OM&R Payments (without Deductions).
 - (v) The calculation will take into consideration the obligations of the Parties with respect to allowances and payments under this Project Agreement.
- (d) If the Parties cannot agree on the Estimated Fair Value, then the Estimated Fair Value shall be determined in accordance with Schedule 27 - Dispute Resolution Procedure.

- (e) HMQ shall pay the Adjusted Estimated Fair Value in accordance with Section 8 of this Schedule 23.

4. CONSEQUENCES OF NON-DEFAULT TERMINATION AND TERMINATION BY HMQ FOR RELIEF EVENT

4.1 Consequences

- (a) If HMQ terminates this Project Agreement pursuant to Section 47.1 of this Project Agreement or if either Party terminates this Project Agreement pursuant to Section 47.2 of this Project Agreement, HMQ shall pay to Project Co the Non-Default Termination Sum.
- (b) The “Non-Default Termination Sum” shall be an amount equal to the aggregate of:
 - (i) the Senior Debt Amount and the Senior Debt Makewhole;
 - (ii) the Junior Debt Amount;
 - (iii) any amount payable by HMQ to Project Co in accordance with Sections 43.2(b) and 44.2(b) of this Project Agreement;
 - (iv) the Employee Termination Payments and the Subcontractor Losses (but excluding therefrom any claims for loss of profit); and
 - (v) an amount equal to the Equity Capital as at Financial Close, less all dividends and other Distributions paid on or made in respect of the Equity Capital on or before the Termination Date, provided that where such amount is negative, it shall be deemed instead to be zero;

LESS, the aggregate (without double counting) of the following, to the extent it is a positive amount:

- (vi) all credit balances on any bank accounts held by or on behalf of Project Co on the Termination Date and the value of any insurance proceeds due to Project Co or to which Project Co would have been entitled had insurance been maintained in accordance with the requirements of this Project Agreement (save where such insurance proceeds are to be applied in reinstatement, restoration or replacement, or, in the case of third party legal liability, in satisfaction of the claim, demand, proceeding or liability or where HMQ is required to procure insurances and to make proceeds available to Project Co under this Project Agreement and it has failed to do so) or sums due and payable from third parties other than sums wholly unrelated to the Project Operations, the Project and this Project Agreement (but only when received from third parties) but excluding any claims under any Subcontracts or claims against other third parties which have not been determined or have been determined but not yet paid, provided that, in such case, Project Co shall assign any such rights and claims under the Subcontracts or claims against other third parties (other than claims against other third parties wholly unrelated to the Project Operations, the Project and this Project Agreement) to HMQ and, at no additional cost to Project Co, give HMQ reasonable assistance in prosecuting such claims; and

- (vii) to the extent realized before the Invoice Date, the market value of any other assets and rights of Project Co (other than those transferred to HMQ pursuant to this Project Agreement) less liabilities of Project Co properly incurred in carrying out its obligations under this Project Agreement as at the Termination Date, provided that no account should be taken of any liabilities and obligations of Project Co arising out of:
 - (A) agreements or arrangements entered into by Project Co to the extent that such agreements or arrangements were not entered into in connection with Project Co's obligations in relation to the Project; or
 - (B) agreements or arrangements entered into by Project Co other than in the ordinary course of business and on commercial arm's length terms, save to the extent that liabilities and obligations would have arisen if such agreements or arrangements had been entered into in the ordinary course of business and on commercial arm's length terms; and
- (viii) amounts which HMQ is entitled to set off pursuant to Section 34.13(a)(i) of this Project Agreement,

provided that the Non-Default Termination Sum shall never be less than the aggregate of the Senior Debt Amount, the Senior Debt Makewhole and the Junior Debt Amount.

- (c) To the extent that such assets and rights referred to in Section 4.1(b)(vii) of this Schedule 23 are not realized and applied pursuant thereto, Project Co shall, on payment of the Non-Default Termination Sum, assign such assets and rights to HMQ.
- (d) HMQ shall pay the Non-Default Termination Sum in accordance with Section 8 of this Schedule 23.

5. CONSEQUENCES OF TERMINATION FOR PROHIBITED ACTS

5.1 Consequences

- (a) If HMQ terminates this Project Agreement as a result of a Project Co Event of Default for failing to comply with Section 60 of this Project Agreement, HMQ shall pay to Project Co the Prohibited Acts Termination Sum.
- (b) The "Prohibited Acts Termination Sum" shall be an amount equal to the aggregate of:
 - (i) the Senior Debt Amount and the Senior Debt Makewhole;
 - (ii) any amount payable by HMQ to Project Co in accordance with Sections 43.2(b) and 44.2(b) of this Project Agreement; and
 - (iii) the following amounts calculated in respect of the Construction Contractor, if the Construction Contractor is not responsible for a Prohibited Act, and the OM&R Provider, if the OM&R Provider is not responsible for a Prohibited Act, and which Project Co can demonstrate will be paid directly to such persons:
 - (A) the Employee Termination Payments; and

- (B) as applicable, the Construction Contractor's and OM&R Provider's out-of-pocket costs incurred as a direct result of termination of this Project Agreement (excluding any breakage fees and overhead and profit of the Construction Contractor and OM&R Provider, as applicable);

LESS, the aggregate (without double counting) of the following, to the extent it is a positive amount:

- (iv) all credit balances on any bank accounts held by or on behalf of Project Co on the Termination Date and the value of any insurance proceeds due to Project Co or to which Project Co would have been entitled had insurance been maintained in accordance with the requirements of this Project Agreement (save where such insurance proceeds are to be applied in reinstatement, restoration or replacement, or, in the case of third party legal liability, in satisfaction of the claim, demand, proceeding or liability or where HMQ is required to procure insurances and to make proceeds available to Project Co under this Project Agreement and it has failed to do so) or sums due and payable from third parties other than sums wholly unrelated to the Project Operations, the Project and this Project Agreement (but only when received from third parties) but excluding any claims under any Subcontracts or claims against other third parties which have not been determined or have been determined but not yet paid, provided that, in such case, Project Co shall assign any such rights and claims under the Subcontracts or claims against other third parties (other than claims against other third parties wholly unrelated to the Project Operations, the Project and this Project Agreement) to HMQ and, at no additional cost to Project Co, give HMQ reasonable assistance in prosecuting such claims;
- (v) to the extent realized before the Invoice Date, the market value of any other assets and rights of Project Co (other than those transferred to HMQ pursuant to this Project Agreement) less liabilities of Project Co properly incurred in carrying out its obligations under this Project Agreement as at the Termination Date, provided that no account should be taken of any liabilities and obligations of Project Co arising out of:
 - (A) agreements or arrangements entered into by Project Co to the extent that such agreements or arrangements were not entered into in connection with Project Co's obligations in relation to the Project; or
 - (B) agreements or arrangements entered into by Project Co other than in the ordinary course of business and on commercial arm's length terms, save to the extent that liabilities and obligations would have arisen if such agreements or arrangements had been entered into in the ordinary course of business and on commercial arm's length terms; and
- (vi) amounts which HMQ is entitled to set off pursuant to Section 34.13(a)(i) of this Project Agreement, provided that HMQ shall only set off amounts which are due to HMQ by Project Co pursuant to the terms of this Project Agreement if and to the extent the Prohibited Acts Termination Sum exceeds the Senior Debt Amount.
- (c) To the extent that such assets and rights referred to in Section 5.1(b)(v) of this Schedule 23 are not realized and applied pursuant thereto, Project Co shall, on payment of the Prohibited Acts Termination Sum, assign such assets and rights to HMQ.

- (d) HMQ shall pay the Prohibited Acts Termination Sum in accordance with Section 8 of this Schedule 23.

6. CONSEQUENCES OF TERMINATION FOR BREACH OF REFINANCING

6.1 Consequences

- (a) If HMQ terminates this Project Agreement as a result of a Project Co Event of Default for failing to comply with Section 7.3 of this Project Agreement or Schedule 28 - Refinancing or the Lender assigns, transfers or otherwise disposes of any right, title or interest it may have in, or obligations it may have pursuant to, the Security Documents in breach of the Lenders' Direct Agreement, HMQ shall pay to Project Co a termination sum equivalent to, and calculated in accordance with Sections 5.1(b)(i), (ii), (iii), (iv) and (v) of this Schedule 23, less amounts which HMQ is entitled to set off pursuant to Section 34.13(a)(i) of this Project Agreement.
- (b) HMQ shall pay such termination sum in accordance with Section 8 of this Schedule 23.

7. CONSEQUENCES OF TERMINATION BY PROJECT CO FOR RELIEF EVENT

7.1 Consequences

- (a) If Project Co terminates this Project Agreement pursuant to Section 47.1 of this Project Agreement, HMQ shall pay to Project Co a termination sum equivalent to the greater of (i) an amount calculated and payable in accordance with, the Prohibited Acts Termination Sum; and (ii) the Adjusted Estimated Fair Value calculated in accordance with this Schedule 23.
- (b) HMQ shall pay such termination sum in accordance with Section 8.1 or 8.3 of this Schedule 23, as applicable.

8. GENERAL

8.1 Payment and Interest Following Non-Project Co Default Termination

- (a) In respect of the termination payments to be made pursuant to any of Sections 2, 4, 5, 6 or 7 of this Schedule 23, as soon as practicable after, and, in any event, within 30 days after, the Termination Date, Project Co shall give to HMQ an invoice for the relevant termination sum and sufficient supporting evidence, reasonably satisfactory to HMQ, justifying the amount of the relevant termination sum including a detailed breakdown of each of the individual items comprising such sum.
- (b) HMQ shall pay to Project Co:
 - (i) the relevant termination sum within 60 days after the Invoice Date; and
 - (ii) IO shall indemnify Project Co as provided in Section 56.2(c) of this Project Agreement in respect of any damages suffered or incurred as a result of the relevant termination sum (or any part of such sum that remains outstanding) not being received on the Termination Date:

- (A) in an amount equivalent to the No Default Payment Compensation Amount for the period from (but excluding) the Termination Date to (and including) the date which is 60 days after the Invoice Date; and
- (B) thereafter, in an amount equivalent to the Payment Compensation Amount until the date of payment.
- (c) In respect of the termination payments to be made pursuant to any of Sections 4, 5, 6 or 7 of this Schedule 23, if the applicable termination sum is negative, HMQ shall have no obligation to make any payment to Project Co and Project Co shall also thereafter indemnify HMQ as provided in Section 56.1(e) of this Project Agreement in respect of any damages suffered or incurred on such amount on the basis that the due date for the payment of the negative termination sum amount was the date 60 days after the Invoice Date until the date of payment in an amount equivalent to the Payment Compensation Amount.

8.2 Payment and Interest Following Project Co Default - Retendering Procedure

- (a) Following the retendering procedure set out in Section 3.3 of this Schedule 23, HMQ shall pay to Project Co the Adjusted Highest Qualifying Tender Price no later than the date falling 30 days after the later of:
 - (i) the date on which HMQ enters into the New Agreement with the New Project Co; and
 - (ii) if Project Co has, pursuant to Section 3.3(i) of this Schedule 23, referred a Dispute relating to the Adjusted Highest Qualifying Tender Price to be resolved in accordance with Schedule 27 - Dispute Resolution Procedure, the date on which the Dispute is finally determined, provided that HMQ shall pay the undisputed amount on the date referred to in Section 8.2(a)(i) of this Schedule 23,

and HMQ shall indemnify Project Co as provided in Section 56.2(c) of this Project Agreement on the Adjusted Highest Qualifying Tender Price on the basis that the due date for the payment of the Adjusted Highest Qualifying Tender Price was the date on which HMQ enters into the New Agreement with the New Project Co:

- (i) in an amount equivalent to the No Default Payment Compensation Amount from the due date up to (and including) the date following 30 days from after the later of the dates determined under Section 8.2(a)(i) and (ii) above (and for clarity, on such portions of the Adjusted Highest Qualifying Tender Price in the circumstance described in paragraph (ii) above); and
- (ii) thereafter, in an amount equivalent to the Payment Compensation Amount until the date of payment.
- (b) If the Adjusted Highest Qualifying Tender Price is negative, HMQ shall have no obligation to make any payment to Project Co and Project Co shall, on the date of the New Agreement, pay HMQ the amount by which such termination sum is negative, failing which Project Co shall also thereafter indemnify HMQ as provided in Section 56.1(e) of this Project Agreement in respect of any damages suffered or incurred on such amount on the basis that the due date for the payment

of the negative termination sum amount was the date of the New Agreement in an amount equivalent to the Payment Compensation Amount until the date of payment.

8.3 Payment and Interest Following Project Co Default - No Retendering Procedure

- (a) If HMQ follows the no retendering procedure set out in Section 3.4 of this Schedule 23, HMQ shall pay to Project Co the Adjusted Estimated Fair Value no later than the date falling 60 days after the date on which the Adjusted Estimated Fair Value has been agreed or determined in accordance with Section 3.4 of this Schedule 23, together with interest on such amount calculated in accordance with Section 8.1(b)(ii) of this Schedule 23.
- (b) If the Adjusted Estimated Fair Value is negative, HMQ shall have no obligation to make any payment to Project Co and Project Co shall, on the Compensation Date, pay HMQ the amount by which the Adjusted Estimated Fair Value is negative, failing which Project Co shall also thereafter indemnify HMQ as provided in Section 56.1(e) in respect of any damages suffered or incurred on such amount on the basis that the due date for payment of the negative Adjusted Estimated Fair Value was the date of the New Agreement in an amount equivalent to the Payment Compensation Amount until the date of payment.

8.4 Costs

- (a) The costs and expenses to be taken into account in the calculation of all termination sums due pursuant to this Schedule 23 shall only be such costs and expenses to the extent that they are reasonable and proper in quantum and shall have been or will be reasonably and properly incurred.

8.5 Undisputed Amounts

- (a) If the calculation of any termination amount is disputed then any undisputed amount shall be paid in accordance with this Section 8 of this Schedule 23 and the disputed amount shall be dealt with in accordance with Schedule 27 - Dispute Resolution Procedure.

8.6 Outstanding Debt Amounts

- (a) HMQ shall be entitled to rely on a certificate of the Lenders' Agent as conclusive as to the Senior Debt Amount, the Senior Debt Makewhole, the Junior Debt Amount and the Junior Debt Makewhole, as applicable, outstanding or payable at any relevant time.
- (b) If a receipt or other acknowledgement is given by the Lenders' Agent acknowledging or otherwise confirming receipt of payment or payments in respect of the Senior Debt Amount, the Senior Debt Makewhole, the Junior Debt Amount and the Junior Debt Makewhole, as applicable, such receipt or other acknowledgement shall discharge HMQ's obligation to pay such portion of compensation due to Project Co that is equal to the amount acknowledged or confirmed.

SCHEDULE 24**EXPIRY TRANSITION PROCEDURE****1. Independent Inspector**

- 1.1 Not less than 90 months prior to the Expiry Date, the Parties shall agree upon and, in accordance with HMQ procurement policies, engage an independent and suitably qualified and experienced person (the “**Independent Inspector**”) to carry out inspections of the Extension pursuant to this Schedule 24.
- 1.2 Project Co and HMQ shall share equally the responsibility for the payment of all fees and costs of the Independent Inspector.
- 1.3 In the event of the Independent Inspector’s engagement being terminated otherwise than for full performance, the Parties shall liaise and cooperate with each other in order to appoint a replacement as soon as reasonably practicable, and in any event within 10 Business Days of the termination of the last Independent Inspector’s engagement.
- 1.4 In the event the Parties fail to agree upon the identity of the Independent Inspector either pursuant to Section 1.1 or Section 1.3 of this Schedule 24 by the specified deadline, then the Independent Inspector shall be selected as follows:
 - (a) each Party shall within 10 Business Days thereafter select three independent and suitably qualified and experienced persons that would be acceptable to that Party as the Independent Inspector, and shall provide notice thereof to the other Party; and
 - (b) if the Parties have both selected a common person, then such common person shall be the Independent Inspector; or
 - (c) if the Parties have not selected a common person, then the Independent Inspector shall be selected in accordance with Schedule 27 - Dispute Resolution Procedure.

2. Condition of Extension on Expiry

- 2.1 Subject to the exceptions specified in Section 2.2 of this Schedule 24, on the Expiry Date:
 - (a) each element of the Extension and the Site (including the ground soil located on the Site) shall be in a condition which is consistent with due performance by Project Co of its obligations under this Project Agreement and, in particular, is consistent with the Extension having been maintained in accordance with the OM&R Specifications, and, with respect to the Site and the ground soil located on the Site, does not deviate from the Pre-Existing Environmental Site Conditions by reason of any Contamination for which Project Co is responsible pursuant to this Project Agreement;
 - (b) each element of the Extension shall be in good operating order (normal wear and tear excepted) and capable of performing in accordance with the performance specifications and standards set out in the Output Specifications; and

- (c) each element of the Extension shall comply with Appendix C of the OM&R Specifications

(collectively, the “**Expiry Transition Requirements**”).

- 2.2 For greater certainty, this Schedule 24 shall not apply to any Extension Infrastructure to be maintained by HMQ in accordance with this Project Agreement.

3. Extension Inspections

- 3.1 The Parties shall cause the Independent Inspector to perform an inspection of the Extension and to produce and deliver to each of the Parties a written report (an “**Extension Condition Report**”) not less than 84 months prior to the Expiry Date that:
 - (a) identifies the condition of the Extension and each element of the Extension (subject to the exceptions specified in Section 2.2 of this Schedule 24) in relation to the Expiry Transition Requirements;
 - (b) assesses Project Co’s business case related to capital replacement (which, for greater certainty, will include consideration of energy consumption), and provides the Independent Inspector’s opinion on both the adequacy of Project Co’s proposed strategy and the consistency of Project Co’s proposed strategy with the Asset Management Plan;
 - (c) identifies any works required to ensure the Extension and each element of the Extension (subject to the exceptions specified in Section 2.2 of this Schedule 24) will meet the Expiry Transition Requirements on the Expiry Date (the “**Expiry Transition Works**”), and specifying the Contract Year in which each of those Expiry Transition Works would be required;
 - (d) specifies the Independent Inspector’s estimate of the costs that would be required to perform the Expiry Transition Works (the “**Expiry Transition Works Costs**”); and
 - (e) details how the Expiry Transition Works Costs were calculated.
- 3.2 The Parties shall cause the Independent Inspector to perform another inspection of the Extension and produce and deliver to each of the Parties an updated Extension Condition Report (each a “**Revised Extension Condition Report**”) on each anniversary of the date of the original Extension Condition Report.
- 3.3 The Asset Management Plan shall be amended and updated annually or more frequently as HMQ may reasonably request to include all Expiry Transition Works and all Expiry Transition Works Costs identified in either the Extension Condition Report or any Revised Extension Condition Report not already included in the then current Asset Management Plan.
- 3.4 Project Co shall carry out the Expiry Transition Works at its own cost notwithstanding that the actual cost of the Expiry Transition Works may be higher than the Expiry Transition Works Costs.

- 3.5 Either Party may dispute the Extension Condition Report or any Revised Extension Condition Report, including the Expiry Transition Works and the Expiry Transition Works Costs, in accordance with Schedule 27 - Dispute Resolution Procedure. In the event that a final determination in accordance with Schedule 27 - Dispute Resolution Procedure specifies Expiry Transition Works or Expiry Transition Works Costs which are different than those set out in either the Extension Condition Report or any Revised Extension Condition Report, then either the Extension Condition Report or any Revised Extension Condition Report, as the case may be, shall be deemed to be amended accordingly, as amended pursuant to Section 3.3 of this Schedule 24, and all deductions and payments permitted or required by Section 4 of this Schedule 24, shall be adjusted accordingly.

4. Payments To and From Escrow Account

- 4.1 Following the date for delivery of the Extension Condition Report, for the purposes of Section 4.2 of this Schedule 24, the Parties shall review the amount of the Expiry Transition Works Costs and the level of capital expenditure Project Co has allocated to spend in the same period pursuant to the Financial Model (the “**Expiry Rehabilitation Costs**”). Where the Expiry Transition Works Costs are greater than the Expiry Rehabilitation Costs, the difference between the Expiry Transition Works Costs and the Expiry Rehabilitation Costs shall be apportioned equally over the Payment Periods from the date the Extension Condition Report is to be delivered hereunder to the Expiry Date (each instalment being the “**Expiry Transition Amount**”). If the Extension Condition Report is delivered after the date for delivery hereunder, then the first instalment to be paid shall also include the amounts to be paid under the instalments that would have been payable prior to the date the Extension Condition Report is delivered. Where the Expiry Transition Works Costs are amended pursuant to Section 3.3 or 3.5 of this Schedule 24, the Parties agree that the Expiry Transition Amount shall be adjusted accordingly.
- 4.2 Subject to Sections 4.3 and 4.5 of this Schedule 24, HMQ may deduct the Expiry Transition Amount from each Monthly OM&R Payment, and pay into a separate interest bearing bank account, upon escrow terms acceptable to the Parties or in trust (the “**Escrow Account**”), the Expiry Transition Amount. If in any Payment Period, the Expiry Transition Amount is greater than the relevant Monthly OM&R Payment, HMQ may deduct the difference between the Expiry Transition Amount and the Monthly OM&R Payment from the next Monthly OM&R Payment or from such other Payment Period as otherwise agreed between the Parties.
- 4.3 HMQ shall not deduct any amount from a Monthly OM&R Payment as contemplated in Section 4.2 of this Schedule 24 if, at such time, the funds in the Escrow Account exceed the value (based on the Expiry Transition Works Costs) of all or any part of the Expiry Transition Works (as amended) yet to be performed.
- 4.4 Project Co may from time to time, but not more often than once in any month, make written request for release of funds from the Escrow Account. HMQ shall consider such request within 10 Business Days and if the funds in the Escrow Account exceed the value (based on the Expiry Transition Works Costs) of all or any part of the Expiry Transition Works (as amended) yet to be performed, then HMQ shall pay the excess to Project Co from the Escrow Account within 10 Business Days thereafter, together with any interest that has accrued on such amount. Project Co shall include with its request all information reasonably required by HMQ to evaluate such request.

- 4.5 Following the date of any Revised Extension Condition Report, if the amount in the Escrow Account (being the deductions of the Expiry Transition Amount made since the Extension Condition Report) together with the deductions to be made from the remaining Monthly OM&R Payments is less than the value (based on the Expiry Transition Works Costs) of the remaining Expiry Transition Works (as amended) yet to be performed, then HMQ may deduct such shortfall, in equal instalments, from each remaining Monthly OM&R Payment until the Expiry Date, and pay each instalment into the Escrow Account and Section 4.4 of this Schedule 24 shall continue to apply until the Expiry Date.
- 4.6 As an alternative to the deductions permitted by Sections 4.2 and 4.5 of this Schedule 24 or the retention of any amount in the Escrow Account pursuant to the foregoing provisions of this Section 4 of this Schedule 24, Project Co may (and if, at any time, the amounts which HMQ is permitted to deduct pursuant to Sections 4.2 and 4.5 of this Schedule 24 is greater than the remaining Monthly OM&R Payments, Project Co shall), within 5 Business Days of a written request from HMQ, provide a bond or letter of credit (the “**Expiry Transition Security**”) in favour of HMQ in an amount equal to the amounts which HMQ is permitted to deduct pursuant to Sections 4.2 and 4.5 of this Schedule 24, in a form and from a surety or bank, as applicable, acceptable to HMQ.

5. Project Co Not Relieved of Obligations

5.1 Notwithstanding:

- (a) any agreement of HMQ to any Expiry Transition Works, Expiry Transition Works Costs or Expiry Transition Security;
- (b) any participation of HMQ in any inspection under this Schedule 24; and
- (c) the complete or partial carrying out of the Expiry Transition Works,

Project Co shall not be relieved or absolved from any obligation to conduct any other inspection or to perform any other works to the extent otherwise required by this Project Agreement, including without limitation the Output Specifications.

6. Final Extension Condition Report

- 6.1 The Parties shall cause the Independent Inspector to perform an inspection of the Extension and to produce and deliver to each of the Parties a Extension Condition Report within 30 Business Days after the Expiry Date (the “**Final Extension Condition Report**”) that documents whether the Extension met the Expiry Transition Requirements on the Expiry Date, as well as identifying any Expiry Transition Works and Expiry Transition Works Costs.
- 6.2 If the Final Extension Condition Report identifies any Expiry Transition Works, HMQ may withdraw from the Escrow Account or call upon the Expiry Transition Security an amount equivalent to such Expiry Transition Works Costs, and HMQ shall pay any remaining funds in the Escrow Account (including any interest accrued) to Project Co and return any remaining Expiry Transition Security to Project Co.

- 6.3 Provided that the funds in the Escrow Account and/or the Expiry Transition Security is adequate to meet Project Co's obligations in respect of the Expiry Transition Works identified in the Final Extension Condition Report, following any withdrawal from the Escrow Account or call upon the Expiry Transition Security in accordance with Section 6.2, Project Co shall have no further liability with respect to such Expiry Transition Works.
- 6.4 If no Expiry Transition Works are identified in the Final Extension Condition Report, HMQ shall, within 20 Business Days of receipt by HMQ of the Final Extension Condition Report, pay the funds in the Escrow Account (including any interest accrued) to Project Co and return the Expiry Transition Security to Project Co, unless HMQ disputes the Final Extension Condition Report, in which case the Escrow Account and Expiry Transition Security shall be dealt with as determined in accordance with Schedule 27 - Dispute Resolution Procedure.

SCHEDULE 25

**INSURANCE AND PERFORMANCE
SECURITY REQUIREMENTS**

**ARTICLE 1
INITIAL WORKS INSURANCE COVERAGE**

- 1.1 Subject to Section 8 of this Schedule 25, from and after execution of this Project Agreement and, in respect of each Section, until the Section Substantial Completion Date of the relevant Section, Project Co shall, at its own expense, obtain and maintain, or cause to be obtained and maintained, exclusively through the Infrastructure Ontario Construction Insurance Program (IOCIP) the following insurances as further described in Appendix A to this Schedule 25:
- (a) “All Risks” Course of Construction Property, including Boiler and Machinery;
 - (b) “Wrap-Up” Commercial General Liability and Non-Owned Automobile Liability;
 - (c) Project Specific Professional Liability; and
 - (d) Project Specific Pollution Liability (combined Contractors’ Pollution Liability and Pollution Legal Liability).
- 1.2 Subject to Section 8 of this Schedule 25, from and after execution of this Project Agreement and, in respect of each Section, until the Section Substantial Completion Date of the relevant Section, Project Co shall, at its own expense, obtain and maintain, or cause to be obtained and maintained, the following insurances as further described in Appendix A to this Schedule 25;
- (a) Automobile Liability;
 - (b) Commercial General Liability and Non-Owned Automobile Liability (to be maintained by the Construction Contractor and each of the Subcontractors involved in the Initial Works) with respect to off-Site operations and activities;
 - (c) Aircraft and Watercraft Liability (if any exposure);
 - (d) “All Risks” Marine Cargo (if any exposure);
 - (e) “All Risks” Contractors’ Equipment;
 - (f) Comprehensive Crime; and
 - (g) WSIB.

**ARTICLE 2
OPERATIONAL TERM INSURANCE COVERAGE**

- 2.1 Subject to Section 8 of this Schedule 25, with respect to each Section, from and after the relevant Section Substantial Completion Date and until the Termination Date, Project Co shall, at its own

expense, obtain and maintain, or cause to be obtained and maintained, the following insurances as further described in Appendix A to this Schedule 25:

- (a) “All Risks” Property;
- (b) Boiler and Machinery;
- (c) Commercial General Liability and Non-Owned Automobile Liability;
- (d) Environmental Impairment (Pollution) Liability;
- (e) Automobile Liability;
- (f) Comprehensive Crime; and
- (g) WSIB.

ARTICLE 3 NO LIMIT ON RECOVERY

- 3.1 Notwithstanding any other provision of this Project Agreement, it is hereby agreed that the limits of liability specified in this Schedule 25 for insurance policies, whether such policies are required to be obtained (or caused to be obtained) by HMQ or by Project Co, shall in no way limit Project Co’s liability or obligations to HMQ or HMQ’s liability or obligations to Project Co, as applicable.

ARTICLE 4 ADDITIONAL COVER

- 4.1 Without prejudice to the other provisions of this Schedule 25, HMQ and Project Co shall, at all relevant times and at their own expense, obtain and maintain, or cause to be obtained and maintained, those insurances which they are required to obtain and maintain, or cause to be obtained and maintained, by Applicable Law, or that they consider necessary.
- 4.2 HMQ reserves the right to require Project Co to purchase such additional insurance coverage as HMQ may reasonably require. HMQ 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 OM&R Work and the Initial Works, contract value, industry standards, and availability of insurance) as HMQ may reasonably require from time to time. Any additional costs of such additional and/or amended insurance shall be borne by HMQ and any cost savings resulting from the implementation of such additional and/or amended insurance shall be for the account of HMQ.

ARTICLE 5 RESPONSIBILITY FOR DEDUCTIBLES

- 5.1 The Party responsible for the matter giving rise to a claim, to the extent responsible therefor, shall be responsible and liable for the payment of deductibles under any policy of insurance under which it is an insured party or under any policy of insurance Project Co is required to maintain (or cause to be maintained) under this Schedule 25. In the event that responsibility for the matter

giving rise to the claim is indeterminable, the First Named Insured under the policy of insurance is responsible and liable for the payment of deductibles.

ARTICLE 6 COOPERATION WITH INSURER'S CONSULTANT

- 6.1 If an insurer or an insurer's appointed consultant, for underwriting purposes or as a term of an insurance policy, needs to review any part of the performance of this Project Agreement, then HMQ and Project Co shall, and shall require the HMQ Parties and the Project Co Parties, respectively, to:
- (a) cooperate with the insurer and its consultant, including providing them with such information and documentation as they may reasonably require; and
 - (b) allow the insurer and its consultant to attend meetings between Project Co and HMQ (or, as applicable, and if reasonably required by the insurer, between Project Co and those engaged by or through Project Co).

ARTICLE 7 BENCHMARKING OF INSURANCE COSTS

- 7.1 For purposes of this Section 7, the following terms shall have the following meanings:
- (a) **"Actual Relevant Insurance Cost"** means the aggregate of (i) the annual insurance premiums reasonably incurred by Project Co to maintain (or cause to be maintained) the Relevant Insurance during the Insurance Review Period, but excluding Taxes and all broker's fees and commissions.
 - (b) **"Base Relevant Insurance Cost"** means \$[REDACTED] for the first Insurance Review Period and, thereafter, means the aggregate of the annual insurance premiums which were projected (as set out in the Financial Model) to be incurred by Project Co to maintain (or cause to be maintained) the Relevant Insurance during the Insurance Review Period, which amounts exclude Taxes and all broker's fees and commissions.
 - (c) **"Insurance Cost Differential"** means an amount, based on the Joint Insurance Cost Report, equal to $(ARIC - BRIC) \pm PIC$ where:
 - ARIC is the Actual Relevant Insurance Cost;
 - BRIC is the Base Relevant Insurance Cost; and
 - PIC is any Project Insurance Change.

For the purpose of determining the Insurance Cost Differential, in the event that there is a net increase in the ARIC relative to the BRIC, the Project Insurance Change shall have a negative value and, in the event that there is a net decrease in the ARIC relative to the BRIC, the Project Insurance Change shall have a positive value.
 - (d) **"Insurance Review Date"** means each anniversary of the Relevant Insurance Inception Date, except where such date lies beyond the end of the Project Term, in which case the

Insurance Review Date shall be the last renewal date of the Relevant Insurance prior to the Expiry Date.

- (e) **“Insurance Review Period”** means a one year period from the Relevant Insurance Inception Date and each subsequent one year period commencing on the first anniversary of the Relevant Insurance Inception Date, except where the end of such period lies beyond the end of the Project Term, in which case the Insurance Review Period shall be the period from the end of the penultimate Insurance Review Period to the last day of the Project Term.
- (f) **“Project Insurance Change”** means any net increase or net decrease in the Actual Relevant Insurance Cost relative to the Base Relevant Insurance Cost, arising from:
 - (i) other than in respect of claims or re-ratings arising out of acts or omissions of HMQ, an HMQ Party or an Extension User, the claims history or re-rating of Project Co or any Project Co Party;
 - (ii) the effect of any change in deductible unless:
 - (1) such change is attributable to circumstances generally prevailing in the worldwide insurance market; and
 - (2) the deductible, further to such change, is either greater than or equal to the maximum deductibles set out in this Schedule 25; and
 - (3) in respect of the Relevant Insurance, such change is not attributable to claims made as the result of acts or omissions of Project Co or any Project Co Party; and
 - (iii) any other issue or factor other than circumstances generally prevailing in the worldwide insurance market.
- (g) **“Relevant Insurance”** means all policies of insurance to be obtained (or caused to be obtained) by Project Co in accordance with Section 2 of this Schedule 25.
- (h) **“Relevant Insurance Inception Date”** means the date on which the Relevant Insurance is first providing active insurance cover to Project Co and HMQ being a date no earlier than the earliest Section Substantial Completion Date.

7.2 No later than 60 days prior to each Insurance Review Date, Project Co's insurance broker shall, at Project Co's sole cost and expense, prepare a report on behalf of both Project Co and HMQ (the **“Joint Insurance Cost Report”**), which contains the following information for the relevant Insurance Review Period:

- (a) a full breakdown of the Actual Relevant Insurance Cost;
- (b) a full breakdown of the Base Relevant Insurance Cost;
- (c) an assessment and quantification of each Project Insurance Change, together with the reasons therefor;

- (d) the opinion of Project Co's insurance broker as to the reasons why the Actual Relevant Insurance Cost has varied from the Base Relevant Insurance Cost, specifying the impact of each of the factors and quantifying the amount attributable to each factor;
 - (e) the calculation of the Insurance Cost Differential; and
 - (f) evidence satisfactory to HMQ, acting reasonably, of any changes to circumstances generally prevailing in the worldwide insurance market that are claimed to account for the Insurance Cost Differential.
- 7.3 The Annual OM&R Payment will be subject to an adjustment in the amount of the Insurance Cost Differential (the "**Insurance Adjustment**") in accordance with Schedule 20 – Payment Mechanism.

ARTICLE 8 UNINSURABLE RISKS

- 8.1 The term "**Uninsurable Risk**" means a risk, or any component of a risk, against which Project Co is required to insure pursuant to this Schedule 25 and for which, at any time after the date of this Project Agreement, either:
- (a) the insurance required pursuant to this Schedule 25 (including the terms and conditions specified for such insurance herein) is not available in relation to that risk:
 - (i) where Applicable Laws require that the insurer must be licensed in the Province of Ontario to insure such a risk, by insurers licensed in the Province of Ontario; or
 - (ii) where Applicable Laws do not require that the insurer must be licensed in the Province of Ontario to insure such a risk, by any insurer otherwise permitted under the terms of this 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 HMQ's reasonable satisfaction that the foregoing definition applies to a particular risk.

- 8.2 Project Co shall notify HMQ as soon as possible and, in any event, within 15 Business Days of becoming aware of same, that a risk, or any component of a risk, has become an Uninsurable Risk, and shall provide HMQ with all relevant details in relation to such risk, including a copy of the relevant insurance policy.
- 8.3 Project Co and HMQ shall, as soon as possible following the provision of the notice referred to in Section 8.2 of this Schedule 25, meet to discuss, in good faith, the appropriate means by which the Uninsurable Risk should be managed and, if Project Co and HMQ are able to agree to alternative arrangements, the Uninsurable Risk shall be managed in accordance with such alternative arrangements.

- 8.4 In the event that Project Co and HMQ, each acting in good faith, are unable to agree to alternative arrangements with respect to the management of an Uninsurable Risk within 15 Business Days of the expiry of the period referred to in Section 8.2 of this Schedule 25, HMQ 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 47.2 of this Project Agreement as if such termination had occurred as a result of the Parties having failed to reach agreement in accordance with Section 47.2 of this Project Agreement following the occurrence of an event of Force Majeure, and, in accordance with the provisions of Schedule 23 - Compensation on Termination, pay to Project Co an amount equal to the Non-Default Termination Sum.
- 8.5 On the occurrence of an Uninsurable Risk, HMQ 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 47.2 of this Project Agreement as if such termination had occurred as a result of the Parties having failed to reach agreement in accordance with Section 47.2 of this Project Agreement following the occurrence of an event of Force Majeure, and, in accordance with the provisions of Schedule 23 - Compensation on Termination, pay to Project Co an amount equal to the Non-Default Termination Sum.
- 8.6 With respect to any Uninsurable Risk:
- (a) Project Co shall continue to approach the insurance market on a regular basis and, in any event, at intervals of not less than 180 days and use reasonable efforts to obtain (or cause to be obtained) insurance to cover as much or all of the Uninsurable Risk as can be insured in the available insurance market from time to time; and
 - (b) Subject to Section 8.6(a) of this Schedule 25, Project Co shall be relieved of its obligation to maintain (or cause to be maintained) insurance in respect of the Uninsurable Risk.
- 8.7 Where a risk which was previously an Uninsurable Risk ceases to be so, Project Co shall, at its own expense, obtain and maintain, or cause to be obtained and maintained, insurance in accordance with the requirements of this Schedule 25 in respect of the risk and the provisions of this Section 8 shall no longer apply to such risk.

- 8.8 From and after the earliest Section Substantial Completion Date, the Parties shall meet on an annual basis to review the scope of insurance coverage and deductibles provided in this Schedule 25, and may make mutually agreed changes thereto.

**ARTICLE 9
TOTAL OR SUBSTANTIAL DESTRUCTION**

- 9.1 In the event of damage to, or destruction of, all or substantially all of the Extension 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 Extension or any other assets, materials or goods necessary or desirable for the carrying out of the Project Operations, all in accordance with the terms of the Insurance Trust Agreement.

**ARTICLE 10
SUBCONTRACTORS**

- 10.1 Project Co shall require that all Subcontractors are covered by, or obtain, the insurance described in this Schedule 25, provided that Project Co shall determine the applicable limits to be obtained for such insurance. Project Co shall be solely responsible and liable for any damages which HMQ may suffer as a direct result of Project Co's failure to comply with the foregoing.
- 10.2 If Project Co receives notice that any Subcontractor employed by or through Project Co is not covered by any insurance required by this Schedule 25 to be obtained (or caused to be obtained) by Project Co, Project Co shall:
- (a) ensure that such insurance coverage is put in place;
 - (b) remove the Subcontractor from the Site and ensure that such Subcontractor does not perform any further part of the Project Operations until after such insurance coverage is put in place; or
 - (c) if the Subcontractor cannot be covered by a particular policy as required by this Schedule 25, replace the Subcontractor with a new Subcontractor who can be covered by insurance required by this Schedule 25 or who can obtain the required insurance coverage; it being acknowledged by Project Co that the requirements and restrictions set forth in this Project Agreement regarding new and replaced Subcontractors shall be complied with.

**ARTICLE 11
RENEWAL**

- 11.1 Project Co shall provide to HMQ, at least 5 Business Days prior to the expiry date of any policy of insurance required to be obtained (or caused to be obtained) by Project Co pursuant to this Schedule 25, evidence of the renewal of each such policy satisfactory to HMQ, acting reasonably.

ARTICLE 12
NAMED AND ADDITIONAL INSURED AND WAIVER OF SUBROGATION

- 12.1 All insurance provided by Project Co, shall:
- (a) include Project Co, HMQ, IO, MTO, ORC and any other party specified in Appendix A of this Schedule 25 as Named Insureds to the extent specified in Appendix A of this Schedule 25 or as required pursuant to any agreement relating to the Project to which Project Co is a party;
 - (b) include HMQ, IO, MTO, ORC, the Lenders, the Lenders' Agent and any other party specified in Appendix A of this Schedule 25 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 or as required pursuant to any agreement relating to the Project to which Project Co is a party;
 - (c) except with respect to the Project Specific Professional Liability specified in Part 1 of Appendix A to this Schedule 25 and Automobile Liability, Comprehensive Crime and WSIB specified in Parts 1 and 2 of Appendix A to this Schedule 25, contain a waiver of subrogation as against HMQ, HMQ Parties and their respective shareholders, officials, directors, officers, employees, servants, consultants (other than design consultants) and agents;
 - (d) contain a breach of warranty provision whereby a breach of a condition by Project Co will not eliminate or reduce coverage for any other insured; and
 - (e) be primary insurance with respect to any similar coverage provided by any insurance obtained by or available to HMQ without any right of contribution of any insurance carried by HMQ.
- 12.2 Notwithstanding that "HMQ" includes each ministry, agency, board or other subdivision, department or branch of HMQ, for purposes of this Schedule 25, including Appendix A hereto, certain ministries and agencies of HMQ are listed as Named Insureds and/or Additional Insureds for greater certainty and for insurance evidence requirements.

ARTICLE 13
CERTIFICATES OF INSURANCE AND CERTIFIED COPIES OF POLICIES

- 13.1 Prior to the commencement of any part of the Initial Works, Project Co will provide HMQ with certified copies of policies, confirming that the insurances specified in Section 1.1 have been obtained and are in full force and effect.
- 13.2 Prior to the commencement of any part of the Initial Works, Project Co will provide HMQ with certificates of insurance or certified copies of policies, confirming that the insurances specified in Section 1.2 have been obtained and are in full force and effect. If certificates of insurance are provided, certified copies of the entire contents of all relevant insurance policies will be subsequently provided to HMQ no later than 90 days after execution of this Project Agreement.
- 13.3 Prior to the commencement of any part of the OM&R Work on any Section, Project Co will provide HMQ with certificates of insurance or certified copies of policies, confirming that the

insurances specified in Section 2.1 have been obtained and are in full force and effect. If certificates of insurance are provided, certified copies of the entire contents of all relevant insurance policies will subsequently be provided to HMQ no later than 90 days after the relevant Section Substantial Completion Date; however specimen wordings of all such insurance policies, along with the corresponding summary of coverage, limits and deductibles, must be provided to HMQ no later than 90 days prior to the relevant Section Substantial Completion Date.

ARTICLE 14 FAILURE TO MEET INSURANCE REQUIREMENTS

- 14.1 If Project Co fails to obtain or maintain, or cause to be obtained and maintained, the insurance required by this Schedule 25, fails to furnish to HMQ a certified copy of each policy required to be obtained by this Schedule 25 or if, after furnishing such certified copy, the policy lapses, is cancelled, or is materially altered, then HMQ shall have the right, without obligation to do so, to obtain and maintain such insurance itself in the name of Project Co, and the cost thereof shall either, at HMQ's option, be payable by Project Co to HMQ on demand or be deducted by HMQ from the next payment or payments otherwise due to Project Co.
- 14.2 If coverage under any insurance policy required to be obtained (or caused to be obtained) by Project Co should lapse, be terminated or be cancelled, then, if directed by HMQ, all work by Project Co shall immediately cease until satisfactory evidence of renewal is produced.

ARTICLE 15 MODIFICATION OR CANCELLATION OF POLICIES

- 15.1 Except as noted in Appendix A to this Schedule 25, all insurance provided by Project Co shall contain endorsements confirming that the policy will not be cancelled, adversely reduced, adversely materially altered or adversely materially amended without the insurer(s) giving at least ninety (90) days prior written notice by registered mail, at the addresses specified, to HMQ, the Lenders and the Lenders' Agent. For greater certainty, the terms "adversely reduced", "adversely materially altered" and "adversely materially amended" as used in this provision shall mean any decrease or reduction in policy limits, aggregate limits or sub-limits (other than as a result of claims under the policy), any increase in any policy deductible or self-insured retention, any reduction in the policy coverage period, cancellation or suspension of coverage with respect to any insured parties from the time the policy was issued for that policy period, addition of any exclusions or restrictions from the time the policy was issued for that policy period and any reduction or restriction in the scope of coverage provided under the policy, in all cases when such adverse reduction, adverse material alteration or adverse material amendment is initiated by the insurer.
- 15.2 All insurance provided by Project Co shall contain endorsements confirming that, in the event of cancellation for non-payment of premium, the insurer(s) will give at least fifteen (15) days prior written notice by registered mail, at the addresses specified, to HMQ, the Lenders and the Lenders' Agent.
- 15.3 With respect to Operational Term insurances, only notice of cancellation will be required for the Automobile Liability and Comprehensive Crime described in Part 2 of Appendix A to this Schedule 25.

- 15.4 With respect to insurances described in Section 1.1 (a), (b) and (d), Section 1.2 (d) and Section 2.1 (a), (b), (c) and (d), breach of any of the terms or conditions of the policies required to be provided by Project Co, or any negligence or wilful act or omission or false representation by an Insured under these policies, shall not invalidate the insurance with respect to HMQ, IO, MTO, ORC, the Lenders or any other Insured, but only to the extent that such breach is not known to these parties.

ARTICLE 16 INSURERS

- 16.1 All policies of insurance to be obtained (or caused to be obtained) by Project Co in accordance with this Schedule 25 shall be issued by financially sound insurers acceptable to HMQ and the Lenders, acting reasonably, and, where required by statute, be licensed to insure such risk in the Province of Ontario.
- 16.2 To be eligible to provide insurance, an insurer must have the capacity to provide the particular insurance and shall have current ratings from time to time of either:
- (a) a Financial Strength Rating of not lower than “A-“ for three out of the previous five years but not lower than “B” at any time during those five years, and a Financial Size Category not lower than VII, such ratings being those established by A. M. Best Company (Best); or
 - (b) a Long-Term Financial Strength Rating of not lower than “A-“ for three out of the past five years but not less than “BBB” at any time during those five years, a Short-Term Financial Strength Rating of not lower than “A-3” for three out of the previous five years and a Financial Enhancement Rating of not lower than “A-“ for three out of the previous five years but not less than “BB+” at any time during those five years, such ratings being those established by Standard and Poor’s (S&P); or
 - (c) if the insurer is not rated by Best or S&P, an insurer that is acceptable to HMQ and Lenders, acting reasonably, with respect to the insurances required by this Schedule 25.

ARTICLE 17 POLICY TERMS AND CONDITIONS

- 17.1 All policies of insurance to be obtained (or caused to be obtained) by Project Co in accordance with this Schedule 25 shall be in form and substance satisfactory to HMQ and its insurance advisors, acting reasonably.
- 17.2 To achieve the minimum limits for any type of insurance required under Appendix A, it is permissible to arrange the insurance under a single policy, or by a combination of primary, umbrella and/or excess policies.

ARTICLE 18 FAILURE TO COMPLY

- 18.1 Neither failure to comply nor full compliance by Project Co with the insurance provisions of this Schedule 25 shall relieve Project Co of its liabilities and obligations under this Project Agreement.

ARTICLE 19
PERFORMANCE SECURITY REQUIREMENTS

19.1 [REDACTED]

19.2 [REDACTED]

FOR INFORMATION ONLY

Appendix A – Insurance Requirements

FOR INFORMATION ONLY

Highway 407 East Extension

Initial Works Insurance – Part 1 Highway 407 East Extension

From First Access to Site until each Section Substantial Completion Date (Insurance for Initial Works)

Insurances to be provided, or caused to be provided, by Project Co and arranged through the IOCIP program

Type	Amount	Maximum Deductibles	Principal Cover
“All Risks” Course of Construction Property, including Boiler and Machinery	Value declared to be equal to \$[REDACTED], including Property of Every Description and all other property supplied by HMQ or HMQ Parties for incorporation into the Project. Delay in Start-up \$[REDACTED], covering a 12 month indemnity period, including Contingent Delayed Start-Up related to losses at Suppliers’ or Manufacturers’ premises or other temporary storage locations (\$[REDACTED] sub-limit) Soft Costs \$[REDACTED] (representing [REDACTED]% of Recurring / Continuing Soft Costs) Extra and Expediting Expense (minimum \$[REDACTED] sub-limit) Principal Extensions: <ul style="list-style-type: none"> Replacement Cost 	[REDACTED]% of loss value / \$[REDACTED] minimum Earthquake \$[REDACTED] Flood \$[REDACTED] Testing and Commissioning \$[REDACTED] All other losses 30 days waiting period applicable to time element coverages	“All Risks” Course of Construction Property Insurance covering the full insurable replacement cost of the Works including cold and hot testing / commissioning of Equipment including HVAC, Delay in Start-Up, Soft Costs with no early occupancy restriction. This coverage shall be primary with respect to the Project without right of contribution of any insurance carried by HMQ, MTO, ORC, IO or the Lenders.

Type	Amount	Maximum Deductibles	Principal Cover
	<ul style="list-style-type: none"> Valuation (Property) Most Recent Technology Replacement Cost Valuation (Equipment or Machinery) Flood (to policy limit with annual aggregate) Natural or man-made earth movement, including earthquake, landslide or subsidence (to policy limit with an annual aggregate) Electronic Data Processing equipment and media, including data restoration and re-creation costs Transit Unnamed locations By-laws including Demolition, Increased Cost of Repairs and Replacement (subject to a \$[REDACTED] sub-limit only with respect to existing or renovated buildings) Debris Removal (minimum \$[REDACTED] sub-limit) Off Premises Services 		

Type	Amount	Maximum Deductibles	Principal Cover
	Interruption (minimum \$[REDACTED] sub-limit)		
	<ul style="list-style-type: none"> Professional Fees (minimum \$[REDACTED] sub-limit) Fire Fighting Expenses (minimum \$[REDACTED] sub-limit) Valuable Papers (minimum \$[REDACTED] sub-limit) Accounts Receivable (minimum \$[REDACTED] sub-limit) Green Building and LEED Upgrades (subject to a \$[REDACTED] sub-limit) Defence Costs (subject to a \$[REDACTED] sub-limit) Contamination Clean-up or Removal (minimum \$[REDACTED] sub-limit) Ammonia Contamination 		

Type	Amount	Maximum Deductibles	Principal Cover
	(minimum \$[REDACTED] sub- limit)		
	<ul style="list-style-type: none"> • LEED Rectification, Commissioning and Testing Expenses (subject to a \$[REDACTED] sub-limit) • Civil Authority Access Interruption (8 weeks) • Prevention of Ingress/Egress (8 weeks) • Permission for Partial Use or Occupancy prior to Substantial Completion • Cost of Carrying Project Financing (12 Months), included in Delayed Start-Up coverage • Margin of Profit Extension for Contractors • Radioactive contamination caused by sudden and accidental release of radioactive isotopes (resulting from an accident) 		
	Permitted Exclusions:		
	<ul style="list-style-type: none"> • Cyber risk • Mould, fungi and fungal 		

Type	Amount	Maximum Deductibles	Principal Cover
	<ul style="list-style-type: none"> derivatives Faulty workmanship, materials construction, or design but resultant damage to be insured to a minimum DE4 standard War risk Terrorism Nuclear or radioactive contamination, except radioactive isotopes intended for scientific, medical, industrial or commercial use Contractors' equipment 		

Type	Amount	Maximum Deductibles	Principal Cover
<i>Comments</i>	<ul style="list-style-type: none"> Named Insured includes Project Co, Lenders, Lender's Agent, the Construction Contractor, all subcontractors, sub-subcontractors, consultants and sub-consultants, HMQ, MTO, ORC and IO and as their respective interests may appear No provision permitted allowing a coinsurance penalty Insurance shall be primary without right of contribution of any other insurance carried by any Named Insured Additional key extensions of coverage: <ul style="list-style-type: none"> Underground services, temporary works involved in the Project such as scaffolding, hoarding, etc., site preparation, including excavation and associated improvements, landscaping and property of others used in the construction of the Project Losses payable in accordance with the Insurance Trust Agreement Upon each Section Substantial Completion, cover will cease and be replaced by All Risk Property and Boiler & Machinery Insurance – Operational Term Waiver of Subrogation against all Named and Unnamed Insureds, including but not limited to Project Co, HMQ, MTO, ORC, IO, the Construction Contractor, all subcontractors, professional consultants (other than for their professional liability), Lenders, Lenders' Agent, as well as officers, directors and employees, servants, and agents of the foregoing Frost or freezing to concrete – but only resultant damage from a peril not otherwise excluded Liberalization Clause Errors and Omissions Breach of Conditions Interims Payments Clause 		
<i>Underwriters</i>	Principal underwriters in compliance with Article 16 of this Schedule 25		

Initial Works Insurance – Part 1 Highway 407 East Extension

From First Access to Site until each Section Substantial Completion Date (Insurance for Initial Works)

Insurances to be provided, or caused to be provided, by Project Co and arranged through the IOCIP program

Type	Amount	Maximum Deductibles	Principal Cover
Wrap-Up Commercial General Liability and Non-Owned Automobile Liability	<p>[\$[REDACTED]] each occurrence, and in the annual aggregate with respect to Broad Form Products and Completed Operations</p> <p>Sub-limits:</p> <ul style="list-style-type: none"> • \$[REDACTED] Non-Owned Automobile Liability • \$[REDACTED] Sudden and Accidental Pollution and Hostile Fire Pollution Liability • \$[REDACTED] “All Risks” Tenants' Legal Liability • \$[REDACTED] Prairie or Forest Fire Fighting Expenses • \$[REDACTED] Employee Benefits Administrative Errors and Omissions • \$[REDACTED] Contractors Rework • \$[REDACTED] Legal Liability for Damages To 	<p>[\$[REDACTED]] per occurrence</p> <p>[\$[REDACTED]] per claim with respect to Contractors Rework</p> <p>[\$[REDACTED]] per claim with respect to each of SEF 94, Tenants Legal Liability, Prairie or Forest Fire Fighting Expenses and Employee Benefits Administrative Errors and Omissions</p>	<p>Wrap-Up Commercial General Liability and Non-Owned Automobile Liability insurance covering all construction operations on an occurrence basis against claims for Bodily Injury (including Death), Personal Injury, Property Damage (including Loss of Use), and including Products and Completed Operations Liability, extended for a period of not less than 24 months, effective from each Section Substantial Completion Date.</p> <p>Coverage shall be maintained continuously from the date of the first access to the Site, until each Section Substantial Completion Date, at which time the Products and Completed Operations extension will take effect.</p> <p>Pollution Liability – Sudden and Accidental and Hostile Fire Pollution coverage to be not less than IBC 2313 form (240 hours detection/240 hours notice coverage structure).</p> <p>This coverage shall be primary with respect to the Project without right of contribution of any insurance carried by HMQ, MTO, ORC, IO or the Lenders.</p>

Type	Amount	Maximum Deductibles	Principal Cover
	Non-Owned Automobiles (SEF 94)		
	<ul style="list-style-type: none"> • \$[REDACTED]/\$ [REDACTED] Medical Payments 		
	Principal Extensions:		
	<ul style="list-style-type: none"> • Owner's and Contractor's Protective • Blanket Contractual (written and oral) • Direct and Contingent Employers Liability • Personal Injury (nil participation) • Cross Liability and Severability of Interest with respect to each insured party • Blasting / demolition / excavating / underpinning / pile driving / shoring / caisson work / work below ground surface / tunnelling / grading and similar operations associated with the Works, as applicable • Elevator and Hoist Collision Liability • Liberalized Notice of Claim Requirement, i.e., 		

Type	Amount	Maximum Deductibles	Principal Cover
	<p>requirement to report will commence when knowledge is held by a designated project person(s) – to be identified by Project Co</p> <ul style="list-style-type: none"> • Non-Owned Automobile Liability • Tenants' Legal Liability (All Risks) – subject to sub-limit • Medical Expenses – subject to sub-limit • Prairie or Forest Fire Fighting Expenses – subject to sub-limit • Sudden and Accidental Pollution and Hostile Fire Pollution Liability – subject to sub-limit • Employee Benefits Administrative Errors and Omissions – subject to sub-limit • Contractors' Rework Coverage – subject to sub-limit • Permission for Unlicensed Vehicles (partial road use) • Unlicensed Equipment • Loss of Use Without Property Damage 		

Type	Amount	Maximum Deductibles	Principal Cover
	<ul style="list-style-type: none"> Loading and Unloading of Automobiles Broad Form Property Damage Broad Form Completed Operations Intentional Injury, committed to Protect Persons or Property Accident Benefits Worldwide Territory, subject to suits being brought in Canada or the US 		
	<p>Permitted Exclusions:</p> <ul style="list-style-type: none"> Injury to employees, where WSIB provides valid coverage Property in the care, custody or control of the insured, except during the Broad Form Products and Completed Operations extension period Operation of licensed motor vehicles, other than attached machinery, while used for its purpose or at the Project Site Physical damage to the Project, except during 		

Type	Amount	Maximum Deductibles	Principal Cover
	Broad Form Products and Completed Operations extension period <ul style="list-style-type: none"> • Cyber risk • Mould, fungi and fungal derivatives • Professional liability of engineers, architects and other professional consultants • Nuclear or radioactive contamination, except release radioactive isotopes intended for scientific, medical, industrial or commercial use 		

Type	Amount	Maximum Deductibles	Principal Cover
<i>Comments</i>	<ul style="list-style-type: none"> Named Insured includes Project Co and its Affiliates, HMQ, MTO, ORC, IO, the Lenders, Project Co parties involved in the Initial Works, including the Construction Contractor, all subcontractors, sub-subcontractors, suppliers while working on Site, tradesmen while working on Site, engineers, architects, consultants and sub-consultants (other than for professional liability), others as Additional Insureds, as may be required from time to time, arising from all operations and activities pertaining to the Initial Works and the control and use of the Site Her Majesty the Queen in Right of Ontario as represented by the Minister of Infrastructure is added as an Additional Insured Directors, officers, shareholders, employees of the insured parties involved in the Initial Works are covered as Additional Insureds Insurance is primary without right of contribution of any other insurance carried by any Named Insured Aggregate limits will be permitted for Products and Completed Operations, Prairie and Forest Fire Fighting Expenses, Sudden and Accidental Pollution and Hostile Fire Pollution Liability and Employee Benefits Administrative Errors & Omissions Liability; no policy general aggregate will be permitted Professional service activities integral to the Project, but not covering engineers, architects or other professional consultants, i.e., incidental professional liability risk of a Named Insured and their employed professionals is to be covered, but not the professional liability of independent fee-for-service professional consultants, architects or engineers Waiver of subrogation of insurers' rights of recovery against all Named and/or Additional Insureds, including Project Co, HMQ, IO, ORC, MTO, Her Majesty the Queen in Right of Ontario as represented by the Minister of Infrastructure, the Construction Contractor, all subcontractors, sub-subcontractors, professional consultants, engineers and architects (other than for their professional liability), Lenders, Lenders' Agent, as well as officers, directors, employees, servants and agents of the foregoing 		
<i>Underwriters</i>	Principal underwriters in compliance with Article 16 of this Schedule 25		

Initial Works Insurance – Part 1 Highway 407 East Extension

From First Access to Site until each Section Substantial Completion Date (Insurance for Initial Works)

Insurances to be provided, or caused to be provided, by Project Co and arranged through the IOCIP program

Type	Amount	Maximum Deductibles	Principal Cover
Project Specific Professional Liability	<p>[\$[REDACTED]] minimum per claim / [\$[REDACTED]] in the aggregate (inclusive of defense and related costs and supplementary payments)</p> <p>Principal Extensions:</p> <ul style="list-style-type: none"> • Primary Insurance extension • Automatic addition of firms • Present, former partner, executive officer, director or shareholder of Named Insureds while acting within their scope of duties for the Named Insured • Any individuals or personal corporations retained by the Named Insured under a personal services contract • Claim defined as a written or oral demand for money or a written or oral allegation in breach in the rendering or failure to render professional services received by the 	<p>[\$[REDACTED]] per claim</p>	<p>Project Specific Professional Liability Insurance in connection with the design and construction of the Project from beginning of first design, through the entire construction period, to each Section Substantial Completion Date plus coverage for an extended reporting period of not less than 36 months.</p> <p>This coverage shall be primary with respect to the Facility without right of contribution of any insurance carried by HMQ, MTO, ORC, IO or the Lenders.</p>

Type	Amount	Maximum Deductibles	Principal Cover
	<p>Insured or Named Insured and resulting from a single error, omission or negligent act</p> <ul style="list-style-type: none"> • Lawyer fees and associated expenses incurred in the investigation, defence, settlement, arbitration or litigation of claims • Duty to defend, even if the allegations are groundless, false or fraudulent • Worldwide territory, subject to suits brought in Canada <p>Permitted Exclusions:</p> <ul style="list-style-type: none"> • Express warranties or guarantees • Estimates on profit, return • Faulty workmanship, construction or work which is alleged or in fact not constructed in accordance with the design of the Project or the construction documents • Design or manufacture of any good or products sold or supplied by the Named Insured 		

Type	Amount	Maximum Deductibles	Principal Cover
	<ul style="list-style-type: none"> • Terrorism • Nuclear Liability • Judgments and awards deemed uninsurable by law • Liability assumed under design contract, unless such liability would have attached to the Named Insured by law in the absence of such agreement • Punitive or exemplary damages, fines, penalties or interest or liquidated punitive or exemplary damages or fees • Refusal to employ, termination of employment, humiliation or discrimination on any basis or other employment related practices or policies 		
<i>Comments</i>	<ul style="list-style-type: none"> • Named Insured: Project Co (as appropriate), all engineers, architects, and other professional consultants that provide professional design services in connection with the Project (subject to reporting provision) • Professional services covered: All architectural, engineering, land surveying, environmental, landscape architectural, interior design/space planning, soil and material testing services, geotechnical services and procurement services, including their replacements and/or sub-consultants of any tier • Retroactive Date: Full retroactive coverage from date of first design activity • Policy to be non-cancellable except for premium non-payment, material misrepresentation or concealment of facts or a material breach of any condition of the policy 		
<i>Underwriters</i>	Principal underwriters in compliance with Clause 16 of this Schedule 25		

Initial Works Insurance – Part 1 Highway 407 East Extension

From First Access to Site until each Section Substantial Completion Date (Insurance for Initial Works)

Insurances to be provided, or caused to be provided, by Project Co and arranged through the IOCIP program

Type	Amount	Maximum Deductibles	Principal Cover
Project Specific Pollution Liability (combined Contractors' Pollution Liability and Pollution Legal Liability – Claims Made) Combined Limit subject to Pollution Legal Liability with a minimum \$[REDACTED] sub-limit	\$[REDACTED] per claim and in the aggregate for all claims, inclusive of defense and all costs and expenses Principal Extensions: <ul style="list-style-type: none"> • Hazardous Substances occurring at or emanating from the Facility or Site during the Policy Period • Microbial Matter (including Fungus/Mould) • Underground / above ground storage tanks • First Party Restoration and Clean-up Costs • Disposal Site Extension, including Transportation (reporting required) • Duty to Defend • Canada and US Territory • Contractual Liability • Emergency Response Costs Permitted Exclusions: <ul style="list-style-type: none"> • Terrorism 	\$[REDACTED] per claim inclusive of defense and all costs and expenses	Pollution Liability insurance covering third party bodily injury, property damage consequential loss or damage, including clean-up and restoration costs, both at the Site and Off-Site, as required. Extended Reporting Period: Minimum of 36 months after each Section Substantial Completion Date. This coverage shall be primary with respect to the Facility without right of contribution of any insurance carried by HMQ, MTO, ORC, IO or the Lenders.

Type	Amount	Maximum Deductibles	Principal Cover
	<ul style="list-style-type: none"> • War • Intentional Non-compliance • Prior Knowledge • WSIB • Employers' Liability • Professional Liability • Nuclear Liability • Property Damage to Motor Vehicles during Transportation 		
<i>Comments</i>	<ul style="list-style-type: none"> • Named Insured will include Project Co, its Affiliates, Project Co parties and all other parties engaged in the Works, including the Construction Contractor, all subcontractors, sub-subcontractors, consultants, and sub-consultants • HMQ, MTO, ORC, IO and the Lenders will be identified as Additional Insureds, or insured clients of Project Co and its Affiliates • Her Majesty the Queen in Right of Ontario as represented by the Minister of Infrastructure is added as an Additional Insured • The directors, officers, shareholders, and employees of the foregoing shall be Additional Insureds 		
<i>Underwriters</i>	Principal underwriters in compliance with Clause 16 of this Schedule 25		

Initial Works Insurance – Part 1 Highway 407 East Extension

From first Access to Site until each Section Substantial Completion Date (Insurance for Initial Works)

Insurances to be provided, or caused to be provided, by Project Co

Type	Amount	Maximum Deductibles	Principal Cover
Automobile Liability	<p>[\$[REDACTED]] (Minimum) for Project Co and Project Co's Construction Contractor vehicles</p> <p>[\$[REDACTED]] (Minimum) for vehicles of any other contractor, subcontractors, sub-subcontractors, consultants, and sub-consultants, and workmen, tradesmen, or other persons working on or at the Site</p>		<p>Standard Ontario Owners Form For all vehicles operated by Project Co, the Construction Contractor, all subcontractors, sub-subcontractors, consultants and sub-consultants, operated in connection with the Project.</p> <p>Business Automobile Liability insurance covering third party property damage and bodily injury liability (including accident benefits) arising out of any licensed vehicle.</p> <p>Policies shall be endorsed to preclude cancellation, except upon 60 days prior written notice provided to HMQ, MTO, ORC, IO and the Lenders.</p>
<p>Commercial General Liability and Non-Owned Automobile Liability</p> <p>For Project Co, the Construction Contractor, all subcontractors, sub-subcontractors,</p>	<p>[\$[REDACTED]] each occurrence, and in the annual aggregate with respect to Broad Form Products and Completed Operations for Project Co and Project Co's Construction Contractor</p> <p>[\$[REDACTED]] each occurrence, and in the annual aggregate with respect to Broad Form Completed Operations for any other contractor, subcontractors, sub-subcontractors,</p>		<p>Commercial General Liability insurance covering all operations on an occurrence basis against claims for Bodily Injury (including Death), Broad Form Property Damage (including Loss of Use), and including Broad Form Products and Completed Operations Liability.</p> <p>This Commercial General Liability Insurance will cover off-site activities connected to the project and Products and Completed Operations Liability beyond the "Wrap-Up" Commercial General Liability Insurance policy's Products and Completed Operations extension period.</p> <p>In respect of each Section, this insurance shall be maintained in effect during the Initial Works of the relevant Section and until twelve (12) months following the earlier of the termination of the insured's person's involvement in the Initial Works and the</p>

Type	Amount	Maximum Deductibles	Principal Cover
consultants and sub-consultants, including Direct and Contingent Employers Liability, Products and Completed Operations Liability, and Owner's and Contractor's Protective extensions	<p>consultants, and sub-consultants, and workmen, tradesmen, or other persons involved in the Initial Works</p> <p>In both instances, limits of liability may be structured as any combination of Primary plus supplementary layers and Umbrella and/or Excess, or Primary plus Umbrella and/or Excess</p> <p>Sub-limits (Project Co and Project Co's Construction Contractor):</p> <ul style="list-style-type: none"> • Full policy limits with respect to Non-Owned Automobile Liability • \$[REDACTED] Prairie or Forest Fire Fighting Expenses <p>Principal Extensions (required to be provided by the Project Co. and its Construction Contractor and shall be endeavoured to be provided by any other contractor, subcontractors, sub-subcontractors,</p>		<p>date of issuance of the relevant Section Substantial Completion Certificate for the Initial Works.</p> <p>Policies shall be endorsed to preclude cancellation, except upon 90 days prior written notice provided to HMQ, MTO, ORC, IO and the Lenders.</p>

Type	Amount	Maximum Deductibles	Principal Cover
	consultants, and sub-consultants, and workmen, tradesmen, or other persons involved in the Initial Works):		
	<ul style="list-style-type: none"> • Owner's and Contractor's Protective • Blanket Contractual (written) • Direct and Contingent Employers Liability • Personal Injury (nil participation) • Cross Liability and Severability of Interest with respect to each insured party • Blasting / demolition / excavating / underpinning / pile driving / shoring / caisson work / work below ground surface / tunnelling/grading and similar operations associated with the Initial Works as applicable • Elevator and Hoist Collision Liability • Non-Owned Automobile Liability • Prairie or Forest Fire Fighting Expenses – 		

Type	Amount	Maximum Deductibles	Principal Cover
	<ul style="list-style-type: none"> subject to sub-limit • Permission for Unlicensed Vehicles' (partial road use) • Unlicensed Equipment • Loss of Use Without Property Damage • Loading and Unloading of Automobiles • Broad Form Property Damage • Broad Form Completed Operations • Intentional Injury, committed to Protect Persons or Property • Worldwide Territory, subject to suits being brought in Canada or the US 		
	<p>Permitted Exclusions:</p> <ul style="list-style-type: none"> • Injury to employees, where WSIB provides valid coverage • Property in the care, custody or control of the insured, except as provided under Broad Form Products and Completed Operations • Operation of licensed 		

Type	Amount	Maximum Deductibles	Principal Cover
	<p>motor vehicles, other than attached machinery, while used for its purpose or at the Site</p> <ul style="list-style-type: none"> • Cyber risk • Mould, fungi and fungal derivatives • Professional liability of engineers, architects and other professional consultants • Nuclear or radioactive contamination, except release of radioactive isotopes intended for scientific, medical, industrial or commercial use 		
<i>Comments</i>	<ul style="list-style-type: none"> • HMQ, MTO, ORC, IO and the Lenders will be identified as Additional Insureds or insured clients of Project Co and its Affiliates 		
<i>Underwriters</i>	Principal underwriters in compliance with Clause 16 of this Schedule 25		

From First Access to Site until each Section Substantial Completion (Insurance for Initial Works)

Insurances to be provided, or caused to be provided, by Project Co

Type	Amount	Maximum Deductibles	Principal Cover
Aircraft and Watercraft Liability (If any exposure)	Minimum \$[REDACTED] inclusive, including \$[REDACTED] passenger hazard – Owned Aircraft Minimum \$[REDACTED] inclusive – Non-Owned Aircraft Minimum \$[REDACTED] inclusive Owned or Non-Owned Watercraft	To be determined	Policies shall be endorsed to preclude cancellation, except upon 90 days prior written notice provided to HMQ, MTO, ORC, IO and the Lenders.
<i>Comments</i>	<ul style="list-style-type: none"> HMQ, MTO, ORC, IO and the Lenders will be identified as Additional Insureds or insured clients of Project Co and its Affiliates 		
“All Risks” Ocean Marine Cargo (if any exposure)	[REDACTED]% Replacement Cost Valuation basis	\$[REDACTED] per claim	Property of every description destined for incorporation into the Facility, during marine transit, on a full replacement value basis, with no co-insurance provision. This coverage shall be primary with respect to the Facility without right of contribution of any insurance carried by HMQ, MTO, ORC, IO or the Lenders.
<i>Comments</i>	<ul style="list-style-type: none"> Named Insured includes Project Co, HMQ, MTO, ORC, IO, Lenders, Lender’s Agent, the Construction Contractor, all subcontractors, sub-subcontractors, consultants and sub-consultants as their respective interests may appear 		
“All Risks” Contractors’ Equipment	If Site equipment is three years old or less, the sum insured shall be equal to [REDACTED]% of the		All Risks coverage on all owned, rented, leased or borrowed contractors’ equipment, used at the Site.

Type	Amount	Maximum Deductibles	Principal Cover
To cover Project Co, the Construction Contractor, subcontractors, sub-subcontractors consultants and sub-consultants	replacement value of all contractors equipment used at the project. If Site equipment is more than three years old, actual cash value basis of loss settlement is acceptable.		
<i>Comments</i>	<ul style="list-style-type: none"> Waiver of Subrogation rights against Project Co, HMQ, MTO, ORC, IO, the Construction Contractor, all subcontractors, sub-subcontractors, consultants, sub-consultants, Lenders, Lenders' Agent, as well as officers, directors, shareholders and employees of the foregoing 		

From First Access to Site until each Section Substantial Completion (Insurance for Initial Works)

Insurances to be provided, or caused to be provided, by Project Co

Type	Amount	Maximum Deductibles	Principal Cover
Employee Dishonesty (Crime)	[\$[REDACTED]] per loss		<p>Employee Dishonesty insurance against the fraudulent/dishonest acts of employees of Project Co and its Affiliates including additional coverage for Broad Form Money and Securities, Money Orders and Counterfeit Paper, Depositors' Forgery, Computer Fraud and Funds Transfer Fraud, Audit Expenses and Credit Card Forgery.</p> <p>Insurance primary without right of contribution of any other insurance carried by HMQ, MTO, ORC, IO or the Lenders.</p>
<i>Underwriters (All non-IOCIP Initial Works insurance to be provided or</i>	Principal underwriters in compliance with Clause 16 of this Schedule 25		

Type	Amount	Maximum Deductibles	Principal Cover
<i>caused to be provided by Project Co)</i>			
WSIB	In accordance with Ontario Act's established benefits and schedules	Not Applicable	<p>(i) Project Co and its Affiliates shall obtain and maintain at Project Co's expense, WSIB Insurance, in accordance with the Province of Ontario requirements.</p> <p>(ii) Project Co shall ensure that satisfactory evidence of WSIB Insurance is provided by all Project Co Parties, including all other consultants, sub consultants, contractors, subcontractors, suppliers and tradesmen working at the Site.</p> <p>Prior to commencement of the Initial Works, each of the foregoing shall provide satisfactory written confirmation of compliance, from the appropriate authority, including confirmation that all required assessments have been paid to date.</p> <p>Upon Substantial Completion of each Section, Project Co shall be provided with satisfactory written confirmation that all required assessments have been paid to date.</p> <p>On request, within 30 days of such request, Project Co shall deliver to HMQ evidence of the workers compensation coverage maintained by any person involved in the Initial Works, or confirmation of that person's exemption from workers compensation coverage.</p>

Operational Term Insurance – Part 2 Highway 407 East Extension

From each Section Substantial Completion Date until Termination Date (Insurance for Operational Term)

Insurance to be provided, or caused to be provided, by Project Co

Type	Amount	Maximum Deductibles	Principal Cover
“All Risk” Property	<p>Limit of Liability of \$[REDACTED] for all property associated with all Sections, while on the Site or while in transit, including material and supplies destined for incorporation into the Project or intended to be used in the performance of OM&R Work and all In-Contract Equipment</p> <p>Business Interruption (Gross Revenue or Gross Profits Form), – 12 months period of indemnity – including interdependency and contingent coverage re losses at key supplier premises, property in transit or in storage off-site</p> <p>Extra and Expediting Expenses (minimum \$[REDACTED] sub-limit)</p> <p>Principal Extensions:</p>	<p>[REDACTED]% of loss value / \$[REDACTED] minimum Earthquake</p> <p>\$[REDACTED] Flood</p> <p>\$[REDACTED] All other losses</p> <p>30 days waiting period applicable to time element coverages</p>	<p>All Risks Property insurance covering all property to be insured with a sum insured equivalent to the full replacement cost value of the property insured, and including necessary Business Interruption and Expediting Expenses.</p> <p>Coverage shall be maintained continuously from and after each Section Substantial Completion Date and at all times thereafter until the Termination Date.</p> <p>Such insurance will include Inland Transportation, By-Laws and Off Premises coverage.</p> <p>This coverage shall be primary with respect to the Project without right of contribution of any insurance carried by HMQ, MTO, ORC, IO or the Lenders.</p>

Type	Amount	Maximum Deductibles	Principal Cover
	<ul style="list-style-type: none"> Replacement Cost Valuation (Property) Most Recent Technology Replacement Cost Valuation (Equipment or Machinery) Flood (to policy limit with annual aggregate) Natural or man-made earth movement, including earthquake, landslide or subsidence (to policy limit with annual aggregate) Electronic Data Processing equipment and media, including data restoration and re-creation costs Debris Removal (minimum \$[REDACTED] sub-limit) Transit (minimum \$[REDACTED] sub-limit) Unnamed locations (minimum \$[REDACTED] sub-limit) Professional Fees (minimum \$[REDACTED] sub- 		

Type	Amount	Maximum Deductibles	Principal Cover
	limit)		
	• Fire Fighting Expenses (minimum \$[REDACTED] sub-limit)		
	• Valuable Papers (minimum \$[REDACTED] sub-limit)		
	• Accounts Receivable (minimum \$[REDACTED] sub-limit)		
	• Contamination Clean-up or Removal (minimum \$[REDACTED] sub-limit)		
	• Civil Authority Access Interruption (minimum 8 weeks)		
	• Prevention of Ingress/Egress (minimum 8 weeks)		
	• Automatic Coverage for Newly Acquired Locations (90 day reporting period acceptable)		
	• By-Laws including demolition and increased replacement / repair costs		
	• Off Premises Services		

Type	Amount	Maximum Deductibles	Principal Cover
	<ul style="list-style-type: none"> Interruption Margin of profit extension for contractors Joint Loss Agreement (if separate “All Risk” Property and Boiler and Machinery policies are arranged) <p>Permitted Exclusions:</p> <ul style="list-style-type: none"> Cyber risk Mould, fungi and fungal derivatives Faulty workmanship, materials construction, design or latent defects but resultant damage to be insured War risk Terrorism Nuclear or radioactive contamination, except radioactive isotopes intended for scientific, medical, industrial or commercial use 		
<i>Comments</i>	<ul style="list-style-type: none"> Named Insured will include Project Co, HMQ, MTO, ORC, IO and the Lenders – Lenders will be covered as Loss Payee and Mortgagee All loss proceeds payable to the Insurance Trustee in accordance with the Insurance Trust Agreement No provision allowing a coinsurance penalty Waiver of Subrogation against all Named Insureds, including but not limited to Project Co, the Lenders, Lenders’ Agent as well as officers, employees, servants and agents of the foregoing 		

Type	Amount	Maximum Deductibles	Principal Cover
<i>Underwriters</i>	Principal underwriters in compliance with Article 16 of this Schedule 25		

FOR INFORMATION ONLY

OM&R Works Phase Insurance – Part 2 Highway 407 East Extension

From each Section Substantial Completion Date until Termination Date (Insurance for OM&R Works Phase)

Insurance to be provided, or caused to be provided, by Project Co

Type	Amount	Maximum Deductibles	Principal Cover
Boiler & Machinery	<p>Limit of \$[REDACTED] each Accident to an Insured Object [REDACTED] \$[REDACTED] Business Interruption Insurance included, subject to a 12 month period of indemnity</p> <p>If a covered accident to insured objects(s) causes an interruption to MTO services or activities, the Business Interruption loss will include the costs of carrying the Project financing, during the affected period</p> <p>Sub-limits (\$[REDACTED] each):</p> <ul style="list-style-type: none"> • Ammonia Contamination • Automatic Coverage • Bylaws • Errors and Omissions • Expediting Expenses • Extra Expense • Hazardous Substances • Professional Fees • Water Damage 	<p>\$[REDACTED]per claim, Direct Damage</p> <p>Business Interruption – Maximum 30 day Waiting Period</p>	<p>Boiler & Machinery insurance on a Comprehensive Policy Form basis including HVAC on a full replacement cost basis, including all appropriate endorsements and extensions as well as necessary Business Interruption and Expediting and Extra Expense coverage.</p> <p>Coverage shall be maintained continuously from and after each Section Substantial Completion Date or activation, whichever shall first occur, and at all times thereafter until the Termination Date.</p> <p>Boiler and Machinery Insurance may be arranged on a combined Property/Boiler and Machinery basis, subject to the Boiler and Machinery section of such a policy being arranged on a Comprehensive Form basis.</p> <p>This coverage shall be primary with respect to the Project without right of contribution of any insurance carried by HMQ, MTO, ORC, IO or the Lenders.</p>

Type	Amount	Maximum Deductibles	Principal Cover
<i>Comments</i>	<ul style="list-style-type: none"> Named Insured will include Project Co, HMQ, MTO, ORC, IO and the Lenders – Lenders will be covered as Loss Payee and Mortgagee All loss proceeds payable to the Insurance Trustee in accordance with the Insurance Trust Agreement <p>As nearly as possible, coverage will be structured to dovetail with the Property Insurance</p>		
<i>Underwriters</i>	Principal underwriters in compliance with Clause 16 of this Schedule 25		

FOR INFORMATION ONLY

Operational Term Insurance – Part 2 Highway 407 East Extension

From each Section Substantial Completion Date until Termination Date (Insurance for Operational Term)

Insurance to be provided, or caused to be provided, by Project Co

Type	Amount	Maximum Deductibles	Principal Cover
Commercial General Liability and Non-Owned Automobile Liability	<p>[\$REDACTED] each accident or occurrence and in the aggregate with respect to Products and Completed Operations</p> <p>Sub-limits:</p> <ul style="list-style-type: none"> • \$[REDACTED] Non-Owned Automobile Liability, unless coverage provided under automobile liability insurance • \$[REDACTED] Sudden and Accidental Pollution and Hostile Fire Pollution • \$[REDACTED] “All Risks” Tenants' Legal Liability, if any exposure exists • \$[REDACTED] Prairie or Forest Fire Fighting Expense • \$[REDACTED] Employee Benefits Administrative Errors and Omission Liability • \$[REDACTED] Legal 	<p>\$[REDACTED] per occurrence</p>	<p>Commercial General Liability insurance covering all operations on an occurrence basis against claims for personal injury (including bodily injury and death), Broad Form Property Damage (including Loss of Use), and including Broad Form Products and Completed Operation Liability insurance.</p> <p>Coverage shall be maintained continuously from and after each Section Substantial Completion Date and at all times thereafter until the Termination Date.</p> <p>Pollution Liability – Sudden and Accidental Pollution coverage to be not less than IBC 2313 form (120 hours detection/120 hours notice coverage structure).</p> <p>This coverage shall be primary with respect to the OM&R Work without right of contribution of any insurance carried by HMQ, MTO, ORC, IO or the Lenders.</p>

Type	Amount	Maximum Deductibles	Principal Cover
	<p>Liability for Damages To Non-owned Automobiles (SEF 94) , unless coverage provided under automobile liability insurance</p> <ul style="list-style-type: none"> • \$[REDACTED]/\$ [REDACTED] Medical Payments <p>Principal Extensions:</p> <ul style="list-style-type: none"> • Owner's and Contractor's Protective • Blanket Contractual (written and oral) • Direct and Contingent Employers Liability • Employee Benefits Administrative Errors and Omissions • Personal Injury (nil participation) • Cross Liability and Severability of Interest with respect to each insured party • Blasting / demolition / excavating / underpinning / pile driving / shoring / caisson work / work below ground surface / tunnelling / grading and similar 		

Type	Amount	Maximum Deductibles	Principal Cover
	<ul style="list-style-type: none"> operations, as applicable Elevator and Hoist Collision Liability Liberalized Notice of Claim Requirement, i.e., requirement to report will commence when knowledge is held by a designated project person(s) – to be identified by Project Co Non-owned Automobile Tenants' Legal Liability (All Risks) – subject to sub-limit Medical Expenses – subject to sub limit Prairie or Forest Fire Fighting Expenses – subject to sub-limit Sudden and Accidental Pollution and Hostile Fire Pollution – subject to sub-limit Permission for unlicensed vehicles' partial road use Unlicensed Equipment Loss of Use Without Property Damage Loading and Unloading of Automobiles Broad Form Property 		

Type	Amount	Maximum Deductibles	Principal Cover
	<ul style="list-style-type: none"> Damage Broad Form Completed Operations Intentional Injury, committed to Protect Persons or Property Voluntary Compensation Worldwide Territory, subject to suits being brought in Canada or the US 		
	<p>Permitted Exclusions:</p> <ul style="list-style-type: none"> Injury to employees, where WSIB provides valid coverage Property in the care, custody or control of the insured, except as provided under Broad Form Products and Completed Operations Operation of licensed motor vehicles, other than attached machinery, while used for its purpose or at the OM&R Work site Cyber risk Mould, fungi and fungal derivatives Professional liability of engineers, architects and 		

Type	Amount	Maximum Deductibles	Principal Cover
	other professional consultants • Asbestos • Nuclear or radioactive contamination, except radioactive isotopes intended for scientific, medical, industrial or commercial use		
<i>Comments</i>	<ul style="list-style-type: none"> • Named Insured includes Project Co and its Affiliates, HMQ, MTO, ORC, IO, the Lenders, Project Co Parties involved in the OM&R Work, including all contractors, subcontractors, sub-subcontractors, suppliers while working on the Site, tradesmen while working on the Site, engineers, architects, consultants and sub consultants, (other than for professional liability) and others as Additional Insureds, as may be required from time to time, arising from all operations and activities pertaining to OM&R Works and the control and use of the Site • Directors, officers, shareholders, employees of the insured parties involved in the OM&R Work are covered as Additional Insureds • Insurance primary without right of contribution of any other insurance carried by any Named Insured • Aggregate limits will be permitted for Products and Completed Operations, Prairie and Forest Fire Fighting Expenses, Sudden and Accidental Pollution and Hostile Fire Pollution Liability and Employee Benefits Administrative Errors & Omissions Liability; no policy general aggregate will be permitted • Professional service activities integral to the OM&R Work, but not covering engineers, architects or other professional consultants, i.e., incidental professional liability risk of a Named Insured and their employed professionals is to be covered, but not the professional liability of independent fee-for-service professional consultants, architects or engineers • Waiver of subrogation of insurers' rights of recovery against all Named and/or Additional Insureds, including Project Co, HMQ, MTO, ORC, IO, all contractors, subcontractors, sub-subcontractors, professional consultants, engineers and architects (other than for their professional liability), Lenders, Lenders' Agent, as well as officers, directors, employees, servants and agents of the foregoing 		
<i>Underwriters</i>	Principal underwriters in compliance with Clause 16 of this Schedule 25		

Operational Term Insurance – Part 2 Highway 407 East Extension

From each Section Substantial Completion Date until Termination Date (Insurance for Operational Term)

Insurance to be provided, or caused to be provided, by Project Co

Type	Amount	Maximum Deductibles	Principal Cover
Environmental Impairment (Pollution) Liability	<p>Minimum \$[REDACTED] per claim and in the aggregate for all claims, inclusive of defense and all costs and expenses</p> <p>Principal Extensions:</p> <ul style="list-style-type: none"> Hazardous Substances occurring at or emanating from the OM&R Work or site during the Policy Period Microbial Matter (including Fungus/Mould) Biological Agents Underground / above ground storage tanks First Party Restoration and Clean-up Duty to Defend Contractual Liability <p>Permitted Exclusions:</p> <ul style="list-style-type: none"> Terrorism Intentional Non-Compliance WSIB 	<p>\$[REDACTED] per claim inclusive of defense and all costs and expenses</p>	<p>Pollution Liability insurance covering third party bodily injury and property damage liability, consequential loss or damage, including necessary clean-up costs, both at the OM&R Work site and off-site, as required. Coverage is extended to include underground and above ground storage tanks.</p> <p>Coverage shall be maintained continuously from and after each Section Substantial Completion Date and at all times thereafter until the Termination Date.</p> <p>This insurance shall include a twelve (12) month extended discovery period and reporting period provision in the event of termination of the Policy or in the event termination of the Project Agreement for any reason, including its expiration.</p> <p>This coverage shall be primary with respect to the OM&R Work without right of contribution of any insurance carried by HMQ, MTO, ORC, IO or the Lenders.</p>

Type	Amount	Maximum Deductibles	Principal Cover
	<ul style="list-style-type: none"> • War • Employers Liability • Nuclear Liability • Professional Liability 		
<i>Comments</i>	<ul style="list-style-type: none"> • It is permissible for Project Co to extend the Initial Works Pollution policy to include pollution events occurring during the OM&R Work, on an annual basis throughout the Project Term (if available). 		
<i>Underwriters</i>	Principal underwriters in compliance with Clause 16 of this Schedule 25		

Operational Term Insurance – Part 2 Highway 407 East Extension

From each Section Substantial Completion Date until Termination Date (Insurance for Operational Term)

Insurance to be provided, or caused to be provided, by Project Co

Type	Maximum Deductibles	Principal Cover
Automobile Liability \$[REDACTED] (Minimum) for Project Co and Project Co's contractor vehicles \$[REDACTED] (Minimum) for vehicles of any other contractor, subcontractors, sub-subcontractors, consultants, and sub-consultants, and workmen, tradesmen, or other persons working on or at the OM&R Work site		Standard Ontario Owners Form For all vehicles operated by Project Co, all contractor, all subcontractors, sub-subcontractors, consultants, and sub-consultants operated in connection with the OM&R Work. Coverage shall be maintained continuously from and after each Section Substantial Completion Date and at all times thereafter until the Termination Date. Business Automobile Liability insurance covering third party property damage and bodily injury liability (including accident benefits) arising out of any licensed vehicle. Policies shall be endorsed to preclude cancellation, except upon 60 days prior written notice provided to HMQ, MTO, ORC, IO and the Lenders.
<i>Underwriters</i>	Principal underwriters in compliance with Clause 16 of this Schedule 25	
Comprehensive Crime	\$[REDACTED] per extension	Comprehensive Crime insurance including coverage for Employee Dishonesty against the fraudulent/dishonest acts of employees of Project Co and its Affiliates, including additional coverage for Broad Form Money and Securities, Money Orders and Counterfeit Paper, Depositors' Forgery, Computer Fraud and Funds Transfer Fraud, Audit Expenses and Credit Card Forgery. Coverage shall be maintained continuously from and after each Section Substantial Completion Date and at all times thereafter

Type	Maximum Deductibles	Principal Cover
		<p>until the Termination Date.</p> <p>This coverage shall be primary with respect to the OM&R Work without right of contribution of any insurance carried by HMQ, MTO, ORC, IO or the Lenders.</p>
<i>Underwriters</i>	Principal underwriters in compliance with Clause 16 of this Schedule 25	

Operational Term Insurance – Part 2 Highway 407 East Extension

From each Section Substantial Completion Date until Termination Date (Insurance for Operational Term)

Insurance to be provided, or caused to be provided, by Project Co

Type		Maximum Deductibles	Principal Cover
WSIB	In accordance with Ontario Act's established benefits and schedules	Not Applicable	<p>(i) Project Co and its Affiliates shall obtain and maintain at Project Co's expense, WSIB Insurance, in accordance with the Province of Ontario requirements.</p> <p>(ii) Project Co shall ensure that satisfactory evidence of WSIB Insurance is provided by all Project Co Parties, including all consultants, sub consultants, contractors, subcontractors, suppliers and tradesmen working at the Site.</p> <p>Prior to commencement of the OM&R Work, each of the foregoing shall provide satisfactory written confirmation of compliance, from the appropriate authority, including confirmation that all required assessments have been paid to date.</p> <p>Upon completion of the OM&R Work, Project Co shall be provided with satisfactory written confirmation that all required assessments have been paid to date.</p> <p>On request, within 30 days of such request, Project Co shall deliver to HMQ evidence of the WSIB coverage maintained by any person involved in the OM&R Work or confirmation of that person's exemption from WSIB coverage.</p>

SCHEDULE 26**RECORD PROVISIONS****1. General Requirements**

- 1.1 Project Co shall prepare, retain and maintain, at its own expense, all the records (including superseded records) referred to in Section 2.1 of this Schedule 26, as follows:
- (a) in accordance with this Section 1 of this Schedule 26;
 - (b) in accordance with the Project Agreement;
 - (c) in accordance with the requirements of Good Industry Practice;
 - (d) having due regard to the guidelines and policies of the Office of the Information and Privacy Commissioner of Ontario;
 - (e) in accordance with the most stringent of Project Co's, the Construction Contractor's and the OM&R Provider's normal business practices;
 - (f) in accordance with Canadian GAAP;
 - (g) in chronological order;
 - (h) in electronic format on HMQ's E-Builder system or HMQ's designated record keeping system;
 - (i) in sufficient detail, in appropriate categories and generally in such a manner as to enable Project Co to comply with Project Co's obligations under Section 37 of this Project Agreement; and
 - (j) in a form that is capable of audit.
- 1.2 Project Co shall retain and maintain all records at the Extension or otherwise on the Site, in addition to retaining and maintaining records referred to in Section 2.1 of this Schedule 26 in electronic format on HMQ's E-Builder system or HMQ's designated record keeping system.
- 1.3 Wherever practical, original records shall be retained and maintained in a hard copy form. Project Co may retain true copies of original records where it is not practical to retain original records.
- 1.4 Any drawings (including, without limitation, the As Built Drawings) required to be made or supplied pursuant to this Project Agreement shall be on the most updated version of the applicable software and editable in updated base software format, of a size appropriate to show the detail to be depicted clearly without magnifying aids, shall be consistent in size and format to drawings previously submitted by Project Co to HMQ, and shall conform to the Output Specifications, Good Industry Practice and the CAD Standards. Where by prior agreement HMQ and Project Co have agreed to accept DVD or other storage media, Project Co shall make or

supply drawings and other documents in such form as has been agreed by the Parties and shall include secure back up facilities.

- 1.5 Records may, with the consent of HMQ, not to be unreasonably withheld or delayed, be stored in electronic form if HMQ has access thereto and will continue to have access thereto, such that HMQ will be able to read, copy, download, and search same without licence or payment.
- 1.6 Subject to Sections 1.7 and 1.8 of this Schedule 26, Project Co shall retain and maintain in safe storage, at its expense, all records referred to in Section 2.1 of this Schedule 26 for a minimum period of the greater of:
 - (a) 7 years; and
 - (b) 6 years following Section Substantial Completion of the Section to which the records relate or, if the records relate to the Project generally, 6 years following Substantial Completion,or such longer period as required by Applicable Law.
- 1.7 Project Co shall notify HMQ if Project Co wishes to destroy any records referred to in this Schedule 26, or in respect of which the required period under Section 1.6 or under Applicable Law for their retention has expired. The Parties agree that:
 - (a) within 60 days of such notice, HMQ may elect to require Project Co to deliver such records to HMQ, in which case Project Co shall, at the expense of HMQ, deliver such records (with the exception of Sensitive Information) to HMQ in the manner and to the location as HMQ shall specify; or
 - (b) if HMQ fails to notify Project Co of its election pursuant to Section 1.7(a) of this Schedule 26 within such 60 day period, Project Co may, at its expense, destroy such records.
- 1.8 In the event of termination of this Project Agreement prior to the Expiry Date, Project Co shall deliver all records that Project Co retains and maintains pursuant to this Schedule 26 to HMQ in the manner and to the location that HMQ shall reasonably specify. HMQ shall make available to Project Co all the records Project Co delivers pursuant to this Section 1.8 of this Schedule 26 subject to prior reasonable notice. Project Co may deliver true copies of original records required by:
 - (a) statute to remain with Project Co;
 - (b) Project Co in connection with its fulfilment of any outstanding obligations under this Project Agreement; or
 - (c) Project Co in connection with its fulfilment of any outstanding obligations under the Lending Agreements.

- 1.9 Where the termination of this Project Agreement arises:
- (a) as a result of an HMQ Event of Default or pursuant to Section 47.3 of this Project Agreement, then the costs of delivering the records and the costs for retaining such records in safe storage will be borne by HMQ; or
 - (b) for any other cause, then the costs of delivering the records and the costs for retaining such records in safe storage for a period of at least six years following the Termination Date (unless a longer period is required by Applicable Law), shall be borne by Project Co.
- 1.10 Within 30 days after the end of each Contract Year, Project Co shall deliver to HMQ a report, as reasonably requested by HMQ in connection with HMQ'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 HMQ or that may be owing by HMQ to Project Co. The Parties acknowledge and agree that the contents of any such report or the failure to mention any matter in any such report shall not limit either Party's rights or remedies against the other Party as contemplated by this Project Agreement.
- 1.11 Project Co shall provide to HMQ not later than 60 days after the end of each fiscal quarter part or all of which falls in a Contract Year, a copy of Project Co's unaudited consolidated financial statements, in respect of that period, and not later than 120 days after the end of such fiscal year, a copy of Project Co's audited financial statements, in respect of that period, in each case, prepared in accordance with Applicable Law and Canadian GAAP, together with copies of all related auditors' reports and, to the extent publicly available, all related directors' reports and other notices and circulars to shareholders or partners, all of which documents, whether or not marked or identified as confidential or proprietary but subject to the exceptions contained in Section 52 of this Project Agreement, shall be treated by HMQ as Confidential Information of Project Co.

2. Records To Be Kept

- 2.1 Without limiting any other requirement of this Project Agreement, Project Co shall prepare, retain and maintain at its own expense:
- (a) this Project Agreement, its Schedules and the Project Documents, including all amendments to such agreements;
 - (b) all records relating to the appointment and replacement of the HMQ Representative and the Project Co Representative;
 - (c) any documents, drawings (including, without limitation, the As Built Drawings) or submissions in accordance with Schedule 10 - Review Procedure;
 - (d) any documents relating to Development Approvals and other Project Co Permits, Licences and Approvals, including any refusals and appeals relating to any applications;

- (e) all records relating to any statutory inspections of the Extension or the Site, including any roadways;
- (f) any notices, reports, results and certificates relating to Section Substantial Completion and Section Final Completion of each of the Crossing Roads Section and the Main Line Section, Substantial Completion and Final Completion of the Initial Works and completion of the Project Co Commissioning;
- (g) all operation and maintenance manuals;
- (h) any documents relating to events of Force Majeure, Delay Events, Compensation Events, Relief Events and Excusing Causes;
- (i) all formal notices, reports or submissions made to or received from HMQ in connection with the provision of the OM&R Work, the monitoring of performance, the availability of the Extension, and payment adjustments;
- (j) all certificates, licences, registrations or warranties related to the performance of the OM&R Work;
- (k) the invoices for Monthly OM&R Payments;
- (l) all documents submitted in accordance with Schedule 22 - Variation Procedure;
- (m) any documents related to decisions resulting from the Dispute Resolution Procedure;
- (n) any documents related to a Project Co Change in Ownership or Change in Control;
- (o) any documents relating to any Refinancing;
- (p) all accounts for Taxes and transactions relating to Taxes, including in relation to HST applicable to the Project, but excluding any records for:
 - (i) Project Co's liabilities or payments under the *Income Tax Act* (Canada), the *Income Tax Act* (Ontario) or any similar statute in any other jurisdiction;
 - (ii) Project Co's liabilities or payments for capital taxes based on or measured by the capital of Project Co;
 - (iii) the withholdings of any payments by Project Co; or
 - (iv) any business or activity in addition to the business or activities related to, and conducted for, the purpose of the Project;
- (q) the financial accounts of Project Co referred to in Section 1.11 of this Schedule 26 above;
- (r) such documents as HMQ may reasonably require relating to Business Opportunities in which HMQ has a right or interest;

- (s) all records required by Applicable Law (including in relation to health and safety matters) to be maintained by Project Co with respect to the Project Operations;
 - (t) any documents relating to insurance and insurance claims;
 - (u) all Jointly Developed Materials; and
 - (v) all other records, documents, information, notices or certificates expressly required to be produced or maintained by Project Co pursuant to this Project Agreement.
- 2.2 Either Party may review the documents required to be prepared, retained and maintained by Project Co pursuant to Section 2.1 of this Schedule 26.

SCHEDULE 27

DISPUTE RESOLUTION PROCEDURE

1. General

- 1.1 All disputes, controversies, or claims arising out of or relating to any provision of this Project Agreement, or the alleged wrongful exercise or failure to exercise by a Party of a discretion or power given to that Party under this Project Agreement, or the interpretation, enforceability, performance, breach, termination, or validity of this Project Agreement, including, without limitation, this Schedule 27, or any matter referred to for resolution pursuant to this Schedule 27 (collectively and individually, a “**Dispute**”) shall be resolved in accordance with the provisions of this Schedule 27.
- 1.2 The Parties agree that at all times, both during and after the Project Term, each of them will make bona fide efforts to:
- (a) resolve by amicable negotiations any and all Disputes arising between them on a without prejudice basis; and
 - (b) have all Disputes resolved at the lowest level of management before engaging the dispute resolution processes described in Sections 2 to 9 of this Schedule 27.
- 1.3 If the Parties are unable to resolve a Dispute at the lowest level of management pursuant to Section 1.2(b) of this Schedule 27, either Party may deliver to the HMQ Representative or the Project Co Representative, as applicable, a written notice of dispute (the “**Notice of Dispute**”), which Notice of Dispute shall, subject to the terms of this Schedule 27 requiring resolution of a Dispute pursuant to a specific dispute resolution process set forth in this Schedule 27, initiate the dispute resolution process described in Sections 2 to 9 of this Schedule 27, as applicable, as more particularly described in this Schedule 27. To be effective, the Notice of Dispute must expressly state that it is a notice of dispute, set out the particulars of the matter in dispute, describe the remedy or resolution sought by the Party issuing the Notice of Dispute and be signed by the HMQ Representative, if given by HMQ, or by the Project Co Representative, if given by Project Co.

2. Amicable Resolution by Party Representatives

- 2.1 On receipt of a Notice of Dispute, the HMQ Representative and the Project Co Representative (collectively “**Party Representatives**” and individually “**Party Representative**”) shall each promptly and diligently make all reasonable bona fide efforts to resolve the Dispute. Each Party Representative shall provide to the other, on a without prejudice basis, frank, candid and timely disclosure of relevant facts, information and documents (except such documentation that is subject to legal privilege) as may be required or reasonably requested by the other to facilitate the resolution of the Dispute.

3. Amicable Resolution by Senior Officers of each Party

- 3.1 If, following the process referred to in Section 2 of this Schedule 27 (or as otherwise agreed to in writing by the Parties pursuant to Section 13.6 of this Schedule 27), a Dispute is not resolved by the Party Representatives within 10 Business Days after receipt by a Party of the applicable Notice of Dispute, or within such longer period of time as the Party Representatives may both expressly agree,

then at any time after the expiry of such period of time either Party Representative may, by notice in writing to the other, refer the Dispute to an executive of a Party who:

- (a) is in a position of authority above that of the HMQ Representative or the Project Co Representative, as the case may be; and
- (b) subject only to approval of the board of directors or similar governing body of the Party, has full authority to resolve and settle the Dispute.

3.2 Once a Dispute is referred to them, the executive of each Party shall promptly and diligently make all reasonable bona fide efforts to resolve the Dispute. All discussions and negotiations, and all documents exchanged, between them related to the Dispute shall be on a without prejudice basis to facilitate the resolution of the Dispute.

4. Independent Certifier

4.1 This Section 4 applies to all Disputes that fall within the description of Section 4.2 of this Schedule 27 that cannot be resolved as provided in Sections 2 and 3 of this Schedule 27 or as otherwise agreed to in writing by the Parties pursuant to Section 13.6 of this Schedule 27.

4.2 All Disputes related to the Initial Works and that:

- (a) arise prior to, or otherwise in relation to, Section Substantial Completion of the Crossing Roads Section or the Main Line Section or Substantial Completion;
- (b) relate to completion of Minor Deficiencies;
- (c) relate to whether any proposed work constitutes a Variation;
- (d) relate to a review of Estimates or any other matters relating to Variations as the Independent Certifier is entitled to review and determine pursuant to Section 39 of the Project Agreement;
- (e) are referred to in this Project Agreement for determination by the Independent Certifier; or
- (f) relate to the Certification Services or any Certification Service Variations (as those terms are defined in the Independent Certifier Agreement);

shall initially be submitted to the Independent Certifier for independent determination by the Independent Certifier within such period as may be specified in this Project Agreement, or if no period is specified, within 10 Business Days after submission to the Independent Certifier.

4.3 Without limiting any obligations of the Parties under the Independent Certifier Agreement, the Parties shall cooperate with the Independent Certifier and provide such information, records and documents as may be required by the Independent Certifier to make the determination within the period referred to in Section 4.2 of this Schedule 27.

4.4 The Independent Certifier's decision to issue or not to issue a Section Substantial Completion Certificate in respect of the Crossing Roads Section or the Main Line Section or the Substantial Completion Certificate shall be final and binding on the Parties solely in respect of determining the Crossing Roads Section Payment Commencement Date, the Main Line Section Payment

Commencement Date or the Substantial Completion Payment Commencement Date respectively, and a Dispute in relation to the Crossing Roads Section Payment Commencement Date, the Main Line Section Payment Commencement Date or the Substantial Completion Payment Commencement Date shall not be subject to resolution pursuant to this Schedule 27. Save and except as aforesaid, the Independent Certifier's determinations are not binding on the Parties, and all Disputes in relation to the Independent Certifier's decisions shall be resolved pursuant to this Schedule 27, provided however that Sections 5 and 6 of this Schedule 27 shall not apply unless otherwise agreed by the Parties on terms acceptable to the Parties.

5. Expert Determination

5.1 If, following the process referred to in Section 2 and 3 of this Schedule 27 (or as otherwise agreed to in writing by the Parties pursuant to Section 13.6 of this Schedule 27), any Dispute as to:

- (a) whether a Liquid Market exists;
- (b) whether amendments proposed by potentially Qualifying Tenders to this Project Agreement or other Project Documents are material;
- (c) the Adjusted Highest Qualifying Tender Price; or
- (d) the determination of the Estimated Fair Value in accordance with Schedule 23 - Compensation on Termination of this Project Agreement,

has not been resolved within 10 Business Days after the date the Dispute was referred to the executives of the Parties for resolution by them, or within such longer period of time as the executives may expressly agree in writing in respect of a specific Dispute to allow them to continue their efforts to resolve the Dispute, then either Party may at any time thereafter, by written notice signed by their Party Representative and delivered to the other Party Representative, require that the Dispute be resolved on an expedited basis by a qualified and experienced expert (the "Expert").

5.2 The Expert shall be appointed as follows:

- (a) if the Parties agree on the Expert, the Parties shall jointly appoint the Expert as soon as possible and, in any event, within 5 Business Days after delivery of the notice requiring that the Dispute be resolved by an Expert; and
- (b) if the Parties fail to agree or jointly appoint the Expert within such 5 Business Day period, either Party may apply to the Ontario Superior Court of Justice for appointment of the Expert, in which case the court shall appoint the Expert at the earliest opportunity from the list of potential Experts submitted by the Parties or, if either or both Parties fail to submit their list of potential Experts within 7 Business Days, the court may appoint such person as the Expert who meets the requirements set out in this Schedule 27 for qualifications and experience of the Expert.

5.3 No one shall be nominated or appointed to act as an Expert who is or was in any way interested, financially or otherwise, in the conduct of the Project Operations or in the business affairs of HMQ, Project Co, or any consultant, subconsultant or subcontractor of any of them.

- 5.4 Subject to the matters the Expert is authorized to determine pursuant to Section 5.1 of this Schedule 27, the Expert will be appointed on a Dispute by Dispute basis, with each Expert having the qualifications and experience relevant to the issues in the particular Dispute for which the Expert is appointed.
- 5.5 The Expert shall determine the appropriate process for timely and cost effective resolution of the Dispute and, without limiting the generality of the foregoing, the Expert has discretion to, among other things:
- (a) solicit submissions and documents from both Parties, and impose deadlines for the receipt of such submissions;
 - (b) require some or all of the evidence to be provided by affidavit;
 - (c) direct either or both Parties to prepare and provide the Expert with such documents, test results or other things as the Expert may require to assist the Expert in the resolution of the Dispute and rendering of a decision;
 - (d) require either Party to supply or prepare for examination by the Expert and the other Party, any document or information the Expert considers necessary;
 - (e) inspect the Project Operations, giving reasonable notice to each Party of the time when, and the place where, the Expert intends to conduct any inspections;
 - (f) convene meetings of the Parties to have the Parties discuss the issues in Dispute in the presence of the Expert; and
 - (g) take, or require either or both Parties to take and provide to the Expert, such measurements, perform such tests, audit such processes and procedures, and take any and all such other measures and steps as the Expert considers necessary to make a final determination in the Dispute.
- 5.6 The Expert shall render a decision as soon as possible and, in any event, shall use all reasonable efforts to render a decision no later than 10 Business Days after the date of the appointment of the Expert, or such longer period of time as agreed to in writing by the Parties. The Expert shall give reasons or a summary of reasons for the Expert's decision.
- 5.7 The Expert shall keep all information about the Dispute confidential and shall not disclose such information to anyone other than the Parties.
- 5.8 Each Party shall bear its own costs of the process for resolution of the Dispute by the Expert. In addition, the costs of the Expert shall be borne equally by the Parties.
- 5.9 Subject to a right to require the Dispute to be arbitrated or litigated pursuant to Sections 7, 8 and 9 of this Schedule 27 by giving the required notices to arbitrate or litigate within the time periods specified therein, the Parties agree that the Expert's determination shall be final and binding on both Parties and not subject to appeal, adjudication, arbitration, litigation or any other dispute resolution process, and both Parties expressly waive all rights of appeal in connection with the Expert's determination. For greater certainty, the final determination by the Expert shall not be referred to an Adjudicator (as defined below) for determination under Section 6 of this Schedule 27.

6. Adjudication

- 6.1 If, the Parties fail to resolve any Dispute through the process referred to in Section 2 and 3 of this Schedule 27 within 15 Business Days following referral of the Dispute to an executive in accordance with Section 3.1 (or such other period as may be agreed or expressly stipulated in respect of the relevant matter) and it is not a Dispute referred to in Sections 4.2 and 5.1 of this Schedule 27 or a Dispute referred to arbitration or litigation pursuant to Sections 4.4 or 5.9 of this Schedule 27 (except as otherwise agreed to in writing by the Parties pursuant to Section 13.6 of this Schedule 27), either Party may refer the Dispute to a single adjudicator selected in accordance with Section 6.2 of this Schedule 27 (the “**Adjudicator**”).
- 6.2 The Adjudicator nominated by the Party issuing the Notice of Dispute shall be agreed between the Parties or, failing agreement, shall be determined by the Ontario Superior Court of Justice (following an application thereto by the Party issuing the Notice of Dispute) and shall:
- (a) be independent of and at arm’s length to Project Co, HMQ, the Lenders and any other person having an interest in the Extension or any of the Project Documents; and
 - (b) if the Dispute arises during the Project Term, be familiar with the construction, operation and management of roads; and
 - (c) be a person who has the qualifications and experience with respect to the particular issues in Dispute.
- 6.3 The Adjudicator shall resolve the Dispute in accordance with the United Kingdom Construction Industry Council’s *Model Adjudication Procedure: Fourth Edition* the terms of which are incorporated herein by reference, subject to the following modifications:
- (a) notwithstanding paragraph 14 of the *Model Adjudication Procedure*, within 7 Business Days of appointment in relation to a particular Dispute, the Adjudicator shall require the Parties to submit in writing their respective arguments; provided that, where necessary, the onus of proving that the Extension is operating in accordance with all relevant specifications and requirements set forth in the Project Agreement is on Project Co. The Adjudicator shall, in his absolute discretion, determine the procedure of the adjudication proceedings including without limitation, whether a hearing is necessary in order to resolve the Dispute;
 - (b) notwithstanding paragraphs 16 and 24 of the *Model Adjudication Procedure*, in any event, and subject to Section 6.4 of this Schedule 27, the Adjudicator shall provide to both Parties his written decision on the Dispute, within 10 Business Days of appointment (or within such other period as the Parties may agree after the reference). The Adjudicator shall give detailed reasons for the Adjudicator’s decision. The Adjudicator shall be entitled to award compensation to a Party and shall be entitled to state the relief for such Party, which may include deeming the occurrence of any Relief Event, Delay Event, Compensation Event and/or Excusing Cause. Unless otherwise provided for in this Schedule 27, the Adjudicator’s decision shall be binding on the Parties, but not final;
 - (c) notwithstanding paragraphs 29 and 30 of the *Model Adjudication Procedure*, the Adjudicator’s costs, including any legal fees, of any reference shall be borne as the Adjudicator shall specify or in default, equally by the Parties. In no circumstances shall the Adjudicator be entitled to order a successful or partially successful Party in an adjudication

to pay more than one half of the Adjudicator's fees. Each Party shall bear its own costs arising out of the reference, including legal costs and the costs and expenses of any witnesses;

- (d) the Adjudicator shall be deemed not to be an arbitrator but shall render his decision as an expert and the provisions of the *Arbitration Act* (Ontario) and the law relating to arbitration shall not apply to the Adjudicator or his determination or the procedure by which he reached his determination;
- (e) notwithstanding paragraph 26 of the *Model Adjudication Procedure*, the Adjudicator shall act impartially and may take the initiative in ascertaining the facts and the law. Unless otherwise expressly provided in this Project Agreement, the Adjudicator shall have the power to open up, review and revise any opinion, certificate, instruction, determination or decision of whatever nature given under this Project Agreement. For greater certainty, the Independent Certifier's decision to issue or not to issue a Section Substantial Completion Certificate in respect of the Crossing Roads Section or the Main Line Section or the Substantial Completion Certificate shall be final and binding solely in respect of determining the Crossing Roads Section Payment Commencement Date, the Main Line Section Payment Commencement Date or the Substantial Completion Payment Commencement Date, respectively, and a Dispute in relation to the Crossing Roads Section Payment Commencement Date, the Main Line Section Payment Commencement Date or the Substantial Completion Payment Commencement Date shall not be subject to resolution pursuant to this Schedule 27;
- (f) the Adjudicator shall execute a non-disclosure agreement (the "**Non-Disclosure Agreement**") in a form satisfactory to the Parties, providing that, among other things, all information, data and documentation disclosed or delivered by a Party to the Adjudicator in consequence of or in connection with his appointment as the Adjudicator shall be treated as confidential and without prejudice to any potential litigation proceedings. The Adjudicator shall not, save except as expressly permitted by the Non-Disclosure Agreement, disclose to any person any such information, data or documentation, and all such information, data or documentation shall remain the property of the Party disclosing or delivering the same and all copies shall be returned to such Party on completion of the Adjudicator's mandate with respect to the Dispute; and
- (g) notwithstanding paragraph 34 of the *Model Adjudication Procedure*, the Adjudicator shall not be liable for anything done or omitted to be done in the discharge or purported discharge of his functions as Adjudicator unless the act or omission is in bad faith. Any employee or agent of the Adjudicator is similarly protected from liability.

6.4 Where it is determined by the Adjudicator that:

- (a) corrective measures must be taken by Project Co to resolve a Dispute, those measures must be implemented by Project Co as soon as reasonably practical, without payment by HMQ unless (i) the Adjudicator determines otherwise; or (ii) that determination is subsequently reversed by a binding and final determination made in a court proceeding;
- (b) corrective measures are not required to be taken by Project Co to resolve a Dispute, HMQ may, at its option, require corrective measures to be taken forthwith by Project Co, in which case those measures must be implemented by Project Co as soon as reasonably practical

provided that HMQ undertakes to pay Project Co for Direct Costs, plus reasonable overhead and profit incurred by Project Co as such costs are so incurred; provided that no such costs should exceed the amount Project Co is entitled to receive pursuant to Schedule 22 - Variation Procedure thereby incurred upon completion of those corrective measures, but any such undertaking and payment shall be without prejudice to HMQ's right to contest the determination made by the Adjudicator in a subsequent proceeding. HMQ shall provide Project Co such reasonable extensions of time in respect of Project Co's obligations under this Agreement necessary to allow Project Co to effect the corrective measures and such extension of time may be treated as a Delay Event or an Excusing Cause, as applicable, if so determined by the Adjudicator.

- 6.5 Subject to a right to require the Dispute to be arbitrated or litigated pursuant to Sections 7, 8 and 9 of this Schedule 27 by giving the required notices to arbitrate or litigate within the time periods specified therein, the Parties agree that the Adjudicator's determination is final and binding and not subject to appeal, arbitration, litigation or any other dispute resolution process, and both Parties expressly waive all rights of appeal in connection with the Adjudicator's determination.

7. Referral of Disputes to Arbitration or Litigation

7.1 If:

- (a) the amount awarded by the Expert to a Party pursuant to Section 5 of this Schedule 27 or by the Adjudicator pursuant to Section 6 of this Schedule 27 is more than \$[REDACTED] (index linked) in the aggregate or \$[REDACTED] (index linked) in any one year;
- (b) the Dispute involves issues other than monetary claims by one Party against the other Party and which a Party reasonably believes are material and significant to that Party; or
- (c) a Notice of Dispute has been issued for a Dispute in relation to the Independent Certifier's decisions for which Section 4.4 of this Schedule 27 provides that Sections 5 and 6 of this Schedule 27 shall not apply to resolve such Dispute,

then, subject to the right of a Party to require litigation of the Dispute pursuant to Section 9.1 of this Schedule 27 or a consolidation of proceedings pursuant to Section 11 of this Schedule 27, either Party may, by written notice signed by their Party Representative, request that the Dispute be resolved by arbitration pursuant to Section 8 of this Schedule 27 upon the written consent of the other Party. Such notice will not be effective unless it indicates it is a notice to arbitrate, is signed by the Party Representative and is delivered to the other Party Representative within 15 Business Days after receipt of the Expert's determination, the Adjudicator's decision or the Notice of Dispute referred to in Section 7.1(c) of this Schedule 27, as applicable, and provided further that such notice expressly identifies the specific Dispute and determination of the Expert, decision of the Adjudicator or the Independent Certifier, as applicable, that is to be the subject of the arbitration.

- 7.2 If a Party is entitled to refer a Dispute to which Sections 5 or 6 of this Schedule 27 apply to arbitration or litigation pursuant to Sections 7.1 or 9.1 of this Schedule 27 then, unless the Parties otherwise expressly agree in writing, all information, documents and submissions prepared by a Party for the Expert or the Adjudicator which are not business records that would otherwise be kept in the normal course of business by the Party for its business purposes, and all decisions and determinations by the Expert or the Adjudicator, shall be confidential and inadmissible in any arbitration or litigation

proceeding. For greater certainty, neither the Expert nor the Adjudicator shall be called as a witness by either party in any arbitration or litigation proceeding.

8. Resolution by Arbitration

8.1 Upon the mutual written consent of the Parties,

- (a) where the Parties fail to resolve a Dispute through the process set out in Sections 2, 3, 4, 5 and 6 (to the extent required) of this Schedule 27, and
- (b) all other requirements set out in this Schedule 27 have been satisfied,

such Dispute may be referred to arbitration in accordance with the *Arbitration Act, 1991* (Ontario) and this Section.

8.2 Disputes referred to arbitration shall be resolved by a single arbitrator unless one of the Parties, by notice in writing delivered to the other Party within 5 Business Days after a notice to arbitrate pursuant to Section 7.1 of this Schedule 27 has been delivered, expressly requires that the Dispute that is the subject of that notice to arbitrate be resolved by a three person arbitration tribunal, in which case that particular Dispute shall be resolved by a three person arbitration tribunal.

8.3 If the arbitration tribunal is comprised of a single arbitrator, the arbitrator shall be appointed as follows:

- (a) if the Parties agree on the arbitrator, the Parties shall jointly appoint the arbitrator as soon as possible and in any event within 5 Business Days after delivery of the notice to arbitrate pursuant to Section 7 of this Schedule 27; and
- (b) if the Parties fail to agree or jointly appoint the arbitrator within such 5 Business Day period, either Party may apply to the Ontario Superior Court of Justice for appointment of the arbitrator, in which case the court shall appoint the arbitrator at the earliest opportunity in accordance with the following:
 - (i) from the lists of potential arbitrators submitted to the court by the Parties, provided that potential arbitrators meeting the necessary qualifications and experience set out in this Schedule 27 are on the list; or
 - (ii) if one Party fails to submit its list of potential arbitrators to the court within 5 Business Days of a request from the court to submit a list, from the list submitted by the other Party provided that potential arbitrators meeting the necessary qualifications and experience set out in this Schedule 27 are on the list of that other Party; or
 - (iii) if no list is submitted by either Party, or if the list or lists submitted do not include potential arbitrators with the necessary qualifications and experience, the court shall be entitled at its sole discretion to appoint anyone who meets the requirements set out in this Schedule 27 for the qualifications and experience of the arbitrator.

8.4 If the arbitration tribunal is comprised of three arbitrators:

- (a) the arbitrators shall be appointed as follows:
 - (i) each Party shall appoint one arbitrator no later than 5 Business Days after delivery of the notice to arbitrate pursuant to Section 7 of this Schedule 27;
 - (ii) if a Party fails to appoint an arbitrator within 5 Business Days after delivery of the notice to arbitrate, the other Party is entitled to apply to the Ontario Superior Court of Justice to appoint that arbitrator, in which case the court shall appoint that arbitrator at the earliest opportunity using a comparable process to that described in Section 8.3(b) of this Schedule 27;
 - (iii) the arbitrators appointed in accordance with the foregoing shall, within 5 Business Days after their appointment, jointly appoint a third arbitrator who shall also act as the chair of the arbitration tribunal and who, in addition to all other required qualifications, shall have experience in arbitration or judicial processes and procedures; and
 - (iv) if the two arbitrators appointed by the Parties fail to appoint a third arbitrator within the required time, either of the other two arbitrators may apply to the Ontario Superior Court of Justice for appointment of the third arbitrator, in which case the court shall appoint the third arbitrator at the earliest opportunity using a comparable process to that described in Section 8.3(b) of this Schedule 27; and
- (b) the arbitrators appointed by the Parties shall at all times be neutral and act impartially and shall not act as advocates for the interests of the Party who appointed them.

8.5 All arbitrators must have qualifications and experience relevant to the issues in the Dispute and also have qualifications and experience as arbitrators.

8.6 No one shall be nominated or appointed to act as an arbitrator who is or was in any way interested, financially or otherwise, in the conduct of the Project Operations or in the business affairs of HMQ, Project Co, or any consultant, subconsultant or subcontractor of any of them.

8.7 The arbitrator(s) shall have the jurisdiction and power to:

- (a) amend or vary any and all rules under the *Arbitration Act, 1991* (Ontario), including rules relating to time limits, either by express agreement of the Parties or, failing such agreement, as the arbitrator(s) consider appropriate and necessary in the circumstances to resolve the Dispute and render an award;
- (b) require some or all of the evidence to be provided by affidavit;
- (c) hold a hearing at which evidence and submissions are presented by the Parties;
- (d) direct either or both Parties to prepare and provide the arbitrator(s) with such documents, test results or other things as the arbitrator(s) may require to assist them in the resolution of the Dispute and rendering of an award;

- (e) require either Party to supply or prepare for examination by the arbitrator(s) and the other Party, any document or information the arbitrator(s) considers necessary;
 - (f) inspect the Project Operations, giving reasonable notice to each Party of the time when, and the place where, the arbitrator(s) intend(s) to conduct any inspections;
 - (g) award any remedy or relief that a court or judge of the Ontario Superior Court of Justice could order or grant subject to and in accordance with this Project Agreement, including, without limitation, interim orders, interim and permanent injunctions, and specific performance; and
 - (h) require either or both Parties to take and provide to the arbitrator(s) such measurements, perform such tests, perform such audits, or take any and all such other measures or steps as the arbitrator(s) consider necessary or desirable to aid them in making a fair and reasonable award.
- 8.8 The place of arbitration shall be Toronto, Ontario. The language of the arbitration shall be English.
- 8.9 The costs of an arbitration are in the discretion of the arbitrator(s) who, in addition to any jurisdiction and authority under applicable law to award costs, has the jurisdiction and authority to make an order for costs on such basis as the arbitrator(s) considers appropriate in the circumstances, including to award actual legal fees and disbursements and expert witness fees, and to specify or order any or all of the following:
- (a) the Party entitled to costs;
 - (b) the Party who must pay the costs;
 - (c) the amount of the costs or how that amount is to be determined; and
 - (d) how all or part of the costs must be paid.
- 8.10 In exercising discretion to award costs, however, the arbitrator(s) will take into account the desire of the Parties that costs should generally be awarded to each Party in proportion to the relative success that each Party has in the arbitration.
- 8.11 The award of the arbitrator(s) shall be final and binding upon both Parties, and both Parties expressly waive all rights of appeal in connection with the award of the arbitrator(s). Judgment may be entered upon the award in accordance with Applicable Law in any court having jurisdiction.
- 8.12 The Parties agree to and shall co-operate fully with the arbitrator(s) and proceed with the arbitration expeditiously, including in respect of any hearing, in order that an award may be rendered as soon as practicable by the arbitrator(s), given the nature of the Dispute. The arbitrator(s) shall render a decision as soon as possible and, in any event, shall use all reasonable efforts to render a decision no later than 20 Business Days after the date of the hearing, or such longer period of time as agreed to in writing by the Parties. If the arbitration tribunal is comprised of three arbitrators, the decision of a majority of the arbitration tribunal shall be deemed to be the decision of the arbitration tribunal, and where there is no majority decision, the decision of the chair of the arbitration tribunal shall be deemed to be the decision of the arbitration tribunal.

- 8.13 This Project Agreement, including this Schedule 27, constitutes an agreement to arbitrate that shall be specifically enforceable.
- 8.14 Any arbitrator appointed pursuant to this Section 8 of this Schedule 27 shall keep all information about the Dispute confidential and shall not disclose such information to anyone other than the Parties.

9. Litigation

9.1 Notwithstanding that a notice to arbitrate has been delivered pursuant to Section 7.1 of this Schedule 27, following receipt of the Expert's award or determination pursuant to Section 5 of this Schedule 27, or of the Adjudicator's award or determination pursuant to Section 6 of this Schedule 27, or if applicable a Notice of Dispute has been issued following receipt of a decision of the Independent Certifier if the Dispute is a Dispute in relation to the Independent Certifier's decisions for which Section 4.4 of this Schedule 27 provides that Sections 5 and 6 of this Schedule 27 shall not apply, if one or more of the following apply then either Party may elect, by written notice signed by their Party Representative, to require that the Dispute be referred to and resolved solely by litigation in the Ontario Superior Court of Justice, and both Parties agree to attorn to the exclusive jurisdiction of the courts of the Province of Ontario in respect of the Dispute:

- (a) if the actual or potential total value or amount at issue in the Dispute (as determined by adding all claims and counterclaims) is more than \$[REDACTED] (index linked) in the aggregate or \$[REDACTED] (index linked) in any one year; or
- (b) if the Dispute is considered by HMQ to involve material issues of public health or safety.

Such notice will not be effective unless it indicates it is a notice to submit the Dispute to litigation, is signed by the Party Representative and is delivered to the other Party Representative within 15 Business Days after receipt of the Expert's determination, the Adjudicator's determination, or the Notice of Dispute referred to in Section 7.1(c) of this Schedule 27, as applicable, and provided further that such notice expressly identifies the specific Dispute and determination of the Adjudicator, Expert or Independent Certifier, as applicable, that is to be the subject of the litigation.

- 9.2 If neither Party delivers a notice of election to resolve a particular Dispute by litigation in the manner and within the time specified in Section 9.1 of this Schedule 27, then:
- (a) provided that one Party has, in the manner and within the time period specified in Section 7.1 of this Schedule 27, given notice to the other Party of election to resolve that Dispute by arbitration, and subject to a consolidation of proceedings pursuant to Section 11 of this Schedule 27, that Dispute shall be resolved only by arbitration pursuant to Sections 8.2 to 8.14 of this Schedule 27; and
 - (b) subject to Section 9.2(a), where a Dispute was determined by the Expert, the Expert's determination is final and binding on both Parties and not subject to appeal, arbitration, litigation or any other dispute resolution process.

10. Consolidation of Project Agreement Adjudication, Arbitration and Litigation

10.1 For all Disputes that arise in respect of any Section prior to Section Substantial Completion of the relevant Section, or in respect of the entire Extension prior to Substantial Completion, unless:

- (a) both Parties otherwise agree; or
- (b) the issue in a particular Dispute arises in connection with the Review Procedure; or
- (c) the issue in a particular Dispute is such that waiting until after Section Substantial Completion of the relevant Section or Substantial Completion, as applicable, to resolve that Dispute will cause irreparable harm to one of the Parties; or
- (d) the issue in a particular Dispute arises in connection with requirements of achieving or deficiencies in not achieving Section Substantial Completion of the Crossing Roads Section or the Main Line Section or Substantial Completion, as applicable; or
- (e) in respect to a particular Dispute, the Dispute is consolidated with Third Party Disputes (as hereinafter defined) pursuant to Section 11 of this Schedule 27;

all adjudication, arbitral and litigation proceedings between the Parties prior to Section Substantial Completion of the relevant Section or Substantial Completion, as applicable, shall be stayed and consolidated into, as applicable, a single adjudication, arbitration and a single litigation proceeding, with the adjudication, arbitration and, if applicable, litigation, proceeding promptly and expeditiously after Section Substantial Completion of the relevant Section or Substantial Completion, as applicable.

11. Consolidation with Third Party Disputes

11.1 Subject to Section 11.4 of this Schedule 27, if either Party is involved in an arbitration in the Province of Ontario with a third party (“**Third Party Arbitration**”), and if such Third Party Arbitration involves common factual or legal issues (including common issues of damages) which are also the subject of a Dispute between the Parties for which a Notice of Dispute has been given, then any arbitration of the Dispute between the Parties which includes those common factual, legal or damages issues (“**Project Agreement Arbitration**”) shall be stayed, consolidated or joined with the Third Party Arbitration(s) but only if HMQ, Project Co and the other parties all agree or, failing their agreement, if a court in the Province of Ontario on application considers it just and convenient in all the circumstances that the Project Agreement Arbitration should be stayed or consolidated or joined with the Third Party Arbitration.

11.2 Subject to Section 11.4 of this Schedule 27, if either Party is involved in litigation in the Province of Ontario with a third party (“**Third Party Litigation**”) and if:

- (a) such Third Party Litigation involves common factual or legal issues (including common issues of damages) which are the subject of a Project Agreement Arbitration; and
- (b) one of the Parties is brought directly into the Third Party Litigation as a party to that litigation,

then on the application of either Party to the court in the Province of Ontario having jurisdiction the court may, if it determines that it is just and convenient in all the circumstances, order a stay of either

or both the Project Agreement Arbitration proceeding and Third Party Litigation, or order a joinder of the Project Agreement Arbitration and the Third Party Litigation. If such joinder is ordered, the Project Agreement Arbitration and the Third Party Litigation ordered to be joined by the court shall be determined by that court or by another court in Ontario such that the Project Agreement Arbitration and the Third Party Litigation shall be resolved in one forum. For purposes of the foregoing, joinder of the Project Agreement Arbitration and the Third Party Litigation shall be construed to include stays and conditional stays of issues in the Project Agreement Arbitration pending the commencement and completion of third party proceedings by one or both of the Parties in the Third Party Litigation.

- 11.3 In considering whether to order a stay, consolidation or joinder of a Project Agreement Arbitration with a Third Party Arbitration or Third Party Litigation, the court will be entitled to give substantial weight to the desire by the Parties that all Disputes which are related to Third Party Arbitration or Third Party Litigation be resolved in a single forum to avoid multiplicity of proceedings and the potential for contradictory findings of fact, liability and quantum, and to ensure the arbitrator or court has the advantage of obtaining full evidence and disclosure from the Parties and from the other parties, as applicable and as required to resolve the Dispute and to make findings of fact, liability and quantum of damages and awards or judgments binding on the Parties based on all available evidence.
- 11.4 Sections 11.1 and 11.2 of this Schedule 27 only apply:
- (a) if the Dispute between the Parties includes a claim by one Party against the other for contribution or indemnity for that Party's liability or potential liability to the third party where such liability results or will result from an award in the Third Party Arbitration or a judgment in the Third Party Litigation; and
 - (b) to those specific issues that are common issues in the Project Agreement Arbitration, the Third Party Arbitration and the Third Party Litigation, such that all other issues in the Dispute shall continue to be resolved by Project Agreement Arbitration and shall not be consolidated with the Third Party Arbitration or Third Party Litigation.

12. [Intentionally Deleted]

13. Miscellaneous

- 13.1 Project Co and HMQ shall diligently carry out their respective obligations under this Project Agreement during the pendency of any Disputes, including, without limitation, adjudication proceedings, arbitration proceedings or litigation proceedings. If during the pendency of any Dispute it is considered necessary by either Party to proceed in respect of the matter that is in Dispute, then without prejudice to Project Co's rights in respect of the Dispute (including in respect of Delay Events, Compensation Events and Variations), Project Co shall proceed in accordance with the direction of HMQ, and in the event the matter in dispute is determined in favour of Project Co, then, to the extent that such Dispute affects any Section, proceeding in accordance with HMQ's position (i) prior to Section Substantial Completion of the relevant Section shall, subject to and in accordance with Section 40 of this Project Agreement, be treated as a Delay Event and, subject to and in accordance with Section 41 of this Project Agreement, be treated as a Compensation Event, and (ii) following Section Substantial Completion of the relevant Section shall, subject to and in accordance with Schedule 22 - Variation Procedure, result in a Variation. For greater certainty, in respect of any Dispute relating to the Works referred to in Section 4.2 of this Schedule 27, the Independent Certifier shall be the decision maker of first instance and the Parties shall comply with the initial decision of

- the Independent Certifier unless and until it is overturned in a subsequent arbitration or litigation proceeding.
- 13.2 Nothing contained in this Schedule 27 will prevent the Parties from seeking interim protection from the courts of the Province of Ontario, including seeking an interlocutory injunction where available pursuant to Applicable Law, if necessary to prevent irreparable harm to a Party.
- 13.3 The Parties shall indemnify each other in respect of any damages suffered or incurred on amounts agreed to be paid pursuant to resolution of a Dispute by the Party Representatives or by the executives of the Parties pursuant to Sections 2 and 3 of this Schedule 27 and on the amount of any award or judgment as follows:
- (a) for amounts payable by Project Co to IO, Project Co shall indemnify HMQ as provided for at Section 56.1(e) of this Project Agreement from and against any damages suffered or incurred resulting from any overpayment to Project Co or, as applicable, any underpayment or non-payment by Project Co from the date of any overpayment to Project Co or, as applicable, from the date on which payment was due under this Project Agreement to HMQ until the date of payment; or
 - (b) for amounts payable by HMQ to Project Co, HMQ shall indemnify Project Co as provided for at Section 56.2(c) of this Project Agreement from and against any damages suffered or incurred resulting from any overpayment to HMQ or, as applicable, any underpayment or non-payment by HMQ from the date of any overpayment to HMQ or, as applicable, from the date on which payment was due under this Project Agreement to Project Co until the date of payment.
- 13.4 Project Co shall ensure that any and all documents and other information in the possession or control of any Project Co Party that are available to Project Co and that may be necessary for the resolution of a Dispute on an informed basis by the Party Representatives or by the executives of the Parties pursuant to Sections 2 and 3 of this Schedule 27, or by an expert, an adjudicator, an arbitrator or court of competent jurisdiction, are made available in a timely manner to HMQ and the HMQ Representative.
- 13.5 HMQ shall ensure that any and all documents and other information in the possession or control of any HMQ Party that are available to HMQ and that may be necessary for the resolution of a Dispute on an informed basis by the Party Representatives or by the executives of the Parties pursuant to Sections 2 and 3 of this Schedule 27, or by an adjudicator, an arbitrator or court of competent jurisdiction, are made available in a timely manner to Project Co and the Project Co Representative.
- 13.6 The Parties can, by written agreement, on a Dispute by Dispute basis:
- (a) extend any or all timelines set out in this Schedule 27;
 - (b) agree to waive or by-pass any one or more of the Dispute resolution processes in Sections 2, 3, 4, 5 and 6 of this Schedule 27 and, instead, proceed directly to resolution of the Dispute by arbitration or litigation pursuant to Sections 7, 8 and 9 of this Schedule 27;
 - (c) agree to (i) resolve a Dispute by litigation rather than adjudication or arbitration notwithstanding the requirements of Section 6 and Section 8 of this Schedule 27, or (ii) agree to resolve a Dispute by arbitration rather than adjudication or litigation notwithstanding the

requirements of Section 6 and Section 9 of this Schedule 27, or (iii) agree to resolve a Dispute by adjudication rather than arbitration or litigation notwithstanding the requirements of Section 8 and Section 9 of this Schedule 27; and

- (d) agree to resolve a Dispute relating to the decision of an Expert by adjudication, arbitration or litigation, notwithstanding the provisions of Section 5 of this Schedule 27.

FOR INFORMATION ONLY

SCHEDULE 28

REFINANCING

1. DEFINITIONS

1.1 The following terms shall have the following meanings:

- (a) **“Distribution”** means, whether in cash or in kind, any:
- (i) dividend or other distribution in respect of the Equity Capital;
 - (ii) reduction of capital, redemption or purchase of shares or any other reorganization or variation to the Equity Capital;
 - (iii) payment, loan, contractual arrangement or transfer of assets or rights to the extent (in each case) it was put in place after Financial Close and was neither in the ordinary course of business nor on reasonable commercial terms; or
 - (iv) the receipt of any other benefit which is not received in the ordinary course of business nor on reasonable commercial terms,
- and where any such Distribution is not in cash, the equivalent cash value of such Distribution shall be calculated.
- (b) **“Equity IRR”** means the projected internal rate of return to the Equity Provider over the full term of this Project Agreement, taking into account the aggregate of all its investments and of all Distributions made and projected to be made.
- (c) **“Exempt Refinancing”** means:
- (i) any Refinancing that has the effect of replacing or extending any Mini-Perm Financing, provided that:
 - (A) Project Co shall assume any and all risks and benefits associated with such Refinancing without adjustment to the Monthly OM&R Payments or any other form of compensation to Project Co under the Project Agreement, including any risk that such Refinancing results in higher financing costs than the financing costs assumed by Project Co in its Financial Model as of the date of this Project Agreement for the Refinancing of any Mini-Perm Financing; and
 - (B) such Refinancing occurs on or before the Planned Mini-Perm Refinancing Date;
 - (ii) a change in taxation or change in accounting treatment pursuant to a Change in Law or change in Canadian GAAP;

- (iii) the exercise of any right, the grant of any amendment, waiver or consent or any similar action under the Lending Agreements that does not provide for a financial benefit to Project Co under those agreements;
 - (iv) any sale of Equity Capital or securitization of the existing rights or interests attaching to such Equity Capital, unless such sale or securitization involves increasing the Senior Debt Amount or the Junior Debt Amount, as applicable, or amending the Senior Debt Makewhole or the Junior Debt Makewhole, as applicable, on terms more favourable to Project Co than contained in the Lending Agreements;
 - (v) any Qualifying Bank Transaction;
 - (vi) any Rescue Refinancing;
 - (vii) any Refinancing that was approved by HMQ prior to the execution of this Project Agreement and occurs during the first six months following the date of this Project Agreement;
 - (viii) any amendment, variation or supplement of any agreement approved by HMQ as part of any Variation under this Project Agreement; or
 - (ix) any Permitted Borrowing.
- (d) **“Mandatory Refinancing”** means an Exempt Refinancing described in Section 1.1(c)(i).
- (e) **“Mini-Perm Financing”** means a financing facility under any Lending Agreement that, pursuant to the applicable Lending Agreement, is scheduled to be repaid in whole or in part from the proceeds of a new financing on or before the Planned Mini-Perm Refinancing Date.
- (f) **“Planned Mini-Perm Refinancing Date”** means the date(s) in which a Refinancing, in whole or in part, of the Mini-Perm Financing takes place, and with respect to the first Planned Mini-Perm Refinancing Date after Financial Close is [REDACTED], and in respect of other such dates, if any, shall be as scheduled pursuant to the applicable Lending Agreements and as consented to by HMQ.
- (g) **“Qualifying Bank”** means a lending institution that is:
- (i) a bank listed in Schedule I, II or III of the *Bank Act* (Canada); or
 - (ii) a bank, life insurance company, pension fund or fund managed by a professional fund manager that controls funds in excess of \$[REDACTED],

provided such institution is not a Restricted Person or a person whose standing or activities (1) are inconsistent with HMQ’s role in the Province of Ontario, or (2) may compromise the reputation or integrity of HMQ and/or any HMQ Party, or (3) may compromise the nature of the Province of Ontario’s highways or the Province of Ontario’s undertaking of any Tolling Activity, so as to affect public perception of that system or undertaking.

- (h) **“Qualifying Bank Transaction”** means:
- (i) the disposition by a Lender of any of its rights or interests in the Lending Agreements to a Qualifying Bank;
 - (ii) the grant by a Lender to a Qualifying Bank of any rights of participation in respect of the Lending Agreements; or
 - (iii) the disposition or grant by a Lender to a Qualifying Bank of any other form of benefit or interest in either the Lending Agreements or the revenues or assets of Project Co, whether by way of security or otherwise.
- (i) **“Qualifying Refinancing”** means any Refinancing that will give rise to a Refinancing Gain that is not an Exempt Refinancing.
- (j) **“Refinancing”** means:
- (i) any amendment, variation, novation, supplement or replacement of any Lending Agreement;
 - (ii) the exercise of any right, or the grant of any waiver or consent, under any Lending Agreement;
 - (iii) the disposition of any rights or interests in, or the creation of any rights of participation in respect of, the Lending Agreements or the creation or granting of any other form of benefit or interest in either the Lending Agreements or the contracts, revenues or assets of Project Co whether by way of security or otherwise; or
 - (iv) any other arrangement put in place by Project Co or another person which has an effect which is similar to any of the foregoing provisions of this definition above or which has the effect of limiting Project Co’s ability to carry out any of the foregoing provisions of this definition.
- (k) **“Refinancing Financial Model”** means a comprehensive and detailed financial model satisfactory to HMQ, acting reasonably, prepared for the purpose of Section 2 of this Schedule 28, which financial model shall be similar in form and content to the Financial Model, suitable for the purposes for which it will be used in this Schedule 28, and shall take into account:
- (i) cash flows for the entire remaining Project Term;
 - (ii) any changes in structure and funding since the date of this Project Agreement;
 - (iii) the performance of the Project Operations to the date of the Refinancing;
 - (iv) macroeconomic assumptions; and
 - (v) all other relevant factors.

- (l) “**Refinancing Gain**” means an amount equal to the greater of zero and $(A - B)$, where:

A = the net present value, discounted at a discount rate equal to the Base Case Equity IRR, of all Distributions as projected immediately prior to the Refinancing (using the Refinancing Financial Model and taking into account the effect of the Refinancing) to be made over the remaining term of this Project Agreement following the Refinancing.

B = the net present value, discounted at a discount rate equal to the Base Case Equity IRR, of all Distributions as projected immediately prior to the Refinancing (using the Refinancing Financial Model but without taking into account the effect of the Refinancing) to be made over the remaining term of this Project Agreement following the Refinancing.

- (m) “**Refinancing Notice**” has the meaning given in Section 2.9.
- (n) “**Rescue Refinancing**” means any Refinancing which takes place due to the failure or prospective failure of Project Co to comply with any material financial obligation under the Lending Agreements, or any of them, which does not increase any liability of HMQ, whether actual or potential.

2. REFINANCING

2.1 Project Co shall not carry out:

- (a) any Qualifying Refinancing unless Project Co has obtained the prior written consent of HMQ, which consent, subject to Section 2.2, shall not be unreasonably withheld or delayed; or
- (b) any Exempt Refinancing or any other Refinancing which does not result in a Refinancing Gain unless Project Co has delivered notice of such Refinancing to HMQ not less than 5 Business Days prior to such Refinancing, except that (i) such notice shall not be required for a disposition by a Lender of its rights or participation in the Lending Agreements pursuant to a Qualifying Bank Transaction or a disposition by a Lender of its rights or participation in the Lending Agreements where such disposition is a trade of bonds issued as provided for under a book-based system of a depository and pursuant to a trust indenture that comprises a portion of the Financing, (ii) such notice shall not be required for any amendment, variation, novation, supplement or replacement of any Lending Agreement or the exercise of any right, or the grant of any waiver or consent, under any Lending Agreement that does not provide for a financial benefit to Project Co under the Lending Agreements unless such amendment, variation, novation, supplement or replacement or the exercise of any right, or the grant of any waiver or consent requires authorization or approval by a formal resolution of the Lenders at a meeting of the Lenders or by written resolution or the required percentage of Lenders, and (iii) notice of any Exempt Refinancing arising from a change in taxation or change in accounting treatment pursuant to a Change in Law or change in Canadian GAAP shall be required to be delivered by

Project Co within 5 Business Days following the date on which Project Co becomes aware that such Change in Law or change in Canadian GAAP has resulted in an Exempt Refinancing.

2.2 HMQ 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 this Project Agreement; or
- (c) if, at the time the Qualifying Refinancing is contemplated and effected, the Qualifying Refinancing will have the effect of increasing any liability of HMQ, whether actual or contingent, present or future, known or unknown.

2.3 HMQ shall be entitled to receive:

- (a) a [REDACTED]% share of any Refinancing Gain arising from a Qualifying Refinancing, in respect of any Refinancing Gain up to (when considered in aggregate with all previous Qualifying Refinancings) a Refinancing Gain of \$[REDACTED];
- (b) a [REDACTED]% share of any further Refinancing Gain arising from a Qualifying Refinancing, in respect of any Refinancing Gain in excess of \$[REDACTED] and up to (when considered in aggregate with all previous Qualifying Refinancings) a Refinancing Gain of \$[REDACTED]; and
- (c) a [REDACTED]% share of any further Refinancing Gain arising from a Qualifying Refinancing.

2.4 Project Co shall promptly provide HMQ with full details of any proposed Qualifying Refinancing, including a copy of the proposed Refinancing Financial Model and the basis for the assumptions used in the proposed Refinancing Financial Model. HMQ shall (before, during and at any time after any Refinancing) have unrestricted rights of audit over the Refinancing Financial Model and any documentation (including any aspect of the calculation of the Refinancing Gain) used in connection with such Refinancing (whether or not such Refinancing is determined to be a Qualifying Refinancing). Project Co shall promptly, and, in any event, within 5 Business Days of receiving a written request from HMQ, provide any information in relation to a proposed Refinancing as HMQ may reasonably require. Project Co shall keep HMQ informed as to any changes to the material terms of the Refinancing.

2.5 Subject to Section 2.6 of this Schedule 28, HMQ shall have the right to elect to receive its share of any Refinancing Gain as:

- (a) a single payment in an amount less than or equal to any Distribution made on or about the date of the Refinancing; and/or
- (b) a reduction in the Monthly OM&R Payments over the remaining Project Term,

such that the total net present value, discounted at the Discount Rate, of the foregoing, calculated at the time immediately prior to the Refinancing, shall equal HMQ's share of the Refinancing Gain.

- 2.6 HMQ and Project Co will negotiate in good faith to agree upon the basis and method of calculation of the Refinancing Gain and payment of HMQ's share of the Refinancing Gain (taking into account how HMQ has elected to receive its share of the Refinancing Gain under Section 2.5 of this Schedule 28 and the profile of the Refinancing Gain). If the parties fail to agree upon the basis and method of calculation of the Refinancing Gain or the payment of HMQ's share, the Dispute shall be determined in accordance with Schedule 27 - Dispute Resolution Procedure.
- 2.7 The Refinancing Gain shall be calculated after taking into account the reasonable out-of-pocket costs that each Party directly incurs in relation to the Qualifying Refinancing and on the basis that, within 15 Business Days of any Qualifying Refinancing, Project Co will reimburse HMQ for all such reasonable out-of-pocket costs incurred by HMQ.
- 2.8 If Project Co must, at a future date, undertake a Mandatory Refinancing, then HMQ may at any time request that Project Co provide to HMQ full and complete details and information with respect to the Mandatory Refinancing and its plan for the Mandatory Refinancing, including in respect to all relevant assumptions regarding the Mandatory Refinancing set out in the Financial Model (the "**Refinancing Information**"). For clarity, if Project Co must, at a future date, undertake a Mandatory Refinancing, HMQ must request Project Co to provide the Refinancing Information before it can issue a Refinancing Notice pursuant to Section 2.9. If HMQ and Project Co mutually agree, acting reasonably, that based on the Refinancing Information, a Refinancing prior to the Mandatory Refinancing would not have a negative material financial impact on the Mandatory Refinancing, then HMQ may provide Project Co with a Refinancing Notice pursuant to Section 2.9.
- 2.9 If HMQ considers the funding terms generally available in the market to be more favourable than those reflected in the Lending Agreements, HMQ may, by notice in writing to Project Co (a "**Refinancing Notice**"), require Project Co to request potential funders to provide terms for a potential Refinancing.
- 2.10 The Refinancing Notice shall set out in reasonable detail the grounds upon which HMQ believes such funding terms to be available. Project Co and HMQ shall meet to discuss the Refinancing Notice within 20 Business Days. Such a meeting will consider the evidence available to both parties about the availability of funding terms for a potential Refinancing. HMQ shall be entitled to withdraw the Refinancing Notice at or before such a meeting, or within 7 Business Days following the meeting.
- 2.11 If HMQ serves a Refinancing Notice which is not withdrawn pursuant to Section 2.10, then Project Co shall:
- (a) act promptly, diligently and in good faith with respect to the potential Refinancing;
 - (b) use all reasonable endeavours to obtain the most favourable available terms from existing and/or new lenders for any potential Refinancing (provided that Project Co shall not be required to propose refinancing in a manner which a prudent board of directors of a

company operating the same business in Canada to that operated by Project Co, in similar circumstances, would not approve), for the avoidance of doubt also being terms which are likely to generate a positive Refinancing Gain after the deduction of costs in accordance with the provisions of Section 2.7; and

(c) either:

- (i) as soon as reasonably practicable after receipt of the Refinancing Notice, provide to HMQ (I) full details of the proposed Refinancing, including a financial model and the basis for the assumptions used in the financial model and evidence to the reasonable satisfaction of HMQ that these assumptions represent the most favourable available terms for the potential Refinancing on the basis set out in Section 2.11(b) and (II) initial drafts of any changes to the Project Agreement including in relation to potential compensation on termination which might be required to give effect to the proposed Refinancing; or
- (ii) if Project Co (acting reasonably) believes that it is not possible to obtain funding terms which are more favourable than those reflected in the Lending Agreements in accordance with the requirements of Section 2.11(b), provide evidence to the reasonable satisfaction of HMQ for such belief and evidence to the reasonable satisfaction of HMQ that Project Co has complied with its obligations in Sections 2.11(a) and (b) above.

2.12 Following receipt of the information referred to in Section 2.11(c)(i), HMQ shall acting reasonably, either:

- (a) instruct Project Co to implement the proposed Refinancing; or
- (b) instruct Project Co to discontinue the proposed Refinancing

provided that if HMQ reasonably considers that the requirements of Sections 2.11(c)(i) or (ii) have not been satisfied, HMQ may require Project Co to satisfy its obligations under Sections 2.11(c)(i) or (ii). If Project Co must, at a future date, undertake a Mandatory Refinancing, HMQ shall not instruct Project Co to implement the proposed Refinancing unless both HMQ and Project Co, acting reasonably, agree that such Refinancing will be likely to generate a positive Refinancing Gain after the deduction of costs in accordance with the provisions of Section 2.7 and will not have a negative material financial impact on the Mandatory Refinancing.

2.13 If HMQ instructs Project Co to implement the proposed Refinancing:

- (a) Project Co shall, as soon as reasonably practicable, use all reasonable endeavours to ensure that such proposed Refinancing is implemented;
- (b) such proposed Refinancing shall be deemed to be a Qualifying Refinancing; and
- (c) the provisions of Sections 2.1 to 2.7 shall apply.

2.14 If:

- (a) HMQ instructs Project Co to discontinue the potential Refinancing pursuant to Section 2.12(b); or
- (b) the requirements of Section 2.11(c)(ii) are satisfied,

then, HMQ shall reimburse Project Co for the reasonable and proper professional costs incurred by Project Co in relation to the potential Refinancing, such costs to be paid to Project Co by HMQ within 20 Business Days after receipt of a valid invoice in respect of such amount. Such costs shall not include any internal management costs incurred by Project Co except insofar as (i) it can be demonstrated to the reasonable satisfaction of HMQ that such costs have been incurred in place of professional costs which would in the normal course of such business have been paid to third parties and (ii) HMQ has, by prior written agreement, approved the use of such internal management resource.

- 2.15 HMQ shall be entitled to issue a Refinancing Notice under Section 2.9 at any time but not more than once in any two-year period. For the avoidance of doubt, a Refinancing Notice that has been withdrawn under Section 2.10 has been issued for the purpose of this Section 2.15.

SCHEDULE 29

STANDBY LETTER OF CREDIT

[NTD: The Standby Letter of Credit must be issued by a bank acceptable to HMQ, acting reasonably, and must be callable at the bank's counters in Toronto, Ontario.]

Letter of Credit: #[●]

Date: [●]

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

Attn: [●]

Dear Sir/Madam:

RE: Highway 407 East Extension

At the request of our client, [●] (“**Project Co**”), we, [insert name and address of issuing bank], hereby issue in your favour an irrevocable standby letter of credit (the “**Letter of Credit**”) in the amount of [REDACTED] (\$[REDACTED]).

The amount available under this Letter of Credit is payable to Ontario Infrastructure and Lands Corporation (“**IO**”), at any time and from time to time, upon (a) receipt by us of a written demand for payment, accompanied by a certificate signed by two officers of IO certifying that IO is entitled to draw on this Letter of Credit pursuant to Section 2.3(c) of a project agreement dated [●] (as amended from time to time, the “**Project Agreement**”), and (b) presentation of the original of this Letter of Credit.

This Letter of Credit will expire at 5:00 p.m. on [insert the date that is 180 days after the **Financial Close Target Date**] (the “**Expiry Date**”), and IO may call for payment of any amount outstanding under this Letter of Credit at any time up to 5:00 p.m. on the Expiry Date should this Letter of Credit not be renewed.

It is a condition of this Letter of Credit that it shall be automatically extended, without amendment, for one year from the Expiry Date, or any future expiration date, unless, at least 30 days prior to any expiration date, we notify you, in writing, that we elect not to consider this Letter of Credit renewed for any such additional period. Upon receipt by you of such notice, you may draw the full amount hereunder by means of your demand.

Partial drawings are permitted.

We hereby agree that demands delivered under this Letter of Credit will be duly honoured upon presentation provided that all terms and conditions herein have been complied with.

Written demands drawn under this Letter of Credit shall state on their face that they are drawn under Letter of Credit #[●].

It is understood that [insert name of issuing bank] is obligated under this Letter of Credit for payments of monies only.

The Project Agreement is referred to herein for reference purposes only and does not form part of the terms of this Letter of Credit.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision) of the International Chamber of Commerce (ICC Publication No. 600) (the “UCP”) with the exception of Articles 18-30 inclusive (other than Article 29a, which shall apply) and Articles 31b, 31c and 32 except to the extent, if any, inconsistent with the express terms of this Letter of Credit. Notwithstanding Article 36 of the UCP, if this Letter of Credit expires during an interruption of business as contemplated in such Article 36, we shall honour any demand made under this Letter of Credit prior to the Expiry Date, within 30 days after the date on which such interruption of business ends (and we shall notify you promptly when it does so end). For matters not covered by such publication, this Letter of Credit shall be governed by and construed in accordance with the laws of the Province of Ontario.

Yours very truly,

[Name of Issuing Bank]

By: _____

Name:

Title:

By: _____

Name:

Title:

SCHEDULE 30

INSURANCE TRUST AGREEMENT

THIS AGREEMENT is made as of the 15th day of May, 2012

BETWEEN:

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

(“**HMQ**”)

AND:

[REDACTED]

(the “**Lenders’ Agent**”)

AND:

407 EAST DEVELOPMENT GROUP GENERAL PARTNERSHIP, [REDACTED]

(“**Project Co**”)

AND:

[REDACTED]

(the “**Account Trustee**”)

WHEREAS:

- A. HMQ and Project Co have entered into the Project Agreement.
- B. HMQ, the Lenders’ Agent and Project Co have entered into the Lenders’ Direct Agreement.
- C. HMQ, the Lenders’ Agent and Project Co have agreed that all amounts from time to time contained in the Insurance Trust Account are to be held in trust by the Account Trustee in accordance with the terms of this Insurance Trust Agreement, and that no releases, distributions or transfers of any funds from the Insurance Trust Account shall be made other than in accordance with the terms of this Insurance Trust Agreement.

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

1. DEFINITIONS

In this Insurance Trust Agreement, unless the context otherwise requires:

- (a) **“Account Trustee”** means [REDACTED].
- (b) **“Bank”** means [REDACTED].
- (c) **“Business Day”** has the meaning given in the Project Agreement.
- (d) **“Change of Authorization Event”** has the meaning given in Section 7(a) of this Insurance Trust Agreement.
- (e) **“Change of Authorization Notice”** has the meaning given in Section 7(b)(ii) of this Insurance Trust Agreement.
- (f) **“Default Notice”** means a written notice given by the Lenders’ Agent to the Account Trustee that an event of default under the Lending Agreements has occurred and is continuing.
- (g) **“Default Period”** means the period commencing on the date upon which the Account Trustee receives a Default Notice and ending on the date upon which the Account Trustee receives written notice from the Lenders’ Agent that the event of default which was the subject matter of the applicable Default Notice has been cured.
- (h) **“Extension”** has the meaning given in the Project Agreement.
- (i) **“Governmental Authority”** has the meaning given in the Project Agreement.
- (j) **“Insurance Policies”** has the meaning given in Section 4(a) of this Insurance Trust Agreement.
- (k) **“Insurance Proceeds”** has the meaning given in Section 4(b) of this Insurance Trust Agreement.
- (l) **“Insurance Trust Account”** means Account No. [REDACTED] at [REDACTED].
- (m) **“Insurance Trust Agreement”** means this insurance trust agreement.
- (n) **“Lenders”** has the meaning given in the Project Agreement.
- (o) **“Lenders’ Agent”** means [REDACTED], acting as agent for and on behalf of the Lenders.
- (p) **“Lenders’ Direct Agreement”** means the lenders’ direct agreement made on or about the date hereof between HMQ, Project Co and the Lenders’ Agent.
- (q) **“Lending Agreements”** has the meaning given in the Project Agreement.
- (r) **“Order”** has the meaning given in Section 6(k) of this Insurance Trust Agreement.
- (s) [REDACTED].

- (t) **“Party”** means any of HMQ, Project Co, the Lenders’ Agent or the Account Trustee, and **“Parties”** means all of HMQ, Project Co, the Lenders’ Agent and the Account Trustee.
- (u) **“Project”** has the meaning given in the Project Agreement.
- (v) **“Project Agreement”** means the project agreement made on or about May 15th, 2012 between HMQ and Project Co.
- (w) **“Project Co”** means [REDACTED], and any successor or permitted assigns.
- (x) **“Project Co Event of Default”** has the meaning given in the Project Agreement.
- (y) **“Project Operations”** has the meaning given in the Project Agreement.
- (z) **“Trust Property”** means all of the property held in trust by the Account Trustee pursuant to this Insurance Trust Agreement, including, without limitation, the Insurance Trust Account, and all amounts from time to time contained therein, the Insurance Policies and the Insurance Proceeds.

2. INTERPRETATION

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

- (a) The headings in this Insurance Trust Agreement are for convenience of reference only, shall not constitute a part of this Insurance Trust Agreement, and shall not be taken into consideration in the interpretation of, or affect the meaning of, this Insurance Trust Agreement.
- (b) Unless the context otherwise requires, references to specific Sections, Clauses, Paragraphs, Subparagraphs, and other divisions are references to such Sections, Clauses, Paragraphs, Subparagraphs, or divisions of this Insurance Trust Agreement and the terms “Section” and “Clause” are used interchangeably and are synonymous.
- (c) Words importing persons or parties are to be broadly interpreted and include an individual, corporation, firm, partnership, joint venture, trust, unincorporated organization, Governmental Authority, unincorporated body of persons or association and any other entity having legal capacity, and the heirs, beneficiaries, executors, administrators or other legal representatives of a person in such capacity.
- (d) Unless the context otherwise requires, wherever used herein the plural includes the singular, the singular includes the plural, and each of the masculine, feminine and neuter genders include all other genders.
- (e) References to any standard, principle, agreement or document include (subject to all relevant approvals and any other provisions of this Insurance Trust Agreement concerning amendments) a reference to that standard, principle, agreement or document as amended, supplemented, restated, substituted, replaced, novated or assigned.
- (f) The words in this Insurance Trust Agreement shall bear their natural meaning.
- (g) References containing terms such as:

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

3. INSURANCE TRUST ACCOUNT

- (a) Prior to the commencement of a Default Period, the Insurance Trust Account, and all amounts from time to time contained therein, including interest thereon, shall be held in trust by the Account Trustee for the benefit of Project Co. During a Default Period, the Insurance Trust Account, and all amounts from time to time contained therein, shall be held in trust by the Account Trustee for the benefit of the Lenders’ Agent and the Lenders, provided that, upon receipt by the Account Trustee of a Change of Authorization Notice, the Insurance Trust Account, and all amounts from time to time contained therein, shall be held in trust by the Account Trustee for the benefit of HMQ.
- (b) The Account Trustee shall not release, distribute or transfer any funds from the Insurance Trust Account other than in accordance with the terms of this Insurance Trust Agreement.
- (c) Notwithstanding any other provision of this Insurance Trust Agreement and subject to Section 3(d), the Lenders’ Agent, HMQ, and Project Co agree that, if any of them either receives any

Insurance Proceeds from the Insurance Trust Account or has the right to direct the Account Trustee to advance funds in respect of any Insurance Proceeds from the Insurance Trust Account, such funds shall be directed, used or advanced only for one of the following purposes:

- (i) the repair, reinstatement, restoration, rehabilitation or replacement of the Extension or any other assets, materials or goods necessary or desirable for the carrying out of the Project Operations in respect of which such Insurance Proceeds have been paid;
- (ii) the completion of the Project; or
- (iii) indemnification for any HMQ loss for which the subject Insurance Proceeds were paid under the Insurance Policies (as defined below).

For greater certainty, use of any Insurance Proceeds received in respect of a claim by Project Co under delay in start-up, soft costs or business interruption insurance shall be applied in accordance with the terms of the Lending Agreements so as to enable Project Co to carry out the Project Operations.

- (d) Notwithstanding anything in this Insurance Trust Agreement, if HMQ is entitled to indemnification under the Insurance Policies in respect of any loss incurred by HMQ, such related insurance proceeds are to be paid directly to HMQ by the insurer or the Account Trustee and shall not be Insurance Proceeds subject to Section 3(c)(i) or (ii) of this Insurance Trust Agreement. For greater certainty, it is understood and agreed that HMQ shall be required to use such proceeds for carrying out the purposes referred to in Sections 3(c)(i) and (ii) in respect of which such proceeds have been paid.

4. **INSURANCE**

- (a) Project Co shall deliver, or cause to be delivered, to the Account Trustee originals of all property and asset related insurance policies that Project Co is required to maintain under the Project Agreement (collectively, the “**Insurance Policies**”), and the Account Trustee shall hold the Insurance Policies in trust for the benefit of each of the beneficiaries and loss payees, as the case may be, thereunder.
- (b) The Account Trustee shall distribute any proceeds of any Insurance Policy that are paid over to it by any insurer, Project Co, the Lenders’ Agent or HMQ (the “**Insurance Proceeds**”) as follows:
 - (i) subject to the last paragraph of Section 3(c), in the case of the all risks course of construction (builders’ risk), boiler and machinery insurance or property insurance policies that Project Co is required to maintain under the Project Agreement:
 - (A) if the Account Trustee has not received a Default Notice and:
 - (1) if the amount of such Insurance Proceeds, together with the aggregate of all Insurance Proceeds paid in respect of the same loss or claim, is less than \$[REDACTED], to Project Co to repair, restore or replace the assets in respect of which such Insurance Proceeds have been paid; or

- (2) if the amount of such Insurance Proceeds, together with the aggregate of all Insurance Proceeds paid in respect of the same loss or claim, is equal to or greater than \$[REDACTED], to the Lenders' Agent to reimburse Project Co for the costs of repairing, restoring or replacing the assets in respect of which such Insurance Proceeds have been paid; or
 - (B) if the Account Trustee has received a Default Notice, to the Insurance Trust Account to be distributed by the Account Trustee in such amounts and to such persons as the Lenders' Agent may at any time or from time to time direct in writing, provided that, if the Account Trustee has received a Change of Authorization Notice, the Account Trustee shall release such Insurance Proceeds from the Insurance Trust Account in such amounts and to such parties as HMQ may at any time or from time to time direct in writing, in each case, to repair, restore or replace the assets in respect of which such Insurance Proceeds have been paid; and
 - (ii) in the case of any other Insurance Policies, to the Lenders' Agent, or, following receipt by the Account Trustee of a Change of Authorization Notice, to HMQ, to be distributed to the parties entitled thereto.
- (c) The Account Trustee shall distribute any excess Insurance Proceeds remaining after the distributions contemplated in Section 4(b)(ii) have been made, including, without limitation, any Insurance Proceeds held in the Insurance Trust Account:
 - (i) if the Account Trustee has not received a Default Notice, to Project Co; and
 - (ii) if the Account Trustee has received a Default Notice, to such persons as the Lenders' Agent, or, following receipt by the Account Trustee of a Change of Authorization Notice, HMQ, may at any time or from time to time direct in writing.

5. ACCOUNT AGREEMENT

- (a) The Account Trustee hereby agrees to promptly provide to the Lenders' Agent all monthly statements and other information with respect to the Insurance Trust Account provided to the Account Trustee by the Bank pursuant to the relevant account agreement. The Account Trustee further agrees that it shall make such requests to the Bank for additional information with respect to the Insurance Trust Account as the Lenders' Agent may from time to time request in writing.
- (b) The Account Trustee hereby agrees to promptly provide to HMQ all monthly statements and other information with respect to the Insurance Trust Account provided to the Account Trustee by the Bank pursuant to the relevant account agreement. The Account Trustee further agrees that it shall make such requests to the Bank for additional information with respect to the Insurance Trust Account as HMQ may from time to time request in writing.

6. THE ACCOUNT TRUSTEE

- (a) The Account Trustee shall not have any duty or obligation to manage, control, use, make any payment in respect of, register, record, insure, inspect, sell, dispose of or otherwise deal with any part of the Trust Property except as expressly provided by the terms of this Insurance Trust

Agreement. The Account Trustee shall carry out all written directions given by the Lenders' Agent, HMQ or Project Co, as applicable, in accordance with this Insurance Trust Agreement and shall not be required to exercise any discretion in exercising any of its duties under this Insurance Trust Agreement in pursuance of such written directions. The Account Trustee shall not be bound to do or take any act, action or proceeding by virtue of the powers conferred on it hereby unless and until it shall have been required to do so under the terms hereof and has received instruction, advice or direction from the Lenders' Agent, HMQ or Project Co, as applicable, as to the action to be taken (except with respect to actions specifically set out herein to be performed by the Account Trustee).

- (b) The Account Trustee will exercise its powers and carry out its obligations hereunder as account trustee honestly, in good faith and in the best interests of the beneficiaries hereunder and in connection therewith will exercise that degree of care, diligence, and skill that a reasonably prudent professional trustee would exercise in comparable circumstances. Unless otherwise required by law, the Account Trustee will not be required to give bond surety or security in any jurisdiction for the performance of any duties or obligations hereunder. No provision of this Insurance Trust Agreement shall be construed to relieve the Account Trustee from liability for its own dishonesty, fraud, negligence (including, without limitation, negligence in the handling of funds), wilful misconduct, bad faith or reckless disregard of any duty hereunder.
- (c) The Account Trustee will not be subject to any liability whatsoever, in tort, contract or otherwise in connection with the Trust Property or the carrying out of its duties under this Insurance Trust Agreement to the Lenders' Agent, the Lenders, Project Co or any other person for any action taken or permitted by it to be taken, or for its failure to take any action, or for not performing any act or fulfilling any duty, obligation or responsibility hereunder by reason of any occurrence beyond the control of the Account Trustee (including, but not limited to, any act or provision of any present or future law or of any Governmental Authority, any act of God or war, or the unavailability of any wire or communication facility), provided that the foregoing limitation will not apply in respect of any action or failure to act arising from or in connection with wilful misconduct, negligence or reckless disregard of duty by the Account Trustee. The Account Trustee in doing anything or permitting anything to be done in respect of the Trust Property or the carrying out of its duties under this Insurance Trust Agreement is, and will be conclusively deemed to be, acting as trustee for the beneficiaries hereunder and not in any other capacity. Except to the extent provided in this Section 6(c), the Account Trustee will not be subject to any liability for debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses against or with respect to the Trust Property, arising out of anything done or permitted by it to be done or its failure to take any action in respect of the execution of its duties hereunder and resort will be had solely to the Trust Property for the payment or performance thereof, and no other property or assets of the Account Trustee, whether owned in its personal capacity or otherwise, will be subject to levy, execution or other enforcement procedure with regard to any obligation under this Insurance Trust Agreement.
- (d) The Account Trustee shall not be required to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers hereunder, or in acting at the request or direction of the Lenders' Agent on behalf of the Lenders, unless it shall have received adequate indemnity or security against such risk or liability satisfactory to it.

- (e) Notwithstanding the foregoing, the Account Trustee shall be liable for any action or failure to act arising from or in connection with the dishonesty, fraud, negligence (including, without limitation, negligence in the handling of funds), wilful misconduct, bad faith or reckless disregard of any duty hereunder by the Account Trustee or any of its directors, officers or employees, or the failure to comply with the standard of care referred to in Section 6(b).
- (f) Except as otherwise provided in Sections 6(c), 6(d) and 6(e):
 - (i) the Account Trustee may rely and shall be protected in acting or refraining from acting upon any signature, resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order or other paper or document reasonably believed by it in good faith to be genuine and to have been signed or presented by the proper party or parties; and
 - (ii) the Account Trustee may exercise its powers and perform its duties by or through such attorneys, representatives, agents and employees as it shall appoint; and may consult with counsel, accountants and other skilled persons selected and employed or retained by it, and the Account Trustee shall not be liable for anything done, suffered or omitted in good faith by it in accordance with the written advice of such counsel, accountants or other skilled persons (provided that such advice pertains to such matters as the Account Trustee may reasonably presume to be within the scope of such person's area of competency) and not contrary to any express provision in this Insurance Trust Agreement.
- (g) Project Co hereby agrees to pay, indemnify and hold harmless the Account Trustee from and against any and all loss, liability, cost, claim and expense incurred by the Account Trustee with respect to the performance of this Insurance Trust Agreement by the Account Trustee or any of the Account Trustee's directors, officers or employees, unless arising from its or their own dishonesty, fraud, negligence (including, without limitation, negligence in the handling of funds), wilful misconduct, bad faith or reckless disregard of any duty hereunder.
- (h) Subject to the terms and conditions set forth in the Account Trustee fee letter, the Account Trustee shall receive from the Trust Property reasonable compensation for its services hereunder and shall be reimbursed by Project Co for its reasonable fees and expenses (including the disbursements and reasonable fees of counsel).
- (i) The Account Trustee agrees to look solely to Project Co, and not, except as expressly set forth herein, to the Lenders' Agent, the Lenders or HMQ for any claim for indemnification which may arise under this Insurance Trust Agreement.
- (j) The Account Trustee shall be responsible for keeping all appropriate books and records relating to the receipt and disbursement of all money which it receives hereunder.
- (k) If at any time the Account Trustee is served with any judicial or administrative order, judgment, decree, writ or other form of judicial or administrative process which in any way affects the Trust Property held by it hereunder (including but not limited to orders of attachment or garnishment or other forms of levies or injunctions or stays relating to the transfer of Trust Property) (each, an "**Order**"), the Account Trustee is authorized to comply therewith in any manner as it or legal counsel of its own choosing deems appropriate. The Account Trustee shall in no way be bound to call for further evidence (whether as to due execution validity or effectiveness, or the jurisdiction

of any court, or as to the truth of any fact), and shall not be responsible for any loss that may be occasioned by its failing to do so. If the Account Trustee complies with any Order, the Account Trustee shall not be liable to any of the Parties hereto or to any other person or entity even though such Order may be subsequently modified or vacated or otherwise determined to have been without legal force or effect. If the Account Trustee is served with any Order, it shall forthwith and, in any event, within three (3) Business Days, deliver a copy of such Order to each of the Lenders' Agent, HMQ and Project Co.

- (l) Unless otherwise specifically set forth herein, the Account Trustee shall proceed as soon as practicable to collect any cheques or other collection items at any time deposited hereunder. All such collections shall be subject to the Account Trustee's usual collection practices or terms regarding items received by the Account Trustee for deposit or collection. Except and to the extent provided herein, the Account Trustee shall not be required, or have any duty, to notify any person of any payment or maturity under the terms of any instrument deposited hereunder, nor to take any legal action to enforce payment of any cheque, note or security deposited hereunder, or to exercise any right or privilege which may be afforded to the holder of any such security.
- (m) In the event that the Account Trustee determines that any direction, instruction, notice or other communication given under this Insurance Trust Agreement by the Lenders' Agent or, where the Account Trustee has received a Change of Authorization Notice, HMQ, is ambiguous or uncertain, the Account Trustee may, in its sole discretion, refrain from taking any action other than retaining possession of the Trust Property, unless the Account Trustee has received written instructions, signed by the Lenders' Agent or, if the Account Trustee has received a Change of Authorization Notice, HMQ, which resolve such ambiguity or uncertainty, provided that the Account Trustee shall, forthwith upon determining that such direction, instruction, notice or other communication is ambiguous or uncertain, seek clarification from the Lenders' Agent, or where the Account Trustee has received a Change of Authorization Notice, HMQ, to resolve such ambiguity or uncertainty.
- (n) Prior to receipt of a Change of Authorization Notice by the Account Trustee, any instruction, notice or other communication delivered to the Account Trustee by the Lenders' Agent shall be paramount to and supersede any direction, instruction, notice or other communication from any other Party to this Insurance Trust Agreement, and the Account Trustee shall comply with such direction, instruction, notice or other communication from the Lenders' Agent. After the Account Trustee has received a Change of Authorization Notice, any instruction, notice or other communication delivered to the Account Trustee by HMQ shall be paramount to and supersede any direction, instruction, notice or other communication from any other Party to this Insurance Trust Agreement, and the Account Trustee shall comply with such direction, instruction, notice or other communication from HMQ.
- (o) Each of the Lenders' Agent and HMQ shall provide to the Account Trustee an incumbency certificate setting out the names and sample signatures of individuals authorized to give instructions to the Account Trustee hereunder. The Account Trustee shall be entitled to rely on each such incumbency certificate until a revised or replacement incumbency certificate is provided to the Account Trustee by the Lenders' Agent or HMQ, as applicable. The Account Trustee shall refuse to act upon any instruction given by the Lenders' Agent or HMQ which is signed by any person other than an individual named in the incumbency certificate provided to the Account Trustee by the Lenders' Agent or HMQ, as applicable, pursuant to this Section 6(o),

as any such incumbency certificate may be amended, supplemented or replaced from time to time.

- (p) The Account Trustee shall be entitled to rely on, and act upon, any direction, instruction, notice or other communication provided to it hereunder which is sent to it by facsimile transmission, provided that any such direction, instruction, notice or other communication is signed by an individual named in the incumbency certificate delivered to the Account Trustee by the Lenders' Agent or HMQ, as applicable, pursuant to Section 6(o).

7. **LENDERS' AGENT AND HMQ RIGHTS TO DIRECT**

- (a) Until the termination of the Project Agreement in accordance with the Lenders' Direct Agreement and receipt by Project Co of any amounts to which it is entitled pursuant to Schedule 23 - Compensation on Termination to the Project Agreement and all Insurance Proceeds to the extent that the value of such Insurance Proceeds was deducted from the amounts payable to Project Co by HMQ (a "**Change of Authorization Event**"), the Lenders' Agent shall, subject to Sections 3 and 4 of this Insurance Trust Agreement, have the exclusive right to direct the Account Trustee with respect to the Insurance Trust Account, the Insurance Policies and the Insurance Proceeds.
- (b) Upon the occurrence of a Change of Authorization Event:
 - (i) the Lenders' Agent shall cease to be entitled, and HMQ shall thenceforth be entitled, to direct the Account Trustee with respect to the Insurance Trust Account, the Insurance Policies and the Insurance Proceeds; and
 - (ii) the Lenders' Agent and HMQ shall jointly provide notice to the Account Trustee (a "**Change of Authorization Notice**") that HMQ shall, as of the date of such Change of Authorization Event, have the exclusive right to direct the Account Trustee with respect to the Insurance Trust Account, the Insurance Policies and the Insurance Proceeds.
- (c) Notwithstanding the foregoing, no Change of Authorization Event shall occur and no Change of Authorization Notice shall be delivered to the Account Trustee where an HMQ Event of Default has occurred. Where an HMQ Event of Default has occurred, upon receipt by the Lenders' Agent and Lenders of all amounts owing by HMQ to the Lenders' Agent and Lenders under the Lenders' Direct Agreement, the Account Trustee shall release all amounts in the Insurance Trust Account, the Insurance Policies and the Insurance Proceeds to Project Co or as Project Co may otherwise direct from time to time.

8. **TERMINATION**

- (a) Subject to the provisions of Section 8(b), this Insurance Trust Agreement shall remain in full force and effect and be binding in accordance with and to the extent of its terms until:
 - (i) the obligations of Project Co to the Lenders' Agent and the Lenders under the Lending Agreements have been paid and performed in full and the Lenders have no further obligation to make any further advances or other credit accommodations under the Lending Agreements; and
 - (ii) the obligations of Project Co to HMQ have been paid and performed in full.

- (b) The Account Trustee may terminate this Insurance Trust Agreement at any time upon sixty (60) days prior written notice to the other Parties hereto, provided that no termination of this Insurance Trust Agreement by the Account Trustee shall be effective until such time as the Lender's Agent, HMQ, 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 the Lenders' Agent, the Lenders and HMQ.

9. **ASSIGNMENT**

- (a) The Account Trustee shall not assign, transfer or otherwise dispose of any of its rights or obligations under this Insurance Trust Agreement without the prior written consent of the Lenders' Agent, HMQ and Project Co.

10. **NOTICES**

- (a) All notices, requests, demands, instructions, certificates, consents and other communications 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 Insurance Trust Agreement) and served by sending the same by registered mail, facsimile or by hand, (in each case, with a copy by electronic transmission) as follows:

If to HMQ:

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

Fax: [REDACTED]
Attn.: [REDACTED]

With a copy to:

Ministry of Transportation
1201 Wilson Avenue
Building D, 7th Floor
Toronto, Ontario
M3M 1J8

Fax: [REDACTED]
Attn.: [REDACTED]

If to Project Co:

[REDACTED]

E-mail: [REDACTED]
Fax: [REDACTED]
Attn.: [REDACTED]

With a copy to:

[REDACTED]

Fax: [REDACTED]
Attn.: [REDACTED]

And a copy to: [REDACTED]

Fax: [REDACTED]

Attn.: [REDACTED]

With electronic copies to: [REDACTED]
[REDACTED]
[REDACTED]

If to the Account Trustee: [REDACTED]
[REDACTED]
[REDACTED]

Fax: [REDACTED]

Attn.: [REDACTED]

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

Fax: [REDACTED]

Attn.: [REDACTED]

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

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

11. AMENDMENTS

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

12. WAIVER

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

13. RELATIONSHIP BETWEEN THE PARTIES

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

14. ENTIRE AGREEMENT

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

15. SEVERABILITY

- (a) Each provision of this Insurance Trust Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Insurance Trust Agreement is declared invalid,

unenforceable or illegal by the courts of a competent jurisdiction, such provision may be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Insurance Trust Agreement. If any such provision of this Insurance Trust Agreement is invalid, unenforceable or illegal, the Parties shall, acting in good faith, promptly negotiate new provisions to eliminate such invalidity, unenforceability or illegality and to restore this Insurance Trust Agreement as near as possible to its original intent and effect.

16. **ENUREMENT**

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

17. **GOVERNING LAW AND JURISDICTION**

- (a) This Insurance Trust Agreement shall be governed by and construed in accordance with the laws of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract, without regard to conflict of laws principles.
- (b) The Parties agree that the courts of the Province of Ontario and all courts competent to hear appeals therefrom shall have exclusive jurisdiction to hear and settle any action, suit, proceeding or dispute in connection with this Insurance Trust Agreement and hereby irrevocably attorn to the exclusive jurisdiction of such courts.
- (c) Nothing in this Insurance Trust Agreement affects the rights, protections and immunities of the Crown under the *Proceedings Against the Crown Act* (Ontario).

18. **HMQ DESIGNATE**

- (a) At any time and from time to time, HMQ may designate any ministry, branch, agency, division, department or office of the Government of Ontario to carry out administrative responsibility for the rights and obligations of HMQ 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 HMQ has notified Project Co, the Lenders' Agent and the Account Trustee in writing that such designated person is no longer the person designated by HMQ 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. HMQ 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 HMQ to delegate administrative responsibilities hereunder as set forth in this Section 18.

19. **FURTHER ASSURANCE**

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

20. LANGUAGE OF AGREEMENT

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

21. COUNTERPARTS

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

22. COPYRIGHT NOTICE

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

23. JOINT AND SEVERAL LIABILITY

Each [REDACTED] hereby acknowledges and agrees to and in favour of each of HMQ, the Lenders' Agent and the Account Trustee that [REDACTED] are jointly and severally liable for the due and punctual payment of all indebtedness of, and performance and discharge of all covenants, obligations, agreements and undertakings (including indemnity obligations) of, Project Co under or pursuant to this Insurance Trust Agreement now or hereafter existing.

[SIGNATURE PAGES IMMEDIATELY FOLLOW]

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

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

Per: _____

Name: _____

Title: _____

Per: _____

Name: _____

Title: _____

I/We have authority to bind the corporation.

[REDACTED], in its capacity as Collateral Trustee

Per: _____

Name: _____

Title: _____

Per: _____

Name: _____

Title: _____

I/We have authority to bind the corporation.

**407 EAST DEVELOPMENT GROUP GENERAL
PARTNERSHIP, [REDACTED]**

[REDACTED]

Per: _____
Name: _____
Title: _____

Per: _____
Name: _____
Title: _____

I/We have authority to bind the corporation.

[REDACTED]

Per: _____
Name: _____
Title: _____

Per: _____
Name: _____
Title: _____

I/We have authority to bind the corporation.

[REDACTED], in its capacity as Account Trustee

Per: _____
Name: _____
Title: _____

Per: _____
Name: _____
Title: _____

I/We have authority to bind the corporation.

SCHEDULE 31

PROJECT CO INFORMATION

[REDACTED]

FOR INFORMATION ONLY

SCHEDULE 32
FINANCIAL MODEL EXTRACTS
[REDACTED]

FOR INFORMATION ONLY

SCHEDULE 33

WORKS REPORT REQUIREMENTS

1. The Works Report shall include the following:
 - (a) an executive summary;
 - (b) design, construction and maintenance status;
 - (c) Works Schedule summary, including:
 - (i) permits;
 - (ii) construction progress;
 - (iii) progress photos;
 - (iv) construction milestones; and
 - (v) full submissions schedule, including an updated Works Submittal and OM&R Submittal register identifying the required submittals that are anticipated to be submitted to HMQ in the following three (3) months;
 - (d) contractual outstanding decisions;
 - (e) environmental monitoring and compliance status;
 - (f) sustainability compliance status:
 - (i) Greenroads progress reports;
 - (ii) LEED Certified Rating progress reports on the Maintenance Facility; and
 - (iii) other sustainability measures implemented or to be implemented;
 - (g) quality assurance and quality control, including:
 - (i) update of quality control and quality assurance activities and personnel responsible;
 - (ii) 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
 - (iii) internal and external audits;
 - (h) organization / staffing changes and additions for Project Co and Construction Contractor;
 - (i) status of all reports submitted pursuant to the requirements of the Project Agreement;

- (j) health and safety, including:
 - (i) lost time injuries; and
 - (ii) accidents with no lost time;
- (k) Subcontract status, including:
 - (i) consultants;
 - (ii) Subcontracts awarded;
 - (iii) tenders; and
 - (iv) labour report (average workforce);
- (l) financial status, including:
 - (i) progress and Variations;
 - (ii) insurance summary;
 - (iii) Construction Contractor default status; and
 - (iv) cash flow projection (capital cost components);
- (m) risk management, including:
 - (i) claims;
 - (ii) liens;
 - (iii) environmental issues;
 - (iv) labour;
 - (v) market conditions;
 - (vi) outstanding disputes;
 - (vii) operational risks; and
 - (viii) other risks;
- (n) cash allowance information, including:
 - (i) a Cash Allowance Account reconciliation (as per Section 23.1(b)(iv) of the Project Agreement);

- (ii) a Cash Allowance Item report (as per Section 23.1(c) of the Project Agreement); and
- (iii) a Request for Payment Approval (as per Section 23.1(d) of the Project Agreement); and
- (o) status of any commissioning activities.

FOR INFORMATION ONLY

SCHEDULE 36

TOLLING INFRASTRUCTURE

1. Definitions

The following terms shall have the following meanings:

- (a) “**Tolling Civil Infrastructure Letter of Credit Delivery Date**” has the meaning given in Section 3(a) of this Schedule 36.
- (b) “**Tolling Civil Infrastructure Letter of Credit**” has the meaning given in Section 3(a) of this Schedule 36.
- (c) “**TCI Amount**” means the amount equal to [REDACTED]% of the TCI Cash Allowance Amount.
- (d) “**TCI LD Claim**” has the meaning given in Section 4(a) of this Schedule 36.

2. Project Co’s Obligations

- (a) Project Co shall, at its own cost, expense and risk, perform and complete the Tolling Civil Infrastructure:
 - (i) in accordance with the Tolling Design;
 - (ii) in compliance with all Applicable Law;
 - (iii) in compliance with all Permits, Licenses and Approvals, and so as to preserve the existence, continuance and effectiveness of such Permits, Licenses and Approvals;
 - (iv) in accordance with Good Industry Practice;
 - (v) in a timely and professional manner;
 - (vi) with due regard to the health and safety of persons and property;
 - (vii) subject to other provisions of the Project Agreement, in a manner which will not impair the ability of HMQ or any Province Person to comply with Applicable Law; and
 - (viii) subject to other provisions of the Project Agreement, in a manner which will not impair the performance of the Governmental Activities.
- (b) Project Co acknowledges and agrees that the provisions of Sections 9.4 and 9.5(a)(v) of the Project Agreement shall apply to the Tolling Civil Infrastructure *mutatis mutandis*.
- (c) Without limiting the generality of Section 2(a) of this Schedule 36 and in furtherance of its obligations set forth herein, Project Co shall:

- (i) subject to Section 9.7 of the Project Agreement, ensure that at all times, the Toll Operator has full and unobstructed access to the Lands to enable the Tolling Design to be developed and finalized;
- (ii) at the request of, and following reasonable notice by, HMQ, attend and participate in meetings with HMQ and the Toll Operator regarding, in respect of, in connection with or relating to the Tolling Infrastructure, including, in particular, the development and finalization of the Tolling Design; and
- (iii) in addition to its obligations with respect to the Design Review Meetings as set out in Section 20.5 of the Project Agreement, provide the Toll Operator with a copy of the minutes of any Design Review Meeting, together with a copy of any notes, comments, sketches, drawings, tracings, lay-outs, plans or diagrams prepared at the Design Review Meetings which may be relevant to the development and finalization of the Tolling Design. Such minutes, notes, comments, sketches, drawings, tracings, lay-outs, plans or diagrams are to be provided by Project Co to the Toll Operator on a timely basis so as to enable the Toll Operator to develop and finalize the Tolling Design on a reasonably timely basis.

3. Tolling Civil Infrastructure Letter of Credit

- (a) On a date that is no later than 15 days after the delivery of the Tolling Design by HMQ to Project Co (or by the Toll Operator to Project Co at the direction of HMQ) (the “**Tolling Civil Infrastructure Letter of Credit Delivery Date**”), Project Co shall provide an irrevocable standby letter of credit (the “**Tolling Civil Infrastructure Letter of Credit**”) in the form attached as Appendix A to this Schedule 36 to secure Project Co’s obligation to complete and perform the Tolling Civil Infrastructure as set out in this Schedule 36.
- (b) The Tolling Civil Infrastructure Works Letter of Credit shall be issued in a principal amount equal to the TCI Amount.
- (c) If Project Co fails to comply with, or defaults in the performance of, any of the provisions of this Schedule 36, then HMQ will be entitled to draw on the Tolling Civil Infrastructure Letter of Credit, in full or in such lesser amount as it may deem necessary in its sole discretion, and retain the proceeds thereof to:
 - (i) remedy such failure or cure such default; and
 - (ii) reimburse HMQ for all reasonable costs (including all applicable Taxes and all legal and professional services, legal costs being on a full indemnity basis) properly incurred by HMQ in exercising its rights under this Schedule 36, including any relevant increased administrative expenses.
- (d) All Disputes shall be resolved in accordance with, and the Parties shall comply with, Schedule 27 – Dispute Resolution Procedure.

- (e) The Tolling Civil Infrastructure Letter of Credit (or the portion of the Tolling Civil Infrastructure Letter of Credit that remains following the exercise of HMQ's rights under Section 3(c) of this Schedule 36) shall be returned by HMQ to Project Co on the earlier of:
 - (i) the date when HMQ is satisfied, in its sole discretion, that the Tolling Civil Infrastructure has been completed as contemplated by this Schedule 36;
 - (ii) the date being the 30th day after the Scheduled Substantial Completion Date; and
 - (iii) the date being the 30th day after the Termination Date.

4. Liquidated Damages Claim

- (a) In the event that:
 - (i) Project Co fails to deliver the Tolling Civil Infrastructure Letter of Credit to HMQ on or before the Tolling Civil Infrastructure Letter of Credit Delivery Date; or
 - (ii) the Tolling Civil Infrastructure Letter of Credit is held to be vitiated or otherwise ceases to be in full force and effect or in material compliance with the requirements set out in this Schedule 36, other than as a consequence of a breach by HMQ of its obligations under the Project Agreement, and such event or circumstances is not remedied within 5 Business Days of Project Co becoming aware of such event or circumstance,

then, in each case, HMQ shall be entitled to make a claim for liquidated damages against Project Co in a maximum amount equal to the TCI Amount (a "**TCI LD Claim**").

- (b) Notwithstanding any other provision in the Project Agreement or this Schedule 36, Project Co and HMQ acknowledge and agree that the occurrence of either event or circumstance described in Section 4(a)(i) or 4(a)(ii) of this Schedule 36 would expose HMQ to damages in an amount equal to the TCI Amount and, as such, the TCI Amount is not a penalty but represents a genuine and reasonable pre-estimate of the damages that HMQ will suffer upon the occurrence of such a failure by Project Co.
- (c) In the event that HMQ is entitled to bring a TCI LD Claim as contemplated by Section 4(a), HMQ shall automatically be entitled to set-off the amount of the TCI LD Claim against any amount payable by HMQ to Project Co under Section 34.1 of the Project Agreement, all in accordance with Section 34.13 of the Project Agreement.
- (d) In the event that the provisions in this Section 4 providing for the payment of liquidated damages are found for any reason to be void, invalid or otherwise inoperative, then HMQ shall retain the right to bring forward a claim against Project Co for any Direct Losses actually suffered by HMQ as a result of the occurrence of either event or circumstance described in Section 4(a)(i) or 4(a)(ii) of this Schedule 36.

5. Consequences of Project Co Failing to Complete the Tolling Civil Infrastructure and Recourse

- (a) Notwithstanding anything in the Project Agreement to the contrary:
- (i) Project Co shall not be required to complete the Tolling Civil Infrastructure pursuant to the provisions of this Schedule 36 in order to achieve any Section Substantial Completion or Substantial Completion. Without limiting the generality of the foregoing, the Independent Certifier shall not consider or review the status of the Tolling Civil Infrastructure when deciding whether or not to issue a Section Substantial Completion Certificate or the Substantial Completion Certificate;
 - (ii) any failure by Project Co to comply with, or any default by Project Co in the performance of, the provisions of Section 2(a) of this Schedule 36, shall not constitute a Project Co Event of Default, and for certainty, HMQ shall not be entitled to terminate the Project Agreement for any such failure or default; and
 - (iii) recourse by HMQ as against Project Co for the failure or default by Project Co to perform and satisfy, in full, the provisions of Section 2(a) of this Schedule 36 shall be limited to the rights, remedies, relief and entitlements of, or available to, HMQ under or pursuant to the Tolling Civil Infrastructure Letter of Credit. For certainty:
 - (A) nothing contained in this Section 5(a)(iii) of Schedule 36 shall, or shall be deemed or interpreted to, limit, restrict, prejudice or derogate, in any way or in any manner whatsoever, any right, remedy, relief or entitlement of, or available to, HMQ to seek or enforce compliance of the provisions of Sections 2(b) and 2(c) of this Schedule 36; and
 - (B) the maximum aggregate liability of Project Co to HMQ as set forth in Section 57.4 of the Project Agreement shall not be subject to, reduced by, or take into consideration, any drawdown made by HMQ under the Tolling Civil Infrastructure Letter of Credit.

6. Variations

- (a) Any change to the scope, configuration or size of the Tolling Design shall, subject to and in accordance with Schedule 22 – Variation Procedure, result in a Variation.

APPENDIX A
TOLLING CIVIL INFRASTRUCTURE LETTER OF CREDIT

[NTD: The Tolling Civil Infrastructure Letter of Credit must be issued by a bank acceptable to HMQ, acting reasonably, and must be callable at the bank's counters in Toronto, Ontario.]

Letter of Credit: #[●]

Date: [●]

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

Attn: [●]

Dear Sir/Madam:

RE: Highway 407 East Extension

At the request of our client, [●] (“**Project Co**”), we, [insert name and address of issuing bank], hereby issue in your favour an irrevocable standby letter of credit (the “**Letter of Credit**”) in the amount of \$● [insert amount equal to [REDACTED]% of the TCI Cash Allowance Amount].

The amount available under this Letter of Credit is payable to IO at any time and from time to time, upon (a) receipt by us of a written demand for payment, accompanied by a certificate signed by two officers of Ontario Infrastructure and Lands Corporation (“**IO**”) certifying that IO is entitled to draw on this Letter of Credit pursuant to Section 3(c) of Schedule 36 to that certain project agreement dated [●] between IO and Project Co (as amended from time to time, the “**Project Agreement**”) and (b) presentation of the original of this Letter of Credit.

This Letter of Credit will expire at 5:00 p.m. on the Longstop Date (as such term is defined in the Project Agreement)], and IO may call for payment of any amount outstanding under this Letter of Credit at any time up to 5:00 p.m. on the Longstop Date should this Letter of Credit not be renewed.

It is a condition of this Letter of Credit that it shall be automatically extended, without amendment except for any reduction contemplated above, for one year from the Longstop Date, or any future expiration date, unless, at least 30 days prior to any expiration date, we notify you, in writing, that we elect not to consider this Letter of Credit renewed for any such additional period. Upon receipt by you of such notice, you may draw the full amount remaining available hereunder by means of your demand.

Partial drawings are permitted.

We hereby agree that demands delivered under this Letter of Credit will be duly honoured upon presentation provided that all terms and conditions herein have been complied with.

Written demands drawn under this Letter of Credit shall state on their face that they are drawn under Letter of Credit #[●].

It is understood that [insert name of issuing bank] is obligated under this Letter of Credit for payments of monies only.

The Project Agreement is referred to herein for reference purposes only and does not form part of the terms of this Letter of Credit.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision) of the International Chamber of Commerce (ICC Publication No. 600) (the “UCP”) with the exception of Articles 18-30 inclusive (other than Article 29a, which shall apply) and Articles 31b, 31c and 32 except to the extent, if any, inconsistent with the express terms of this Letter of Credit. Notwithstanding Article 36 of the UCP, if this Letter of Credit expires during an interruption of business as contemplated in such Article 36, we shall honour any demand made under this Letter of Credit prior to the Longstop Date, within 30 days after the date on which such interruption of business ends (and we shall notify you promptly when it does so end). For matters not covered by such publication, this Letter of Credit shall be governed by and construed in accordance with the laws of the Province of Ontario.

Yours very truly,

[Name of Issuing Bank]

By: _____

Name:

Title:

By: _____

Name:

Title: