

**DEVELOPMENT AND MASTER CONSTRUCTION
AGREEMENT
(Redacted Version)**

**TO DESIGN AND BUILD ONTARIO LINE – PAPE TUNNEL &
UNDERGROUND STATIONS**

CONFIDENTIAL

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Schedule 6	- DMCA Construction Works
Schedule 7	- Mobility Matters
Schedule 8	- Subcontracts
Schedule 9	- Key Individuals
Schedule 10	- Review Procedure
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Schedule 12	- Works Schedule Requirements
Schedule 13	- Integration Related Amendments
Schedule 14	- Commissioning
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Schedule 19	- Governance, Meetings and Progress Reporting
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Schedule 24	- Form of Parent Guarantee
Schedule 25	- Insurance and Bond Requirements
Schedule 26	- Record Provisions
Schedule 27	- Dispute Resolution Procedure
Schedule 28	- Value for Money Statement
Schedule 29	- Safety, System Assurance and Security
Schedule 30	- [Intentionally Deleted]
Schedule 31	- Project Co Information
Schedule 32	- [Intentionally Deleted]
Schedule 33	- Works Report Requirements
Schedule 34	- Permits, Licences, Approvals and Agreements
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Schedule 36	- Property Access Matters
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Schedule 41	- Early Works Handover
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Schedule 44	- Geotechnical Baseline Reports
Schedule 45	- Integration with RSSOM Project
Schedule 46	- TTC Station Weekend Closures

- Schedule 47 - Corporate Overhead and Profit
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- Schedule 49 - Target Price Gainshare / Painshare Regime

THIS AGREEMENT is entered into as of the 17th day of January, 2024

BETWEEN

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

(“**Contracting Authority**”)

AND:

PAPE NORTH CONNECT, [REDACTED]

(“**Project Co**”)

WHEREAS:

- A. The Province of Ontario’s New Subway Transit Plan for the Greater Toronto and Hamilton Area includes a number of priority projects, including a 15.5 kilometre subway that will run between Ontario Place/Exhibition through downtown Toronto to the Ontario Science Centre.
- B. In connection with the Ontario Line Subway System, Contracting Authority, with the assistance of IO, wishes to procure the design, construction and handover of three kilometres of twin running tunnels, the Pape Station and the Cosburn Station and other associated structures required for the Ontario Line Subway System. The Project will be integrated with the RSSOM Project and the Elevated Guideway and Stations Project, and together with the South Civil Project, the Early Works Infrastructure and the Project Co Infrastructure, will collectively form the Ontario Line Subway System.
- C. Project Co will carry out the Works, which Works include the design, construction, supply, integration and commissioning of the Project Co Infrastructure and the New Third Party Infrastructure (the “**Project**”). The Project has been approved to proceed as a progressive design build project. The Project shall follow five fundamental principles which guide the financing and procurement of public infrastructure projects, which include:
 1. the public interest is paramount;
 2. value for the investment of public money must be demonstrable;
 3. appropriate public control and ownership must be maintained;
 4. accountability must be maintained; and
 5. fair, transparent and efficient processes must be used.
- D. On November 17, 2022, Contracting Authority issued a Request for Qualification for the Project, thereby commencing the procurement process for the Project.

- E. On April 3, 2023, Contracting Authority issued a Request for Proposals, advancing the procurement process for the Project.
- F. Contracting Authority and Project Co wish to enter into this development and master construction agreement (this “**Agreement**”) to, *inter alia*, set out the terms and conditions upon which Project Co shall perform the design of the Works, perform certain DMCA Construction Works, submit one or more TPA Proposals to Contracting Authority, and perform the TPA Works.
- G. The Parties agree, through the process set out in Schedule 2 – Development Works Submissions and Project Development Process, to determine how the Works will be packaged into one or multiple TPA Scopes, with a view to entering into a Target Price Agreement with respect to each TPA Scope.
- H. The Parties agree that following Project Co’s delivery of a TPA Proposal and the TPA Proposal Negotiations, Contracting Authority may elect to enter into a Target Price Agreement with Project Co with respect to the TPA Scope to which such TPA Proposal relates. The Target Price Agreement shall set out the commercial terms and technical requirements applicable to the TPA Works, as well as any other modifications to the terms of this Agreement that will apply to such TPA Works.
- I. Where more than one Target Price Agreement is entered into pursuant to this Agreement, the Parties agree to incorporate into any subsequent Target Price Agreement the TPA Scope, commercial terms and technical requirements that were the subject of and included in the prior Target Price Agreement, with the subsequent Target Price Agreement superseding any and all prior Target Price Agreements. Consequently, at any given time, no more than one Target Price Agreement shall be in effect.
- J. This Agreement shall at all times continue to govern Project Co’s performance of the TPA Works, subject only to the modifications to the terms hereof as set out in a Target Price Agreement.
- K. With a view to ensuring that both Parties are able to properly and effectively discharge their respective duties, functions and responsibilities under Applicable Law, it is the intent that Contracting Authority and Project Co work collaboratively, responsibly and cooperatively throughout the Project Term.

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 Agreement shall be interpreted in accordance with Schedule 1 – Definitions and Interpretation.
- (b) This 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 Agreement:

Schedule No.		Description
Schedule 1	-	Definitions and Interpretation
Schedule 2	-	Development Works Submissions and Project Development Process
Schedule 3	-	Form of Assignment of Subcontract
Schedule 4	-	Form of Target Price Agreement
Schedule 5	-	TOC Development Requirements
Schedule 6	-	DMCA Construction Works
Schedule 7	-	Mobility Matters
Schedule 8	-	Subcontracts
Schedule 9	-	Key Individuals
Schedule 10	-	Review Procedure
Schedule 11	-	Quality Management
Schedule 12	-	Works Schedule Requirements
Schedule 13	-	Integration Related Amendments
Schedule 14	-	Commissioning
Schedule 15	-	Output Specifications
Schedule 16	-	Encumbrances
Schedule 17	-	Environmental Obligations
Schedule 18	-	Communication and Public Engagement Protocol
Schedule 19	-	Governance, Meetings and Progress Reporting
Schedule 20	-	Warranty Letter of Credit
Schedule 21	-	Risk Allocations
Schedule 22	-	Estimates, Variations and Proposals
Schedule 23	-	Compensation on Termination
Schedule 24	-	Form of Parent Guarantee
Schedule 25	-	Insurance and Bond Requirements
Schedule 26	-	Record Provisions
Schedule 27	-	Dispute Resolution Procedure
Schedule 28	-	Value for Money Statement
Schedule 29	-	Safety, System Assurance and Security
Schedule 30	-	[Intentionally Deleted]
Schedule 31	-	Project Co Information
Schedule 32	-	[Intentionally Deleted]
Schedule 33	-	Works Report Requirements
Schedule 34	-	Permits, Licences, Approvals and Agreements
Schedule 35	-	Lands
Schedule 36	-	Property Access Matters
Schedule 37	-	Intellectual Property
Schedule 38	-	Integration with EGS Project
Schedule 39	-	Form of RSSOM Interface Agreement
Schedule 40	-	Rail Corridor Access and Flagging
Schedule 41	-	Early Works Handover
Schedule 42	-	Payment Procedures
Schedule 43	-	Incentives and Construction Enforcement Regime
Schedule 44	-	Geotechnical Baseline Reports
Schedule 45	-	Integration with RSSOM Project
Schedule 46	-	TTC Station Weekend Closures
Schedule 47	-	Corporate Overhead and Profit

Schedule 48	-	Defined Cost
Schedule 49	-	Target Price Gainshare / Painshare Regime

- (c) The documents comprising this 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 as expressly set out herein, on the DMCA Effective Date, the Request for Proposals and Project Co's proposal submitted in response to the RFP shall be superseded entirely by this Agreement and rendered null and void, and shall not be relied upon or used by Project Co, Contracting Authority or anyone else (including anyone pursuant to Schedule 27 – Dispute Resolution Procedure or any arbitral body or any court) in any way to interpret or qualify the scope of the Works, any obligations or liabilities of Project Co, or anything else contained in this Agreement or the Target Price Agreement.
- (e) Unless it is specifically provided that a consent, approval or satisfaction is in the sole discretion of Contracting Authority, no consent, approval or satisfaction of Contracting Authority or the Contracting Authority Representative shall be unreasonably withheld or delayed.
- (f) Unless it is specifically provided that a consent, approval or satisfaction is in the sole discretion of Project Co, no consent, approval or satisfaction of Project Co or the Project Co Representative shall be unreasonably withheld or delayed.
- (g) The organization of the Output Specifications into divisions, sections and parts shall not control Project Co in dividing the Works among the Project Co Parties or in establishing the extent of the Works to be performed by a trade.

1.2 Conflict of Terms

- (a) In the event of ambiguities, conflicts or inconsistencies between or among any of the provisions of this 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 Agreement signed by the Parties and Variation Confirmations shall govern and take precedence only over those specific provisions of this 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 Agreement;
 - (iv) Schedule 1 – Definitions and Interpretation;
 - (v) Schedule 48 – Defined Cost;
 - (vi) Schedule 47 – Corporate Overhead and Profit;
 - (vii) Schedule 2 – Development Works Submissions and Project Development Process;

- (viii) Schedule 6 – DMCA Construction Works;
 - (ix) Schedule 49 – Target Price Gainshare / Painshare Regime;
 - (x) Schedule 42 – Payment Procedures;
 - (xi) Schedule 34 – Permits, Licences, Approvals and Agreements;
 - (xii) Schedule 35 – Lands;
 - (xiii) Schedule 27 – Dispute Resolution Procedure;
 - (xiv) Schedule 40 – Rail Corridor Access and Flagging;
 - (xv) Schedule 17 – Environmental Obligations;
 - (xvi) Schedule 25 – Insurance and Bond Requirements;
 - (xvii) Schedule 22 – Estimates, Variations and Proposals;
 - (xviii) Schedule 10 – Review Procedure;
 - (xix) Schedule 14 – Commissioning;
 - (xx) Schedule 11 – Quality Management;
 - (xxi) Schedule 45 – Integration with RSSOM Project;
 - (xxii) Schedule 38 – Integration with EGS Project;
 - (xxiii) Schedule 41 – Early Works Handover;
 - (xxiv) Schedule 15 – Output Specifications;
 - (xxv) Schedule 23 – Compensation on Termination;
 - (xxvi) Schedule 26 – Record Provisions; and
 - (xxvii) the other Schedules in the order in which they are listed in Section 1.1(b).
- (b) Subject to Section 1.2(a), if the ambiguity, conflict or inconsistency is between a provision of general application and a provision that applies only to a specific part of the Works, the provision that applies to the specific part of the Works shall govern for that specific part of the Works.
- (c) If any ambiguity, conflict or inconsistency is not readily resolved by the foregoing provisions of this Section 1.2, then Project Co or Contracting Authority, upon discovery of same, shall immediately give Notice to the Contracting Authority Representative. The Contracting Authority Representative shall, within 10 Business Days after such Notice, make a determination of which provision governs and give Notice of such determination, in writing, to Project Co.

- (d) Contracting Authority and Project Co shall comply with the determination of the Contracting Authority Representative pursuant to this Section 1.2 unless Project Co disputes the decision of the Contracting Authority Representative in which event such Dispute may be referred for resolution in accordance with Schedule 27 – Dispute Resolution Procedure.

1.3 Conflict of Documents

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

1.4 Legal Requirements

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

1.5 Joint and Several Liability

- (a) Each entity comprising Project Co shall be liable, on a joint and several basis, for all of the obligations of Project Co under this Agreement.

2. DMCA EFFECTIVE DATE AND COMPLETION DOCUMENTS

2.1 DMCA Effective Date

- (a) This Agreement is effective as from the date first stated above (the “**DMCA Effective Date**”).

2.2 Completion Documents

- (a) Project Co acknowledges that on the DMCA Effective Date Contracting Authority has delivered to Project Co the documents set out in Section 2 (*Documents To Be Delivered By Contracting Authority*) of Schedule 10 (*DMCA Completion Documents*) of the RFP.
- (b) Contracting Authority acknowledges that on the DMCA Effective Date Project Co has delivered to Contracting Authority the documents set out in set out in Section 1 (*Documents To Be Delivered By Preferred Proponent*) of Schedule 10 (*DMCA Completion Documents*) of the RFP.

3. SCOPE OF AGREEMENT AND TERM

3.1 Scope of Agreement

- (a) Project Co shall undertake the Project and perform the Works in accordance with and subject to the provisions of this Agreement and the Target Price Agreement then in effect.

- (b) Project Co shall exercise its rights and perform its obligations without recourse to Contracting Authority, except as otherwise provided in this Agreement and the Target Price Agreement then in effect.

3.2 Project Term

- (a) The term of this Agreement shall be the period of time from the DMCA Effective Date and ending on the expiry of the later of (i) the TPA Warranty Period applicable to the TPA Works which is the latest to reach TPA Substantial Completion, (ii) the DMCA Warranty Period applicable to the DMCA Construction Works which is the latest to reach DMCA Construction Works Substantial Completion; and (iii) in respect of New City Infrastructure and New TTC Infrastructure, the DMCA Warranty Period or the TPA Warranty Period applicable to the Construction Works which is the latest to reach Handover, unless terminated earlier in accordance with the terms of this Agreement (the “**Project Term**”).

3.3 Parties to Collaborate and Cooperate

- (a) The Parties agree to:
- (i) at all times act cooperatively, reasonably and in good faith in the performance of their respective obligations and the exercise of their respective rights under this Agreement and to establish and maintain a collaborative culture, provided that the foregoing shall not limit any right of a Party where in this Agreement it is set out that a Party may exercise any of its rights in its sole discretion;
 - (ii) develop and agree to the Development Works Charter in accordance with Schedule 19 – Governance, Meetings and Progress Reporting; and
 - (iii) at all times, with respect to the performance of the Works and this Agreement, act in accordance with the following principles, whereby the Parties shall:
 - (A) establish and maintain a collaborative culture and act, at all times, in a manner that is consistent with a Best for Project approach;
 - (B) promote a “win together, lose together” approach to the Project;
 - (C) be empowered with accountability for decisions each Party makes during the Project Term;
 - (D) follow “safety first and always” principles;
 - (E) promote and maintain a “one team” approach;
 - (F) operate and cause their advisors to operate on a principle of full transparency and maintain a commitment to an open book approach. With respect to Project Co, Project Co shall cause the Subcontractors to operate on such principle and maintain such commitment;
 - (G) seek to create exceptional value for Contracting Authority and the Project and mutual benefits for the Parties;

- (H) establish and maintain a value for money approach to the Project in accordance with the Value for Money Statement;
- (I) build high-performing teams that will seek to promptly and proactively take steps to minimize and resolve any potential and actual Disputes that arise under this Agreement; and
- (J) consider the advice and recommendations of the other Party when making decisions or exercising any right under this Agreement,

provided that the foregoing shall not limit any right of a Party where in this Agreement it is set out that a Party may exercise any of its rights in its sole discretion.

- (b) No consent, approval or satisfaction of a Party or a Party Representative shall be unreasonably withheld or delayed, unless it is specifically provided in this Agreement that the consent, approval or satisfaction is in the sole discretion of the Party or the Party Representative.
- (c) Notwithstanding anything to the contrary in this Agreement, no Party shall be under any obligation to perform or shall be liable for any of the other Party's obligations under this Agreement.

4. DEVELOPMENT WORKS, TARGET PRICE AGREEMENT AND DMCA CONSTRUCTION WORKS

4.1 Purpose of Development Works

- (a) The Parties acknowledge and agree that the purpose of the terms set out in Schedule 2 – Development Works Submissions and Project Development Process is:
 - (i) for Contracting Authority and Project Co to collaboratively plan and for Project Co to perform the Development Works, all subject to and in accordance with this Agreement; and
 - (ii) to allow Contracting Authority to assess and determine, in its sole discretion, if it will elect to proceed to enter into one or more Target Price Agreements with Project Co, including after:
 - (A) the Draft TPA Negotiations Process pursuant to Schedule 2 – Development Works Submissions and Project Development Process is undertaken with respect to an applicable TPA Scope;
 - (B) a TPA Proposal submitted by Project Co pursuant to Schedule 2 – Development Works Submissions and Project Development Process has been reviewed and commented on by Contracting Authority with respect to an applicable TPA Scope;
 - (C) any TPA Proposal Negotiations pursuant to Schedule 2 – Development Works Submissions and Project Development Process are undertaken and completed with respect to an applicable TPA Scope; and
 - (D) Contracting Authority has taken into account and considered any other factors identified by Contracting Authority or any of its stakeholders (including the

Province), in its sole discretion, including any relevant affordability constraints of Contracting Authority or the Province and the performance of Project Co and the Project Co Parties under this Agreement.

- (b) Notwithstanding anything to the contrary in this Agreement, Project Co acknowledges, confirms and agrees that:
 - (i) Contracting Authority shall be under no obligation whatsoever, and shall not be liable under this Agreement or otherwise pursuant to any Applicable Law, to Project Co or to any Project Co Party to enter into any Target Price Agreement;
 - (ii) nothing in this Agreement shall limit, prejudice or fetter Contracting Authority's right to (A) terminate this Agreement pursuant to Section 33, including after Contracting Authority enters into a Target Price Agreement, (B) terminate any Target Price Agreement in accordance with the provisions thereof, or (C) issue a Variation removing certain Development Works from the scope of Works to be performed by Project Co; and
 - (iii) Contracting Authority shall not be liable for any losses, damages or claims suffered by Project Co or any Project Co Party arising from or connected with the termination of this Agreement for any reason whatsoever, including following Contracting Authority's review of and comment on a TPA Proposal, except as expressly set out in Section 33 or Section 35.

4.2 Development Works Obligations

- (a) Except as otherwise provided in this Agreement, Project Co shall perform all work and provide all services necessary to complete the Development Works in accordance with this Agreement.
- (b) The Parties agree to comply with the provisions of Schedule 2 – Development Works Submissions and Project Development Process, including with regards to:
 - (i) the performance of the activities to be carried out during the First Development Phase, the Second Development Phase and each TPA Development Phase and the Project Checkpoints process applicable in respect thereof;
 - (ii) Project Co's submission of the applicable Development Works Project Deliverables to Contracting Authority for its review and comment; and
 - (iii) the terms and conditions pursuant to which the Parties shall negotiate finalize, execute and deliver any Target Price Agreement,subject to and in accordance with the terms of this Agreement.
- (c) Project Co shall use commercially reasonable efforts to obtain the best value for money when performing the Development Works and providing Estimates.
- (d) Project Co acknowledges and agrees that notwithstanding anything to the contrary in this Agreement, no consultation, cooperation, inspection, testing, approval, comment, audit, certification, acknowledgement or direction by Contracting Authority, the Contracting Authority Representative, the Independent Commissioning Agent, the City of Toronto or any other third

party pursuant to this Agreement, and no consent furnished by Contracting Authority pursuant to this Agreement, shall relieve Project Co from its exclusive responsibility for ensuring that the Works, the Project Co Infrastructure and the New Third Party Infrastructure comply with the requirements of this Agreement, or estop Contracting Authority from asserting any non-compliance with any such requirements under this Agreement.

4.3 Target Price Agreements

- (a) Each Party acknowledges and agrees that any Target Price Agreement that is entered into shall be in the form of Schedule 4 – Form of Target Price Agreement, subject to modifications thereof only in respect of the Negotiable Draft TPA Provisions.
- (b) Where a Target Price Agreement has been entered into in respect of any TPA Scope (the “**Initial TPA**”) and a subsequent Target Price Agreement is intended to be entered into in respect of a different TPA Scope (the “**Subsequent TPA**”), it is agreed that (i) the TPA Works under the Initial TPA shall be included in TPA Works under the Subsequent TPA (ii) the Subsequent TPA shall reflect all terms of the Initial TPA (including in respect of all Negotiable Draft TPA Provisions) with respect to the TPA Works under the Initial TPA (without further negotiation of or modification of such Negotiable Draft TPA Provisions to the extent they apply to the TPA Works under the Initial TPA), (iii) without limiting the generality of (ii), such Subsequent TPA shall reflect a Target Price that includes within it the Target Price applicable under the Initial TPA, and (iv) such Subsequent TPA shall replace and supersede the Initial TPA.

4.4 DMCA Construction Works

- (a) Project Co acknowledges and agrees that pursuant to Schedule 6 – DMCA Construction Works, Contracting Authority may by way of a Notice to Proceed require Project Co to perform certain Works in accordance with any specifications or requirements set out therein (the “**DMCA Construction Works**”).
- (b) Notwithstanding any other provision of this Agreement to the contrary, Contracting Authority reserves the right to direct Project Co not to perform any DMCA Construction Works until such time as Project Co provides an Estimate to Contracting Authority and such Estimate is approved by Contracting Authority in writing in accordance with Schedule 22 – Estimates, Variations and Proposals.

5. PAYMENT AND TARGET PRICE

5.1 General – Development Works and DMCA Construction Works

- (a) Project Co represents and warrants that the amounts it will be paid under this Agreement, exclusive of HST, for the performance of the Development Works and the DMCA Construction Works will each be based on a Proper Invoice prepared and as determined in accordance with Part A of Schedule 42 – Payment Procedures, Schedule 47 – Corporate Overhead and Profit, and Schedule 48 – Defined Cost.
- (b) Project Co acknowledges and agrees that:

- (i) Project Co has satisfied itself as to the correctness and sufficiency of the Defined Cost, Corporate Overhead and Profit, and has based the Defined Cost, Corporate Overhead and Profit on the data, interpretations, necessary information, examinations and satisfaction as to all relevant matters related to this Agreement; and
 - (ii) except as otherwise expressly set out in this Agreement, there shall be no other amounts payable by Contracting Authority under this Agreement in respect of the Development Works or DMCA Construction Works to Project Co other than the Defined Cost, Corporate Overhead and Profit.
- (c) Subject to the provisions of this Agreement and in accordance with and subject to Applicable Law respecting holdbacks, Contracting Authority shall pay Project Co, in respect of the Development Works and the DMCA Construction Works, the Defined Cost, Corporate Overhead and Profit (plus applicable HST) determined pursuant to Part A of Schedule 42 – Payment Procedures, Schedule 47 – Corporate Overhead and Profit, and Schedule 48 – Defined Cost on a monthly basis.

5.2 General – TPA Works

- (a) The Target Price applicable in respect of the TPA Works, exclusive of HST, shall be as set out in the Target Price Agreement entered into by the Parties in respect of the TPA Works.
- (b) The Target Price applicable to the TPA Works at any time:
- (i) shall be fixed and not subject to Adjustment under this Agreement except in accordance with Schedule 21 – Risk Allocations or Part B of Schedule 22 – Estimates, Variations and Proposals; and
 - (ii) shall be inclusive of all Defined Cost.
- (c) For greater certainty, a Target Price will only be adjusted where this Agreement specifically and expressly refers to an Adjustment in accordance with Schedule 21 – Risk Allocations or Part B of Schedule 22 – Estimates, Variations and Proposals, and no claim for any adjustment to a Target Price on any legal or equitable basis outside of the specific and express rights to an Adjustment set out in this Agreement will be allowed.
- (d) Subject to the provisions of this Agreement (including, for clarity Section 5.2(c)) and in accordance with and subject to Applicable Law, including the *Construction Act* (Ontario), Contracting Authority covenants and agrees to pay Project Co in accordance with Part B of Schedule 42 – Payment Procedures:
- (i) amounts in respect of the Defined Cost, Corporate Overhead and Profit, as determined in accordance with Schedule 49 – Target Price Gainshare / Painshare Regime, Schedule 47 – Corporate Overhead and Profit and Schedule 48 – Defined Cost;
 - (ii) amounts payable to Project Co as determined in accordance with Schedule 43 – Incentives and Construction Enforcement Regime;
 - (iii) amounts which become payable in connection with a Variation implemented pursuant to Part B of Schedule 22 – Estimates, Variations and Proposals; and

- (iv) amounts payable in respect of compensation as determined pursuant to Schedule 23 – Compensation on Termination if this Agreement is terminated pursuant to Sections 31.3(a), 32.2(a)(ii), 33.1, 33.2, 33.4 or 33.5;
- (e) Details of payments to be made pursuant to Section 5.2(d) are set out in Part B of Schedule 42 – Payment Procedures.

5.3 HST

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

5.4 Set-Off

- (a) The Parties agree that their rights of set-off at law or in equity are limited to the right of:
 - (i) Contracting Authority, to set off against any amounts otherwise due to Project Co pursuant to the terms of this Agreement, any amounts (including any amounts payable in accordance with Section 41) that,
 - (A) are due or owed to Contracting Authority from or by Project Co pursuant to the terms of this Agreement or by the Parent Guarantor pursuant to the Parent Guarantee; or
 - (B) are being disputed in accordance with Schedule 27 – Dispute Resolution Procedure; and
 - (ii) Project Co to set-off against any amounts otherwise due to Contracting Authority pursuant to the terms of this Agreement, any amounts (including any amounts payable in accordance with Section 41) that:
 - (A) are due or owed to Project Co from or by Contracting Authority pursuant to the terms of this Agreement; or
 - (B) are being disputed in accordance with Schedule 27 – Dispute Resolution Procedure.
- (b) Where a set-off, deduction or withholding is being exercised against amounts payable under a Proper Invoice, Contracting Authority shall deliver a notice of non-payment in the prescribed form and manner no later than 14 days after receiving the Proper Invoice.
- (c) For clarity, Contracting Authority is entitled to exercise its rights in accordance with Section 5.4(a)(i) immediately upon an amount becoming due or owed to Contracting Authority,
 - (i) by Project Co pursuant to the terms of this Agreement; or
 - (ii) by the Parent Guarantor pursuant to Schedule 24 – Form of Parent Guarantee.

5.5 Effect of Payment

- (a) Subject to Section 35.2, no payment hereunder shall be construed as an acceptance or approval of incomplete, defective or improper performance by Project Co of any of its obligations under this Agreement, nor shall it operate to relieve Project Co from the performance of any of its obligations under this Agreement which have not been performed.

5.6 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 Agreement, except as specifically and expressly set out in this Agreement.

5.7 Taxes

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

5.8 Changes in Scope of Taxation

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

5.9 Changes in Recoverability of Tax Credits

- (a) Contracting Authority will pay to Project Co from time to time, as the same is incurred by Project Co, amounts equal to any Irrecoverable Tax to the extent such Irrecoverable Tax results from a Change in Law. Project Co will pay to Contracting Authority from time to time, as the same is incurred by Project Co, amounts equal to any Recoverable Tax to the extent such Recoverable Tax results from a Change in Law.
- (b) For the purposes of this Section 5.9, the term “**Irrecoverable Tax**” means HST or an irrecoverable sales tax levied by the Province in lieu of all or a portion of HST incurred by Project Co in respect of the supply of any property or service to Contracting Authority which is consumed, used or supplied, or to be consumed, used or supplied, exclusively by Project Co in the course of carrying out the Works to the extent that Project Co is unable to recover or be credited with input tax credits, refunds, rebates or exemptions for such HST.
- (c) For the purposes of this Section 5.9, the term “**Recoverable Tax**” means HST incurred by Project Co in respect of the supply of any property or service to Contracting Authority which is consumed, used or supplied, or to be consumed, used or supplied, exclusively by Project Co in the course of carrying out the Works to the extent that Project Co is able to recover or be credited with input tax credits, refunds, rebates or exemptions for such HST.

5.10 Information and Assistance Provided by Project Co

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

5.11 Residency – *Income Tax Act (Canada)*

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

5.12 Taxes – General

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

would cause Contracting Authority to have (or result in Contracting Authority having) any obligation to deduct, withhold or remit any Taxes that are required by Applicable Law to be deducted, withheld or remitted from any amounts paid or credited to Project Co or any Project Co Party under this Agreement or under any other Project Document.

5.13 Taxes – Indemnity

(a) If:

- (i) Project Co becomes a Non-Resident; or
- (ii) Contracting Authority is or becomes required by Applicable Law to deduct or withhold any amount in respect of Taxes on or in respect of any amounts paid or credited to Project Co or a Project Co Party by Contracting Authority under this Agreement or under any other Project Document,

then Contracting Authority shall be entitled to make any applicable deductions or withholdings required by Applicable Law from any amount paid or credited or to be paid or credited to Project Co or a Project Co Party on or after the date on which:

- (iii) Project Co or the Project Co Party becomes a Non-Resident and at all times while it remains a Non-Resident; or
- (iv) Contracting Authority is required by Applicable Law to deduct or withhold amounts in respect of any such amounts,

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

(b) If:

- (i) Project Co becomes a Non-Resident, or
- (ii) Contracting Authority is or becomes required by Applicable Law to deduct and withhold any amount in respect of Taxes on or in respect of any amounts paid or credited to Project Co or a Project Co Party by Contracting Authority under this Agreement or under any other Project Document,

Project Co shall, in each case, indemnify and hold harmless Contracting Authority for:

- (iii) the full amount of all Taxes (“**Indemnifiable Taxes**”) that arise, are imposed on or are required to be paid by Contracting Authority in respect of any amounts paid or credited by Contracting Authority to Project Co or any Project Co Party under this Agreement or under any other Project Document as a result of either of the foregoing items less any amount withheld or deducted by Contracting Authority in respect of such Taxes, and

- (iv) any liability payable or incurred in connection with Indemnifiable Taxes (including penalties, interest and reasonable expenses associated with Tax compliance, reporting and contesting such liability for Indemnifiable Taxes, including reasonable professional expenses payable or incurred in connection therewith) arising from or with respect to Indemnifiable Taxes, whether or not they were correctly or legally asserted (“**Associated Liabilities**”).

Payment under this indemnification shall be made within 30 days after the date Contracting Authority makes written demand for it. A certificate containing reasonable detail as to the amount of Indemnifiable Taxes and Associated Liabilities submitted to Project Co by Contracting Authority shall be conclusive evidence, absent manifest error, of the amount due from Project Co to Contracting Authority. Contracting Authority shall be entitled to exercise its rights of set-off under Section 5.4 against any amounts owing under this indemnification.

6. REPRESENTATIONS AND WARRANTIES

6.1 Project Co Representations and Warranties

- (a) Project Co represents and warrants to Contracting Authority that as of the DMCA Effective Date:
 - (i)
 - (A) Project Co is [REDACTED];
 - (B) [REDACTED] is a [REDACTED], 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 Agreement and to perform its obligations hereunder; and
 - (C) [REDACTED] is a [REDACTED], 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 Agreement and to perform its obligations hereunder;
 - (ii) Project Co and the Project Co Parties, collectively, have extensive experience and are knowledgeable in the design and construction of infrastructure and facilities similar to those included in the scope of the Project in scale, scope, type and complexity, and have the required ability, experience, skill and capacity to perform the Works in a timely and professional manner as set out in this Agreement;
 - (iii) Project Co has the requisite power, authority and capacity to execute, deliver and perform this 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 Agreement to be done, executed, delivered or performed;
 - (iv) no steps or proceedings have been taken or are pending to supersede or amend the constating documents, articles or by-laws of Project Co in a manner that would impair or limit its ability to perform the obligations of Project Co under this Agreement;

- (v) this Agreement has been duly authorized, executed, and delivered by Project Co and constitutes a legal, valid, and binding obligation of Project Co, enforceable against Project Co in accordance with its terms, subject only to:
 - (A) limitations with respect to the enforcement of remedies by bankruptcy, insolvency, moratorium, winding-up, arrangement, reorganization, fraudulent preference and conveyance and other laws of general application affecting the enforcement of creditors' rights generally; and
 - (B) general equitable principles and the fact that the availability of equitable remedies is in the discretion of a court and that a court may stay proceedings or the execution of judgments;
- (vi) the execution, delivery, and performance by Project Co of this Agreement does not and will not violate or conflict with, or constitute a default under:
 - (A) its constating, formation or organizational documents, including any by-laws;
 - (B) any Applicable Law; or
 - (C) any covenant, contract, agreement, or understanding to which it is a party or by which it or any of its properties or assets is bound or affected;
- (vii) no Project Co Event of Default has occurred and is continuing;
- (viii) all of the information regarding Project Co set out in Schedule 31 – Project Co Information is true and correct in all material respects;
- (ix) there are no actions, suits, proceedings, or investigations pending or threatened against Project Co or, to Project Co's knowledge, any Project Co Party at law or in equity before any Governmental Authority or arbitral body (whether or not covered by insurance) that individually or in the aggregate could result in any material adverse effect on the business, properties, or assets, or the condition, financial or otherwise, of Project Co or in any impairment of its ability to perform its obligations under this Agreement, and Project Co has no knowledge of any violation or default with respect to any order, writ, injunction, or decree of any Governmental Authority or arbitral body that could result in any such material adverse effect or impairment;
- (x) Project Co has:
 - (A) reviewed the Background Information available as of the DMCA Effective Date as required in Section 7.1;
 - (B) carefully reviewed the whole of this Agreement, and all other documents made available to Project Co by or on behalf of Contracting Authority;
 - (C) reviewed and understood general conditions relating to the performance of the Development Works including the transportation, handling and storage of materials and availability of labour and the character and availability of

equipment, materials and facilities needed to perform the Development Works; and

- (D) to its knowledge, concluded or determined that nothing inhibits or prevents Project Co from completing the Development Works or performing the Development Works in accordance with this Agreement in a good and safe manner so as to achieve and satisfy the requirements of this Agreement;
- (xi) Project Co is able to meet its obligations as they generally become due;
- (xii) Project Co is registered under Subdivision D of Division V of Part IX of the *Excise Tax Act* (Canada) and its HST registration number is [REDACTED];
- (xiii) Project Co is not a Non-Resident;
- (xiv) Project Co has obtained any necessary Project Co Permits, Licences, Approvals and Agreements required to commence the Development Works;
- (xv) the management or supervisory personnel Project Co has assigned to the Project are highly experienced;
- (xvi) Project Co has a sufficient staff of qualified and competent personnel to replace its designated supervisors, subject to Contracting Authority's approval, in the event of death, incapacity or resignation;
- (xvii) no Restricted Person has Direct or Indirect Power or Control over any member of the Project Co Group in relation to the decisions, management, actions or policies of Project Co or in relation to the operation, management and ownership of the Project;
- (xviii) to the knowledge of Project Co, following the exercise of reasonable due diligence, no Restricted Person has directly or indirectly, an Economic Interest in Project Co or the Project;
- (xix) Project Co is not a Restricted Person;
- (xx) either:
 - (A) the COR-Certified Construction Project Co Party is in possession of its COR Certification in good standing as required under this Agreement and has the ability to maintain such COR Certification in good standing at all times during the performance of the Works in accordance with its terms, provisions and conditions; or
 - (B) the COR-Qualified Construction Project Co Party:
 - (I) is in possession of its OHSAS 18001 Accreditation or ISO 45001 Accreditation which remains in good standing and has the ability to maintain such OHSAS 18001 Accreditation or ISO 45001 Accreditation in good standing at all times during the performance of the Works, and

- (II) has made an application to the IHSa for its COR Certification as required under this Agreement;
- (xxi) the Subcontracts identified in Schedule 8 – Subcontracts have been entered into and are in full force and effect, and Project Co has provided a true and complete copy of each of them to Contracting Authority;
- (xxii) the Assignment of Project Documents is in full force and effect;
- (xxiii) the Subcontractors whose Initial Subcontracts are the subject of the Assignment of Project Documents have acknowledged and consented to the Assignment of Project Documents in accordance with its terms;
- (xxiv) Project Co has obtained priority for Contracting Authority’s security interest in the Assignment of Project Documents over all other security interests granted by Project Co to any other person; and
- (xxv) the Assignment of Subcontract in respect of each applicable Initial Subcontract is in full force and effect.

6.2 Contracting Authority Representations and Warranties

- (a) Contracting Authority represents and warrants to Project Co that, as of the DMCA Effective Date:
 - (i) Contracting Authority is a non-share capital corporation continued under the *Metrolinx Act, 2006*, S.O. 2006, c. 16 and has all of the requisite corporate power and authority to own its properties and assets, to carry on its business as it is currently being conducted, and to enter into this Agreement in its own name as a Crown agency of the Province in accordance with section 3 of the *Metrolinx Act, 2006*, S.O. 2006, c. 16;
 - (ii) subject to Sections 6.2(a)(v)(C), (D) and (E), Contracting Authority is entering into this Agreement in its own name as a Crown agency of the Province and has the requisite power, authority and capacity to execute and deliver this Agreement and to bind itself personally to this Agreement and to provide recourse to the Province in accordance with the provisions of the *Metrolinx Act, 2006*, S.O. 2006, c. 16, including section 35 thereof, and Project Co is entitled to rely upon Contracting Authority’s authority to bind itself and the recourse to the Province on such basis in respect of all other agreements, instruments, undertakings and documents executed and delivered by Contracting Authority that are required by this Agreement to be executed and delivered by Contracting Authority;
 - (iii) subject to Sections 6.2(a)(v)(C), (D) and (E), Contracting Authority has the requisite power, authority and capacity to perform its obligations under this 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 Agreement to be done, executed, delivered or performed;
 - (iv) Contracting Authority has obtained all necessary approvals to enter into this Agreement as a Crown agency;

- (v) this Agreement has been duly authorized, executed, and delivered by Contracting Authority and constitutes a legal, valid, and binding obligation of Contracting Authority, enforceable against Contracting Authority, subject to the provisions of the *Metrolinx Act, 2006*, S.O. 2006, c. 16, in accordance with its terms, subject only to:
 - (A) limitations with respect to the enforcement of remedies by bankruptcy, insolvency, moratorium, winding-up, arrangement, reorganization, fraudulent preference and conveyance and other laws of general application affecting the enforcement of creditors' rights generally;
 - (B) general equitable principles and the fact that the availability of equitable remedies such as specific performance and injunction may not be available against Contracting Authority and the Province and that a court may stay proceedings or the execution of judgments;
 - (C) statutory limitations of general application respecting the enforceability of claims against Contracting Authority or the Province or the property of Contracting Authority or the Province;
 - (D) any terms and conditions set out in the approval that has been provided in connection with this Agreement for the purposes of section 28 of the *Financial Administration Act*, R.S.O. 1990, c. F.12; and
 - (E) with regard to the recourse against the Province, section 35 of the *Metrolinx Act, 2006*, S.O. 2006, c. 16 and the powers of the Minister of Finance to effect set-offs against amounts owing by the Province pursuant to section 43 of the *Financial Administration Act*, R.S.O. 1990, c. F.12;
- (vi) the execution, delivery, and performance by Contracting Authority of this Agreement does not and will not violate or conflict with, or constitute a default under:
 - (A) the *Metrolinx Act, 2006*, S.O. 2006, c. 16, or any regulations made in respect thereof;
 - (B) any Applicable Law; or
 - (C) any covenant, contract, agreement, or understanding relating to the Project or the Lands to which it is a party or by which it or any of its properties or assets is bound or affected;
- (vii) Contracting Authority has, or will have, licence rights of use and access to, on and over the Metrolinx Lands sufficient to enable Contracting Authority to grant or to cause to be granted to Project Co the access rights contemplated in Section 16.1; and
- (viii) no Contracting Authority Event of Default has occurred and is continuing.

7. BACKGROUND INFORMATION

7.1 Review of Background Information

- (a) With respect to the Development Works,
- (i) Project Co acknowledges and agrees that, as of the DMCA Effective Date, it has and shall be deemed to have:
 - (A) conducted its own review, due diligence and analysis of all Background Information provided to it or obtained by it prior to the last date for the issuance of addenda under the Requests for Proposals in accordance with Good Industry Practice;
 - (B) satisfied itself as to the accuracy, completeness and fitness for purpose of any such Background Information upon which it places reliance; and
 - (C) identified and raised, prior to the last date for the issuance of addenda under the Request for Proposals, any and all ambiguities or issues requiring clarification associated with the Background Information given or made available to, or obtained by, Project Co before the last date for issuance of addenda under the Request for Proposals.
 - (ii) Project Co acknowledges and agrees that, with respect to any Background Information provided to it or obtained by it following the last date for issuance of addenda under the Request for Proposals, it has or shall be deemed to have:
 - (A) conducted its own review, due diligence and analysis of all Background Information in accordance with Good Industry Practice as soon as practicable and without any unreasonable delay, and in any event, within thirty (30) days of receipt of such Background Information, or such longer period as may be required to review such Background Information in accordance with Good Industry Practice;
 - (B) during and as a result of such review, due diligence and analysis, satisfied itself as to the accuracy, completeness and fitness for purpose of any such Background Information upon which it places reliance; and
 - (C) identified and raised, prior to placing any reliance upon the Background Information, any and all ambiguities or issues requiring clarification associated with the Background Information.
- (b) With respect to the TPA Works,
- (i) in respect of any Background Information given or made available to, or obtained by, Project Co prior to the TPA Effective Date, and without limiting any of its rights under Sections 7.4, 18.2, 18.3, 18.4, 18.5, 18.6 and 18.7, Project Co acknowledges and agrees that it has and shall be deemed to have,

- (A) conducted its own review, due diligence and analysis of such Background Information in accordance with Good Industry Practice (which, however, for the purpose of this Section 7.1(b), does not include any inspections in respect of the Lands beyond what is required pursuant to Section 16.9);
 - (B) satisfied itself as to the accuracy, completeness and fitness for purpose of any such Background Information upon which it places reliance;
 - (C) identified and raised, prior to the Technical Reference Date, any and all ambiguities or issues requiring clarification associated with the Background Information (including the Technical Reports and the Project GBR) given or made available to, or obtained by, Project Co before the Technical Reference Date; and
 - (D) identified and raised, prior to the TPA Effective Date, any and all ambiguities or issues requiring clarification associated with the Background Information (including the Technical Reports and the Project GBR) given or made available to, or obtained by, Project Co after the Technical Reference Date and on or before the TPA Effective Date.
- (ii) In respect of any Background Information given or made available to, or obtained by, Project Co after the TPA Effective Date, and without limiting any of Project Co’s rights under Sections 7.4, 18.2, 18.3, 18.4, 18.5, 18.6 and 18.7, Project Co acknowledges and agrees that it shall,
- (A) conduct its own review, due diligence and analysis of such Background Information in accordance with Good Industry Practice (which, however, for the purpose of this Section 7.1(b)(ii)(A), does not include any inspections in respect of the Lands beyond what is required pursuant to Section 16.9);
 - (B) satisfy itself as to the accuracy, completeness and fitness for purpose of any such Background Information upon which it places reliance; and
 - (C) identify and raise, within thirty (30) days of receipt of such Background Information, or such longer period as may be required to review such Background Information in accordance with Good Industry Practice, any and all ambiguities or issues requiring clarification associated with such Background Information (including with the Technical Reports and the Project GBR).
- (c) With respect to any DMCA Construction Works,
- (i) in respect of any Background Information given or made available to, or obtained by, Project Co prior to the date of the applicable Notice to Proceed, Project Co acknowledges and agrees that it has and shall be deemed to have,
 - (A) conducted its own review, due diligence and analysis of such Background Information in accordance with Good Industry Practice;

- (B) satisfied itself as to the accuracy, completeness and fitness for purpose of any such Background Information upon which it places reliance; and
 - (C) identified and raised, prior to the date of the applicable Notice to Proceed, any and all ambiguities or issues requiring clarification associated with the Background Information (including the Technical Reports and the Project GBR) given or made available to, or obtained by, Project Co before the applicable Notice to Proceed.
- (ii) In respect of any Background Information given or made available to, or obtained by, Project Co after the applicable Notice to Proceed, Project Co acknowledges and agrees that it shall,
- (A) conduct its own review, due diligence and analysis of such Background Information in accordance with Good Industry Practice;
 - (B) satisfy itself as to the accuracy, completeness and fitness for purpose of any such Background Information upon which it places reliance; and
 - (C) identify and raise, within thirty (30) days of receipt of such Background Information, or such longer period as may be required to review such Background Information in accordance with Good Industry Practice, any and all ambiguities or issues requiring clarification associated with such Background Information (including with the Technical Reports and the Project GBR).

7.2 No Warranty for Background Information

- (a) Except as expressly provided in Sections 7.4, 18.2, 18.3, 18.4, 18.5, 18.6 and 18.7, neither Contracting Authority nor any Province Person or Government Entity gives any warranty or undertaking of whatever nature in respect of the Background Information and, specifically (but without limitation), neither Contracting Authority nor any Province Person or Government Entity warrants that the Background Information represents all of the information in its possession or control (either during the conduct of the procurement process for the Project or at the time of execution and delivery of this Agreement) relevant or material to or in connection with the Project or the obligations of Project Co under this Agreement or under any of the Project Documents.

7.3 No Claims or Liability in Respect of Background Information

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

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

7.4 Exceptions

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

7.5 Due Diligence and Investigations

- (a) Prior to the execution of a Target Price Agreement, Project Co shall, from time to time, perform or cause the performance of investigations and other technical due diligence:
 - (i) as approved by Contracting Authority pursuant to Schedule 22 – Estimates, Variations and Proposals in respect of the Metrolinx Lands;
 - (ii) as otherwise directed in writing by Contracting Authority in respect of the Lands; or
 - (iii) as reasonably requested by Project Co in writing in respect of the Metrolinx Lands, and approved by Contracting Authority in writing, acting reasonably,

for the purposes of the proper performance of the Works, or effectively or efficiently mitigating risks with respect to the Works or the Project.

- (b) Prior to the execution of a Target Price Agreement, Contracting Authority shall, from time to time, use reasonable commercial efforts to perform or cause the performance of investigations and other technical due diligence in respect of the Metrolinx Lands or the Project reasonably requested by Project Co or any Project Co Party for the purposes of Project Co's proper performance of the Works, or effectively or efficiently mitigating risks with respect to the Works or the Project.

- (c) Project Co acknowledges and accepts that:
 - (i) notwithstanding any other provision in this Agreement, Contracting Authority does not have any right to use, access or permit any investigations or other technical due diligence at any lands beyond the boundaries of the Metrolinx Lands, other than any easements and similar interests of Contracting Authority which benefit the Metrolinx Lands; and
 - (ii) the performance of any investigations and other technical due diligence described in Section 7.5(a) may, in Contracting Authority’s sole discretion, be subject to any rules or other requirements provided by Contracting Authority to Project Co from time to time, which Project Co agrees to comply with.
- (d) All reports produced by Project Co or a Project Co Party as a result of any investigations and other technical due diligence described in Section 7.5(a) shall be addressed to Contracting Authority in addition to Project Co.
- (e) All reports, documents and other information obtained by Project Co through any investigations and other technical due diligence performed in accordance with this Section 7.5 shall, for the purposes of this Agreement, be Background Information.

8. PROJECT DOCUMENTS

8.1 Project Documents

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

8.2 Ancillary Documents

- (a) Project Co shall not:
 - (i) terminate or agree to the termination of all or part of any Ancillary Document, except pursuant to Sections 25.3 and 45.2 or otherwise to prevent or cure a Project Co Event of Default (provided that commercially reasonable alternative measures would not prevent or cure such Project Co Event of Default);
 - (ii) make or agree to any amendment, restatement or other modification to any Ancillary Document that materially adversely affects Project Co’s ability to perform its obligations

under this Agreement or that has the effect of increasing any liability of Contracting Authority, whether actual or potential;

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

without the prior written consent of Contracting Authority, provided that, where consent is requested pursuant to Section 8.2(a)(i) or Section 8.2(a)(iv), such consent shall not be withheld, and shall be provided within a reasonable time, where the relevant matter referred to in Section 8.2(a)(i) or Section 8.2(a)(iv) will not materially adversely affect Project Co's ability to perform its obligations under this Agreement or have the effect of increasing any liability of Contracting Authority, whether actual or potential. In the event of termination or agreement to the termination of all or part of any Ancillary Document as described in Section 8.2(a)(i), or the entering into of any agreement replacing all or part of any Ancillary Document as described in Section 8.2(a)(iv), Project Co shall, to the extent applicable, comply with all provisions herein relating to changes in Subcontractors, including Section 11.38(a).

9. CONTRACTING AUTHORITY RESPONSIBILITIES

9.1 General

- (a) Contracting Authority shall:
 - (i) perform all of its obligations under, and observe all provisions of, this Agreement in compliance with Applicable Law;
 - (ii) obtain, maintain, and, as applicable, renew Contracting Authority Permits, Licences, Approvals and Agreements which may be required for the performance of the Works;
 - (iii) comply with all Permits, Licences, Approvals and Agreements in accordance with their terms; and
 - (iv) cooperate with Project Co in the fulfillment of the purposes and intent of this Agreement, provided, however, that Contracting Authority shall not be under any obligation to perform any of Project Co's obligations under this Agreement.
- (b) Contracting Authority shall, and shall cause all Contracting Authority Parties to, take reasonable steps to minimize undue interference with the provision of the Works by Project Co or any Project Co Party.
- (c) Nothing in this Agreement shall in any way fetter the right, authority and discretion of Contracting Authority or any Province Person or Government Entity in fulfilling its statutory or other functions

under Applicable Law, and Project Co understands and agrees that nothing in this Agreement shall preclude Contracting Authority’s board of directors (or any respective designate appointed pursuant to Section 48.1) from performing, discharging or exercising its duties, responsibilities, and powers under Applicable Law. Project Co further agrees that it shall comply, and shall cause all relevant Project Co Parties to comply, with all written directions issued by or on behalf of Contracting Authority’s board of directors (or any respective designate appointed pursuant to Section 48.1) from time to time, subject to Section 29.1(b).

10. PROJECT CO CONSTRUCTION RESPONSIBILITIES – GENERAL

10.1 Complete and Operational Project Co Infrastructure and New Third Party Infrastructure

- (a) Project Co shall design, engineer, construct and commission the Project Co Infrastructure and the New Third Party Infrastructure so as to provide Contracting Authority with complete Project Co Infrastructure and complete New Third Party Infrastructure in accordance with the Construction Technical Requirements, and the Target Price Agreement then in effect (if applicable), all in accordance with and subject to the terms of this Agreement and such Target Price Agreement.

10.2 General Responsibilities and Standards – Construction Works

- (a) Project Co shall perform and complete the Construction Works:
- (i) in accordance with the Project Works Schedules, and, in this regard, shall commence the Works no later than the day following the DMCA Effective Date and, subject to adjustment as provided for in this Agreement,
 - (A) achieve TPA Substantial Completion by the TPA Scheduled Substantial Completion Date; and
 - (B) achieve TPA Final Completion by the TPA Scheduled Final Completion Date;
 - (ii) in compliance with Applicable Law;
 - (iii) so as to satisfy the Construction Technical Requirements;
 - (iv) in accordance with Good Industry Practice;
 - (v) in a manner consistent with the Quality Plans;
 - (vi) in a timely and professional manner;
 - (vii) with due regard to the health and safety of persons and property;
 - (viii) subject to the other provisions of this Agreement, in a manner which will not impair the ability of Contracting Authority, any Province Person or any Government Entity to comply with Applicable Law;
 - (ix) subject to the other provisions of this Agreement, in a manner which will not impair the performance of the Governmental Activities; and

- (x) in accordance with all other terms of this Agreement.
- (b) Project Co shall coordinate with the City of Toronto, MTO, the TTC and any other third party as expressly set out herein or in any Target Price Agreement or as directed by Contracting Authority, all Construction Activities relating to Existing Third Party Infrastructure owned by each such third party and its applicable New Third Party Infrastructure, including the provision of any Project Works Schedule relating to such infrastructure, so as to minimize the impact of Construction Activities on such third party's operations and services provided by such third party to the public.
- (c) Project Co shall cooperate with Contracting Authority in the fulfillment of the purposes and intent of this Agreement, provided however that Project Co shall not be under any obligation to perform any of Contracting Authority's obligations under this Agreement.
- (d) Project Co shall cooperate with Contracting Authority as reasonably required by Contracting Authority in respect of Contracting Authority's consultations with the City of Toronto, the TTC, MTO and each Railway Company in relation to the Project and the Construction Works.
- (e) Project Co shall cooperate and assist Contracting Authority in any dispute relating to the Project or this Agreement arising out of any of the Third Party Agreements, including attending at hearings, providing information, and doing such other things as Contracting Authority may reasonably require to resolve the dispute.
- (f) Project Co shall promptly, or immediately in the case of a defect which may result in a health and safety matter, notify the Contracting Authority Representative to the extent that Project Co becomes aware of any defect in the property or Existing Third Party Infrastructure of:
 - (i) the City of Toronto, excluding the New City Infrastructure;
 - (ii) the TTC, excluding the New TTC Infrastructure; or
 - (iii) a Railway Company.
- (g) Project Co shall enter into any agreements that may be required by Utility Companies to complete the Works, subject to and in accordance with Section 11.35.
- (h) Project Co shall promptly, or immediately in the case of anything relating to health and safety, notify Contracting Authority with respect to,
 - (i) any injuries to persons on Lands owned by or leased to the City of Toronto, the TTC, such Railway Company, or any other third party, or damage to any infrastructure or Lands owned by or leased to any of them that occurs during the course of the Construction Works;
 - (ii) any significant developments that affect infrastructure or Lands owned by or leased to the City of Toronto, the TTC, such Railway Company, or any other third party; and
 - (iii) any proposed decision where the effect thereof may reasonably be expected to affect the design, functionality, safety or integrity of any part of any infrastructure that belongs to the City of Toronto, the TTC, or such Railway Company.

- (i) Project Co shall promptly, or immediately in the case of anything relating to health or safety, (A) notify Contracting Authority upon the receipt or notice of (and provide Contracting Authority with copies of any correspondence received in relation to), any incident report, investigation report, inspection, order, change or similar correspondence (in each case, whether in draft or final form) issued by the MLITSD or any other Governmental Authority in respect of the Works and (B) following a request by Contracting Authority, provide Contracting Authority with a copy of any health and safety investigation report completed by Project Co.
- (j) If Contracting Authority executes an agreement with the City of Toronto, the TTC or any third party owner of infrastructure, other than South Civil Project Co, RSSOM Project Co, EGS Project Co or any TOC Contractor, which affects this Project (each, a “**Third Party Agreement**”) and Contracting Authority provides a copy of the Third Party Agreement or a template agreement upon which Contracting Authority intends to base a Third Party Agreement (each, a “**Template Third Party Agreement**”) to Project Co, then the following shall apply:

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

then Project Co shall ensure that Project Co and the Project Co Parties do not contravene or cause Contracting Authority to contravene the applicable Third Party Agreement(s).

- (ii) If, at any time following the Technical Reference Date, Contracting Authority provides a copy of a Third Party Agreement to Project Co and either (x) Contracting Authority did not provide a copy of the applicable Template Third Party Agreement to Project Co prior to the Technical Reference Date in accordance with Section 10.2(j)(i)(B) or (y) such Third Party Agreement contains terms and conditions that are inconsistent with the applicable Template Third Party Agreement and would result in a material change to the Construction Works, then,
- (A) Project Co shall ensure that Project Co and the Project Co Parties do not contravene or cause Contracting Authority to contravene the Third Party Agreement; and
 - (B) to the extent that Project Co’s performance of its obligations set out in Section 10.2(j)(ii)(A) requires Project Co to perform any alteration, addition, Demolition, extension or variation to the Construction Works and would not otherwise be required of Project Co under this Agreement, then such change shall, subject and in accordance with Schedule 22 – Estimates, Variations and Proposals, result in a Variation.

- (k) If Project Co has entered into any agreement with a Utility Company with respect to the Construction Works, Project Co shall provide a copy of such agreement to Contracting Authority no later than fifteen (15) days after executing such agreement.
- (l) Project Co shall enter into an Occupancy Agreement on or as soon as practicable (and in any event within 15 Business Days) following the date that Contracting Authority delivers a draft form to Project Co with respect to the Project Office as directed by Contracting Authority, a draft form of which is included in the Background Information. The following shall apply with respect to the Occupancy Agreement:
 - (i) if Contracting Authority directs Project Co to enter into a final form of Occupancy Agreement that is substantially the same as the draft form of Occupancy Agreement included in the Background Information as at the Technical Reference Date, then Project Co shall enter into such Occupancy Agreement and ensure that Project Co and the Project Co Parties comply with and do not contravene such Occupancy Agreement; and
 - (ii) if Contracting Authority directs Project Co to enter into a final form of Occupancy Agreement that contains terms and conditions that are inconsistent with and materially different from the draft form of Occupancy Agreement included in the Background Information as at the Technical Reference Date, then Project Co shall enter into such Occupancy Agreement and ensure that Project Co and the Project Co Parties comply with and do not contravene such Occupancy Agreement, provided that such changes shall, subject and in accordance with Schedule 22 – Estimates, Variations and Proposals, result in a Variation.
- (m) For greater certainty, the Parties hereby acknowledge and agree that:
 - (i) the Early Contractor Activities, if any, form part of the Construction Works; and
 - (ii) any Early Contractor Activities performed or completed by Project Co prior to the date hereof are subject to the terms and provisions of this Agreement.

11. PROJECT CO RESPONSIBILITIES – DESIGN AND CONSTRUCTION

11.1 Development of Design

- (a) Project Co shall develop and complete the design of the Project Co Infrastructure and the New Third Party Infrastructure and all Design Data in accordance with the requirements of this Agreement, including Schedule 2 – Development Works Submissions and Project Development Process, Schedule 10 – Review Procedure, the Target Price Agreement and this Section 11.1.
- (b) In order to develop the detailed design of the Project Co Infrastructure and New Third Party Infrastructure, Project Co shall consult with the Stakeholders (which consultation requirements pursuant to the Environmental Assessments are further described in Schedule 17 – Environmental Obligations) and the Contracting Authority Representative and the Contracting Authority Design Team in an interactive process. If as a result of any consultation with Stakeholders, a change to the scope, configuration or size of any Project Co Infrastructure or New Third Party Infrastructure or a change in the Works is proposed or required, then such change shall, subject to and in accordance

- with Schedule 22 – Estimates, Variations and Proposals and Schedule 10 – Review Procedure, as applicable, result in a Variation.
- (c) The further development of the design of the Project Co Infrastructure and New Third Party Infrastructure and the process by which it is progressed must fully comply with the requirements of this Agreement.
- (d) The Parties agree that Appendix A (*Minimum Works Submittals*) to Schedule 10 – Review Procedure are initial lists of Design Data and other items that will require design review, which Design Data and other items shall include:
- (i) design development drawings, reports, schedules and specifications for the Project Co Infrastructure and New Third Party Infrastructure, progressed from the DMCA Effective Date and the TPA Effective Date, as applicable, showing all engineering and non-engineering design information sufficient to allow for the development of working drawing documentation (collectively, the “**Design Development Submittals**”);
 - (ii) working drawing documentation, being construction drawings, reports, schedules and specifications progressed from the Design Development Submittals, showing all architectural, engineering and non-engineering design information in accordance with the requirements of this Agreement (collectively, the “**Construction Document Submittals**”); and
 - (iii) all other documentation required pursuant to Schedule 10 – Review Procedure.
- (e) Project Co shall submit to the Contracting Authority Representative for review in accordance with Schedule 2 – Development Works Submissions and Project Development Process and Schedule 10 – Review Procedure all Design Data and other items listed in Section 11.1(d).
- (f) The Design Data and other items listed in Section 11.1(d) shall contain, at a minimum, the following additional information:
- (i) all design or construction drawings and specifications necessary to enable the Contracting Authority Representative to review and comment on the design pursuant to Schedule 10 – Review Procedure;
 - (ii) for each of the Construction Document Submittals, a schedule identifying all changes to the relevant documentation that has occurred from the Design Development Submittals; and
 - (iii) where changes have been submitted, an indication of how the changes meet the requirements of this Agreement.
- (g) Without limiting any right of Contracting Authority or any obligation of Project Co under this Agreement (including pursuant to Sections 11.1(i) and 11.1(j)), Project Co shall not, without the approval of Contracting Authority, submit to the Contracting Authority Representative for review in accordance with Schedule 10 – Review Procedure any (i) Design Data or (ii) other item listed in Section 11.1(d), in each case, in relation to the applicable stage of the design or construction documentation development specified in Schedule 10 – Review Procedure that is not substantially

of the same content, level of detail and quality (including with respect to the quality of materials and finishes, quality and quantity of features, and the quality and nature of construction methods set out in or inferred by such submittal) as was reviewed by Contracting Authority in accordance with Schedule 10 – Review Procedure during a previous stage of design or construction documentation development. The Parties agree that no such approval of Contracting Authority shall lessen, reduce or otherwise modify or amend Contracting Authority’s rights under this Agreement to review each such submittal in accordance with Schedule 10 – Review Procedure or constitute acceptance of or comment by Contracting Authority on such submittal or the Works, and Project Co shall remain solely responsible for compliance in full with all requirements of this Agreement in respect of the subject matter of such submittal.

- (h) If Project Co commences or permits the commencement of the next level of design or construction of any part or parts of the Project Co Infrastructure prior to being entitled to proceed in accordance with Schedule 10 – Review Procedure and it is subsequently determined in accordance with Schedule 10 – Review Procedure or Schedule 27 – Dispute Resolution Procedure that the design or construction does not comply with this Agreement, then Project Co shall forthwith undo, remove from the Project Co Infrastructure and/or Lands, replace and restore, as applicable, any parts of the design or construction that do not comply with this Agreement.
- (i) Project Co shall not commence or permit the commencement of construction of any part or parts of the New Third Party Infrastructure, unless Project Co has first obtained the written consent of the applicable third party to do so. If, after obtaining such written consent, Project Co commences or permits the commencement of construction of any part or parts of the New Third Party Infrastructure, prior to being entitled to proceed in accordance with Schedule 2 – Development Works Submissions and Project Development Process or Schedule 10 – Review Procedure and it is subsequently determined in accordance with Schedule 2 – Development Works Submissions and Project Development Process, Schedule 10 – Review Procedure or Schedule 27 – Dispute Resolution Procedure that the construction does not comply with this Agreement, then Project Co shall forthwith,
 - (i) obtain written consent from the applicable third party owner of the New Third Party Infrastructure to undo, remove from the New Third Party Infrastructure, and/or Lands, replace and restore, as applicable, any parts of the construction that do not comply with this Agreement; and
 - (ii) following the written consent contemplated in Section 11.1(i)(i), undo, remove from the New Third Party Infrastructure, and/or Lands, replace and restore, as applicable, any parts of the construction that do not comply with this Agreement.
- (j) Neither Contracting Authority nor any Province Person will have any liability:
 - (i) if a document submitted by Project Co and reviewed by Contracting Authority, the Contracting Authority Representative or the Contracting Authority Design Team results in non-compliance with this Agreement by Project Co or a breach by Project Co of Applicable Law; or
 - (ii) for any loss or claim arising due to any defect in any documents, drawings, specifications or certificates submitted by Project Co.

- (k) Project Co and Contracting Authority will cooperate with each other in the design review process. Notwithstanding such cooperation by Contracting Authority, such review shall not constitute acceptance of the Works, and Project Co shall remain solely responsible for compliance in full with all requirements of this Agreement.
- (l) Project Co shall allow the Contracting Authority Representative and the Contracting Authority Design Team, at any time, a reasonable opportunity to view any items of Design Data, which shall be made available to the Contracting Authority Representative and/or Contracting Authority Design Team, as applicable, as soon as practicable following receipt of a written request from the Contracting Authority Representative.
- (m) Project Co shall establish and maintain a computerized design database which Contracting Authority may access remotely by computer to view drawings comprised within the Design Data and to electronically store and print copies of such Design Data.

11.2 Start-Up Meetings

- (a) Project Co shall comply with its obligations with respect to the Start-Up Meeting as set out in Schedule 19 – Governance, Meetings and Progress Reporting.

11.3 Design Review Meetings

- (a) Project Co shall comply with its obligations with respect to the Design Review Meetings as set out in Schedule 19 – Governance, Meetings and Progress Reporting.

11.4 Performance of Design Obligations

- (a) In the design and engineering of the Project, Project Co, its consultants and the Project Co Parties shall, at a minimum, exercise the standard of care normally exercised by licensed or registered professional architectural and engineering personnel having the requisite knowledge and experience in performing design activities of a similar nature, scope and complexity.
- (b) Project Co shall ensure that all parts of the Works shall, as required by Applicable Law, be performed or reviewed by licenced or registered professional engineers and architects registered to practice in the Province of Ontario. Such architects and engineers shall certify and, if required by Applicable Law, sign and seal, all designs, drawings and technical reports confirming that they comply with all prevailing design standards and design practices for such work in the Province of Ontario, all other applicable standards, specifications and codes, and as otherwise required by Applicable Law.

11.5 Construction Works Submittals

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

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

11.6 Documents

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

11.7 General Construction Obligations

- (a) Without limiting Section 10.2:
- (i) Project Co is solely responsible for all construction means, methods and techniques used to undertake the Construction Works and must provide everything (including labour, Plant, equipment and materials) necessary for the construction and commissioning of the Project Co Infrastructure (including each Project Co Infrastructure Section) and the New Third Party Infrastructure, and all other performance of the Construction Works.
- (ii) Project Co shall in a timely and professional manner and in accordance with the requirements of this Agreement:
- (A) construct the Works diligently, expeditiously and in a thorough and workman-like manner consistent with Schedule 11 – Quality Management;
- (B) ensure that,
- i. no works other than the Construction Works under this Agreement are constructed on the Lands, the Project Co Infrastructure, the New Third Party Infrastructure or the Existing Infrastructure by Project Co, any Project Co Party or any person for whom Project Co is responsible at law; and

- ii. the Project Co Infrastructure is constructed only on the Metrolinx Lands in accordance with the Construction Technical Requirements;
 - (C) protect the Construction Works from all of the elements, casualty and damage; and
 - (D) in respect of Plant, equipment, Products and materials incorporated in the Construction Works, use Plant, equipment, Products and materials that:
 - i. are of a kind that are consistent with the Construction Technical Requirements;
 - ii. are new, of good quality and are used, handled, stored and installed in accordance with Applicable Law and Good Industry Practice, including, with respect to health and safety, so as not to be hazardous or dangerous; and
 - iii. where they differ from the Construction Technical Requirements, have been substituted with Contracting Authority's prior written consent in accordance with Section 11.20.
- (iii) Without limiting Project Co's obligations pursuant to Section 11.11 or Project Co's indemnity pursuant to Section 41.1, and subject to Section 11.13, Project Co shall, at all times prior to each applicable Section Substantial Completion Date, and, subject to Section 11.11(g), thereafter any time Project Co is undertaking Construction Activities in respect of an applicable Project Co Infrastructure Section, be responsible for maintaining and securing the Metrolinx Lands for each such Project Co Infrastructure Section to prevent access onto the Metrolinx Lands, the Project Co Infrastructure, the New Third Party Infrastructure and the Existing Infrastructure, in each case in respect of each such Project Co Infrastructure Section, of any persons not entitled to be there, and the licence granted to Project Co pursuant to Section 16.1 shall include rights for Project Co to do so.
- (iv) Project Co shall not, and Project Co shall ensure that the Project Co Parties do not, in any way whatsoever, contravene or cause a contravention of any labour-related contractual obligation or agreement or any provision of any collective agreement to which the City of Toronto or TTC is a party that: (A) is applicable to the New Third Party Infrastructure owned by the City of Toronto or the TTC, as applicable; (B) relates to any construction pursuant to this Agreement; and (C) was identified by Contracting Authority on or before the Technical Reference Date, as such collective agreements or labour-related agreements may be amended from time to time. To the extent that any such labour-related agreement or any provision of any collective agreement materially changes from the labour-related agreements or collective agreements that were available on the Collective Agreements e-Library Portal or as part of the Background Information as of the Technical Reference Date, then such material change shall, subject and in accordance with Schedule 22 – Estimates, Variations and Proposals, result in a Variation.
- (b) Project Co shall provide a construction site office for use by Contracting Authority, at the location(s) specified in the Construction Technical Requirements, and in accordance with the requirements set out in the Construction Technical Requirements.

11.8 Permits, Licences, Approvals and Agreements

- (a) Each of Contracting Authority and Project Co shall comply with all of their respective obligations with respect to Permits, Licences, Approvals and Agreements as set out in this Agreement and Schedule 34 – Permits, Licences, Approvals and Agreements.

11.9 Protection of Works and Property and Reinstatement Work

- (a) Project Co shall protect the Construction Works, including the Project Co Infrastructure and the New Third Party Infrastructure (prior to Handover of the New Third Party Infrastructure), the property of Contracting Authority and third parties on and adjacent to the Lands (including any TOC Developments and Adjacent Developments) and the Existing Infrastructure from damage or destruction which may arise as a result of Project Co's operations under this Agreement.

- (b) Unless this Agreement is terminated in accordance with its terms, if all or any part of,
- (i) the Construction Works, including any Project Co Infrastructure and New Third Party Infrastructure (prior to Handover of the New Third Party Infrastructure), is damaged or destroyed prior to the applicable Section Substantial Completion Date, TPA Substantial Completion Date, DMCA Construction Works Substantial Completion Date or Project Substantial Completion Date, as applicable;
 - (ii) the Construction Works, including the Project Co Infrastructure and the New Third Party Infrastructure (at any time prior to the Handover of New Third Party Infrastructure), is damaged or destroyed at any time after the applicable Section Substantial Completion Date, TPA Substantial Completion Date, DMCA Construction Works Substantial Completion Date or the Project Substantial Completion Date, as applicable, as a result of an act or omission of Project Co or a Project Co Party;
 - (iii) the Existing Infrastructure is damaged or destroyed at any time as a result of an act or omission of Project Co or a Project Co Party;
 - (iv) the property of Contracting Authority on or adjacent to the Lands is damaged or destroyed at any time as a result of any act or omission of Project Co or a Project Co Party; or
 - (v) the property of a third party on or adjacent to the Lands is damaged or destroyed at any time as a result of any act or omission of Project Co or a Project Co Party,

then,

- (vi) in the case of Section 11.9(b)(i) above, subject to Section 11.9(g) (as applicable), Project Co shall Make Good such portion of the Construction Works, including the Project Co Infrastructure, the New Third Party Infrastructure, and the property of Contracting Authority on or adjacent to the Lands, including the Existing Infrastructure (the “**CA Reinstatement Work**”); and/ or
- (vii) in the case of Section 11.9(b)(ii), (iii), (iv) or (v) above, subject to Section 11.9(g) (as applicable), Project Co shall upon written notice from Contracting Authority, Make Good such property, at Project Co's own cost and expense (the “**Other Reinstatement Work**” and together with the CA Reinstatement Work, the “**Reinstatement Works**”).

- (c) Project Co shall carry out any Reinstatement Works promptly and, in any event, as soon as practicable in the circumstances.
- (d) Except as otherwise expressly provided in this Agreement, damage to or destruction of all or any part of the Construction Works, including the Project Co Infrastructure or the New Third Party Infrastructure, shall not terminate this Agreement or relieve Project Co of any of its obligations hereunder (including indemnity obligations). For clarity, after Handover of applicable New Third Party Infrastructure, damage or destruction to the New Third Party Infrastructure shall be dealt with pursuant to this Agreement as damage or destruction to the property of third parties.
- (e) Project Co shall not undertake to Make Good any damage or destruction whatsoever to the property of Contracting Authority or a third party on or adjacent to the Lands (other than to the Project Co Infrastructure or the New Third Party Infrastructure prior to Handover of applicable New Third Party Infrastructure) or Existing Third Party Infrastructure, without first consulting Contracting Authority and receiving written instructions from Contracting Authority as to the course of action to be followed.
- (f) Notwithstanding Sections 11.9(b) and 11.9(g), Reinstatement Work carried out by Project Co in respect of Existing Third Party Infrastructure and New Third Party Infrastructure that is not owned by the City of Toronto or the TTC shall be planned and implemented by Project Co in consultation with the applicable third party.
- (g) If the Reinstatement Work is reasonably estimated to cost more than \$[REDACTED] (index linked) or in any other case where the Contracting Authority Representative, having regard to the nature of the damage or destruction, notifies Project Co that a Reinstatement Plan is required (excluding where the damage or destruction occurs before the TPA Final Completion Date and the Contracting Authority Representative acting reasonably considers that the continued application of the Design and Construction Certification Procedure would be able to adequately address the Reinstatement Work without the need for a separate Reinstatement Plan), Project Co shall, as soon as practicable and in any event within 20 Business Days after the occurrence of the damage or destruction or receipt of notification from the Contracting Authority Representative, as the case may be, (or if, with the exercise of all due diligence more than 20 Business Days is reasonably required for such purposes, then within such longer period of time after the occurrence of such damage or destruction or receipt of notification from the Contracting Authority Representative, as the case may be, as may be reasonably required with the exercise of all due diligence, provided Project Co exercises and continues to exercise all such due diligence) submit to the Contracting Authority Representative pursuant to Schedule 10 – Review Procedure a plan (a “**Reinstatement Plan**”) prepared by Project Co for carrying out the Reinstatement Work setting out, in reasonable detail, *inter alia*:
 - (i) a description of the Reinstatement Work required to restore, replace and reinstate the damage or destruction;
 - (ii) Project Co’s proposed schedule for the execution of the Reinstatement Work; and
 - (iii) the information required pursuant to Schedule 22 – Estimates, Variations and Proposals as if such plan were an Estimate,

and the Reinstatement Work must not be commenced until the Contracting Authority Representative consents thereto in accordance with Schedule 10 – Review Procedure except to the extent necessary to address any Emergency or public safety needs. Notwithstanding Section 11.9(e), where there is danger to life or property which arises out of or in connection with the performance of the Construction Works, either Party may, but Project Co shall, immediately take such emergency action as is necessary to remove the danger.

- (h) Project Co shall cause the Reinstatement Work to be carried out in accordance with the Construction Technical Requirements and all other applicable requirements under this Agreement and, where applicable, Project Co shall also cause the Reinstatement Work to be carried out in accordance with the Reinstatement Plan consented to by the Contracting Authority Representative in accordance with Schedule 10 – Review Procedure. All designs, plans and specifications in respect of the Reinstatement Work shall be subject to the Design and Construction Certification Procedure. If requested by the Contracting Authority Representative, the persons (and if applicable, a suitable parent entity thereof acceptable to Contracting Authority) retained by Project Co to design and carry out any Reinstatement Work shall, as a condition to their retainer and prior to commencing any Reinstatement Work or design work in connection therewith, enter into a construction contract with Project Co and, if requested by Contracting Authority in accordance with Section 11.38, an Acknowledgement and Consent Agreement or Assignment of Subcontract, as applicable.
- (i) If any Project Co Party has caused damage or destruction to the work of another contractor related to the Project, Project Co agrees upon due notice to settle with such other contractor by negotiation or arbitration in accordance with Section 11.12(g) and Schedule 27 – Dispute Resolution Procedure. If the other contractor makes a claim against Contracting Authority on account of damage or destruction alleged to have been so sustained, the dispute shall be dealt with in substantially the same manner as contemplated in Section 11.12(g) and Schedule 27 – Dispute Resolution Procedure.

11.10 Liability Unaffected

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

11.11 Safety

- (a) Project Co shall until the Project Substantial Completion Date at all times and in relation to all Works, and following the Project Substantial Completion Date, solely in relation to Construction Activities:

- (i) comply with the Project Co Site Specific Safety Manual;
 - (ii) keep the Site (including Existing Infrastructure on the Site), the Construction Works, the Project Co Infrastructure and the New Third Party Infrastructure in a safe and orderly state, as appropriate in accordance with Good Industry Practice, to avoid danger to persons on the Site (including Existing Infrastructure on the Site), the Project Co Infrastructure and the New Third Party Infrastructure and in the immediate vicinity of the Site (including Existing Infrastructure on the Site), the Project Co Infrastructure and the New Third Party Infrastructure;
 - (iii) take such measures as are reasonable in accordance with Good Industry Practice to prevent access to the Site (including Existing Infrastructure on the Site), the Project Co Infrastructure and the New Third Party Infrastructure of any persons or creatures not entitled to be there;
 - (iv) comply, and cause each Project Co Party to comply,
 - (A) with Applicable Law relating to health and safety, including the *Occupational Health and Safety Act* (Ontario) and all regulations thereto;
 - (B) with the Traffic and Transit Management Plan and all rules, requirements and restrictions relating to access, road safety and operations, as set out in this Agreement, including, for clarity, the Construction Technical Requirements; and
 - (C) with any direction or instruction (each of which shall be deemed to be Applicable Law) from Transport Canada arising from any contractual arrangement or Board Order involving (I) Transport Canada and Metrolinx or (II) Transport Canada and GO Transit, as applicable, with respect to the Rail Corridor and facilitate and provide cooperation with respect to any inspections by Transport Canada on the Lands;
 - (v) with respect to the Construction Works, identify the Project Co Party that is, or whose partners or members are each, a COR-Certified Construction Project Co Party or, prior to receipt of COR Certification, a COR-Qualified Construction Project Co Party, with the greatest degree of control over the Construction Works' health and safety matters, and cause said Project Co Party to perform, all of the obligations of the "constructor", and indemnify Contracting Authority, each Province Person and each Government Entity against any and all of the liabilities of the "constructor", under the *Occupational Health and Safety Act* (Ontario) and all regulations thereto;
 - (vi) provide Contracting Authority with a certificate of good standing from WSIB or any successor thereto once every 90 days; and
 - (vii) facilitate and provide cooperation with respect to any inquiry or investigation of the MLITSD with respect to the Project.
- (b) Project Co shall ensure the Project Co Party identified pursuant to Section 11.11(a)(v) above registers the Project with the MLITSD by way of a Notice of Project, pursuant to the Applicable

- Law. Project Co shall ensure the Project Co Party identified pursuant to Section 11.11(a)(v) above shall identify as the “constructor” on the Notice of Project.
- (c) Project Co shall (i) deliver at least one copy of the Project Co Site Specific Safety Manual to Contracting Authority in accordance with Schedule 29 – Safety, System Assurance and Security and (ii) keep and maintain at least one copy of the Project Co Site Specific Safety Manual (as it may be amended from time to time) at the Site until the Project Final Completion Date.
- (d) At any time that the Construction Works are being carried out in or around the Existing Infrastructure, the Project Co Party identified pursuant to Section 11.11(a)(v) above shall at all times:
- (i) ensure that it complies with all safety requirements set out in this Agreement, including those set out in Section 11.11(a) above; and
- (ii) keep the Existing Infrastructure in a safe and orderly state, as appropriate and in accordance with Good Industry Practice, to avoid any danger to employees, visitors and other persons attending the Existing Infrastructure.
- (e) If the MLITSD determines, pursuant to the *Occupational Health and Safety Act* (Ontario), that the Project Co Party identified pursuant to Section 11.11(a)(v) above is not the “constructor” for the Site or any portion thereof, then the following shall apply:
- (i) all Project Co Parties shall comply with the instructions of the “constructor” relating to matters of health and safety on the Site, methods and manner of construction, and coordination and scheduling of the “constructor’s” works with the Construction Works;
- (ii) if the activity or presence of Project Co or a Project Co Party on the Site caused, in whole or in part, MLITSD to determine that the Project Co Party identified pursuant to Section 11.11(a)(v) above is not the “constructor” for the Site or any portion thereof, all Project Co Parties will immediately take any necessary remedial action, including vacating the Site to ensure that the MLITSD determines that the Project Co Party identified pursuant to Section 11.11(a)(v) is the “constructor”;
- (iii) if a third party is named “constructor” by MLITSD, no Project Co Party shall interfere with or delay the third party’s work, and shall not do anything whatsoever that causes the third party to be in contravention of its obligations under the *Occupational Health and Safety Act* (Ontario). All Project Co Parties shall immediately cease and desist any activity that results or has a likelihood of resulting in such interference with or delay of the work of the third party; and
- (iv) if the MLITSD determines that Contracting Authority or a third party contractor (including RSSOM Project Co or EGS Project Co) has been designated as the “constructor” under the *Occupational Health and Safety Act* (Ontario), and such determination by the MLITSD is caused or contributed to by a failure of any Project Co Party to comply with, or a breach by any Project Co Party of, the provisions of this Agreement (but only to the extent of such cause or contribution), Project Co shall indemnify Contracting Authority and the Province Persons and each of their respective directors, officers, employees, agents and representatives from and against any and all of

the liabilities arising from such determination by the MLITSD, and all Project Co Parties shall follow all directions of Contracting Authority required to fulfil any obligations Contracting Authority may have as a consequence of being designated the “constructor”; and

- (v) if the MLITSD determines that Contracting Authority or a third party contractor (including RSSOM Project Co or EGS Project Co) has been designated as the “constructor” under the *Occupational Health and Safety Act* (Ontario), and such determination by the MLITSD is for a reason other than a failure of any Project Co Party to comply with, or a breach by any Project Co Party of, the provisions of this Agreement (but only to the extent of such cause or contribution), then, to the extent that Project Co’s performance of its obligations set out in this Section 11.11(e) would result in a material change to the Construction Works and would not otherwise be required of Project Co under this Agreement, such change shall, subject and in accordance with Schedule 22 – Estimates, Variations and Proposals, result in a Variation.
- (f) In the event that a breach by the Project Co Party identified pursuant to Section 11.11(a)(v) of, the provisions of this Agreement causes or contributes to (but only to the extent of such cause or contribution) an MLITSD determination that the Project Co Party identified pursuant to Section 11.11(a)(v) is not the “constructor” for the Site or any portion thereof, or if the Project Co Party identified pursuant to Section 11.11(a)(v) or any Project Co Party is denied access to the Site pursuant to Section 11.11(e)(ii), Project Co will not be eligible for an Adjustment Event in connection therewith.
- (g) Project Co acknowledges and agrees that, following each applicable Section Substantial Completion Date, Project Co’s access to, and control of the relevant portions of the Site in respect of each applicable Project Co Infrastructure Section may be subject to the activities of Contracting Authority, the Contracting Authority Parties or Other Contractors, and that Project Co may be required to undertake all or a portion of the Construction Works in respect of an applicable Project Co Infrastructure Section under circumstances where a person other than the Project Co Party identified pursuant to Section 11.11(a)(v) is the “constructor” for all or a portion of the Site in respect of each such applicable Project Co Infrastructure Section. Following each applicable Section Substantial Completion Date, Project Co shall:
 - (i) provide Contracting Authority with at least fifteen (15) Business Days advance Notice of its intention to undertake Construction Activities on the Site in respect of each such applicable Project Co Infrastructure Section, providing reasonable particulars;
 - (ii) participate with Contracting Authority and any party fulfilling the role of “constructor” in reviewing and coordinating construction schedules, when requested to do so by Contracting Authority;
 - (iii) coordinate its access to the Site in respect of each such applicable Project Co Infrastructure Section with Contracting Authority and any party fulfilling the role of “constructor” in respect of all or a portion of the Site in respect of each such applicable Project Co Infrastructure Section; and
 - (iv) comply with the instructions of any party that is fulfilling the role of “constructor” under the *Occupational Health and Safety Act* (Ontario) relating to matters of health and safety,

methods and manner of construction (where applicable), and coordination and scheduling of the Construction Works in respect of each such applicable Project Co Infrastructure Section. Project Co shall not interfere with, and shall not do anything whatsoever that causes the “constructor” to be in contravention of its obligations under the *Occupational Health and Safety Act* (Ontario).

- (h) Project Co shall comply with Schedule 29 – Safety, System Assurance and Security.
- (i) Project Co shall comply with the requirements set out in Schedule 40 – Rail Corridor Access and Flagging in respect of the interaction between Project Co, CN Rail, VIA Rail, GO Transit and any other users of the Rail Corridor with respect to the activities to be performed in, on, under and/or adjacent to the Rail Corridor.

11.12 Additional Works and Third Party Works

- (a) Project Co shall, having regard to Project Co’s obligations set out in Section 17, arrange and carry out all coordination of the Works with the Third Party Works directly with the applicable Third Party Contractor.
- (b) Contracting Authority may, in its sole discretion, carry out Additional Works.
- (c) Contracting Authority may, in its sole discretion, assign the responsibility for directing the methods and manner of construction (where applicable) of the Additional Works, the coordination and scheduling of the Additional Works and the safety training in respect of the Additional Works to Project Co. For clarity, Contracting Authority may, in its sole discretion, assign such responsibilities to Project Co.
- (d) In connection with the Additional Works taking place prior to each applicable Section Substantial Completion Date, or thereafter where Project Co is designated as the “constructor” for an applicable Project Co Infrastructure Section, Contracting Authority shall,
 - (i) cause Additional Contractors to comply with the instructions of Project Co relating to matters of health and safety on the Site, methods and manner of construction (where applicable), and coordination and scheduling of the Additional Works with the Works;
 - (ii) enter into separate contracts with Additional Contractors,
 - (A) under conditions of contract which are compatible with the conditions of this Agreement;
 - (B) that require Additional Contractors to comply with Section 11.12(e) and all directions of Project Co in respect of any matter regarding health and safety on the Site, and methods and manner of construction (where applicable); and
 - (C) that require Additional Contractors to comply with Project Co’s coordination and scheduling of the Additional Works; and
 - (iii) ensure that insurance coverage is provided by each Additional Contractor as would be required by a prudent owner similarly situated and coordinate such insurance with the

insurance coverage of Project Co and in any event, such insurance shall provide for liability insurance of not less than the amount set out in the Target Price Agreement.

- (e) In connection with the Additional Works, if Contracting Authority has assigned responsibilities to Project Co pursuant to this Section 11.12, Project Co shall,
- (i) direct the methods and manner of construction (where applicable) of the Additional Works and the coordination and scheduling of the Additional Works with the Construction Works to be performed under this Agreement;
 - (ii) assume overall responsibility for compliance with all aspects of,
 - (A) Applicable Law relating to health and safety at the Site, including all the responsibilities of the “constructor” under the *Occupational Health and Safety Act* (Ontario); and
 - (B) the Traffic and Transit Management Plan and all rules, requirements and restrictions relating to access, rail safety and operations and track protection, and road safety and operations, as set out in this Agreement, including, for clarity, the Output Specifications,

prior to each applicable Section Substantial Completion Date and, exercised in a manner consistent with the *Occupational Health and Safety Act* (Ontario), at any time that Project Co is acting as a “constructor” on the Site for an applicable Project Co Infrastructure Section following each such applicable Section Substantial Completion Date;
 - (iii) provide Additional Contractors reasonable opportunity to introduce and store their products and use their construction machinery and equipment to execute the Additional Works, as applicable;
 - (iv) participate with Contracting Authority and Additional Contractors in reviewing the construction schedules of Additional Contractors, when directed to do so by Contracting Authority; and
 - (v) if part of the Construction Works is affected by or depends upon, for its proper execution, the Additional Works, promptly (and in any event within thirty (30) days) report to Contracting Authority in writing and prior to proceeding with that part of the Construction Works any readily apparent deficiencies in the Additional Works. Failure by Project Co to so report shall invalidate any claims against Contracting Authority by reason of such readily apparent deficiencies. Failure by Project Co to report deficiencies that are not readily apparent shall not invalidate claims Project Co may have against Contracting Authority relating to such deficiencies that are not readily apparent.
- (f) In the case of Additional Works carried out prior to the TPA Substantial Completion, if:
- (i) any Additional Contractors cause any damage to the TPA Works;

- (ii) Project Co incurs any additional costs or there is any delay in the TPA Works as a result of any Additional Contractors not complying with the coordination, scheduling and safety instructions of Project Co; or
- (iii) subject to the performance by Project Co of its obligations under this Section 11.12, if Project Co incurs any additional costs or there is any delay in the Construction Works as a result of any such Additional Works (other than Additional Works that are required to meet the Construction Technical Requirements and provided such Additional Works are performed by such Additional Contractors by any applicable date set out in the Construction Technical Requirements and in accordance with Good Industry Practice and in accordance with the terms of their respective contracts or engagements with Contracting Authority),

then, subject to and in accordance with Schedule 21 – Risk Allocations, Project Co may be entitled to an Adjustment for such delay in the TPA Works or additional costs in respect of the TPA Works.

- (g) Claims, disputes, and other matters in question between Project Co and Additional Contractors shall be dealt with by negotiation, adjudication and/or arbitration in a reasonably similar manner to what is contemplated in Schedule 27 – Dispute Resolution Procedure provided that the Additional Contractors and Contracting Authority have made commercially reasonable efforts to ensure that provisions similar to Schedule 27 – Dispute Resolution Procedure have been included in the contracts between Contracting Authority and the Additional Contractors. Project Co shall be deemed to have consented to arbitration of any dispute with any Additional Contractor whose contract with Contracting Authority contains a similar agreement to arbitrate.
- (h) In connection with the Additional Works, Project Co may request a Variation as follows:
 - (i) Project Co shall have a period of 10 Business Days following Notice from Contracting Authority of Contracting Authority’s intention to carry out such Additional Works, including a reasonable description of such Additional Works, to request a Variation if such Additional Works are,
 - (A) reasonably expected to make void a warranty made in favour of Project Co from a Project Co Party or equipment supplier and given in accordance with Good Industry Practice; or
 - (B) reasonably expected to have a material negative consequence on Project Co’s ability to perform any of the Construction Works (which for certainty, will include any material increased cost to Project Co in performing any Construction Works);
 - (ii) If Project Co has made a request for a Variation in accordance with Section 11.12(h)(i), Contracting Authority shall, within 10 Business Days after such request, either issue a Variation Enquiry or give Notice to Project Co that it does not agree that a Variation is required;
 - (iii) Either Party may refer the question of whether a Variation is required as the result of a warranty risk or risk in the performance of the Works for resolution in accordance with Schedule 27 – Dispute Resolution Procedure; and

- (iv) If Contracting Authority has, under Section 11.12(h)(ii), given Notice to Project Co that it does not agree that a Variation is required, Contracting Authority shall, within 10 Business Days after a subsequent agreement or of a determination that a Variation is required, issue a Variation Enquiry and the relevant provisions of Schedule 22 – Estimates, Variations and Proposals shall apply except that:
 - (A) Contracting Authority shall not be entitled to withdraw any such Variation Enquiry unless Contracting Authority determines not to proceed with the Additional Works or to proceed only in a manner that the Additional Works will not result in a warranty becoming void or will not result in any material negative consequence on Project Co's ability to perform any of the Construction Works and Project Co has agreed with such conclusion, or the Parties otherwise agree; and
 - (B) the Parties shall, without prejudice to their respective general obligations to comply with the terms of this Agreement, use commercially reasonable efforts to mitigate the adverse effects with respect to any void or voidable warranty and take commercially reasonable steps to minimize any increase in costs arising from any void warranty.
- (i) Placing, installing, applying or connecting the Additional Works performed by Additional Contractors on and to the Construction Works performed by Project Co shall not relieve Project Co from its obligations under this Agreement with respect to the Construction Works, except to the extent expressly described in any Variation Confirmation.

11.13 Protest and Trespass

- (a) Except as otherwise provided in this Agreement, Contracting Authority shall not be responsible for the presence of any persons participating in a Protest Action (“**Protesters**”) or any other persons otherwise not entitled to be on or around the Lands (“**Trespassers**”). For greater certainty, the presence of, or interference by, any Protesters or Trespassers on or around the Metrolinx Lands shall not be a breach of the obligation of Contracting Authority to grant licence rights of use and access to Project Co on and over the Metrolinx Lands pursuant to Section 16 nor a breach of any other obligation, representation or warranty under this Agreement.
- (b) The management of any Protesters or Trespassers shall be the responsibility of Project Co in respect of such parts of the Site and/or Metrolinx Lands (including Existing Infrastructure on the Site and/or Metrolinx Lands and facilities or infrastructure within such parts of the Site and/or Metrolinx Lands that have not been handed over to RSSOM Project Co or are not under the exclusive control of RSSOM Project Co, or are not under the exclusive control of EGS Project Co), New Third Party Infrastructure and Project Co Infrastructure that have not been handed over by and remain under the control of Project Co, to the extent such management is not otherwise the responsibility of the Police Service.
- (c) If Protesters or Trespassers occupy the Site, lands, facilities or infrastructure referred to in Section 11.13(b), or access to such Site, lands, facilities, or infrastructure is prevented or interfered with by Protesters or Trespassers, Project Co shall use all appropriate measures reasonable in the circumstances to manage such Protesters or Trespassers and promptly notify the Contracting Authority Representative of such occurrence and of the action which Project Co proposes to take in respect thereof. Project Co may exercise any legal remedy available to it to remove Protesters or

Trespassers from the Site, lands, facilities or infrastructure referred to in Section 11.13(b), provided that if Project Co does elect to exercise any such legal remedy, Project Co shall give the Contracting Authority Representative at least 24 hours' Notice prior to commencing any such legal proceeding (except in a case of Emergency, danger to persons or material destruction or material damage to property where, in such circumstances, such Notice may be given to Contracting Authority less than 24 hours prior to the commencement of such legal proceeding) and shall continually update the Contracting Authority Representative as to the status of any such legal proceeding in reasonable detail and at reasonable intervals, and provided further that:

- (i) Project Co shall not give directly or indirectly to any Protester or Trespasser any inducement, monetary or otherwise, with a view to avoiding, limiting or influencing the manner of protest activities by that Protester or Trespasser or by other Protesters or Trespassers; and
 - (ii) Project Co shall not by virtue of this Section 11.13(c) be prevented from entering into *bona fide* settlements of claims brought against it by Protesters or Trespassers which provide for reasonable payments in satisfaction of such claims or agreeing to any reasonable cost orders in any proceedings.
- (d) Project Co may request the assistance of Contracting Authority to remove Protesters or Trespassers from the Site, Lands, facilities or infrastructure, set out in Section 11.13(b) if Project Co demonstrates to Contracting Authority's reasonable satisfaction that:
- (i) Project Co is pursuing all legal remedies available to it to remove the Protesters or Trespassers (provided that for this purpose Project Co may, but shall not be obligated to, prosecute injunctive or other judicial remedies beyond the court of first instance); and
 - (ii) the continued presence of the Protesters or Trespassers is having a material adverse effect on the conduct of the Works that Project Co is unable to mitigate.

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

- (e) If (i) Project Co experiences a Protest Action on either the Site (including Existing Infrastructure on the Site), Metrolinx Lands, New Third Party Infrastructure and Project Co Infrastructure, or (ii) access by Project Co to the Site (including Existing Infrastructure on the Site) or Metrolinx Lands, New Third Party Infrastructure or Project Co Infrastructure is prevented or materially interfered with by a Protest Action, then the Protest Action may, subject to and in accordance with Schedule 21 – Risk Allocations, in respect of such Protest Action be entitled to an Adjustment provided that Project Co has exhausted all legal remedies available to it to seek injunctive relief or other judicial remedies from a court of first instance and to enforce such injunction or other remedy granted by such court to remove Protesters and Trespassers in such Protest Action from the Site (including Existing Infrastructure on the Site), Metrolinx Lands, New Third Party Infrastructure and Project Co Infrastructure, provided that Project Co shall not be obligated to prosecute injunctive or other judicial remedies beyond the court of first instance with respect to such removal of Protesters and Trespassers.

11.14 Adjacent Developments

- (a) Project Co shall coordinate and cooperate with Contracting Authority and the City of Toronto with respect to the Metrolinx Developer Review Process, recognizing that:
- (i) Contracting Authority, in association with the City of Toronto, will be responsible for carrying out reviews of development applications in accordance with the Metrolinx Developer Review Process, including the issuance of any corridor development permits as contemplated under the *Building Transit Faster Act (2020)*;
 - (ii) Contracting Authority, in association with the City of Toronto, will be responsible for providing development applications for Adjacent Developments to Project Co for review;
 - (iii) Project Co shall be responsible for reviewing and commenting on development applications, inclusive of classifying and completing the review of all technical review submission materials; and
 - (iv) the Metrolinx Developer Review Process will be fully integrated into the City of Toronto's development review process.
- (b) Project Co shall:
- (i) review and comment on all submittal materials received from Contracting Authority with respect to Adjacent Developments within 10 Business Days of receipt, utilizing a standard comment form to be provided by Contracting Authority; and
 - (ii) where possible, obtain necessary approvals for all Construction Activities prior to construction of Adjacent Developments to ensure that no adverse impacts will be caused to the New Third Party Infrastructure.
- (c) For clarity, Project Co shall, as required by Contracting Authority,
- (i) provide all commercially reasonable assistance to,
 - (A) facilitate the discussion, agreement and any implementation of proposals with respect to Adjacent Developments; and
 - (B) avoid or mitigate any adverse impact of an Adjacent Development on the Construction Works, the Project Co Infrastructure and the New Third Party Infrastructure;
 - (ii) permit the Adjacent Developer to post or affix signage in respect of the Adjacent Development, which signage may identify the Adjacent Development project architect, engineer and lender, and other members of the Adjacent Developer's project team;
 - (iii) permit an Adjacent Developer to post or affix signage, as required in connection with a development application; and
 - (iv) provide, to the Adjacent Developer, all Project documentation in respect of the design and construction of any elements of the Project Co Infrastructure or New Third Party

Infrastructure that are relevant to the Adjacent Development, subject to the Adjacent Developer executing a confidentiality agreement and a waiver of liability, each in a form and substance satisfactory to Contracting Authority and Project Co, each acting reasonably.

11.15 Defective Works

- (a) Prior to the TPA Substantial Completion, Section Substantial Completion, or Project Substantial Completion, as applicable:
- (i) Project Co shall promptly Make Good any deficiency, defect or error in the Works or failure of the Works to conform to this Agreement, or any deficiency, defect or error in relation to any Product (collectively, a “**Construction Defect**”) whether or not such Construction Defect has been incorporated into the Project Co Infrastructure or the New Third Party Infrastructure and whether or not the Construction Defect is the result of poor workmanship, use of defective Products or equipment or damage through carelessness or other act or omission of Project Co. Project Co shall Make Good, in a manner acceptable to Contracting Authority, all Construction Defects, whether or not they are specifically identified by Contracting Authority, and Project Co shall prioritize the correction of any Construction Defects so as not to interfere with or derogate from the Project Works Schedules, provided that Project Co shall prioritize the correction of any Construction Defects that in the sole discretion of Contracting Authority is determined to adversely affect the day to day operation of Contracting Authority.
 - (ii) Project Co shall Make Good promptly other contractors’ work (other than RSSOM Project Co and EGS Project Co) destroyed or damaged by such rectifications. Any damage to the work of RSSOM Project Co or any RSSOM Project Co Party shall be dealt with in accordance with Schedule 45 – Integration with RSSOM Project. Any damage to the work of EGS Project Co or any EGS Project Co Party shall be dealt with in accordance with Schedule 38 – Integration with EGS Project.
 - (iii) If in the opinion of Contracting Authority it is not expedient for Project Co to correct any Construction Defects, Contracting Authority may deduct from the Target Price the difference in value between the Works as performed and that called for by this Agreement.

11.16 Warranty Obligations

- (a) Project Co represents, warrants and covenants that:
- (i) the Works, including the Project Co Infrastructure (but, for clarity, not including any Early Works Infrastructure that becomes Project Co Infrastructure upon handover thereof in accordance with Schedule 41 – Early Works Handover), the New Third Party Infrastructure, and all Products, parts and workmanship, including those replaced during each TPA Warranty Period or the DMCA Warranty Period, as applicable, shall,
 - (A) conform to the requirements and specifications set out in this Agreement, Good Industry Practice, Applicable Law and all professional engineering principles generally accepted as standards of the industry in the Province of Ontario;
 - (B) be free of defects, including design defects, errors and omissions; and

- (C) be new, of good quality material, of merchantable quality and fit for the intended purpose of constructing the subway infrastructure, as described in this Agreement; and
- (ii) materials and equipment shall be of good quality and in compliance with this Agreement.
- (b) Project Co shall promptly, during each TPA Warranty Period or the DMCA Warranty Period, as applicable, correct and Make Good all Construction Defects and Construction Latent Defects arising in respect of the applicable Works other than to the extent any Construction Defects (i) have arisen as a result of normal wear and tear, (ii) are caused or contributed to by Contracting Authority, RSSOM Project Co, EGS Project Co, any third party owner of the New Third Party Infrastructure or any Province Person for whom any of the foregoing are responsible at law, or (iii) are caused or contributed to by an Adjustment Event (in each of the cases set out in (i)-(iii) of this Section 11.16(b), Project Co shall not have liability or obligation therefor) and provided that Contracting Authority gives Project Co Notice of any Construction Latent Defect within five (5) years of the TPA Substantial Completion Date with respect to TPA Works or the applicable DMCA Construction Works Substantial Completion Date with respect to DMCA Construction Works. For greater certainty, Project Co is required to correct and Make Good Construction Defects (except to the extent Construction Defects are excluded from Project Co's liability and obligations pursuant to (A)-(C) of this Section 11.16(b)) related to any Product and any equipment during the TPA Warranty Period or DMCA Warranty Period, as applicable, despite Project Co having obtained on Contracting Authority's behalf industry-standard or other equipment warranties in accordance with Section 11.16(d).
- (c) The warranties set out in this Section 11.16 shall each cover labour and material, including, the costs of removal and replacement of covering materials. None of the warranties shall limit extended warranties on any Product or any item of equipment called for elsewhere in the Construction Technical Requirements or otherwise provided by any manufacturer of such Product or item of equipment. Project Co shall ensure that all extended warranties specified in this Agreement are provided and shall, in the case of the New Third Party Infrastructure, assign to the third party owner of the New Third Party Infrastructure all such extended warranties as the third party owner may direct.
- (d) Project Co shall obtain warranties from the manufacturers of each of the Products and items of equipment for the duration(s) and in accordance with the applicable requirements specified in Construction Technical Requirements in the name of and to the benefit of Project Co, Contracting Authority in the case of Project Co Infrastructure, and the applicable third party owner in the case of New Third Party Infrastructure. Where, in respect of a Product warranty or equipment warranty, the Construction Technical Requirements do not specify a specific duration and/or other requirements, Project Co shall obtain industry-standard warranties from the applicable manufacturers in the name of and to the benefit of Project Co and Contracting Authority which shall extend no less than the TPA Warranty Period or the DMCA Warranty Period, as applicable. Each Product warranty and equipment warranty shall be issued by the applicable manufacturer and delivered to Project Co no later than 30 days prior to, in the case of Project Co Infrastructure and New Third Party Infrastructure, the TPA Warranty Period or DMCA Warranty Period, as applicable. Project Co shall ensure that each Product warranty and equipment warranty, including any Product warranty or equipment warranty extended under this Section 11.16(d), is fully assigned to Contracting Authority or the third party owner of New Third Party Infrastructure, as applicable, at no cost or expense to Contracting Authority or the third party owner, at the end of the TPA

Warranty Period or the DMCA Warranty Period, as applicable, as such TPA Warranty Period or the DMCA Warranty Period, as applicable, may be extended in accordance with Section 11.17(a).

- (e) Contracting Authority may, in its sole discretion, assign Project Co warranties set out in this Section 11.16 to the applicable third party owner of the New Third Party Infrastructure, and shall provide Notice to Project Co of any such assignment of Project Co warranties. On the commencement of each TPA Warranty Period or the DMCA Warranty Period, as applicable, for each of the Project Co Infrastructure and the New Third Party Infrastructure, Project Co shall provide at least two copies of each of the compilations of warranty certificates, one compilation for each of the Project Co Infrastructure and one compilation for each category of New Third Party Infrastructure, as categorized by ownership of the New Third Party Infrastructure. Project Co shall update all copies of each of the compilations from time to time as each TPA Warranty Period or the DMCA Warranty Period, as applicable, commences. Each of the compilations shall indicate the start and completion date of each warranty of Project Co.
- (f) Subject to Section 11.12, Project Co acknowledges that,
 - (i) with respect to the Project Co Infrastructure, Contracting Authority may, in its sole discretion; and
 - (ii) with respect to the New Third Party Infrastructure, the applicable third party owner may, in its sole discretion,

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

11.17 Warranty Work and Prompt Repair of Warranty Work

- (a) Project Co shall carry out all work, including correcting Construction Defects and Construction Latent Defects, to satisfy the warranties provided pursuant to Section 11.16 and this Section 11.17, and in accordance with the TPA Warranty Period or the DMCA Warranty Period, as applicable, and Project Co shall also Make Good any damage to other works caused by the repairing of such defects, deficiencies, or failures to comply (the “**Warranty Work**”). All Warranty Work shall be carried out and completed and Warranty Work shall not be the basis of a claim for an Adjustment Event, a Variation, additional compensation or damages. The TPA Warranty Period or the DMCA Warranty Period, as applicable, shall be extended for a further two years from the date of the last applicable Warranty Work completed and accepted by Contracting Authority in respect of the Project Co Infrastructure and by the applicable third party owner in respect of the New Third Party Infrastructure. For clarity, any extension of a TPA Warranty Period or the DMCA Warranty Period, as applicable, for the purposes of a correction shall only apply to the relevant Warranty Work and not the Works as a whole.
- (b) Project Co acknowledges and agrees that the timely performance of Warranty Work is critical to the ability of Contracting Authority to maintain effective operations of the Project Co Infrastructure, and to the ability of the third party owners to maintain effective operations of the New Third Party Infrastructure. Project Co shall use commercially reasonable efforts to respond to

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

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

is unable to contact Project Co and/or obtain the Warranty Work promptly, or, in the case of urgent Warranty Work within the time period set out in Section 11.17(b), Contracting Authority and the applicable third party owner, as applicable, may take such emergency steps as are reasonable and appropriate to correct any defects, deficiencies or failures to comply with this Agreement. Except in the case of damage caused by Contracting Authority's or the third party owner's own forces, such emergency steps taken by Contracting Authority's or the third party owner's own forces, as applicable, shall not invalidate any warranties of Project Co in respect of the applicable Works.

- (d) If Project Co fails to carry out the Warranty Work in accordance with Section 11.16, and in the time specified in Section 11.17(b) or subsequently agreed upon, without prejudice to any other right or remedy Contracting Authority may have, Contracting Authority and the third party owner, as applicable, may correct the Works, as applicable, and may draw down on the TPA Warranty Security or DMCA Construction Warranty Security to fund or as reimbursement for such costs and expenses.
- (e) Project Co acknowledges and agrees that all rules, requirements and restrictions relating to access, rail safety and operations and track protection, as set out in the Construction Technical Requirements, apply to Project Co's performance of its obligations in accordance with Sections 11.16 and 11.17.
- (f) After the Handover of the applicable New Third Party Infrastructure, Project Co shall be solely responsible for obtaining access from the applicable third party for the purpose of carrying out Warranty Work. Project Co acknowledges that such access to the applicable New Third Party Infrastructure may be subject to such limitations as may be imposed by the applicable third party owner, and that Project Co may be required to obtain a Permit, Licence, Approval or Agreement to access the applicable New Third Party Infrastructure for the purpose of carrying out Warranty Work. Without limiting Project Co's obligation to carry out the Warranty Work, if Project Co,
- (i) has made commercially reasonable efforts to access New Third Party Infrastructure for the purpose of carrying out Warranty Work and is otherwise in compliance with all of Project Co's obligations pursuant to this Agreement; and

- (ii) is denied access to all or a portion of the relevant New Third Party Infrastructure such that Project Co is unable to perform the Warranty Work,

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

- (g) The warranties set out in Sections 11.16 and 11.17 shall not deprive Contracting Authority or any third party owner of New Third Party Infrastructure of any other action, right or remedy otherwise available to Contracting Authority or the third party owner at law or in equity, and the periods referred to in this Section 11.17, shall not be construed as a limitation on the time in which Contracting Authority or the third party owner may pursue such other action, right or remedy, provided that the obligations of Project Co specified in Sections 11.16 and 11.17 shall only apply to a Construction Defect or a Construction Latent Defect if the relevant Construction Defect or Construction Latent Defect is notified to Project Co before the end of the TPA Warranty Period or the DMCA Warranty Period, as applicable.
- (h) Neither test results, nor selection or approval by Contracting Authority or the Contracting Authority Representative of testing entities, nor any other thing in this Agreement shall have the effect of limiting or shortening or otherwise affecting in any way whatsoever the duration, effectiveness or content of any guarantee or warranty set forth in any other document or material forming part of this Agreement.

11.18 Warranty Security

- (a) Not less than 90 days prior to each then-current TPA Scheduled Substantial Completion Date or relevant DMCA Construction Works Scheduled Substantial Completion Date, as applicable, Project Co shall deliver, or cause to be delivered, to Contracting Authority, (i) a TPA Warranty Letter of Credit or multiple TPA Warranty Letters of Credit, which shall in the aggregate equal the amount set out in the Target Price Agreement (the “**Required Amount**” applicable to such TPA Warranty Letter(s) of Credit), or (ii) a DMCA Construction Works Warranty Letter of Credit or multiple DMCA Construction Works Warranty Letters of Credit, which shall in the aggregate equal the DMCA Construction Works Required Amount for the relevant DMCA Construction Works.
- (b) Provision of the TPA Warranty Letter of Credit or DMCA Construction Works Warranty Letter of Credit, as applicable, shall be a precondition to achievement of each TPA Substantial Completion or DMCA Construction Works Substantial Completion, as applicable, unless Contracting Authority, in its discretion, agrees to retain the TPA Warranty Cash Amount or DMCA Construction Warranty Cash Amount, as applicable. If the TPA Warranty Letter of Credit has not been delivered to Contracting Authority by the TPA Substantial Completion Date, Contracting Authority may, in its discretion, deduct or set off the Required Amount from any payment due to Project Co (the “**TPA Warranty Cash Amount**”). If the DMCA Construction Works Warranty Letter of Credit has not been delivered to Contracting Authority by the applicable DMCA Construction Works Scheduled Substantial Completion Date, Contracting Authority may, in its discretion, deduct or set off the relevant DMCA Construction Works Required Amount from any

payment due to Project Co (the “**DMCA Construction Warranty Cash Amount**”). Until receipt of the TPA Warranty Letter of Credit or relevant DMCA Construction Works Warranty Letter of Credit, as applicable, Contracting Authority may use the TPA Warranty Cash Amount or DMCA Construction Warranty Cash Amount in the place of, in the same manner as and for the same purpose as the TPA Warranty Letter of Credit or DMCA Construction Works Warranty Letter of Credit as applicable.

If the TPA Warranty Letter of Credit or DMCA Construction Works Warranty Letter of Credit, as applicable, is delivered to Contracting Authority after the TPA Substantial Completion or relevant DMCA Construction Works Substantial Completion, as applicable, then by the date that is five Business Days following the date that the TPA Warranty Letter of Credit or DMCA Construction Works Warranty Letter of Credit, as applicable, has been delivered to Contracting Authority, Contracting Authority shall pay to Project Co the TPA Warranty Cash Amount or the DMCA Construction Warranty Cash Amount, as applicable, less the amount of any claims previously satisfied by a draw in accordance with Section 11.18(c).

- (c) Contracting Authority shall be entitled to draw on the TPA Warranty Security or DMCA Construction Warranty Security:
 - (i) in an amount equal to the amount of the costs estimated by Contracting Authority for,
 - (A) Contracting Authority to rectify defects, deficiencies or non-compliant items in the Works, including any costs incurred by Contracting Authority in accordance with Sections 11.16 and 11.17 as a result of Project Co’s failure to comply with its obligations under Sections 11.16 and 11.17; and
 - (B) all other Direct Losses suffered by Contracting Authority, excluding, any Direct Losses arising out of the Project Co indemnities set out in Section 41.1; and
 - (ii) to satisfy any amounts that are due and have remained outstanding for thirty (30) days by Project Co pursuant to the terms of this Agreement or by the Parent Guarantor pursuant to the Parent Guarantee.
- (d) Contracting Authority may make multiple calls on the TPA Warranty Security or DMCA Construction Warranty Security.
- (e) In the event that Contracting Authority draws on the TPA Warranty Security or DMCA Construction Warranty Security, as applicable, Project Co shall forthwith, and in any event within five Business Days following such draw, provide Contracting Authority with a replacement or additional letter of credit such that the TPA Warranty Letter(s) of Credit or relevant DMCA Construction Works Letter(s) of Credit, as applicable, is at all times during the period between the TPA Substantial Completion or applicable DMCA Construction Works Substantial Completion, as applicable, and the TPA Warranty Security Return Date or applicable DMCA Construction Warranty Security Return Date, as applicable, in the applicable Required Amount or applicable DMCA Construction Works required Amount, as applicable.
- (f) Unless the TPA Warranty Security or DMCA Construction Warranty Security is fully drawn by Contracting Authority in accordance with the provisions of this Agreement, Contracting Authority

shall release and deliver the TPA Warranty Security or DMCA Construction Warranty Security, as applicable, to Project Co on the TPA Warranty Security Return Date or DMCA Construction Warranty Security Return Date, as applicable.

- (g) In the event that the TPA Warranty Letter of Credit or DMCA Construction Works Warranty Letter of Credit, as applicable, has an expiry date that is prior to the TPA Warranty Security Return Date or DMCA Construction Warranty Security, as applicable, and Project Co does not renew (or does not cause the renewal of) the TPA Warranty Letter of Credit or DMCA Construction Works Warranty Letter of Credit, as applicable, and does not provide (or cause the provision of) proof of such renewal to Contracting Authority before the date that is 20 days before the TPA Warranty Letter of Credit's or DMCA Construction Works Warranty Letter of Credit's, as applicable, expiry date, then at any time during such 20 day period and upon providing prior written Notice to Project Co, Contracting Authority may draw upon the full amount of the TPA Warranty Letter of Credit or DMCA Construction Works Warranty Letter of Credit, as applicable, and deposit the cash proceeds thereof in a segregated bank account selected by Project Co at an Acceptable Issuer and if Project Co does not promptly select such bank account, then such bank account may be selected by Contracting Authority in its sole and absolute discretion and such cash proceeds shall thereupon stand in place of the TPA Warranty Letter of Credit or DMCA Construction Works Warranty Letter of Credit, as applicable, unless Project Co delivers (or causes the delivery of) a replacement TPA Warranty Letter of Credit or DMCA Construction Works Warranty Letter of Credit, as applicable, to Contracting Authority. All interest earned on such cash proceeds shall be for the benefit of Project Co. Contracting Authority shall be entitled to withdraw such cash proceeds in the same manner that it is permitted to draw upon the TPA Warranty Security or DMCA Construction Warranty Security under Section 11.18(c). Upon the delivery of a replacement TPA Warranty Letter of Credit or DMCA Construction Works Warranty Letter of Credit, as applicable, by Project Co to Contracting Authority, all applicable remaining cash proceeds and all interest thereon from such segregated bank account shall be returned to Project Co or as Project Co may direct within five (5) Business Days after the delivery of such replacement TPA Warranty Letter of Credit or replacement DMCA Construction Works Warranty Letter of Credit, as applicable, by Project Co to Contracting Authority.
- (h) For clarity, if Contracting Authority elects to draw down on the TPA Warranty Security or DMCA Construction Warranty Security in accordance with this Section 11.18, Contracting Authority shall not be entitled to exercise its rights pursuant to the Parent Guarantee to fund or as reimbursement for the costs and expenses Contracting Authority has already been compensated for pursuant to this Section 11.18.

11.19 Coordination and Minimization of Disruption and Interference

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

- (iii) all Adjacent Developments, in accordance with Sections 11.9 and 11.14; and
 - (iv) each TOC Contractor with respect to each TOC Development.
- (b) Project Co acknowledges and agrees that,
- (i) Project Co has familiarized itself, or will prior to commencing the Construction Works familiarize itself, with all operations and activities associated with the Lands, the Existing Infrastructure and the existing Transit Systems and highway systems, and will perform the Construction Works in accordance with, and subject to,
 - (A) this Agreement, including all rules, requirements and restrictions relating to access, rail safety and operations and track protection, as set out in the Construction Technical Requirements;
 - (B) the Traffic and Transit Management Plan; and
 - (C) the requirements of Contracting Authority and other third parties,in order to maintain normal operations and activities associated with the Lands, the Existing Infrastructure and the existing Transit Systems and highway systems;
 - (ii) the carrying on of Contracting Authority Activities during construction is a priority for Contracting Authority, and Project Co has reviewed the Project Documents with respect to this;
 - (iii) Project Co shall use all methods required to comply with the instructions set out in this Agreement during the performance of the Construction Works, Project Co shall fully cooperate with Contracting Authority in complying with such instructions during the performance of the Construction Works; and
 - (iv) this Agreement includes specifications which include instructions respecting Contracting Authority's use of the Existing Infrastructure, Project Co has read and understood such instructions and shall comply with the procedures set out therein, and Project Co shall be responsible for its failure to comply with these procedures.
- (c) Except as explicitly permitted by Contracting Authority or this Agreement, and subject to Project Co's compliance with all applicable Permits, Licences, Approvals and Agreements,
- (i) Project Co shall minimize disturbance to and interference with,
 - (A) the existing Transit Systems, highway systems, and the Existing Infrastructure in accordance with this Agreement, including with respect to noise, dust control, access to the Lands and the particular requirements in respect of those portions of the Works which are to be carried out within the Existing Infrastructure and in respect of those portions of the Construction Works where connections are being made to the Existing Infrastructure;
 - (B) the construction, operations or maintenance activities of Contracting Authority, any Province Person, any Governmental Authority, any Other Contractor, any

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

- (C) the convenience of the public in respect of, and the access of the public to and use of, any public or private roads or highways or other transportation infrastructure including the Existing Infrastructure (other than the Project Co Infrastructure and the New Third Party Infrastructure), whether under the control or in the possession of Contracting Authority or any other person, and Project Co shall minimize any lane or ramp closures or diversions, track closures or diversions and traffic diversions or restrictions; and
 - (D) the construction, operation or maintenance activities of any TOC Contractor with respect to the applicable TOC Development, in accordance with Section 11.9 and the Construction Technical Requirements.
- (d) To the extent that the Project necessitates interference, in any way, with the operation of the existing Transit Systems, existing highway systems, or Existing Infrastructure, including the imposition of any closures or detours on the existing highway systems, or Existing Infrastructure, Project Co shall use commercially reasonable efforts to cooperate with Contracting Authority, Province Persons, Governmental Authorities, Other Contractors, Utility Companies, MTO, the City of Toronto, and Transit System and other relevant third parties to ensure the continued operation of the existing Transit Systems, highway systems, and Existing Infrastructure.
 - (e) Project Co shall develop and implement protocols in furtherance of its obligations as set out in this Section 11.19 in accordance with the Traffic and Transit Management Plan and the Construction Technical Requirements.
 - (f) Project Co, shall as required by Contracting Authority, provide all commercially reasonable assistance to facilitate the discussion, agreement and any implementation of proposals with respect to the TOC Developments.

11.20 Substitutions

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

11.21 Anti-Racism and Anti-Discriminatory Processes, Policies and Procedures

- (a) Project Co shall, with respect to its activities in Canada, incorporate reasonable processes, policies, controls and procedures to safeguard its ongoing commitment to Anti-Racism, anti-discrimination and anti-harassment practices, including by imposing requirements for Subcontractors to establish, maintain, review and update from time to time reasonable processes, policies, controls and procedures relating to the same under their Subcontracts in respect of their activities in Canada.

- (b) Contracting Authority may, in its sole discretion from time to time, but not more than once in any twelve-month period, require Project Co to cause the obtainment of a third party attestation from a reputable, independent consulting firm with expertise in equity and diversity proposed by Contracting Authority or otherwise approved by Contracting Authority, acting reasonably, regarding the presence and design of the internal processes, policies, controls and procedures of Project Co, establishing and maintaining a corporate commitment to providing opportunities for equity-deserving groups, including Indigenous Nations, Black and other racialized communities and eliminating workplace hate and intolerance.
- (c) Project Co shall take reasonable proactive measures to monitor for and actively strive to prevent the occurrence of racism, discrimination and harassment (including Systemic Racism and other forms of racial discrimination and harassment), and respond in a prompt and appropriate manner when any issue of racism, discrimination or harassment arises in its work environment, in order to maximize the likelihood that its work environment is and remains free from racism, discrimination and harassment.
- (d) Project Co shall provide Contracting Authority a list of any incidents of racism, discrimination and harassment within its work environment related to the Project, and the manner in which it was addressed with as part of the Works Report in accordance with Schedule 33 – Works Report Requirements.

11.22 Change in Standards

- (a) Where this Agreement requires Project Co to comply with a technical standard in respect of the Works, and that standard has changed between the Technical Reference Date and the date that such compliance is required, then Project Co shall give Notice to Contracting Authority of such change. If, after such Notice, Contracting Authority requires compliance with the changed standard (rather than the standard applicable as of the Technical Reference Date), then, to the extent such change impacts the Works and would not have otherwise been taken into account by compliance with Good Industry Practice as at the Technical Reference Date, such changed standard shall, subject to and in accordance with Schedule 22 – Estimates, Variations and Proposals, result in a Variation. If Contracting Authority does not require compliance with the changed standard, then Project Co shall continue to comply with the standard applicable as of the Technical Reference Date, without a Variation therefor. This Section 11.22 shall not apply where a change in a technical standard is also a Change in Law.

11.23 Responsibility for Project Co Infrastructure and New Third Party Infrastructure

- (a) Each Project Co Infrastructure Section shall, for all purposes of this Agreement, become RSSOM Project Infrastructure (and all risk therefor shall transfer to RSSOM Project Co subject to the other terms of this Agreement) upon the earlier of:
 - (i) the applicable Section Substantial Completion Date;
 - (ii) the applicable DMCA Construction Works Substantial Completion Date;
 - (iii) the TPA Substantial Completion Date; and
 - (iv) the Project Substantial Completion Date.

- (b) New Third Party Infrastructure shall, for all purposes of this Agreement, become Existing Third Party Infrastructure (and all risk therefor shall transfer to the applicable third party subject to the other terms of this Agreement) upon the earlier of,
- (i) the date that there is a Handover of that portion of the New Third Party Infrastructure from Project Co to the applicable third party; and
 - (ii) the Project Final Completion Date.

11.24 COR Certification

- (a) Project Co shall at all times during the performance of the Works, cause a COR-Qualified Construction Project Co Party or COR-Certified Construction Project Co Party, as the case may be, to:
- (i) to the extent a COR-Qualified Construction Project Co Party has not obtained COR Certification prior to the DMCA Effective Date,
 - (A) use best efforts to obtain its COR Certification no later than 18 months following the DMCA Effective Date. In the event that Contracting Authority is satisfied, in its sole discretion, that the COR-Qualified Construction Project Co Party has used best efforts to obtain its COR Certification in accordance with this Section 11.24 and the COR-Qualified Construction Project Co Party has not obtained COR Certification by the end of such 18 month period, then Contracting Authority shall establish a time period during which the COR-Qualified Construction Project Co Party shall obtain its COR Certification, which time period shall not be less than 30 days; and
 - (B) maintain in good standing and, as applicable, renew its OHSAS 18001 or ISO 45001 Accreditation;
 - (ii) once the COR-Qualified Construction Project Co Party is certified (thereafter referred to as a “**COR-Certified Construction Project Co Party**”), maintain in good standing, and, as applicable, renew its COR Certification; and
 - (iii) comply with all requirements of its OHSAS 18001, ISO 45001 Accreditation or COR Certification (if a COR-Certified Construction Project Co Party), in accordance with its terms.
- (b) Without limiting any other provision of this Agreement, if at any time during the performance of the Works:
- (i) a COR-Qualified Construction Project Co Party fails to obtain its COR Certification in accordance with this Agreement and Contracting Authority determines that the failure to obtain the COR Certification is as a result of such COR-Qualified Construction Project Co Party not using best efforts to obtain such certification and Contracting Authority delivers a Notice to Project Co indicating that a COR-Qualified Construction Project Co Party has failed to obtain its COR Certification in accordance with this Agreement;

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

Project Co shall:

- (vii) immediately upon the occurrence of a H&S Certification Default Event, notify Contracting Authority that a H&S Certification Default Event has occurred, and:
 - (A) produce and deliver to Contracting Authority a report identifying the reasons for the failure to obtain or maintain in good standing the COR Certification, OHSAS 18001 or ISO 45001 Accreditation, as the case may be;
 - (B) produce and deliver to Contracting Authority a plan showing the steps that are to be taken to have the COR Certification, OHSAS 18001 or ISO 45001 Accreditation, as the case may be, obtained or reinstated in good standing within a period of not more than 30 days (the “**H&S Certification Reinstatement Plan**”), which H&S Certification Reinstatement Plan shall be subject to review and approval by Contracting Authority and, to the extent Contracting Authority requires any amendments or revisions to be made to the H&S Certification Reinstatement Plan, Project Co shall take, and shall cause the COR-Qualified Construction Project Co Party or the COR-Certified Construction Project Co Party, as the case may be, to take, all reasonable steps as may be necessary to make all such required amendments and revisions and deliver to Contracting Authority an amended H&S Certification Reinstatement Plan not more than five Business Days from the date on which such request is made by Contracting Authority;
 - (C) no later than five Business Days after the H&S Certification Default Event occurs, arrange to have conducted a complete H&S Construction Inspection in accordance with Section 15.1(b); and

- (D) arrange to have conducted an H&S Construction Re-Inspection in accordance with Section 15.1(e), if required; or
- (viii) within five Business Days after receipt of the Notice from Contracting Authority under Section 11.24(b)(v) or Section 11.24(b)(vi):
 - (A) produce and deliver to the Contracting Authority Representative a report identifying the manner in which the COR Certification, OHSAS 18001 or ISO 45001 Accreditation, as the case may be, shall be maintained in good standing or obtained, as applicable;
 - (B) produce and deliver to the Contracting Authority Representative a plan showing the steps that are to be taken to ensure that the COR Certification, OHSAS 18001 or ISO 45001 Accreditation, as the case may be, will be maintained in good standing without interruption (the “**H&S Certification Maintenance Plan**”), which H&S Certification Maintenance Plan shall be subject to review and approval by Contracting Authority and, to the extent Contracting Authority requires any amendments or revisions to be made to the H&S Certification Maintenance Plan, Project Co shall take all reasonable steps as may be necessary to make all such required amendments and revisions and deliver to Contracting Authority an amended and H&S Certification Maintenance Plan not more than five Business Days from the date on which such request is made by Contracting Authority;
 - (C) arrange to have conducted a complete H&S Construction Inspection in accordance with Section 15.1(b), and
 - (D) arrange to have conducted an H&S Construction Re-Inspection in accordance with Section 15.1(e), if required.

11.25 Demolition Requirements

- (a) Without limiting Project Co’s obligation to perform the Works at all times in accordance with Applicable Law, in respect of any Demolition, Project Co shall, and shall cause each applicable Project Co Party that is performing any part of the Demolition to, at all times during the performance of the Works,
 - (i) conduct all work in connection with any Demolition at all times in compliance with section 3 of the Performance Standards Regulation and the Building Code;
 - (ii) ensure that all Project Co Parties having responsibility for the supervision of any such Demolition are qualified as either a professional engineer, limited license holder or provisional license holder (as such terms are used in the Performance Standards Regulation) (such person is hereinafter referred to as a “**Demolition Supervisor**”);
 - (iii) observe and perform the Demolition in a manner that is consistent with the recommendations set forth in the Demolition Guidelines in all material respects; and
 - (iv) in respect of any Complex Structure Demolition to be conducted by Project Co or any applicable Project Co Party:

- (A) prepare detailed specifications relating to such Complex Structure Demolition which specifications will include a detailed risk assessment and risk mitigation plan assessing all apparent or inferable risks that might be associated with the Demolition, colour-coded Load-Path Diagrams (which will include a description of the Demolition Requirements set forth herein) to supplement the Site work plans and blueprints relating to the Demolition and all other technical requirements relating to the Complex Structure Demolition (the “**Demolition Specifications**”);
- (B) at all times when a Complex Structure Demolition is being performed that the Demolition Specifications, Demolition work plans and Load-Path Diagram, be present and available at the Site at which such Complex Structure Demolition is being performed; and
- (C) ensure at all times when a Complex Structure Demolition is being performed that a Demolition Supervisor will be on the Site at which such Complex Structure Demolition is being performed and actively supervising all activities in respect of the Complex Structure Demolition,

(collectively the “**Demolition Requirements**”).

- (b) If at any time while any Demolition is being performed pursuant to this Agreement, Project Co or any Project Co Party that is performing any part of any Demolition receives Notice from Contracting Authority or any Province Persons or Governmental Authority that the Demolition is being conducted in a manner that is either not in compliance with the Demolition Requirements or not otherwise in accordance with this Agreement (such event referred to as a “**Demolition Default Event**”), Project Co shall and shall cause any applicable Project Co Party to:
 - (i) be required immediately upon the occurrence of a Demolition Default Event, notify Contracting Authority that a Demolition Default Event has occurred, unless Contracting Authority was the person that provided Notice of the Demolition Default Event;
 - (ii) cease all work in respect of such Demolition; and
 - (iii) within five Business Days after receipt of a Notice of a Demolition Default Event produce and deliver to the Contracting Authority Representative:
 - (A) a report identifying the reasons for the occurrence of the Demolition Default Event; and
 - (B) a Demolition Plan showing the steps that are to be taken to rectify the Demolition Default Event within a period of not more than 30 days from the occurrence of the Demolition Default Event, which Demolition Plan shall be subject to review and approval by Contracting Authority and, to the extent Contracting Authority requires any amendments or revisions to be made to such Demolition Plan, Project Co and the applicable Project Co Parties shall take all reasonable steps as may be necessary to make all such required amendments and revisions and deliver to Contracting Authority an amended and revised Demolition Plan not more than five Business Days from the date on which such request is made by Contracting Authority.

- (c) No Demolition shall be recommenced at the Site that was the subject of the Demolition Default Event until:
 - (i) Contracting Authority is satisfied that Project Co or the applicable Project Co Party has taken all necessary steps to remediate such Demolition Default Event in accordance with Demolition Plan; and
 - (ii) Contracting Authority has received a report, in form and substance satisfactory to Contracting Authority, prepared by a professional engineer that the Demolition Default Event has been remediated and the Site has been properly prepared for the Demolition to proceed in accordance with the Demolition Plan.
- (d) For clarity, Project Co shall not be eligible for an Adjustment Event in connection with a Demolition Default Event or the recommencement of a Demolition pursuant to Section 11.25(c).

11.26 Intentionally Deleted

11.27 Works, Goods, Equipment, Consumables and Materials

- (a) Project Co shall cause the Works, including the goods, equipment, consumables and materials used or supplied by it or any contractor or Subcontractor in connection with the Works, to be:
 - (i) of good quality, fit for the intended purposes of the Project Co Infrastructure and the New Third Party Infrastructure (as a whole), and maintained in a safe, serviceable and clean condition, all in accordance with this Agreement (including the Output Specifications and Schedule 29 – Safety, System Assurance and Security) and Good Industry Practice;
 - (ii) of the type specified in the Output Specifications, if applicable; and
 - (iii) in compliance with all Applicable Law,and shall, as soon as practicable after receiving a request from the Contracting Authority Representative, supply to the Contracting Authority Representative evidence to demonstrate its compliance with this Section 11.27(a).
- (b) Project Co shall cause sufficient stocks of goods, equipment, consumables and materials to be held in compliance with its obligations under this Agreement.

11.28 GO Passenger Charter and TTC By Law No. 1

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

11.29 Senior Executives Meetings

- (a) The Parties shall conduct meetings of the Senior Executives Team in accordance with Schedule 19 – Governance, Meetings and Progress Reporting.

11.30 Tunnel Boring Machine

- (a) The Parties acknowledge the uniqueness of the Tunnel Boring Machine being procured by or on behalf of Project Co for the Project and the extended period of time for the manufacturing of same (as generally reflected in the Project Works Schedule) (the “**Procured TBM**”). The Parties acknowledge that loss of or damage to a Tunnel Boring Machine during the marine transport of same to the Lands (such loss or damage being a “**TBM Marine Event**”) may result in a Critical Path delay to the Project Works Schedule. For purposes of this Section 11.30, the Procured TBM shall include the Tunnel Boring Machine and all of their component parts in the case of transportation of the Tunnel Boring Machine in portions, and “marine transport” shall include the transportation of the Procured TBM over water only, and, for greater clarity, shall not include loading or unloading the Tunnel Boring Machine onto or off of the marine vessel on which it is being transported.
- (b) In the event that a TBM Marine Event occurs that results in demonstrated Critical Path delay to the Project Works Schedule of 60 Business Days or more arising from such TBM Marine Event, Project Co shall subject to and in accordance with Schedule 21 – Risk Allocations be entitled to an Adjustment, provided that:
 - (i) Project Co has satisfied the Notice requirements set out in Sections 11.30(f) and 11.30(g); and
 - (ii) the seaworthiness of the vessel used for the marine transport of the Procured TBM did not, directly or indirectly, materially contribute to the TBM Marine Event.
- (c) For clarity, Project Co shall not be entitled to an Adjustment Event due to the occurrence of a TBM Marine Event in the event that the Critical Path delay to the Project Works Schedule arising therefrom is less than 60 Business Days. If Project Co demonstrates a Critical Path delay of 60 Business Days or more arising from a TBM Marine Event, Project Co shall be entitled to time relief pursuant to Schedule 21 – Risk Allocations for the entire duration of such Critical Path delay. Project Co shall take all commercially available measures reasonably appropriate under the circumstances to mitigate any delay arising from any TBM Marine Event.
- (d) Neither Project Co nor its Subcontractors shall be entitled to monetary compensation whatsoever from Contracting Authority under this Agreement as a result of any TBM Marine Event, regardless of the impact of such TBM Marine Event. In that regard, Project Co shall procure (or shall require the procurement of) marine transit insurance and marine delay-in start-up insurance to mitigate the monetary losses arising from or relating to any TBM Marine Event.
- (e) Project Co shall use commercially reasonable efforts to include within the purchase agreement (or supply contract, as the case may be) for the Procured TBM the requirement of the vendor or supplier of the Procured TBM to deliver a certificate of seaworthiness with respect to each vessel that will be used in the marine transportation of the Procured TBM to the Lands. If, despite using commercially reasonable efforts, such requirement is not included in the purchase agreement (or

supply contract, as the case may be) for the Procured TBM, then Project Co shall request and shall use commercially reasonable efforts to obtain a certificate of seaworthiness from either the insurer issuing the marine transit insurance and marine delay-in start-up insurance policies applicable to the Procured TBM, or the operator (or operators) of the marine vessel (or vessels) transporting the Procured TBM. If a certificate of seaworthiness is obtained, Project Co shall promptly deliver same to the Contracting Authority and such certificate shall establish a rebuttable presumption of the seaworthiness of the vessel (or vessels) transporting the Procured TBM. If a certificate of seaworthiness is not obtained, then the seaworthiness of the vessel (or vessels) transporting the Procured TBM to the Lands will be determined as at the time of the loss without presumption.

- (f) If Project Co believes that a TBM Marine Event has occurred and that as a result Project Co will experience a Critical Path delay to the Project Works Schedule of no less than 60 Business Days, Project Co shall submit written Notice to Contracting Authority of such TBM Marine Event within 10 Business Days following the date on which Project Co first became aware of the occurrence of the TBM Marine Event. This Notice shall include (i) preliminary details as to the circumstances of the TBM Marine Event, and (ii) a preliminary estimate of the Critical Path delay attributable to the TBM Marine Event.
- (g) Within 20 days after receipt by Contracting Authority of the Notice from Project Co to referred to in Section 11.30(f), Project Co shall submit to Contracting Authority a detailed written Notice which shall include a delay analysis and the effect that the TBM Marine Event will have on Project Co's ability to perform its obligations under this Agreement. As Project Co receives or becomes aware of any further information relating to the TBM Marine Event, it shall submit such further information to Contracting Authority as soon as practicable. Project Co shall supply any further information that Contracting Authority may reasonably require as promptly as practicable after such request.

11.31 RSSOM Project Integration, EGS Project Integration and Interface Obligations

- (a) The Parties shall enter into and shall perform their respective obligations as set out in the RSSOM Interface Agreement.
- (b) Project Co and Contracting Authority shall comply with the terms of Schedule 45 – Integration with RSSOM Project in connection with integration of the Construction Works with the RSSOM Project Infrastructure.
- (c) Project Co and Contracting Authority shall comply with the terms of Schedule 38 – Integration with EGS Project.
- (d) The terms of Section 2 (*Integration Incentive Events*) of Schedule 43 – Incentives and Construction Enforcement Regime shall apply with respect to incentives relating to each applicable No Later Than Date, Critical Data Deadline and Critical Works Deadline.
- (e) [REDACTED]

11.32 Early Works Infrastructure

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

11.33 Pandemic and Epidemic Plan

- (a) Project Co shall implement and comply with the Pandemic and Epidemic Response and Mitigation Plan. All updates to the Pandemic and Epidemic Response and Mitigation Plan and all updates to such plan shall be subject to review by Contracting Authority pursuant to Schedule 10 – Review Procedure.
- (b) In the event that a specific pandemic or epidemic (including COVID-19 or any subsequent outbreak of COVID-19) is reasonably foreseeable and likely to occur and affect the Works or otherwise occurs and affects the Works, Project Co shall promptly (at the request of Contracting Authority or on its own volition) update the Pandemic and Epidemic Response and Mitigation Plan on a monthly basis and submit each update with the next Works Report until such time as the Parties agree, acting reasonably, that either the pandemic or epidemic will not occur and affect the Works or such pandemic or epidemic has ended, no longer affects the Works and no further updates to such plan are required. Following the review by Contracting Authority of each updated Pandemic and Epidemic Response and Mitigation Plan pursuant to Schedule 10 – Review Procedure, Project Co shall, without limiting any other obligation of Project Co under this Agreement or Applicable Law, implement such plan in accordance with Schedule 10 – Review Procedure.
- (c) Any Pandemic and Epidemic Response and Mitigation Plan (including any update thereto) or the potential or actual impact of any pandemic or epidemic on the Works may, at the request of a Party, be discussed at any meeting of the Leadership Team or at any other meeting between the Parties reasonably requested by a Party during the Project Term. Any Party may, acting reasonably, require that any such other meeting be on a “without prejudice basis”.
- (d) Nothing required pursuant to this Section 11.30 in relation to the Pandemic and Epidemic Response and Mitigation Plan shall in any way obviate or detract from Project Co’s right to relief under this Agreement in relation to a Pandemic and Epidemic Change in Law or a Pandemic and Epidemic Supply Chain Delay.

11.34 TOC Developments

- (a) Contracting Authority and Project Co shall comply with the provisions of Schedule 5 – TOC Development Requirements.
- (b) Project Co shall provide the assistance described in Section 11.14, *mutatis mutandis*, as such applies to the TOC Developments.

11.35 Utility Agreements

- (a) For each Utility Agreement to be entered into between Project Co and the subject Utility Company, the form of which was made available as Background Information at least 10 Business Days in advance of the applicable TPA Proposal Submission Date for the TPA Scope that includes the subject matter of such Utility Agreement (each being a “**Form of Utility Agreement**”), Project Co shall, or shall cause a Subcontractor to, execute and deliver each such Utility Agreement promptly, such Utility Agreement to be substantially in the form of the Form of Utility Agreements.
- (b) In the event that Project Co executes and delivers to the Utility Company a completed Utility Agreement in the Form of Utility Agreement or in a form otherwise agreed to between Project Co

and the applicable Utility Company as described in Section 11.35(a), and such Utility Company fails to execute and deliver such Utility Agreement within 30 days of the date of the delivery of the Utility Agreement by Project Co to the Utility Company, and such failure to execute and deliver such Utility Agreement will materially adversely interfere with Project Co’s ability to perform the TPA Works or will materially adversely affect the Target Price, then Project Co shall promptly provide Notice to Contracting Authority in accordance with Schedule 21 – Risk Allocations.

- (c) In the event that Project Co executes and delivers a completed Utility Agreement in the Form of Utility Agreement or in a form otherwise agreed to between Project Co and the applicable Utility Company as described in Section 11.35(a), and such Utility Company executes and delivers such Utility Agreement containing a Post-CC Utility Agreement Amendment (or communicates to Project Co that it will only enter into a Utility Agreement that incorporates a Post-CC Utility Agreement Amendment), then:
- (i) Project Co shall promptly provide Notice to Contracting Authority informing Contracting Authority that a Post-CC Utility Agreement Amendment has been proposed by the subject Utility Company and providing details regarding such Post-CC Utility Agreement Amendment (a “**Post-CC Utility Agreement Amendment Notice**”);
 - (ii) Project Co shall, during the 30 day period following the date upon which Contracting Authority receives the Post-CC Utility Agreement Amendment Notice (or such longer period of time as the Parties may otherwise agree), use commercially reasonable efforts to resolve and settle the Post-CC Utility Agreement Amendment with the subject Utility Company; and
 - (iii) if:
 - (A) Project Co has complied with its obligations under Sections 11.35(c)(i) and 11.35(c)(ii); and
 - (B) Project Co and the subject Utility Company are unable to resolve and settle the Post-CC Utility Agreement Amendment resulting in Project Co and such Utility Company failing to enter into the subject Utility Agreement, and such failure to enter into such Utility Agreement will materially adversely interfere with Project Co’s ability to perform the Works or will materially adversely affect Project Co’s cost of performing the Works, then:
 - (I) Project Co shall promptly provide Notice to Contracting Authority of the matters described in Section 11.35(c)(iii)(B); and
 - (II) subject to and in accordance with Schedule 22 – Estimates, Variations and Proposals, Project Co shall be entitled to a Variation.
- (d) If, pursuant to and in accordance with a Utility Agreement, the subject Utility Company identifies to Project Co, and requires the performance of, any works relating to the Utility Infrastructure that is the subject matter of such Utility Agreement, and in Project Co’s reasonable opinion, such works are unreasonable and unnecessary for Project Co to perform as part of the Construction Works, or are otherwise outside the scope of work contemplated by such Utility Agreement, and if the performance of such works will or is likely to affect the Works so as to cause a delay in achieving

the TPA Substantial Completion by the TPA Scheduled Substantial Completion Date, in delivering Critical RSSOM Infrastructure Works by the applicable Critical RSSOM Infrastructure Works Deadline, in delivering Critical Works by the applicable Critical Works Deadline or in delivering Critical Data by the applicable Critical Data Deadline:

- (i) Project Co shall promptly deliver Notice to Contracting Authority describing such works and providing such opinion; and
 - (ii) without limiting or prejudice to any right of Contracting Authority under this Agreement, Project Co may deliver a Project Co TPA Variation Notice to Contracting Authority pursuant to and in accordance with Schedule 22 – Estimates, Variations and Proposals in respect of such works.
- (e) Where a Utility Agreement requires Project Co to comply with a technical standard in respect of the design or construction of certain Utility Infrastructure as part of the Construction Works, and that standard has changed between Technical Reference Date and the date that such compliance is required, then Project Co shall give Notice to Contracting Authority of such change. If after such Notice, Contracting Authority requires compliance with the changed standard (rather than the standard applicable as of the Technical Reference Date), then, to the extent such change impacts the design or construction of such Utility Infrastructure and would not have otherwise been taken into account by compliance with Good Industry Practice, such changed standard shall, subject to and in accordance with Schedule 22 – Estimates, Variations and Proposals, result in a Variation. If Contracting Authority does not require compliance with the changed standard, then Project Co shall continue to comply with the standard applicable as of the Technical Reference Date, without a Variation therefor. This Section 11.35(e) shall not apply where a change in a technical standard is also a Change in Law.

11.36 Project Office and Site Office

- (a) During the Project Term:
 - (i) the Parties agree to work out of and comply with the requirements in respect of the Project Office and the Site Office, as such requirements are set out in Schedule 19 – Governance, Meetings and Progress Reporting and the Output Specifications, as applicable, and as may be further developed pursuant to Schedule 2 – Development Works Submissions and Project Development Process;
 - (ii) Project Co shall not amend, extend, otherwise modify, replace, terminate, assign or otherwise transfer the Occupancy Agreement or sublet, license or part possession with all or any part of the Project Office without the consent of Contracting Authority;
 - (iii) Project Co shall ensure that Project Co and the Project Co Parties comply with all of the obligations of Project Co set out in the Occupancy Agreement, including obtaining and maintaining all insurance required by and in accordance with the Occupancy Agreement; and
 - (iv) the Parties acknowledge and confirm that Schedule 48 – Defined Cost shall apply in respect of the costs and expenses incurred by Project Co and the Project Co Parties in connection the Occupancy Agreement.

11.37 TTC Station Weekend Closures

- (a) TTC Station Weekend Closures shall be as set out in Schedule 46 – TTC Station Weekend Closures.

11.38 Subcontracting

- (a) All subcontracting of any tier of Subcontractor by Project Co of the performance of the Works during the Project Term shall satisfy the requirements of this Agreement, including:
- (i) this Section 11.38, Section 11.39 and Section 11.40; and
 - (ii) the Project Execution Plan.
- (b) The Parties acknowledge and confirm that the Initial Subcontracts (including the Design Agreements) have been executed by the parties thereto as of the DMCA Effective Date and are indicated in Schedule 8 – Subcontracts. Project Co agrees to update the list of Subcontracts from time to time as additional Subcontractors are engaged by Project Co or any Subcontractor in accordance with this Agreement, including as resulting from the execution of any Target Price Agreement.
- (c) Unless otherwise agreed by Contracting Authority in writing, Project Co shall, and shall cause each Subcontractor to, provide Contracting Authority with the draft execution form of each Major Subcontract that will be entered into following the DMCA Effective Date a minimum of 15 Business Days in advance of the proposed date of execution of such Subcontract.
- (d) Without limiting any other right of Contracting Authority under this Agreement:
- (i) by no later than the date that is 10 Business Days following the later of:
 - (A) the date Contracting Authority is provided with a draft execution form of a Major Subcontract in accordance with Section 11.38(c), and
 - (B) if respect of any Major Subcontract that is subject to a business case in accordance with section 11.40(c), the expiry of the period in which Contracting Authority may deliver an objection to such business case, or, where Contracting Authority objects to the business case, the date on which Contracting Authority withdraws such objection in writing,

Contracting Authority may, acting reasonably, give Notice to the Project Co Representative that Contracting Authority objects to Project Co or any Subcontractor entering into such Major Subcontract and direct that Project Co or such Subcontractor not enter into such Major Subcontract (each a “**Major Subcontract Objection Notice**”). In any such Major Subcontract Objection Notice, Contracting Authority shall provide reasons for its objection and direction, and may set out any conditions that must be satisfied before Contracting Authority will withdraw such Major Subcontract Objection Notice. In the event that Project Co is successful in addressing the objection of Contracting Authority in any Major Subcontract Objection Notice (including any and all such conditions) to Contracting Authority’s reasonable satisfaction, then Contracting

- Authority shall promptly withdraw such Major Subcontract Objection Notice in writing;
and
- (ii) subject to Section 11.38(e), Contracting Authority may, concurrently with the execution and delivery of the relevant Subcontract, require Project Co to enter into and cause the relevant Subcontractors to enter into an Assignment of Subcontract in the form set out in Schedule 3 – Form of Assignment of Subcontract together with any revisions reasonably required by Contracting Authority to permit such execution and delivery.
- (e) In respect of each Subcontract entered into following the DMCA Effective Date, Project Co agrees that it shall, and shall cause each Subcontractor to, promptly, and in any event within three (3) Business Days following the date any Subcontract is entered into:
- (i) provide a true and complete copy of the Subcontract to Contracting Authority;
 - (ii) if the Subcontract is the subject of the Assignment of Project Documents, provide a fully executed (other than by Contracting Authority) copy of the Acknowledgement and Consent Agreement to Contracting Authority for Contracting Authority’s execution; and
 - (iii) if the Subcontract is the subject of an Assignment of Subcontract, provide a fully executed (other than by Contracting Authority) copy of the Assignment of Subcontract to Contracting Authority for Contracting Authority’s execution.
- (f) If required by Contracting Authority pursuant to Section 11.38(d)(ii), Project Co shall cause each Subcontractor to enter into an Assignment of Subcontract, provided that no such Subcontractor shall be obligated to enter into an Assignment of Subcontract:
- (i) if the Subcontract has been assigned to Contracting Authority pursuant to the Assignment of Project Documents; or
 - (ii) where the Subcontract is not a Major Subcontract.
- (g) Without limiting Contracting Authority’s rights under Section 11.38(d)(i), each Subcontract shall:
- (i) if such Subcontract is a Major Subcontract, or a Subcontract that is otherwise subject to the Assignment of Project Documents or an Assignment of Subcontract, adopt all of the terms and conditions of this Agreement to the extent applicable to those parts of the Works to be performed by the Subcontractor, including terms and conditions (A) related to payments, intellectual property, Variations and Relief Events; (B) necessary for Project Co to comply with Section 26.4; and (C) to the extent that such Subcontract relates to Design Works, providing for the performance of, *inter alia*, such Design Works in the event that Contracting Authority exercises its rights under the Assignment of Project Documents, or if applicable, an Assignment of Subcontract;
 - (ii) for each Subcontract that is not a Major Subcontract and is not otherwise subject to the Assignment of Project Documents or an Assignment of Subcontract, adopt all of the terms and conditions of this Agreement to the extent applicable to those parts of the Works to be performed by the Subcontractor necessary for Project Co to comply with Section 26.4;

- (iii) except as expressly otherwise provided in this Agreement, not permit or require the payment of any break fee, penalty or payment of any additional costs or profits in the event this Agreement is terminated other than in accordance with Section 33.6;
 - (iv) in the case of Design Agreements entered into by Project Co, be assignable to Contracting Authority pursuant to the Assignment of Project Documents;
 - (v) if required by Contracting Authority pursuant to Section 11.38(d)(ii), be assignable to Contracting Authority pursuant an Assignment of Subcontract;
 - (vi) not include any provision that would have the effect of materially increasing any obligation or liability of Contracting Authority, whether actual or potential, relative to Contracting Authority’s obligations or liabilities under this Agreement, were Contracting Authority to exercise its rights under the Assignment of Project Documents or any Assignment of Subcontract in respect of such Subcontract;
 - (vii) not include any provision that would have the effect of materially lessening or limiting any obligation or liability of the Subcontractor under such Subcontract or materially increasing any obligation or liability of Contracting Authority under such Subcontract, in each case, whether actual or potential, were Contracting Authority to exercise its rights under the Assignment of Project Documents or any Assignment of Subcontract in respect of such Subcontract;
 - (viii) reserve such rights to Contracting Authority as are available to Contracting Authority under this Agreement, including a right for Contracting Authority to terminate the Subcontract at any time and in its sole discretion, were Contracting Authority to exercise its rights under the Assignment of Project Documents or any Assignment of Subcontract in respect of such Subcontract;
 - (ix) not permit Project Co or the Subcontractor to amend or modify any Major Subcontract or any other Subcontract that is subject to the Assignment of Project Documents or an Assignment of Subcontract, except as permitted by Section 11.38(q)(ii); and
 - (x) not permit the Subcontractor to terminate any Major Subcontract or any other Subcontract that is subject to the Assignment of Project Documents or an Assignment of Subcontract or to suspend or to discontinue its performance thereunder for convenience, or for any default by Project Co (or by Contracting Authority as an assignee of such agreement), without first giving Project Co and Contracting Authority prior written notice, and without permitting Project Co (or Contracting Authority as an assignee of such agreement) the right to cure such default within a reasonable amount of time.
- (h) In addition to the provisions of Section 11.38(g), unless otherwise agreed by Contracting Authority in writing, Project Co shall, and shall cause each Subcontractor to, ensure that all Subcontracts that are subject to the *Construction Act* contain provisions:
- (i) in each case, requiring Project Co or the relevant Subcontractor to make all payments within the timeframes set forth in the *Construction Act*, except for amounts withheld by reason of legitimate dispute which have been identified to the relevant Subcontractor from whom payment has been withheld in accordance with the *Construction Act*;

- (ii) which provide that each person making payments under the contract retain any required holdbacks in compliance with the *Construction Act*; and
 - (iii) requiring each Subcontractor to include a section to the same effect as this Section 11.38(h) in any contract it enters into wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of the Subcontract.
- (i) Without limiting any other provision of this Agreement, the Subcontracts taken as a whole shall at all times provide for the performance of all Design Works.
- (j) Project Co acknowledges and agrees that:
- (i) the Corporate Overhead and Profit payable to Project Co in relation to:
 - (A) Primary Team Self-Performed Development Work and Construction Work;
 - (B) Primary Team Subcontracted Development Work and Construction Work;
 - (C) Primary Team Self-Performed Design Work; and
 - (D) Primary Team Subcontracted Design Work,shall be based on the percentages applicable thereto as set forth in Sections 2.1 and 2.2 (*Corporate Overhead and Profit*) of Schedule 47 – Corporate Overhead and Profit, as applicable;
 - (ii) in respect of any Primary Team Self-Performed Development Work and Construction Work or Primary Team Self-Performed Design Work, the aggregate amount of all overhead and profit (including all Corporate Overhead and Profit) payable to any Primary Team Members contractually obliged to perform such Primary Team Self-Performed Development Work and Construction Work or Primary Team Self-Performed Design Work, as applicable, will be the Corporate Overhead and Profit payable to Project Co in relation to such Primary Team Self-Performed Development Work and Construction Work or Primary Team Self-Performed Design Work, as applicable; and
 - (iii) in respect of any Primary Team Subcontracted Development Work and Construction Work or Primary Team Subcontracted Design Work, the aggregate amount of all overhead and profit (including Corporate Overhead and Profit) payable to any Primary Team Members in respect of such Primary Team Subcontracted Development Work and Construction Work or Primary Team Subcontracted Design Work, as applicable, will be the Corporate Overhead and Profit payable to Project Co in relation to such Primary Team Subcontracted Development Work and Construction Work or Primary Team Subcontracted Design Work, as applicable.
- For greater certainty, Project Co acknowledges and agrees that the principle of ‘no margin on margin’ shall be applicable in relation to any Subcontracts as between Primary Team Members.
- (k) Project Co shall not subcontract any interest in this Agreement or the Target Price Agreement, and shall not permit any Subcontractor to subcontract any interest in its Subcontract, to a

Restricted Person or an Affiliate of a Restricted Person, or a person whose standing or activities may compromise:

- (i) Contracting Authority’s reputation or integrity; or
 - (ii) the nature of the public transit system within the City of Toronto or the Province of Ontario so as to affect public confidence in any of the public transit systems within such area or the Project.
- (l) Unless Project Co has obtained the prior written consent of Contracting Authority (which consent may be withheld in its sole discretion), Project Co shall ensure that no Primary Team Member shall enter into any Subcontract with any Non-Primary Team Subcontractor where such Primary Team Member is required to perform the Works under such Subcontract as the subcontractor to the Non-Primary Team Subcontractor thereunder.
- (m) [Intentionally deleted].
- (n) Project Co shall not be relieved of any liability or obligation under this 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 Works, to comply with the obligations of Project Co hereunder in the same manner and to the same extent as Project Co.
- (o) Project Co shall comply with and cause the Subcontractors to comply with each of their respective obligations under the Subcontracts.
- (p) Project Co shall enforce and cause the enforcement of the obligations of the Subcontractors under the Subcontracts, including all entitlements, rights, remedies and relief in favour of Project Co that relate to any obligations of Project Co under this Agreement.
- (q) Project Co shall not, except with the written consent of Contracting Authority, acting reasonably and without any unreasonable delay:
- (i) terminate, or agree to or permit the termination of, all or any material part of any Major Subcontract or any Subcontract that is subject to the Assignment of Project Documents or an Assignment of Subcontract;
 - (ii) make, or agree to or permit the making of any material amendment to any Major Subcontract or any other Subcontract that is subject to the Assignment of Project Documents or an Assignment of Subcontract (including any amendment that would depart from the requirements of this Section 11.38, materially and adversely affect the ability of Project Co to perform its obligations under this Agreement or, if and to the extent applicable, have the effect of increasing any liability of Contracting Authority, whether actual or potential, as an assignee of such agreement), other than amendments that are the direct and reasonable consequence of a Variation, an amendment to this Agreement or are otherwise agreed to in writing in advance by Contracting Authority, acting reasonably and without any unreasonable delay;

- (iii) permit any departure by a Subcontractor from any material provision of a Major Subcontract;
 - (iv) permit the Subcontractor to assign or transfer to any person any of the Subcontractor's rights or obligations under any Major Subcontract or any other Subcontract that is subject to the Assignment of Project Documents or an Assignment of Subcontract; and
 - (v) permit the Subcontractors to subcontract any of the works or services under the Subcontract except to the extent provided for under the Subcontract, and in all cases, in compliance with the terms of this Agreement, including this Section 11.38.
- (r) Project Co shall:
- (i) within 15 Business Days of receiving a written request from Contracting Authority, cause the execution and delivery to Contracting Authority of a statement or certificate stating (if such is the case, or stating the manner in which such may not be the case): (A) that any particular Subcontract is unmodified and in full force and effect; (B) the date of commencement and expiry of the term of such Subcontract and the dates to which all payments payable thereunder have been paid; (C) whether or not there is any existing default by a party to such Subcontract, and, if so, specifying such default; (D) that there are no defences, counterclaims or rights of set-off in respect of the obligations thereunder of a party to such Subcontract; and (E) such other matters as Contracting Authority may reasonably request;
 - (ii) within two Business Days of receiving a notice of default from a Subcontractor in respect of a Subcontract, provide a copy of such notice of default to Contracting Authority;
 - (iii) if it issues a notice of default to a Subcontractor in respect of a Subcontract, provide a copy of such notice to default to Contracting Authority at the same time as such notice of default is issued to such Subcontractor; and
 - (iv) promptly after it is executed and delivered or otherwise finalized, deliver to Contracting Authority a copy of any amendment, restatement, supplement or other modification to any Subcontract, or any final account agreement or settlement agreement between Project Co and any Subcontractor or between any Subcontractors.
- (s) When requested by Contracting Authority, Project Co shall promptly provide reasonable documentary evidence to Contracting Authority of compliance with Project Co's obligations set out in this Section 11.38.
- (t) For clarity, Contracting Authority's rights under any applicable Subcontract only arise if, when and to the extent that Contracting Authority exercises its rights pursuant to and in accordance with the Assignment of Project Documents or any Assignment of Subcontract.
- (u) Notwithstanding anything to the contrary in this Agreement or in any Subcontract (including any Initial Subcontract), no review of a Subcontract by Contracting Authority, no comment provided by Contracting Authority on a Subcontract, no approval provided by Contracting Authority with regards to all or any part of a Subcontract, and no failure by Contracting Authority to give Project Co a Major Subcontract Objection Notice pursuant to Section 11.38(d), shall constitute a waiver

of any right of Contracting Authority under this Agreement, a release by Contracting Authority of Project Co from any obligation or liability under this Agreement, or an amendment to this Agreement.

11.39 Affiliated Subcontractors

- (a) Project Co recognizes that difficulties may arise in the proper calculation of Defined Cost if Project Co (or any of its Subcontractors, of any tier) enters into a contract, arrangement or understanding related to this Agreement with any person (other than a Primary Team Member) that is an Affiliate of Project Co or any Prime Team Member (an “**Affiliated Subcontractor**”). Project Co agrees that before it (or any of its Subcontractors, of any tier) enters into any contract, arrangement or understanding with an Affiliated Subcontractor (an “**Affiliated Subcontract**”), Project Co must first seek the approval of Contracting Authority before entering into that Affiliated Subcontract.
- (b) Where, in accordance with Section 11.39(a), Project Co enters into an Affiliated Subcontract, then:
- (i) the Defined Cost that are payable to Project Co in respect of that Affiliated Subcontract will be calculated in accordance with Section 7 (*Affiliated Subcontracts*) of Schedule 48 – Defined Cost; and
 - (ii) the Corporate Overhead and Profit payable to Project Co in respect of that Affiliated Subcontract will be:
 - (A) calculated in accordance with Schedule 47 – Corporate Overhead and Profit; or
 - (B) otherwise determined by Contracting Authority in accordance with Section 11.39(c).
- (c) Where Section 11.39(b)(ii)(B) applies, Contracting Authority shall determine any adjustments to the Corporate Overhead and Profit payable to Project Co in respect of the subject Affiliated Subcontract having regard to:
- (i) the percentages of Corporate Overhead and Profit for Project Co stated in Schedule 47 – Corporate Overhead and Profit or otherwise approved by Contracting Authority; and
 - (ii) the estimated Defined Cost for Project Co and the subject Subcontractor.
- (d) Project Co may, from time to time, request in writing that Contracting Authority consider, in its sole discretion, whether (or not) the provisions of Section 11.39(a) and 11.39(c) shall apply to Works undertaken by an Affiliated Subcontractor specified by Project Co on the basis that:
- (i) (A) such Affiliated Subcontractor operates its business independently from Project Co and each other Prime Team Member, or (B) on the whole, there is genuine value delivered to the Contracting Authority that could not be obtained by contracting with a third party; and
 - (ii) the proposed commercial terms and conditions of the subject Affiliated Subcontract, taken as a whole, are no less favourable than the commercial terms and conditions, taken

as a whole, that could be obtained by Project Co under a Subcontract with a Subcontractor that is not an Affiliated Subcontractor in an open and unrestricted market between prudent parties having no compulsion to act.

- (e) With any request made pursuant to Section 11.39(d), Project Co shall provide to Contracting Authority:
 - (i) such information as is required to demonstrate the matters set forth in subclauses (i) and (ii) of Section 11.39(d), including to demonstrate that the Affiliated Subcontractor does not recover or receive any benefit from the Corporate Overhead and Profit paid to Project Co, and Project Co does not, and will not, recover or receive any benefit from any overhead, markup or profit that may be charged by the Affiliated Subcontractor in the performance of the Works to be performed under the Affiliated Subcontract;
 - (ii) such other information as Contracting Authority may request, acting reasonably, in order for Contracting Authority to be satisfied, in its sole discretion, as to the matters set forth in subclauses (i) and (ii) of Section 11.39(d), which may include a request that Project Co provide a letter from the Chief Financial Officer, or equivalent senior officer, of the Affiliated Subcontractor certifying as to the matters set forth in subclauses (i) and (ii) of Section 11.39(d).
- (f) Following the request made by Project Co pursuant to Section 11.39(d), and delivery by Project Co to Contracting Authority of the information as contemplated in Section 11.39(e), Contracting Authority shall advise Project Co whether (or not) the provisions of 11.39(a) and 11.39(c) shall apply to the subject Affiliated Subcontractor.

11.40 Competitive Procurement Requirements

- (a) The provisions of this Section 11.40 are in addition to any other requirements set out in this Agreement and apply to (i) the engagement of all Subcontractors under this Agreement other than the Primary Team Members and the Non-Primary Project Co Team Subcontractors, and (ii), where noted, in the event that a Primary Team Member or a Non-Primary Project Co Team Member wishes to self-perform or perform, respectively, any part of the Works under this Agreement that was not expressly set out in an Initial Subcontract as Works to be performed by such Primary Team Member or Non-Primary Project Co Team Member, as applicable.
- (b) Project Co shall and, where applicable, shall cause all Subcontractors to:
 - (i) procure all Subcontracts and engage all Subcontractors in accordance with Good Industry Practice; and
 - (ii) use commercially reasonable efforts to procure all Subcontracts and engage all Subcontractors in respect of the Project where the total estimated cost of the Subcontract will be \$[REDACTED] or more through an open and competitive procurement process (including through the use of competitive requests for proposals and tenders and quotes), except that no Subcontractor shall be required to procure any Subcontractor through an open and competitive procurement process where such first Subcontractor is performing Works pursuant to a fixed-price contract awarded pursuant to a competitive procurement process in accordance with this Agreement.

- (c) Without limiting any right of Contracting Authority under this Agreement and notwithstanding Section 11.40(b)(ii), if Project Co or a Subcontractor, acting reasonably, desires to:
- (i) engage a potential Subcontractor on a single source or sole source basis (including by subcontracting Works to an Affiliated Subcontractor) or by way of any other non-competitive procurement process;
 - (ii) award a Subcontract to a potential Subcontractor where the procurement process only had one participating proponent or resulted in one proposal from a potential Subcontractor; or
 - (iii) in the case of a Primary Team Member or a Non-Primary Project Co Team Member, self-perform any part of the Works,

in each case, where the total estimated cost of the Subcontract or self-performed Works is \$[REDACTED] or more, then, unless otherwise agreed by the Parties:

- (A) Project Co shall, as soon as practicable and after consulting with Contracting Authority, provide a written business case to Contracting Authority justifying the engagement of such Subcontractor on such basis or for self-performing such part of the Works. With respect to any such self-performed Works, such business case shall include a comparison of the price, schedule, risk and other relevant issues of self-performing such Works relative the anticipated or actual price, schedule, contractual terms, risks, compliance monitoring and other relevant issues that would likely arise if such Works were competitively procured or did arise during an incomplete or terminated competitive procurement process;
 - (B) by no later than the date that is five Business Days after the receipt of any such business case, Contracting Authority may, acting reasonably and without limiting or prejudice to any other right of Contracting Authority under this Agreement, give Notice to the Project Co Representative that Contracting Authority objects to such business case. In any such Notice, Contracting Authority shall provide reasons for its objection, and may set out conditions that must be satisfied before Contracting Authority is willing to withdraw such objection; and
 - (C) in the event that Project Co receives any such Notice, then Project Co shall use reasonable commercial efforts to address the objection of Contracting Authority to such business case (including to satisfy any such conditions provided by Contracting Authority). In the event that Project Co is successful in addressing such objection to Contracting Authority's reasonable satisfaction, then Contracting Authority shall promptly withdraw such objection in writing. In the event that Project Co fails to address such objection to Contracting Authority's reasonable satisfaction and Project Co nonetheless proceeds to engage or permit the engagement of such Subcontractor or to self-perform such Works, then, unless the Parties otherwise agree, Project Co shall not be entitled to be paid any Corporate Overhead or Profit under this Agreement in respect of the Works performed by such Subcontractor or such self-performed Works.
- (d) Unless otherwise agreed by Contracting Authority, prior to any procurement of a Subcontractor or undertaking any competitive market testing, Project Co or the applicable Subcontractor shall

undertake reasonably appropriate market analysis and outreach to identify potential Subcontractors, which shall be based on up to date market intelligence, including by taking into account lead times in relation to the pricing of subcontracted Works packages and the design development and securing of labor, goods, equipment and services required to deliver the subcontracted Works packages.

- (e) Project Co shall use and, if applicable, shall cause all Subcontractors to use, commercially reasonable efforts to obtain the best value for money when procuring any part of the Works, including, where reasonably appropriate or otherwise at the request of Contracting Authority, applying, using and comparing applicable industry benchmarks or benchmarking data for such purposes, and will comply with all Good Industry Practice in relation to any such procurement, to a standard no less than Project Co or applicable Subcontractor would apply if all costs incurred were to its own account without recourse to Contracting Authority, including using commercially reasonable efforts to mitigate such costs. To the extent any procurement or delivery of any Works results in costs or expenses that are in excess of those costs or expenses established by industry benchmarks or benchmarking data, Project Co shall, at the request of Contracting Authority, provide Contracting Authority sufficient information and analysis to demonstrate to Contracting Authority that such excess costs or expenses are reasonable and justified in the context of the subject Works.
- (f) Any arrangements or agreements between Project Co and any Subcontractor or between Subcontractors (including in relation to credits, rebates, discounts, including volume related discounts and associated with membership of a specialist supply chain, and any other special commercial arrangements) impacting the Project, shall be contained within the Subcontracts, disclosed to Contracting Authority and open to future audit by Contracting Authority.
- (g) Project Co shall, and where applicable, shall cause all Subcontractors to use commercially reasonable efforts to ensure that each competitive procurement for subcontracted Works is issued to at least four potential Subcontractors and that proposals are received from at least three different proponents, provided that, where a proponent in any procurement is a potential Affiliated Subcontractor, such procurement shall be issued to at least four potential Subcontractors in addition to such potential Affiliated Subcontractor and proposals are to be received from at least three different proponents in addition to such potential Affiliated Subcontractor's proposal.
- (h) Unless otherwise agreed by the Parties (including where Project Co has provided applicable benchmarking data to Contracting Authority's satisfaction, in its discretion), in the event that a Primary Team Member or a Non-Primary Project Co Team Member desires to self-perform any part of the Works, Project Co or the Subcontractor shall first be required to market-test the applicable Works with no fewer than three different potential Subcontractors in order to ensure that the Works are performed by the most appropriate person and that the best value for money will be achieved for the Project in accordance with this Agreement.
- (i) Project Co shall and shall cause all Subcontractors to, in accordance with Good Industry Practice, develop and use appropriate procurement documentation for all competitive procurements (including, as appropriate, requests for proposals, tenders, quotes, other solicitation documents, and evaluation handbooks). Such procurement documents must enable the analysis of proposals from proponents using key criteria for evaluations, including price, contractual terms and

conditions, performance schedule, quality compliance and other important aspects of each such procurement.

- (j) Promptly following the request of Contracting Authority from time to time, Project Co will advise Contracting Authority of the status and approach of, and the timing for, the engagement of any particular Subcontractors and shall provide lists of potential Subcontractors Project Co is considering engaging.
- (k) Unless otherwise agreed by the Parties and without limiting any other right of Contracting Authority or obligation of Project Co under this Agreement, with respect to each competitive procurement of any part of the Works to potential Subcontractors (including all suppliers, specialists and other services and works providers), Project Co shall:
 - (i) promptly following the request of Contracting Authority from time to time, provide Contracting Authority with an update in respect of the status of each procurement;
 - (ii) on an open book basis, promptly provide Contracting Authority all information and documents requested by Contracting Authority with regards to the procurement, including all relevant procurement documents, the list of all potential and actual proponents, proposals (including prices) received from proponents, the detailed results of any proposal evaluations and negotiations with proponents, any final draft Subcontract, and any differences between the terms of the winning proposal and the terms of the final draft Subcontract. Nothing in this Section 11.40(k) applies to information or documents that may be subject to legal privilege or are confidential lawyer-client communications; and
 - (iii) carry out, maintain and, at the request of Contracting Authority, submit to Contracting Authority a summary of the procurement process, including a summary of any proposals received, a comparison of such proposals, a justification for the selection of the preferred proponent and any other relevant details described in Section 11.40(k)(ii).
- (l) Notwithstanding anything to the contrary in this Agreement (including the foregoing provisions of this Section 11.40) but subject to Section 11.40(m), Project Co acknowledges that Contracting Authority may require Project Co to competitively procure:
 - (i) in Contracting Authority's sole discretion, any Subcontracts, including if Contracting Authority is required by Applicable Law or any policy applicable to Contracting Authority to competitively procure any such Subcontracts, but excluding: (A) the Initial Subcontracts; and (B) any Major Subcontracts in respect of which a Major Subcontract Objection Notice was not received by Project Co or was received by Project Co but was subsequently withdrawn by Contracting Authority pursuant to Section 11.38(d)(i); and
 - (ii) acting reasonably and notwithstanding Section 11.40(l)(i), any scope of the Works to be performed by any Subcontractor (other than by any Subcontractor that is a Primary Team Member), even if such scope of the Works is within the scope of work set out in any of the Initial Subcontracts or in any of the Major Subcontracts in respect of which a Major Subcontract Objection Notice was not received by Project Co or was received by Project Co but was subsequently withdrawn by Contracting Authority pursuant to Section 11.38(d)(i).

- (m) If, pursuant to Section 11.40(l), Contracting Authority requires Project Co to competitively procure any Subcontract in respect of TPA Works subject to any Target Price Agreement then in effect, Project Co shall, subject to and in accordance with Schedule 21 – Risk Allocations, be entitled to an Adjustment Event.

11.41 Construction Enforcement Regime

- (a) Project Co shall comply with Schedule 43 – Incentives and Construction Enforcement Regime, and shall be liable to Contracting Authority for all Construction Period Deductions in accordance with the terms of Schedule 43 – Incentives and Construction Enforcement Regime and this Agreement.

12. REPRESENTATIVES

12.1 The Contracting Authority Representative

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

12.2 The Project Co Representative

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

12.3 Communications to Representatives

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

12.4 Key Individuals

- (a) The individuals who are critical to the performance of the Works are identified in Schedule 9 – Key Individuals. Project Co shall use commercially reasonable efforts to ensure that such persons remain involved in the Works in the capacity set out in Schedule 9 – Key Individuals (unless such Key Individuals are not available for reasons beyond the control of Project Co or a Project Co Party). Project Co or a Project Co Party shall not, for the duration of the Works, require or request any such person to be involved in any other project, if, in the reasonable opinion of Contracting Authority such involvement would have a material adverse effect on the Works. For clarity, Project Co and the Project Co Parties' reasonable commercial efforts, in accordance with this Section 12.4(a), shall include the denial of promotions or relocations of a Key Individual as permitted by the Applicable Law.

- (b) Subject to Project Co’s obligations to ensure that Key Individuals remain involved in the Works as set out in Section 12.4(a), if it becomes necessary for Project Co to replace any individual identified in Schedule 9 – Key Individuals, Project Co shall nominate a competent suitably qualified and experienced permanent replacement or replacements, having regard to the qualifications set out in Schedule 9 – Key Individuals, as soon as practicable and provide Contracting Authority with relevant information on the proposed replacement and shall consult with Contracting Authority before finalizing the appointment of such replacement. Project Co shall not replace any of the individuals identified in Schedule 9 – Key Individuals without the prior written consent of Contracting Authority, which consent shall not be withheld or delayed where Project Co is compliant with Sections 12.4(a) and 12.4(c) and the proposed replacement is suitably qualified and experienced, having regard to the qualifications set out in Schedule 9 – Key Individuals.
- (c) If Contracting Authority determines, acting reasonably, that it is in the best interests of Contracting Authority that any individual identified in Schedule 9 – Key Individuals be replaced, Contracting Authority shall notify Project Co (including a detailed explanation of the reasons for such determination), and, within 90 days after receipt by Project Co of such Notice, Project Co shall provide Contracting Authority with relevant information on the proposed replacement and shall consult with Contracting Authority before finalizing the appointment of such replacement.

13. WORKS SCHEDULE REQUIREMENTS AND WORKS REPORT

13.1 Completion of the Works

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

13.2 Works Schedule Requirements

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

13.3 Notification of Early TPA Works Completion

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

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

13.4 Works Report

- (a) Project Co shall continuously monitor the progress of the Works in relation to the Baseline Works Schedule in accordance with Schedule 33 – Works Report Requirements.

13.5 Early Warnings

- (a) Project Co shall provide Notice to Contracting Authority of an Early Warning Event no later than five (5) Working Days after Project Co becomes aware of same. In conjunction with the provision of this Notice, Project Co shall update its Early Warning Register and provide a copy of the update to Contracting Authority or to such location as may be directed by Contracting Authority from time to time.
- (b) In the event that Contracting Authority provides Notice to Project Co of an Early Warning Event, Project Co shall promptly update the Early Warning Register to include the identified event.
- (c) Project Co and Contracting Authority shall attend a meeting to discuss the Early Warning Register (an “**Early Warning Meeting**”):
 - (i) at least, once every two (2) weeks during the Project Term; and
 - (ii) at such other time as may be directed by the Contracting Authority Representative.
- (d) The purpose of the Early Warning Meeting is to promote cooperative and effective communication between Project Co and Contracting Authority with a view to identifying potential actions or solutions to avoid or reduce the impact of an Early Warning Event. For clarity, nothing in this Section 13.5 shall restrict or impede Project Co’s rights to an Adjustment Event or a Variation pursuant to and in accordance with this Agreement.
- (e) Project Co shall determine which Project Co Representative and Contracting Authority shall determine which Contracting Authority Representative should attend each Early Warning Meeting having regard to the subject matter of the outstanding Early Warning Events listed in the Early Warning Register.
- (f) Prior to each Early Warning Meeting, Project Co shall prepare written analysis of each Early Warning Event, including, without limitation, a description of the nature of the impact of the Early Warning Event (e.g., the Works impacted, risk to the Project Work Schedule, and/or potential cost and quality impacts), mitigation strategies and alternatives to resolve the Early Warning Events, and any additional information as may be requested by Contracting Authority.
- (g) Following each Early Warning Meeting, Project Co shall update the Early Warning Register to include a summary of the discussion at the meeting and any notes provided by Contracting Authority.

- (h) If Project Co and Contracting Authority agree that an Early Warning Event has been resolved, Project Co shall update the Early Warning Register to indicate that the matter is closed. If Project Co and Contracting Authority are unable to agree on a resolution of an Early Warning Event, either Party may refer the matter to dispute resolution pursuant to Schedule 27 – Dispute Resolution Procedure.
- (i) No actions or potential Variations considered during an Early Warning Meeting shall be binding on, or otherwise impact the rights and obligations of Project Co and Contracting Authority under this Agreement, unless they are confirmed in writing in accordance with the requirements of Schedule 22 – Estimates, Variations and Proposals.

14. SENIOR EXECUTIVES TEAM AND LEADERSHIP TEAM

14.1 Establishment of Senior Executives Team

- (a) The Parties shall establish and operate a Senior Executives Team in accordance with Schedule 19 – Governance, Meetings and Progress Reporting.
- (b) The Parties shall establish and operate a Leadership Team in accordance with Schedule 19 – Governance, Meetings and Progress Reporting.

15. QUALITY MANAGEMENT

15.1 Quality Management

- (a) Project Co and Contracting Authority shall comply with the provisions of Schedule 11 – Quality Management.
- (b) Subject to Section 15.1(c), Project Co shall conduct an inspection of its facilities and of its health and safety management systems and construction vehicles on an annual basis until Final Completion or as otherwise required in accordance with Sections 11.24(b)(vii)(C) or 11.24(b)(viii)(C) (each, an “**H&S Construction Inspection**”), which H&S Construction Inspections shall:
 - (i) be conducted by a Certified H&S Inspector, and
 - (ii) during the performance of the Construction Works, include, at a minimum,
 - (A) a review of general compliance with all applicable *Occupational Health and Safety Act* (Ontario) requirements, compliance with all safety manuals applicable to any portion of the Lands at which Construction Works are being conducted, including the Project Co Site Specific Safety Manual; and
 - (B) a review of Project Co’s job hazard analysis documentation on any portion of the Lands which could endanger or put at risk the safety of any person working on any portion of the Lands;
- (c) The first H&S Construction Inspection shall occur no later than the 90th day following the date of the first Target Price Agreement or, if that day is not a Business Day, on the Business Day immediately succeeding such day.

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

16. LAND ACCESS AND INVESTIGATION

16.1 Access to Metrolinx Lands

- (a) Subject to this Section 16 and the provisions of Schedule 35 – Lands and Schedule 40 – Rail Corridor Access and Flagging, including any restrictions on the use and access to the Metrolinx Lands set out in Schedule 35 – Lands and Schedule 40 – Rail Corridor Access and Flagging, Contracting Authority shall grant or have caused to be granted, and shall continuously grant or cause to be granted, to Project Co and all Project Co Parties non-exclusive licence rights of use and access to, on, over and under the Metrolinx Lands, except such rights set out as a Project Co

responsibility to obtain in Schedule 34 – Permits, Licences, Approvals and Agreements, as are required by Project Co and such Project Co Parties and sufficient (subject to Project Co obtaining the Project Co Permits, Licences, Approvals and Agreements and performing its obligations described therein and subject to the timing and extent of the grant of use and access to the Metrolinx Lands set out in Schedule 35 – Lands) to allow Project Co and such Project Co Parties to perform that part of the Works to be performed on or under Metrolinx Lands. The rights granted to Project Co pursuant to this Section 16.1(a) shall be effective on the later of,

- (i) the DMCA Effective Date; and
 - (ii) the commencement date for access to individual parcels of lands that comprise the Metrolinx Lands as set out in Schedule 35 – Lands.
- (b) Subject to Project Co’s obligation to comply with the other terms and conditions set forth in this Agreement and the other Project Documents, Project Co shall ensure that each Project Co Party shall at all times, when entering the Lands and the EGS Project Infrastructure, act in a manner consistent with the obligations of Project Co under this Agreement.
- (c) In consideration for the use and access rights granted pursuant to Section 16.1(a), Project Co shall provide the Works subject to and in accordance with this Agreement.
- (d) Without derogating from any of Contracting Authority’s rights hereunder, and subject to any restrictions set out in Schedule 35 – Lands, Schedule 40 – Rail Corridor Access and Flagging and the RSSOM Interface Agreement, Contracting Authority acknowledges that, in respect of the Works, Project Co and the Project Co Parties require, and Contracting Authority shall provide, access to the Metrolinx Lands, the RSSOM Project Infrastructure and TOC Developments on the Metrolinx Lands without material interference by Contracting Authority or any Province Person for such period of time identified in Section 16.1(a). Project Co further acknowledges that following each applicable Section Substantial Completion Date, Project Co’s access to the Metrolinx Lands for each such applicable Project Co Infrastructure Section shall be subject to the Contracting Authority Activities and Other Works.
- (e) Subject to Section 16.1(f), none of the rights granted pursuant to this Section 16.1 shall grant access to,
- (i) any lands beyond the boundaries of the Metrolinx Lands, or to any lands other than the Metrolinx Lands, other than easements and similar interests of Contracting Authority which benefit the Metrolinx Lands, obtained after the Technical Reference Date, to the extent the same are necessary for the Works or exceed any restrictions set out in Schedule 35 – Lands; or
 - (ii) any facilities or infrastructure of Contracting Authority, the City of Toronto, the TTC, Utility Companies, Railway Companies or any other third parties, except as set out in Schedule 35 – Lands (which access, if any, is subject to Section 16.1(b)).
- (f) Contracting Authority shall provide Project Co with limited and non-exclusive access to the Existing Metrolinx Infrastructure to the extent necessary to perform the Works and subject to such reasonable conditions as are imposed by Contracting Authority.

- (g) The use and access rights provided in this Section 16.1 shall automatically terminate as of the Termination Date, save and except for any earlier termination of the use and access rights specified in Schedule 35 – Lands.
- (h) For greater certainty, the use and access rights provided in this Section 16.1 shall not entitle Project Co or any Project Co Party to extract any mineral from the Metrolinx Lands for use in the Works.
- (i) Contracting Authority shall acquire use of and access to the Metrolinx Lands described in Schedule 35 – Lands on or prior to the applicable commencement date for access set out in Schedule 35 – Lands. Contracting Authority shall provide Notice to Project Co of the commencement of access rights to the Metrolinx Lands as such access is obtained by Contracting Authority.

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

- (a) Project Co acknowledges and agrees that the rights granted to Project Co and the Project Co Parties hereunder to the Metrolinx Lands shall be non-exclusive and that Contracting Authority and any person authorized by Contracting Authority may occupy and possess the Metrolinx Lands, the Project Co Infrastructure, the New Third Party Infrastructure and the Existing Infrastructure (in each case, on the Metrolinx Lands) without the prior consent of Project Co, including for the purposes of carrying out the Governmental Activities and the Other Works. In exercising its rights Project Co shall not, and shall require that the Project Co Parties shall not, except as permitted under this Agreement, disrupt the performance of the Governmental Activities or the Other Works.
- (b) Without limiting Section 16.2(a), Project Co acknowledges that Contracting Authority may from time to time use or develop (including by way of subdivision or expansion), or permit the use or development of, or dispose of, portions of the Metrolinx Lands (or interests in the Metrolinx Lands), other than those portions of the Metrolinx Lands (or interests in the Metrolinx Lands) necessary for the performance of the Works. To the extent that such use, development or disposition materially adversely interferes with Project Co’s licence rights hereunder or materially adversely interferes with Project Co’s ability to perform the Works, such use, development or disposition shall, subject to and in accordance with Schedule 22 – Estimates, Variations and Proposals, result in a Variation. For greater certainty, but without limiting the generality of the foregoing, Project Co acknowledges and agrees that certain of the Metrolinx Lands shall be subject to the restrictions set out in the Output Specifications, Schedule 35 – Lands and Schedule 40 – Rail Corridor Access and Flagging.
- (c) Project Co shall be solely responsible to arrange all access to lands that it requires to access Existing Third Party Infrastructure except in the case of Existing Third Party Infrastructure located on the Metrolinx Lands, in which case, access to the Metrolinx Lands is provided for in accordance with Schedule 35 – Lands and any Permits, Licences, Approvals and Agreements. Project Co shall be solely responsible to obtain permission from the applicable third party to access the Existing Third Party Infrastructure or any component thereof owned by third parties.
- (d) Project Co acknowledges and agrees that Contracting Authority has no authority to and is not obligated to grant the use of or access to any lands that are not Metrolinx Lands, which use and access must be sought by Project Co or the Project Co Parties from each third party owner or rights holder of such lands in accordance with this Agreement, Applicable Law, any Permits, Licences, Approvals and Agreements and any other requirements imposed by such third party.

- (e) Project Co shall ensure that no Project Co Party uses or accesses (including trespasses upon) any lands of a third party land owner or rights holder during and for the purpose of the performance of the Works, (i) save and except as otherwise set out in this Agreement or permitted by Applicable Law, or (ii) unless Project Co has obtained the permission of such third party for such use or access and, in such an event, only in accordance with any and all terms and conditions of such permission.

16.3 Naming and Signage

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

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

16.4 No Interest in Land, Facilities or Infrastructure

- (a) Project Co acknowledges and agrees that Project Co does not acquire any estate, right, title or ownership interest in the Lands or any part of the Project Co Infrastructure, the New Third Party Infrastructure or the Existing Infrastructure, or any other interest in land, facilities or infrastructure pursuant to this Agreement, the Project Documents or otherwise. Notwithstanding any provision herein or in any of the Project Documents to the contrary, all fee simple interest in and freehold title to the Lands, or any part thereof, and the Project, shall at all times remain unencumbered by any interest of Project Co. Project Co shall have access to the Metrolinx Lands, the Project Co Infrastructure, and the Existing Metrolinx Infrastructure under and subject to the licences and access rights granted under this Section 16.

16.5 Non-Disturbance Agreement

- (a) If Contracting Authority mortgages, charges or otherwise encumbers the Metrolinx Lands, Contracting Authority shall notify Project Co and, at the request of Project Co, provide Project Co with an agreement, in form satisfactory to Project Co, acting reasonably, executed by the mortgagee, chargee or other encumbrancer of the Metrolinx Lands permitting Project Co to access and use the Metrolinx Lands under the use and access granted pursuant to this Section 16, free from interference from the mortgagee, chargee or other encumbrancer or any person claiming by or through the mortgagee, chargee or other encumbrancer. This Section 16.5 shall not apply in respect of any portion of the Metrolinx Lands used or developed pursuant to Section 16.2(b) if neither the licence granted pursuant to this Section 16 nor the Works pertain to such portion of the Metrolinx Lands.

16.6 Adjustments to Metrolinx Lands Available to Project Co

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

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- (iv) where the Additional Lands will contain New City Infrastructure that is for the City of Toronto, written confirmation from the City of Toronto that it will accept:
 - (A) such New City Infrastructure; and
 - (B) in accordance with this Section 16.6, conveyance by Contracting Authority of the applicable Additional Lands in connection with the Handover of such New City Infrastructure; and
 - (v) any savings in Defined Cost to Project Co that will result in a reduction to the Target Price.
 - (c) Project Co shall promptly provide such additional information as Contracting Authority may request from time to time in relation to the Additional Lands Request.
 - (d) Contracting Authority may, in its sole discretion, accept or reject any Additional Lands Request, or prescribe conditions, restrictions and requirements in connection with its agreement to an Additional Lands Request. In the event that Contracting Authority agrees to an Additional Lands Request, such acquisition shall become part of the Metrolinx Lands once acquired and shall, subject to and in accordance with this Section 16.6 and Schedule 22 – Estimates, Variations and Proposals, result in a Variation, provided that such additional lands, rights or interests shall become “**Additional Lands**” and part of the Metrolinx Lands only if and when,
 - (i) Contracting Authority has issued a Variation Confirmation pursuant to Schedule 22 – Estimates, Variations and Proposals; and
 - (ii) Contracting Authority has successfully acquired or obtained such rights, title or interest in the proposed Additional Lands.
 - (e) Project Co acknowledges and agrees that any decision of Contracting Authority pursuant to Section 16.6(d) shall be final and binding on the Parties and in the event that Contracting Authority does not agree to an acquisition of Additional Lands pursuant to Section 16.6(d), Project Co acknowledges and agrees that Contracting Authority’s decision or determination shall not be subject to dispute resolution pursuant to Schedule 27 – Dispute Resolution Procedure.
 - (f) Additional Lands acquired or obtained by Contracting Authority pursuant to this Section 16.6 shall constitute Metrolinx Lands for the purposes of this Agreement, provided that, notwithstanding anything to the contrary in this Agreement:
 - (i) with respect to Additional Lands Requests made following execution of a Target Price Agreement and to the extent related to TPA Works, Project Co shall be responsible for and shall indemnify and hold harmless Contracting Authority and the Province Persons from and against all costs, risks, obligations, and liabilities in respect of, or arising in connection with, such Additional Lands (and any portion of such Additional Lands comprising the Site) including claims relating to Site Conditions thereon and therein, including with respect to Geotechnical Site Conditions, Contamination, Items of Interest or Value, Major Existing Infrastructure, Contracting Authority Utility Infrastructure, Mislocated Utility Infrastructure, or Species-at-Risk;

- (ii) with respect to Additional Lands Requests made following the execution of a Target Price Agreement and to the extent related to the TPA Works, Contracting Authority provides no representation or warranty, and shall have no obligation to Project Co, in respect of, or arising in connection with, any Additional Lands (and any portion of Additional Lands comprising a Site), including for certainty, pursuant to Sections 6.2, 7.4, 9.1, 11.13, 18.2, 18.4, 18.5, 18.6 and 18.7, other than to grant or cause to be granted to Project Co and the Project Co Parties, non-exclusive license rights of use and access to, on and over the Additional Lands to allow Project Co and such Project Co Parties to carry out those Works to be performed on the Additional Lands; and
- (iii) in no event will Contracting Authority be liable for any delay by Contracting Authority, any Contracting Authority Party or any third party in:
 - (A) reviewing or processing Additional Lands Requests; or
 - (B) acquiring or obtaining Additional Lands with respect to Additional Lands Requests made following the execution of a Target Price Agreement and to the extent related to the TPA Works,pursuant to this Section 16.6.
- (g) Project Co shall be entitled to acquire ownership of or obtain rights or interests in or to any properties at its own cost and expense, however, such properties shall not, for the purposes of this Agreement, form part of the Metrolinx Lands and no Project Co Infrastructure shall be located on, or rely in any way upon, any properties which Project Co acquires ownership of or obtains rights or interests in or to pursuant to this Section 16.6(g).

16.7 Changes to Lands

- (a) Notwithstanding any other provision in this Agreement, the Parties acknowledge and agree that any alteration, addition or variation to or in the Metrolinx Lands described in Schedule 35 – Lands or the dates by which Contracting Authority grants to Project Co access to the Metrolinx Lands pursuant to Section 16.1(a) shall be effected by way of Variation, subject to and in accordance with Schedule 22 – Estimates, Variations and Proposals and, as applicable, Section 16.6.

16.8 Adequacy of the Lands

- (a) Without limiting any of Project Co’s rights under Sections 7.4, 16.1(d), 18.2, 18.3, 18.4, 18.5, 18.6 and 18.7, Project Co acknowledges and agrees that, following execution of a Target Price Agreement and to the extent related to TPA Works, it has and shall be deemed to have satisfied itself as to:
 - (i) the adequacy of the Lands, rights of access to, from and through the Lands and any accommodation it may require for the purposes of fulfilling its obligations under this Agreement;
 - (ii) the possibility of interference by persons of any description whatsoever with access to or use of, or rights in respect of, the Lands; and

- (iii) the precautions, times and methods of working necessary to prevent any nuisance or interference, whether public or private, being caused to any third parties.

16.9 Inspection and Investigation of the Lands

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

16.10 No Warranty in Respect of Lands

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

16.11 No Claims in Respect of Lands

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

- (iii) any claim that incorrect, inaccurate, incomplete or insufficient information on any matter relating to the Lands, the Existing Infrastructure or the Site Conditions was given to it by any person, whether or not Contracting Authority or a Province Person.

17. ENCUMBRANCES

17.1 Project Co Shall Perform Obligations Under Encumbrances

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

17.2 No Encumbrances

- (a) Project Co shall not create, incur, permit or suffer to exist any Encumbrance to be created, filed, issued or registered upon or against the Lands or any part of them or any interest therein,
 - (i) due to an act or omission of Project Co or any Project Co Party, or
 - (ii) arising in relation to the Works.
- (b) Project Co does not have title to the Lands or any interest therein, and no act or omission by Project Co or any Project Co Party shall give rise to a right for any person to obtain title to or any interest in the Lands or any part thereof, except:
 - (i) as may be expressly agreed to in writing by Contracting Authority or the applicable third party owner of the Lands;
 - (ii) as may be expressly permitted by the terms of this Agreement; or
 - (iii) as may be permitted under Applicable Law, but without limiting Project Co's obligations under Sections 17.2(c)(i) and 17.3(a).
- (c) In the event that the Lands or any part thereof or any interest therein becomes subject to any Encumbrance following the DMCA Effective Date,

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- (i) due to an act or omission of Project Co or any Project Co Party (which has not been consented to in writing by Contracting Authority), or arising in relation to the Works, Project Co shall immediately take all steps necessary to terminate, remove, vacate or discharge such Encumbrance. If such Encumbrance is not terminated, removed, vacated or discharged within 10 Business Days after Project Co becoming aware of the creation, filing, issuance or registration of such Encumbrance, then, without prejudice to any other rights or remedies it may have, Contracting Authority may take whatever steps it deems necessary and appropriate, in its sole discretion, to terminate, remove, vacate or discharge the Encumbrance, including payment of any amount owing or claimed thereunder, and seek immediate recovery from Project Co of the amount of any such payment and any associated costs, including legal costs (on a full indemnity basis), all of which shall be payable on demand, and Project Co hereby appoints Contracting Authority as Project Co's attorney to execute any removal, vacating, termination or discharge of an Encumbrance referred to in this Section 17.2(c)(i) which appointment is coupled with an interest and shall be irrevocable for the Project Term and thereafter so long as any of Project Co's obligations under this Section 17.2(c)(i) are outstanding;
 - (ii) due to an act or omission of Project Co or any Project Co Party (which has been consented to in writing by Contracting Authority), or arising in relation to the Works, Project Co shall perform all obligations under such Encumbrance in accordance with Sections 17.1 and 17.3 (as is applicable); or
 - (iii) which is not due to an act or omission of Project Co or any Project Co Party, or which has not arisen in relation to the Works, prior to performing obligations under any such Encumbrance, Project Co shall promptly notify Contracting Authority of any such Encumbrance and Contracting Authority may elect, in its sole discretion, to:
 - (A) have such Encumbrance be removed, vacated or discharged;
 - (B) perform the required obligations thereunder; or
 - (C) instruct Project Co to perform the required obligations thereunder.
 - (d) For the purposes of this Section 17, if:
 - (i) an Encumbrance otherwise identified in Sections (b)(viii), (ix) or (x) of Schedule 16 – Encumbrances has not been complied with (excluding non-compliance by Project Co) and such non-compliance materially interferes with the use of the Lands for the purposes of the Works; or
 - (ii) an Encumbrance otherwise identified in Sections (b)(vii), (viii), (ix) or (x) of Schedule 16 – Encumbrances was not disclosed to Project Co and was not ascertainable through commercially standard off-title searches, and such Encumbrance materially interferes with the use of the Lands for the purposes of the Works,

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

- (e) If Project Co is instructed to perform obligations under an Encumbrance pursuant to Section 17.2(c)(iii) or Section 17.2(d), which performance imposes costs or delays in the performance of Works, then, subject to and in accordance with Schedule 21 – Risk Allocations, Project Co may be entitled to an Adjustment for such performance of obligations.

17.3 Construction Act

- (a) The Parties acknowledge that Section 17.2 shall apply to claims for liens made against the Lands pursuant to the *Construction Act* (Ontario) and shall also apply to claims made against Contracting Authority or the holdback under the *Construction Act* (Ontario) as though such a claim were an Encumbrance against the Lands as referred to therein.
- (b) Project Co shall comply with the holdback requirements under the *Construction Act* (Ontario).
- (c) Project Co acknowledges that, notwithstanding that the same may be permitted under the *Construction Act* (Ontario), there will be no early release of any amount of the Legislative Holdback which Contracting Authority is required to retain under the *Construction Act* (Ontario) except as provided in Schedule 42 – Payment Procedures.
- (d) Project Co shall, as a condition of final payment under any Subcontract for which lien rights or rights in respect of the holdback may be claimed under the *Construction Act* (Ontario), require that a certificate of completion under section 33(1) of the *Construction Act* (Ontario) for such Subcontract be issued and the relevant Subcontractor provide statutory declarations or other assurances confirming that all those engaged by the Subcontractor have been paid in accordance with Applicable Law.
- (e) Upon request by Contracting Authority, Project Co shall perform and deliver to Contracting Authority a sub-search of title on the Lands or any part thereof. Contracting Authority shall pay the reasonable costs of any such search.

18. SITE CONDITIONS

18.1 Acceptance of Lands, Existing Infrastructure and Site Conditions

- (a) Upon execution of a Target Price Agreement and to the extent related to TPA Works, Project Co agrees to accept the Lands and the Existing Infrastructure on an “as is, where is” basis, and shall be responsible for all Site Conditions thereon, except in respect of:
 - (i) Geotechnical Site Conditions;
 - (ii) Contamination;
 - (iii) Items of Interest or Value;
 - (iv) Major Existing Infrastructure;
 - (v) Utility Infrastructure; and
 - (vi) Species-at-Risk,

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

- (b) For greater certainty, except as expressly set out in this Agreement, nothing in this Section 18 shall relieve Project Co from performing any of its obligations hereunder (including its obligations under Section 10.2 and Section 11.11).
- (c) For greater certainty, where in this Article 18 it is indicated that Project Co shall be responsible for a Site Condition or any words of similar import are used, such import of responsibility shall not be construed so as to disentitle Project Co from any payment of its Defined Cost, Corporate Overhead or Profit in accordance with this Agreement in respect of such responsibility.

18.2 Geotechnical Site Conditions

- (a) **“Differing Geotechnical Site Condition”** means any Geotechnical Site Condition which is the subject of a Geotechnical Baseline Statement to the extent that it differs from such Geotechnical Baseline Statement as determined in accordance with Schedule 44 – Geotechnical Baseline Report, provided that such difference was not:
 - (i) within the Knowledge of the Project Manager as of the Technical Reference Date;
 - (ii) discovered by Project Co or readily apparent during the performance of the Development Works or during the performance of the DMCA Construction Works prior to the Technical Reference Date;
 - (iii) caused or contributed to by Project Co or a Project Co Party.
- (b) Project Co shall be responsible for all Geotechnical Site Conditions other than Differing Geotechnical Site Conditions.
- (c) Any Differing Geotechnical Site Condition experienced by Project Co shall, subject to and in accordance with Schedule 21 – Risk Allocations, be treated as an Adjustment Event and Project Co may be entitled to an Adjustment.
- (d) Upon the discovery of any Differing Geotechnical Site Condition, Project Co shall immediately inform the Contracting Authority Representative.
- (e) In the event that Contracting Authority wishes Project Co to perform actions in respect of any Differing Geotechnical Site Condition, then Contracting Authority shall issue an instruction to Project Co specifying what action Contracting Authority requires Project Co to take and Project Co shall promptly and diligently comply with all such instructions.
- (f) If Section 18.2(e) requires Project Co to perform any alteration, addition, Demolition, extension or variation in the Works as a result of instructions given by Contracting Authority pursuant to Section 18.2(e), then Project Co shall be entitled to a Variation for any such alteration, addition, Demolition, extension or variation in the Works in accordance with Schedule 22 – Estimates, Variations and Proposals.
- (g) The Parties agree that any Disputes in respect of a claim pursuant to Section 18.2(c) shall be referred to the CDB for a decision pursuant to Section 4.5(a) (*CDB to Resolve Disputes*) of Schedule 27 – Dispute Resolution Procedure.

18.3 Contamination

- (a) **“Project Co Known Contamination”** means any Contamination or Designated Substances and Hazardous Materials that:
- (i) was within the Knowledge of the Project Manager as of the Technical Reference Date;
 - (ii) was discovered by Project Co or became readily apparent during the performance of the Development Works or during the performance of the DMCA Construction Works prior to the Technical Reference Date;
 - (iii) is an Identified Contaminated Material;
 - (iv) is described in a Geotechnical Baseline Statement;
 - (v) was readily apparent from the Project Co Land Inspections; or
 - (vi) is caused or contributed to by Project Co or any Project Co Party but only to the extent of such cause or contribution (**“Project Co Caused Contamination”**).
- (b) **“Project Co On-Site Contamination”** means any Project Co Known Contamination that is on, in or under the Lands (including any such Project Co Known Contamination while migrating on, in or under the Lands).
- (c) **“Project Co Off-Site Migrating Contamination”** means:
- (i) any Project Co Known Contamination (other than Project Co Caused Contamination) migrating to or from the Lands to the extent such migration to or from the Lands is caused by Project Co or a Project Co Party other than as a result of the Tunnel Construction Work;
 - (ii) any Project Co Caused Contamination migrating to or from the Lands; and
 - (iii) any Contamination migrating to or from the Lands that is caused by a negligent act or omission of Project Co or a Project Co Party,
- including while each of the above is on the Lands.
- (d) **“Project Co Contamination”** means the Project Co On-Site Contamination and the Project Co Off-Site Migrating Contamination.
- (e) **“Contracting Authority Contamination”** means all Contamination on, in or under the Lands or migrating to or from the Lands, other than Project Co Contamination provided that, in the case of Contamination that is described in a Geotechnical Baseline Statement, Contracting Authority shall only be responsible for such Contamination to the extent that it differs from such Geotechnical Baseline Statement as determined in accordance with Schedule 44 – Geotechnical Baseline Report.
- (f) Project Co shall be responsible for

- (i) the Project Co Contamination; and
 - (ii) any Worsened Contamination.
- (g) Any Contracting Authority Contamination encountered by Project Co shall, subject to and in accordance with Schedule 21 – Risk Allocations, be treated as an Adjustment Event and Project Co may be entitled to an Adjustment.
- (h) Upon the discovery of any Contamination, Project Co shall immediately inform the Contracting Authority Representative, and shall comply, and ensure compliance by all Project Co Parties, with all Applicable Law and Schedule 17 – Environmental Obligations in respect thereof:
- (i) in respect of any Contracting Authority Contamination; and
 - (ii) in respect of all Project Co Contamination or Worsened Contamination.
- (i) Except to the extent required to prevent or mitigate an Emergency or to comply with Applicable Law, Project Co shall not undertake any significant work pursuant to Section 18.3(h) in respect of any Contracting Authority Contamination until the Contracting Authority Representative has been given a reasonable opportunity to review the nature and extent of the Contamination and has instructed Project Co to proceed with such work.
- (j) In the event that Contracting Authority wishes Project Co to perform actions in respect of any Contamination which are in addition to any required pursuant to Section 18.3(h), then Contracting Authority shall issue an instruction to Project Co specifying what action Contracting Authority requires Project Co to take and Project Co shall promptly and diligently comply with all such instructions.
- (k) If Section 18.3(j) requires Project Co to perform any alteration, addition, demolition, extension or variation in the Works as a result of any Contracting Authority Contamination, or as a result of any instructions given by Contracting Authority pursuant to Section 18.3(j), then Project Co shall be entitled to a Variation for any such alteration, addition, Demolition, extension or variation in the Works in accordance with Schedule 22 – Estimates, Variations and Proposals.
- (l) The Parties agree that any Disputes in respect of a claim pursuant to Section 18.3(g) shall be referred to the CDB for a decision pursuant to Section 4.5(a) (*CDB to Resolve Disputes*) of Schedule 27 – Dispute Resolution Procedure.

18.4 Items of Geological, Historical or Archaeological Interest or Value

- (a) As between the Parties, all fossils, artifacts and other objects having artistic, historic, archaeological or monetary value, including human remains and burial sites, which may be found on, in or under the Lands (collectively the “**Items of Interest or Value**”) are or shall be the sole and absolute property of Contracting Authority or the owner of the relevant property, as applicable.
- (b) Project Co shall be responsible for the Items of Interest and Value.
- (c) Upon the discovery of any Items of Interest or Value, Project Co shall:

- (i) promptly inform the Contracting Authority Representative of such discovery; and
 - (ii) take all steps not to disturb the Items of Interest or Value and, if necessary, cease any Works in so far as performing such Works would endanger the Items of Interest or Value or prevent or impede their excavation, take all necessary steps to preserve and ensure the preservation of the Items of Interest or Value in the same position and condition in which it was found, and comply, and ensure that all Project Co Parties comply, with the requirements of Schedule 17 – Environmental Obligations, the Metrolinx Interim Heritage Management Protocol (2013), Applicable Law and all requirements of Governmental Authorities with respect to such discovery, including the *Funeral, Burial and Cremations Services Act* (Ontario) and the *Standards & Guidelines for Conservation of Provincial Heritage Properties issued under the Ontario Heritage Act* (Ontario).
- (d) In the event that Contracting Authority requires Project Co to perform actions in respect of any discovery of any Items of Interest or Value which are in addition to any required pursuant to Section 18.4(c), then Contracting Authority shall issue an instruction to Project Co specifying what action Contracting Authority requires Project Co to take and Project Co shall promptly and diligently comply with all such instructions.
- (e) If Section 18.4(d) requires Project Co to perform any alteration, addition, Demolition, extension or variation in the Works, as a result of any instructions given by Contracting Authority pursuant to Section 18.4(d), then Project Co shall be entitled to a Variation for any such alteration, addition, Demolition, extension or variation in the Works in accordance with Schedule 22 – Estimates, Variations and Proposals.

18.5 Major Existing Infrastructure Condition

- (a) **“Differing Major Existing Infrastructure Condition”** means any Major Existing Infrastructure Condition to the extent that it differs from the information provided in the applicable Major Existing Infrastructure Condition Report (including any Major Existing Infrastructure Condition that was not described or contained in such Major Existing Infrastructure Condition Report) provided that such difference was not:
- (i) within the Knowledge of the Project Manager as of the Technical Reference Date;
 - (ii) discovered by Project Co or readily apparent during the performance of the Development Works or during the performance of the DMCA Construction Works prior to the Technical Reference Date;
 - (iii) readily apparent from the Project Co Land Inspections; or
 - (iv) caused or contributed to by Project Co or a Project Co Party (a **“Project Co Caused Differing Major Existing Infrastructure Condition”**).
- (b) Project Co shall have no claims against Contracting Authority in respect of any Major Existing Infrastructure or Major Existing Infrastructure Conditions except for Differing Major Existing Infrastructure Conditions or any Defined Cost or Corporate Overhead and Profit in respect thereof.

- (c) Any Differing Major Existing Infrastructure Condition encountered by Project Co shall, subject to and in accordance with Schedule 21 – Risk Allocations, be treated as an Adjustment Event and Project Co may be entitled to an Adjustment.
- (d) Upon the discovery of a Differing Major Existing Infrastructure Condition or a Project Co Caused Differing Major Existing Infrastructure Condition, Project Co shall immediately inform the Contracting Authority Representative.
- (e) Except to the extent required to mitigate an Emergency or to comply with Applicable Law, Project Co shall not undertake any work in respect of any Differing Major Existing Infrastructure Condition or Project Co Caused Differing Major Existing Infrastructure Condition until the Contracting Authority Representative has been given a reasonable opportunity to review the nature and extent of the condition and has instructed Project Co to proceed with such work.
- (f) In the event that Contracting Authority wishes Project Co to perform actions in respect of any Differing Major Existing Infrastructure Condition or Project Co Caused Differing Major Existing Infrastructure Condition then Contracting Authority shall issue an instruction to Project Co specifying what action Contracting Authority requires Project Co to take and Project Co shall promptly and diligently comply with all such instructions:
 - (i) in respect of any Differing Major Existing Infrastructure Condition; and
 - (ii) in respect of any Project Co Caused Differing Major Existing Infrastructure Condition.
- (g) If Section 18.5(f)(i) requires Project Co to perform any alteration, addition, Demolition, extension or variation in the Works, then Project Co shall be entitled to a Variation for any such alteration, addition, Demolition, extension or variation in the Works in accordance with Schedule 22 – Estimates, Variations and Proposals.
- (h) The Parties agree that any Disputes in respect of a claim pursuant to Section 18.5(c) shall be referred to the CDB for a decision pursuant to Section 4.5(a) (*CDB to Resolve Disputes*) of Schedule 27 – Dispute Resolution Procedure.

18.6 Mislocated or Unknown Utility Infrastructure

- (a) “**Project Co Utility Infrastructure**” shall mean all Utility Infrastructure on, in or under the Lands that:
 - (i) was within the Knowledge of the Project Manager, as of the Technical Reference Date;
 - (ii) was discovered by Project Co or became readily apparent during the performance of the Development Works or during the performance of the DMCA Construction Works prior to the Technical Reference Date;
 - (iii) was described in the Subsurface Utility Engineering (SUE) Reports as of the Technical Reference Date other than Mislocated Utility Infrastructure;
 - (iv) was readily apparent from the Project Co Land Inspections;
 - (v) is a service connection; or

- (vi) is any of the following owned by the City of Toronto:
 - (A) watermains of nominal diameter less than 150mm;
 - (B) combined sewers or storm sewers of nominal diameter less than 300mm;
 - (C) sanitary sewers of nominal diameter less than 250mm; and
 - (D) street lighting and traffic signal cables.
- (b) “**Contracting Authority Utility Infrastructure**” means:
 - (i) any Mislocated Utility Infrastructure; and
 - (ii) any other Utility Infrastructure on, or in the Lands, other than Project Co Utility Infrastructure.
- (c) Project Co shall be responsible for all Project Co Utility Infrastructure.
- (d) Any Contracting Authority Utility Infrastructure encountered by Project Co shall, subject to and in accordance with Schedule 21 – Risk Allocations, be treated as an Adjustment Event and Project Co may be entitled to an Adjustment.
- (e) Project Co shall promptly notify Contracting Authority in writing upon the discovery of any Contracting Authority Utility Infrastructure.
- (f) Project Co shall not undertake any work in respect of any Contracting Authority Utility Infrastructure until the Contracting Authority Representative has been given a reasonable opportunity to review the nature and extent of the Contracting Authority Utility Infrastructure and has instructed Project Co to proceed with such work.
- (g) In the event that Contracting Authority wishes Project Co to perform actions in respect of any Contracting Authority Utility Infrastructure then Contracting Authority shall issue an instruction to Project Co specifying what action Contracting Authority requires Project Co to take and Project Co shall promptly and diligently comply with all such instructions.
- (h) If Section 18.6(g) requires Project Co to perform any alteration, addition, Demolition, extension or variation in the Works, then Project Co shall be entitled to a Variation for any such alteration, addition, Demolition, extension or variation in the Works in accordance with Schedule 22 – Estimates, Variations and Proposals.
- (i) The Parties agree that any Disputes in respect of a claim pursuant to Section 18.6(d) shall be referred to the CDB for a decision pursuant to Section 4.5(a) (*CDB to Resolve Disputes*) of Schedule 27 – Dispute Resolution Procedure.

18.7 Species-at-Risk

- (a) Upon the discovery of any Species-at-Risk, Project Co shall immediately inform the Contracting Authority Representative, and shall comply, and ensure compliance by all Project Co Parties, with all Applicable Law and the provisions of the Output Specifications and Schedule 17 –

Environmental Obligations in respect thereof (including taking all necessary steps to preserve the respective habitat and relocate the Species-at-Risk).

- (b) In the event that Contracting Authority requires Project Co to perform any actions which are in addition to any required pursuant to Section 18.7(a), then Contracting Authority shall issue an instruction to Project Co specifying what action Contracting Authority requires Project Co to take and Project Co shall promptly and diligently comply with all such instructions.
- (c) If Project Co is to perform any alteration, addition, Demolition, extension or variation in the Works as a result of any instructions given by Contracting Authority pursuant to Section 18.7(b), then Project Co shall be entitled to a Variation for any such alteration, addition, Demolition, extension or variation in the Works in accordance with Schedule 22 – Estimates, Variations and Proposals.

19. INTENTIONALLY DELETED

20. CONTRACTING AUTHORITY ACCESS AND MONITORING

20.1 Contracting Authority Access During the Works

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

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

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

- (ii) comply with all relevant safety procedures and any reasonable directions with regard to site safety that may be issued by or on behalf of the Project Co Representative from time to time; and
- (iii) if required by Project Co, be accompanied by a representative of Project Co or a Project Co Party.

20.2 Increased Monitoring

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

20.3 Right to Uncover

- (a) Project Co shall ensure that Contracting Authority is afforded advance Notice of, and that Contracting Authority is afforded a full opportunity to witness, all inspection and test activity in accordance with the Inspection and Test Plan. If Project Co does not provide such Notice and opportunity, Project Co shall at the request of Contracting Authority uncover any relevant part of the Works which have been covered up or otherwise put out of view or remove any relevant part of the Works that have been proceeded with in order to permit Contracting Authority to witness the relevant inspection or test activity.
- (b) Contracting Authority shall have the right, at any time prior to the Project Final Completion Date, to request Project Co to uncover or open up and inspect (or allow Contracting Authority to inspect) any part or parts of the Works, or to require testing of any part or parts of the Works, where Contracting Authority reasonably believes that such part or parts of the Works is or are defective or that Project Co has failed to comply with the requirements of this Agreement (including the Design Data) relevant to such part or parts of the Works, and Project Co shall comply with such request. When Contracting Authority makes such a request, Contracting Authority shall include reasonably detailed reasons with such request.
- (c) If an inspection shows that the relevant part or parts of the Works is or are defective or that Project Co has failed to comply with the requirements of this Agreement (including the Design Data) relevant to such part or parts of the Works, Project Co shall rectify all such defects and non-compliance diligently.
- (d) If an inspection shows that the relevant part or parts of the applicable Works is or are not defective and that Project Co has complied with the requirements of this Agreement (including the Design Data) relevant to such part or parts of the Works, the exercise by Contracting Authority of its rights pursuant to this Section 20.3 may entitle Project Co to an Adjustment subject to and in accordance with Schedule 21 – Risk Allocations.

20.4 No Relief from Obligations

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

20.5 Access by Others

- (a) Subject to Section 20.5(b) and subject to and in accordance with Section 11.12 (to the extent applicable), Project Co shall ensure that throughout the Project Term, without prejudice to any access rights of any such person as a member of the general public or pursuant to Applicable Law, that it does not restrict access to the Lands, Project Co Infrastructure, Existing Infrastructure, or New Third Party Infrastructure for:
- (i) inspectors and other persons authorized to act on behalf of Contracting Authority and owners of New Third Party Infrastructure and Existing Third Party Infrastructure, for inspection and/or acceptance purposes;
 - (ii) all Other Contractors, including the owners or operators of any Third Party Facilities and their agents at all reasonable times to exercise any right or power or perform any duty or obligation under any Applicable Law or the Utility Agreements, Railway Orders or encroachment permits, provided that prior to the each applicable Section Substantial Completion Date, and any time after each applicable Section Substantial Completion Date where Project Co is acting as the “constructor” in respect of an applicable Project Co Infrastructure Section in accordance with the *Occupational Health and Safety Act* (Ontario), wherever consistent with the requirements of Applicable Law and the requirements of this Agreement, Project Co may limit such access so as to not unnecessarily impede or restrict traffic flows, the operation of the Existing Infrastructure or any applicable Works;
 - (iii) all Governmental Authorities and Emergency Service Providers in order to carry out any work (including surveys and inspections) in accordance with or to exercise any right or power or perform any duty or obligation under any Applicable Law and provided that prior to each applicable Section Substantial Completion Date, and any time after each applicable Section Substantial Completion Date where Project Co is acting as the “constructor” in respect of an applicable Project Co Infrastructure Section in accordance with the *Occupational Health and Safety Act* (Ontario), whenever consistent with the applicable requirements of such Governmental Authority, Emergency Service Providers or Applicable Law and the requirements of this Agreement (as the case may be), Project Co may limit such access so as to not unnecessarily impede or restrict traffic flows, the operation of the Existing Infrastructure or any Works;
 - (iv) any Province Persons, Other Contractors, owners or operators of Third Party Facilities, Governmental Authorities, Emergency Service Providers, Utility Companies, Railway Companies, the City of Toronto, the TTC and other Transit Systems and rail systems for the purposes of access to and from any other lands and/or facilities adjacent to or in proximity to the Lands, the Project Co Infrastructure, the New Third Party Infrastructure and Existing Infrastructure owned or operated by such person or in which such person has any interest, provided that, prior to each applicable Section Substantial Completion Date,

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

- (v) any Province Person to undertake emergency training in relation to the Project Co Infrastructure.
- (b) Subject to Section 20.5(c), Contracting Authority shall require persons accessing Site(s) on the Metrolinx Lands in accordance with access rights under Section 20.5(a) to:
- (i) provide reasonable prior Notice to Project Co appropriate to the circumstances;
 - (ii) comply with all relevant health and safety procedures and any reasonable directions with regard to health and safety that may be issued by or on behalf of the Project Co Representative from time to time; and
 - (iii) if reasonably required by Project Co, be accompanied by a representative of Project Co or a Project Co Party.
- (c) Section 20.5(b) shall not apply,
- (i) to Additional Contractors, who shall instead comply with any instructions or procedures made by Project Co pursuant to Section 11.12;
 - (ii) in the case of access rights described in Section 20.5(a) for the purpose of responding to an Emergency;
 - (iii) for the purposes of responding to an emergency declared by Contracting Authority or by a Governmental Authority; and
 - (iv) in a circumstance where the requirements of Section 20.5(b) are inconsistent with the requirements of the applicable Governmental Authority or Emergency Service Provider.

20.6 Public Use

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

affecting all or any part of the Lands, the Project Co Infrastructure or the New Third Party Infrastructure, at any time.

21. ENVIRONMENTAL REQUIREMENTS

21.1 Environmental Requirements

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

22. INDEPENDENT COMMISSIONING AGENT, CONTRACTING AUTHORITY ADVISORS AND COMBINED DISPUTE RESOLUTION

22.1 Independent Commissioning Agent

- (a) Contracting Authority shall appoint a suitably qualified and experienced Independent Commissioning Agent for the purposes of this Agreement. Project Co acknowledges that Contracting Authority may, in its discretion appoint one or more persons to perform the role of the Independent Commissioning Agent under this Agreement, which persons may be employees of or contractors to Contracting Authority. Contracting Authority shall require the person, firm or entity performing the role of Independent Commissioning Agent to perform its obligations set out in this Agreement honestly, diligently, impartially and in accordance with the terms of this Agreement.
- (b) Contracting Authority shall promptly deliver Notice to Project Co as to the identity of the Independent Commissioning Agent and any replacement of the Independent Commissioning Agent. Contracting Authority may, in its sole discretion, by notice to Project Co replace the Independent Commissioning Agent at any time during the Project Term, whether with another person, firm or entity.
- (c) The Independent Commissioning Agent shall perform its obligations under this Agreement from the date Contracting Authority appoints the Independent Commissioning Agent until the end of the later of the TPA Warranty Period and DMCA Warranty Period, unless otherwise agreed by Contracting Authority and the Independent Commissioning Agent.
- (d) The Independent Commissioning Agent may visit the Site, at intervals and times of their choosing, to become familiar with the progress and quality of the Works. The Independent Commissioning Agent may, in the Independent Commissioning Agent's sole discretion, provide at the Site one or more representatives to assist in carrying out the responsibilities of the Independent Commissioning Agent.
- (e) The Independent Commissioning Agent does not have the authority to, approve or accept any Works for or on behalf of Contracting Authority. For certainty, where Independent Commissioning Agent is an employee(s) of Contracting Authority, a separate approval or acceptance from Contracting Authority will be required for any Works.
- (f) If Project Co considers that the persons acting in the role of the Independent Commissioning Agent are not performing their duties in accordance with this Agreement, Project Co shall notify Contracting Authority, giving reasons. If Contracting Authority agrees with Project Co's contention that the Independent Commissioning Agent is not performing their duties, Contracting

Authority may, in its discretion, and without limiting any other remedies Contracting Authority may have:

- (i) notify the Independent Commissioning Agent of the failure and require the Independent Commissioning Agent to promptly rectify its performance; or
 - (ii) in Contracting Authority’s sole discretion, replace the Independent Commissioning Agent with another person, firm or entity.
- (g) Without prejudice to Project Co’s right to dispute any decision or finding of the Independent Commissioning Agent, Project Co acknowledges and agrees that replacement, in Contracting Authority’s sole discretion, of the Independent Commissioning Agent shall be a complete and adequate remedy in relation to Project Co’s Notice regarding the Independent Commissioning Agent’s performance under Section 22.1(e), and Project Co irrevocably waives any further rights, including any right to termination arising out of any failure by Independent Commissioning Agent to properly carry out their duties in accordance with this Agreement.

22.2 Contracting Authority Advisors

- (a) The Parties acknowledge and agree that Contracting Authority may appoint advisors, including:
- (i) a financial auditor;
 - (ii) a collaborative coach;
 - (iii) an independent third-party cost advisor;
 - (iv) a technical advisor; and
 - (v) legal advisors,

to be accountable independently and directly to Contracting Authority to validate and provide independent reports and advice with respect to the Works.

All costs and expenses of any advisors retained by Contracting Authority pursuant to Section 22.2(a) shall be at Contracting Authority’s sole cost and expense.

22.3 Cooperation with Contracting Authority’s Advisors

- (a) Project Co shall fully co-operate with and assist:
- (i) Contracting Authority and Contracting Authority’s advisors to ensure that each of them can effectively and expeditiously carry out their duties; and
 - (ii) any of Contracting Authority’s advisors, including any independent third party assessors, retained by Contracting Authority to advise in respect of or to assess any or all of the Works Submittals.

22.4 Combined Dispute Resolution Board

- (a) The Parties shall:
- (i) appoint and maintain the appointment of the CDB and ensure that the CDB is kept informed of the performance of the Parties' obligations under this Agreement and of any Disputes under this Agreement, pursuant to and in accordance with Schedule 27 – Dispute Resolution Procedure;
 - (ii) deliver the reports, notices and other documents to the CDB described in Schedule 27 – Dispute Resolution Procedure; and
 - (iii) resolve Disputes under this Agreement using the CDB pursuant to and in accordance with Schedule 27 – Dispute Resolution Procedure.

23. COMMISSIONING AND COMPLETION

23.1 Commissioning Activities and Commissioning and Completion of DMCA Construction Works

- (a) Project Co shall perform all Commissioning pursuant to Schedule 14 – Commissioning.
- (b) Unless required by Contracting Authority pursuant to a Notice to Proceed, this Section 23 shall not apply to DMCA Construction Works.

23.2 Commencement of Commissioning

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

23.3 Section Substantial Completion Certificates and Substantial Completion Certificates

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

whether or not the requirements for an applicable Section Substantial Completion, TPA Substantial Completion or DMCA Construction Works Substantial Completion, as applicable, under this Agreement have been satisfied, then such Section Substantial Completion Deliverable or Substantial Completion Deliverable, as applicable, shall be deemed to have not been included as part of the applicable Section Substantial Completion Notice or Substantial Completion Notice, as applicable. Following such review and determination by the Independent Commissioning Agent and before the expiry of the applicable two (2) Business Day period, the Independent Commissioning Agent shall either deliver notice to Project Co and the Contracting Authority:

- (i) confirming, as applicable, that:
 - (A) the applicable Section Substantial Completion Notice includes all of the Section Substantial Completion Deliverables described in the Section Substantial Completion Deliverables List (the “**CA Section Substantial Completion Deliverables Confirmation**”), or
 - (B) the applicable Substantial Completion Notice includes all of the Substantial Completion Deliverables described in the Substantial Completion Deliverables List (the “**CA Substantial Completion Deliverables Confirmation**”); or
- (ii) setting out, as applicable:
 - (A) a list of the Section Substantial Completion Deliverables that were not included in the Section Substantial Completion Notice (a “**CA Section Substantial Completion Deliverables Deficiencies List**”); or
 - (B) a list of the Substantial Completion Deliverables that were not included in the Substantial Completion Notice (a “**CA Substantial Completion Deliverables Deficiencies List**”).
- (e) If the Independent Commissioning Agent provides a notice to Project Co and Contracting Authority setting out a CA Section Substantial Completion Deliverables Deficiencies List or CA Substantial Completion Deliverables Deficiencies List, as applicable, pursuant to Section 23.3(d), then Project Co shall subsequently submit a new and replacement version of the applicable Section Substantial Completion Notice or Substantial Completion Notice pursuant to Section 23.3(b), which, for greater certainty, includes all of the applicable Section Substantial Completion Deliverables or Substantial Completion Deliverables, as applicable, and the process described in Section 23.3(d) shall be repeated until the applicable CA Section Substantial Completion Deliverables Confirmation or CA Substantial Completion Deliverables Confirmation is provided by the Independent Commissioning Agent to Project Co and Contracting Authority.
- (f) Contracting Authority shall, within five (5) Business Days after receipt of a CA Section Substantial Completion Deliverables Confirmation or a CA Substantial Completion Deliverables Confirmation, as applicable, provide the Independent Commissioning Agent and Project Co with Contracting Authority’s opinion as to whether the conditions for issuance of the applicable Section Substantial Completion Certificate, TPA Substantial Completion Certificate or DMCA Construction Works Substantial Completion Certificate have been satisfied or, if applicable, any

reasons as to why Contracting Authority considers that the applicable Section Substantial Completion Certificate, TPA Substantial Completion Certificate or DMCA Construction Works Substantial Completion Certificate should not be issued.

- (g) Within five (5) Business Days after Project Co's receipt of Contracting Authority's applicable opinion pursuant to Section 23.3(f), the Parties shall cause the Independent Commissioning Agent to determine whether the conditions for issuance of the applicable Section Substantial Completion Certificate, TPA Substantial Completion Certificate or DMCA Construction Works Substantial Completion Certificate have been satisfied, having regard for the opinions of both Project Co and Contracting Authority, to determine whether any Section Minor Deficiencies or Minor Deficiencies exist in respect of the applicable Project Co Infrastructure Section or Project Co Infrastructure, and to issue to Contracting Authority and to Project Co either:
- (i) the applicable Section Substantial Completion Certificate, TPA Substantial Completion Certificate or DMCA Construction Works Substantial Completion Certificate confirming the date of issue as the applicable Section Substantial Completion Date, TPA Substantial Completion Date or DMCA Construction Works Substantial Completion Date and setting out the Section Minor Deficiencies List for the applicable Project Co Infrastructure Section(s) or the Minor Deficiencies List, in each case if applicable, in accordance with Section 23.6; or
 - (ii) a report detailing the matters that the Independent Commissioning Agent considers are required to be performed by Project Co to satisfy the conditions for issuance of the applicable Section Substantial Completion Certificate, TPA Substantial Completion Certificate or DMCA Construction Works Substantial Completion Certificate.
- (h) Where the Independent Commissioning Agent has issued a report in accordance with Section 23.3(g)(ii) and Project Co has not referred a Dispute in relation thereto for resolution in accordance with Schedule 27 – Dispute Resolution Procedure, Project Co shall, within five (5) Business Days after receipt of such report, provide the Independent Commissioning Agent and the Contracting Authority Representative with:
- (i) a detailed list indicating the rectification actions proposed for all matters raised in such report;
 - (ii) the schedule for completion of all such rectification actions; and
 - (iii) any additional Commissioning that needs to be undertaken as a result of the rectification actions,

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

- (i) In the event that the applicable Section Substantial Completion Certificate, TPA Substantial Completion Certificate or DMCA Construction Works Substantial Completion Certificate has not been issued within thirty (30) days after the later of (x) the delivery of a Section Substantial Completion 10-Day Notice or Substantial Completion 10-Day Notice, as applicable, or (y) the delivery of a Section Substantial Completion Notice or Substantial Completion Notice, as applicable, such Section Substantial Completion 10-Day Notice or Substantial Completion 10-Day Notice, as applicable, or Section Substantial Completion Notice or Substantial Completion Notice, as applicable, shall be deemed to have been rescinded by Project Co and Project Co shall be required to deliver a new Section Substantial Completion 10-Day Notice (unless Contracting Authority otherwise agrees in respect of such Section Substantial Completion 10-Day Notice) or Substantial Completion 10-Day Notice, as applicable, in order to initiate a new application for an applicable Section Substantial Completion, TPA Substantial Completion or DMCA Construction Works Substantial Completion.
- (j) For greater certainty, the Independent Commissioning Agent’s decision to issue the CA Section Substantial Completion Deliverables Confirmation or the CA Substantial Completion Deliverables Confirmation, as applicable, shall not limit or otherwise affect:
 - (i) any of Project Co’s obligations under this Agreement to satisfy the requirements of Section Substantial Completion, TPA Substantial Completion or DMCA Construction Works Substantial Completion, as applicable; or
 - (ii) the opinion of Contracting Authority or the determination of the Independent Commissioning Agent as to whether the conditions for issuance of an applicable Section Substantial Completion Certificate, TPA Substantial Completion Certificate or DMCA Construction Works Substantial Completion Certificate have been satisfied pursuant to Section 23.3(f) and Section 23.3(g) respectively.
- (k) Any Dispute in relation to the Independent Commissioning Agent’s decision to issue or not to issue any Section Substantial Completion Certificate, any TPA Substantial Completion Certificate or any DMCA Construction Works Substantial Completion Certificate may be referred for resolution pursuant to the Dispute Resolution Procedure.
- (l) Unless otherwise specified in the Construction Technical requirements, Project Co shall provide As-Built Drawings, Record Drawings and specifications, Design Data, spare parts that are expressly referenced in the Construction Technical Requirements, and Shop Drawings in respect of a Project Co Infrastructure Section as soon as possible after delivery of the applicable Section Substantial Completion Notice and in any event no later than the applicable Section Substantial Completion Date.
- (m) The submission of a Section Substantial Completion Notice or a Substantial Completion Notice by Project Co in accordance with Section 23.3(b) shall:
 - (i) in respect of a Section Substantial Completion Notice constitute a waiver by Project Co of all claims whatsoever against Contracting Authority under this Agreement in respect of the applicable Project Co Infrastructure Section, arising prior to the submission of the Section Substantial Completion Notice; and

- (ii) in respect of a Substantial Completion Notice constitute a waiver by Project Co of all other claims, whatsoever against Contracting Authority under this Agreement arising prior to the submission of a Substantial Completion Notice,

except, in the case of both Sections 23.3(m)(i) and 23.3(m)(ii), (x) without prejudice to specific notice requirements in this Agreement, those made in writing by Project Co (either on its own account or arising out of a claim of a Project Co Party) arising prior to the submission of the applicable Section Substantial Completion Notice or a Substantial Completion Notice and still unsettled, and (y) any claim which could not reasonably have been known to Project Co or a Project Co Party at such time following due diligence.
- (iii) Project Co, Contracting Authority and the Independent Commissioning Agent acknowledge and agree that Section Substantial Completion in respect of a Project Co Infrastructure Section shall be deemed to satisfy the substantial completion test contemplated in Section 23 in respect of such Project Co Infrastructure Section and all Project Co Infrastructure contained therein, and shall not be revisited at the time of review by the Independent Commissioning Agent (or Contracting Authority) of the TPA Substantial Completion or DMCA Construction Works Substantial Completion, as applicable, as a whole.

23.4 Operation and Maintenance Manuals

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

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

- (a) Project Co shall deliver a Notice (the “**Countdown Notice**”) to Contracting Authority and the Independent Commissioning Agent specifying the date on which Project Co anticipates that a Section Substantial Completion will be achieved (the “**Anticipated Section Substantial Completion Date**”), the date on which Project Co anticipates a TPA Substantial Completion will be achieved (each an “**Anticipated TPA Substantial Completion Date**”), and the date on which Project Co anticipates a DMCA Construction Works Substantial Completion will be achieved (each an “**Anticipated DMCA Construction Works Substantial Completion Date**”), as applicable.
- (b) The Countdown Notice shall be delivered not less than ninety (90) days prior to the applicable Anticipated Section Substantial Completion Date, Anticipated TPA Substantial Completion Date or Anticipated DMCA Construction Works Substantial Completion Date. If:

- (i) Project Co fails to deliver a Countdown Notice not less than ninety (90) days prior to the applicable No Later Than Date, the Anticipated Section Substantial Completion Date shall be deemed to be the same date as the applicable No Later Than Date;
 - (ii) Project Co fails to deliver the Countdown Notice not less than ninety (90) days prior to the TPA Scheduled Substantial Completion Date, the Anticipated TPA Substantial Completion Date shall be deemed to be the same date as the TPA Scheduled Substantial Completion Date; or
 - (iii) Project Co fails to deliver the Countdown Notice not less than ninety (90) days prior to the applicable DMCA Construction Works Substantial Completion Date, the applicable Anticipated DMCA Construction Works Substantial Completion Date shall be deemed to be the same date as the applicable DMCA Construction Works Scheduled Substantial Completion Date.
- (c) In accordance with Section 13.3(a), any Anticipated Section Substantial Completion Date, any Anticipated TPA Substantial Completion Date or any Anticipated DMCA Construction Works Substantial Completion Date, as applicable, shall not be earlier than the applicable No Later Than Date, TPA Scheduled Substantial Completion Date or DMCA Construction Works Scheduled Substantial Completion Date, as applicable, without the prior written consent of Contracting Authority, in its sole discretion.
- (d) Within fifteen (15) Business Days of the Independent Commissioning Agent’s receipt of the applicable Countdown Notice in accordance with Section 23.5(a), the Independent Commissioning Agent, in consultation with Project Co and Contracting Authority, shall prepare and deliver to Project Co and Contracting Authority:
- (i) a list of deliverables (the “**Section Substantial Completion Deliverables List**”) that (A) are to be appended to and form part of the applicable Section Substantial Completion Notice to be submitted by Project Co pursuant to Section 23.3(b), and (B) will constitute a minimum amount of evidence necessary for Project Co, in the applicable Section Substantial Completion Notice, to describe, in reasonable detail, the satisfaction of the requirements for the applicable Section Substantial Completion and to support Project Co’s opinion that the conditions for issuance of the applicable Section Substantial Completion Certificate have been satisfied (collectively, the “**Section Substantial Completion Deliverables**”); and
 - (ii) a list of deliverables (each, the applicable “**Substantial Completion Deliverables List**”) that (A) are to be appended to and form part of the applicable Substantial Completion Notice to be submitted by Project Co pursuant to Section 23.3(b), and (B) will constitute a minimum amount of evidence necessary for Project Co, in the applicable Substantial Completion Notice, to describe, in reasonable detail, the satisfaction of the requirements for the TPA Substantial Completion or DMCA Construction Works Substantial Completion, as applicable, and to support Project Co’s opinion that the conditions for issuance of the TPA Substantial Completion Certificate or DMCA Construction Works Substantial Completion Certificate, as applicable, have been satisfied (collectively, the applicable “**Substantial Completion Deliverables**”).

- (e) From time to time until the date that is sixty (60) days prior to an Anticipated Section Substantial Completion Date, Anticipated TPA Substantial Completion Date or Anticipated DMCA Construction Works Substantial Completion Date, as applicable, the Independent Commissioning Agent, in consultation with Project Co and Contracting Authority, may amend the applicable Section Substantial Completion Deliverables List or the applicable Substantial Completion Deliverables List, including to set out any additional Section Substantial Completion Deliverables or Substantial Completion Deliverables, as applicable, not identified in the applicable Section Substantial Completion Deliverables List or applicable Substantial Completion Deliverables List pursuant to Section 23.5(d). Each amended Section Substantial Completion Deliverables List or Substantial Completion Deliverables List, as applicable, shall, following its preparation, be deemed to be the applicable Section Substantial Completion Deliverables List or the applicable Substantial Completion Deliverables List for the purposes of this Agreement and be promptly delivered to Project Co and Contracting Authority.
- (f) For greater certainty, nothing in Section 23.5(d) or Section 23.5(e) limits or otherwise affects any of Project Co’s obligations under this Agreement to satisfy the requirements of any Section Substantial Completion, TPA Substantial Completion or DMCA Construction Works Substantial Completion or to describe, in reasonable detail, the satisfaction of such requirements in the applicable Section Substantial Completion Notice or the applicable Substantial Completion Notice pursuant to Section 23.3(b).

23.6 Section Minor Deficiencies and Minor Deficiencies

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

and, in either case, an estimate of the cost for Contracting Authority and the time for Project Co, to complete and rectify such Section Minor Deficiencies or Minor Deficiencies, as applicable.

- (b) [Intentionally deleted].
- (c) Each Section Minor Deficiencies List and Minor Deficiencies List will contain the schedule for the completion and rectification of the applicable Section Minor Deficiencies or Minor Deficiencies. The timeframe for the completion or rectification of each Section Minor Deficiency or Minor Deficiency shall be no later than six (6) months following the applicable Section Substantial Completion Date, TPA Substantial Completion Date or DMCA Construction Works Substantial Completion Date, other than for Section Minor Deficiencies or Minor Deficiencies that are seasonal in nature and cannot be completed within six (6) months following the applicable Section Substantial Completion Date, TPA Substantial Completion Date or DMCA Construction Works Substantial Completion Date (“**Seasonal Minor Deficiencies**”). In

determining the relevant time for rectifying Section Minor Deficiencies or Minor Deficiencies, Project Co shall schedule the completion and rectification of Section Minor Deficiencies or Minor Deficiencies so as to,

- (i) comply with the Traffic and Transit Management Plan and all rules, requirements and restrictions relating to access, rail safety and operations and track protection, and road safety and operations, as set out in this Agreement, including, for clarity, the Construction Technical Requirements; and
- (ii) minimize, to the greatest extent reasonably possible,
 - (A) any disruption of the Works or restrictions or other impairment of the public's use and enjoyment of the Project Co Infrastructure, the New Third Party Infrastructure, the Existing Infrastructure, or any portion thereof; and
 - (B) any disruption of the operations of Contracting Authority, any Province Person, any Governmental Authority or any Other Contractor, including the performance of the Governmental Activities and the Other Works.
- (d) The Independent Commissioning Agent must prepare the applicable Section Minor Deficiencies List or Minor Deficiencies List in relation to the applicable Section Substantial Completion Notice or the applicable Substantial Completion Notice as soon as reasonably practicable, and, in any event, before the applicable Section Substantial Completion Certificate, TPA Substantial Completion Certificate or DMCA Construction Works Substantial Completion Certificate is issued, but shall not withhold the applicable Section Substantial Completion Certificate, TPA Substantial Completion Certificate or DMCA Construction Works Substantial Completion Certificate by reason solely that there are Section Minor Deficiencies or Minor Deficiencies, as applicable.
- (e) No later than twenty (20) Business Days prior to an Anticipated Final Completion Date, Contracting Authority may direct the Independent Commissioning Agent to amend, in consultation with Project Co and Contracting Authority, an applicable Section Minor Deficiencies List or Minor Deficiencies List on one occasion to include a list of any and all Section Minor Deficiencies or Minor Deficiencies, as applicable, that were identified after the preparation of, or not included in, the applicable Section Minor Deficiencies List or Minor Deficiencies List pursuant to Section 23.6(a). The Independent Commissioning Agent shall prepare the applicable amended Section Minor Deficiencies List or Minor Deficiencies List as soon as reasonably practicable, and, in any event, within ten (10) Business Days after such applicable direction given by Contracting Authority. The amended applicable Section Minor Deficiencies List or Minor Deficiencies List shall, following its preparation, be deemed to be the applicable Section Minor Deficiencies List or Minor Deficiencies List for the purposes of this Agreement, including for the purposes of Sections 23.6 to 23.8 inclusive. The achievement of an applicable Section Substantial Completion shall not be revisited at the time of delivery of an amended applicable Section Minor Deficiencies List.
- (f) Where the Independent Commissioning Agent has been directed to amend a Section Minor Deficiencies List or a Minor Deficiencies List pursuant to Section 23.6(e), the Independent Commissioning Agent shall specify a completion and rectification time for any newly added Section Minor Deficiencies or Minor Deficiencies, as applicable, that is no greater than ten (10)

Business Days from the date of the issuance of such amended Section Minor Deficiencies List or Minor Deficiencies List.

- (g) Contracting Authority may, in its sole discretion, waive any requirement for any Section Substantial Completion, TPA Substantial Completion or DMCA Construction Works Substantial Completion, and the failure to meet any such requirement shall constitute a Section Minor Deficiency or Minor Deficiency, as applicable.

23.7 Completion and Rectification of Section Minor Deficiencies and Minor Deficiencies

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

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

23.8 Failure to Rectify Section Minor Deficiencies and Minor Deficiencies

- (a) If Project Co fails to complete and rectify any Section Minor Deficiency or any Minor Deficiency within the time for its completion and rectification specified in Section 23.7, Contracting Authority may engage others (including RSSOM Project Co) to perform the work necessary to complete and rectify such Section Minor Deficiency or Minor Deficiency at the risk and cost of Project Co, and Contracting Authority may deduct such cost from any subsequent amounts payable by Contracting Authority to Project Co.

23.9 Final Completion Countdown Notice

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

23.10 Final Completion Certificate

- (a) Project Co shall give the Independent Commissioning Agent and the Contracting Authority Representative at least ten (10) Business Days’ Notice prior to the date upon which Project Co anticipates delivering a Final Completion Notice.

- (b) Project Co shall give the Independent Commissioning Agent and the Contracting Authority Representative Notice (each a “**Final Completion Notice**”) upon the satisfaction of all applicable requirements for the TPA Final Completion or DMCA Construction Works Final Completion, as applicable, which Final Completion Notice shall describe, in reasonable detail, the satisfaction of the requirements for the TPA Final Completion or DMCA Construction Works Final Completion, as applicable, including the completion and rectification of all applicable Minor Deficiencies, including, for certainty, any unrectified Section Minor Deficiencies, together with Project Co’s opinion as to whether the conditions for issuance of a TPA Final Completion Certificate or DMCA Construction Works Final Completion Certificate have been satisfied. A Final Completion Notice shall also include the following documentation:
- (i) Project Co’s declaration that no written notice of lien arising in relation to the performance of the applicable Construction Works has been received by it that has not been withdrawn by the lien claimant;
 - (ii) Project Co’s Statutory Declaration CCDC 9A (2001);
 - (iii) Project Co’s WSIB Certificate of Clearance; and
 - (iv) a written statement that the Works have been performed to the requirements of the Ancillary Documents, itemizing approved changes in the TPA Works or DMCA Construction Works, the Independent Commissioning Agent’s written instructions, and modifications required by Governmental Authorities.
- (c) Contracting Authority shall, within five (5) Business Days after receipt of a Final Completion Notice, provide the Independent Commissioning Agent and Project Co with Contracting Authority’s opinion as to whether the conditions for issuance of the TPA Final Completion Certificate or DMCA Construction Works Final Completion Certificate, as applicable, have been satisfied and, if applicable, any reasons as to why they consider that a TPA Final Completion Certificate or DMCA Construction Works Final Completion Certificate should not be issued.
- (d) Within five (5) Business Days after Project Co’s receipt of Contracting Authority’s opinion pursuant to Section 23.10(c), the Parties shall cause the Independent Commissioning Agent to determine whether the conditions for issuance of the TPA Final Completion Certificate or DMCA Construction Works Final Completion Certificate, as applicable, have been satisfied, having regard for the opinions of both Project Co and Contracting Authority, and to issue to Contracting Authority and to Project Co either:
- (i) a TPA Final Completion Certificate or DMCA Construction Works Final Completion Certificate confirming the date of issue as the TPA Final Completion Date or DMCA Construction Works Final Completion Date, as applicable; or
 - (ii) a report detailing the matters that Contracting Authority considers are required to be performed by Project Co to satisfy the conditions for issuance of the TPA Final Completion Certificate or DMCA Construction Works Final Completion Certificate, as applicable, including any items on the applicable Minor Deficiencies List which remain outstanding.

- (e) Where the Independent Commissioning Agent has issued a report in accordance with Section 23.10(d)(ii) and Project Co has not referred a Dispute in relation thereto for resolution in accordance with Schedule 27 – Dispute Resolution Procedure, Project Co shall, within five (5) Business Days after receipt of such report, provide the Independent Commissioning Agent and the Contracting Authority Representative with:
- (i) a detailed list indicating the rectification actions proposed for all matters raised in such report;
 - (ii) the schedule for completion of all such rectification actions; and
 - (iii) any additional Commissioning that needs to be undertaken as a result of the rectification actions,

and Project Co shall perform all such additional rectification actions in a timely manner. Upon completion thereof, Project Co may give a further Final Completion Notice and Sections 23.10(c) to 23.10(e), inclusive, shall be repeated until the TPA Final Completion Certificate or DMCA Construction Works Final Completion Certificate, as applicable, has been issued.

- (f) Any Dispute in relation to the Independent Commissioning Agent’s decision to issue or not to issue a TPA Final Completion Certificate or DMCA Construction Works Final Completion Certificate may be referred for resolution in accordance with Schedule 27 – Dispute Resolution Procedure.
- (g) The submission of a Final Completion Notice by Project Co in accordance with Section 23.10(b), shall constitute a waiver by Project Co of all claims whatsoever against Contracting Authority, arising prior to the submission of the applicable Final Completion Notice, except:
- (i) without prejudice to specific notice requirements in this Agreement, those made in writing by Project Co (either on its own account or arising out of a claim of a Project Co Party) prior to the applicable Final Completion Notice and still unsettled; and
 - (ii) any claim which could not reasonably have been known to Project Co or a Project Co Party at such time following due diligence.

23.11 Effect of Certificates/Use

- (a) The issue of a Section Substantial Completion Certificate, a DMCA Construction Works Substantial Completion Certificate, a DMCA Construction Works Final Completion Certificate, a TPA Substantial Completion Certificate or a TPA Final Completion Certificate, the commencement of use by Contracting Authority or the public of any part of the Project Co Infrastructure or New Third Party Infrastructure under the terms of this Agreement or the commencement of any Governmental Activities, shall, in no way:
- (i) limit the obligations of Project Co under this 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 applicable Minor Deficiencies List or any applicable amended Minor Deficiencies List described in Section 23.6(e); or

- (ii) be construed as an approval by Contracting Authority of any Construction Works or the way in which they have been carried out.

23.12 Inspection, Commissioning and Handover of New City Infrastructure

- (a) Project Co acknowledges and agrees that New City Infrastructure will be inspected, commissioned and handed over to the City of Toronto upon completion of New City Infrastructure.
- (b) For the purposes of this Section 23.12, Contracting Authority may delegate the responsibility for carrying out interim inspections, final inspections, warranty inspections and Handover activities, on behalf of Contracting Authority, to the City of Toronto, in respect of the New City Infrastructure, by providing Notice to Project Co of any such delegation (any such Notice referred to as a “**Notice of Delegation**”), and Contracting Authority may, in its sole discretion, and at any time revise such delegation by Notice to Project Co. For clarity, Contracting Authority may delegate the foregoing responsibility in respect of all or any component of New City Infrastructure. Project Co acknowledges and agrees that, for the purposes of this Section 23.12, Project Co shall Handover all New City Infrastructure directly to Contracting Authority unless Contracting Authority has delivered to Project Co a Notice of Delegation in respect of the New City Infrastructure, in which case, Project Co shall Handover such New City Infrastructure directly to the City of Toronto.
- (c) No later than five (5) days prior to the anticipated completion of the New City Infrastructure, Project Co shall provide Notice to Contracting Authority or, where a Notice of Delegation has been provided to Project Co, Project Co shall provide Notice to the City of Toronto, in respect of the New City Infrastructure, of the date on which the New City Infrastructure will be completed and ready for inspection and testing. Project Co and Contracting Authority, or Project Co and the City of Toronto (where a Notice of Delegation has been provided) shall carry out a joint inspection of such New City Infrastructure. Such joint inspection shall occur no later than ninety (90) days after the date of completion of the New City Infrastructure. The inspection and testing of the New City Infrastructure pursuant to this Section 23.12(c) shall follow the inspection and testing requirements set out in the Inspection and Test Plan. Such inspection shall be for the purposes of:
 - (i) assessing whether the New City Infrastructure has been constructed in accordance with the Construction Technical Requirements and is otherwise in compliance with the requirements in this Agreement; and
 - (ii) identifying any defects or deficiencies to the New City Infrastructure that Project Co must correct, repair or restore before Project Co completes the Commissioning of the New City Infrastructure before the Handover of the New City Infrastructure to the City of Toronto.
- (d) Prior to final inspection of the New City Infrastructure, Project Co shall:
 - (i) prepare a record of the following, and submit it to Contracting Authority for review in accordance with Schedule 10 – Review Procedure at least thirty (30) Business Days before the final inspection:

- (A) a list of the New City Infrastructure to be inspected;
 - (B) the tests, inspection methods and procedures to be used and performed and the standards that apply in respect of tests, inspection methods and procedures, which test and inspection shall follow the inspection and testing requirements set out in the Inspection and Test Plan;
 - (C) the scheduled date for testing and inspection of New City Infrastructure;
 - (D) a list of the names and employers of persons to represent Project Co and Contracting Authority or, if a Notice of Delegation has been issued in respect of the New City Infrastructure, a list of the names and employers of persons to represent Project Co and the City of Toronto, in respect of New City Infrastructure, at the inspection; and
 - (E) a list of existing systems that may be impacted by the tests and inspection;
- (ii) ensure that:
- (A) all defects and deficiencies that have been identified during any interim inspections Contracting Authority and the City of Toronto, in respect of New City Infrastructure, have been rectified; and
 - (B) any damage to the New City Infrastructure is repaired by Project Co subject to and in accordance with Section 11.9 of this Agreement.
- (e) Project Co shall prepare a record of each inspection carried out pursuant to Section 23.12(c) in inspection report format including: (i) a list of defects or deficiencies to the New City Infrastructure identified during the inspection; and (ii) actions to be taken by Project Co to correct each defect or deficiency and to rectify the damage. Project Co shall submit the inspection reports to Contracting Authority within three (3) Business Days after each inspection for review in accordance with Schedule 10 – Review Procedure.
- (f) After the inspection of the New City Infrastructure pursuant to Section 23.12(c), Project Co shall make all arrangements in respect of the New City Infrastructure to,
- (i) correct all defects and deficiencies to the New City Infrastructure and repair any damage to the New City Infrastructure;
 - (ii) complete Commissioning of the New City Infrastructure in accordance with Schedule 14 – Commissioning;
 - (iii) in respect of New City Infrastructure, comply with all requirements in respect of New City Infrastructure set out in Appendix B (*New City Infrastructure*) of Schedule 14 – Commissioning (including, for clarity, those set out in Attachment 1 (*Form of New City Infrastructure Certification*) of Appendix B (*New City Infrastructure*)) prior to, and as a pre-condition of Handover of New City Infrastructure;
 - (iv) complete Handover of the New City Infrastructure to Contracting Authority or, where Contracting Authority has delivered to Project Co a Notice of Delegation in respect of the

- New City Infrastructure, complete Handover to the City of Toronto, in respect of the New City Infrastructure; and
- (v) seek, receive, and document confirmation from Contracting Authority or, where Contracting Authority has delivered to Project Co a Notice of Delegation in respect of the New City Infrastructure, seek, receive, and document confirmation from the City of Toronto, in respect of the New City Infrastructure, as applicable, that such Commissioning and Handover has been completed.
 - (g) Project Co shall provide Notice to Contracting Authority when Project Co has completed Commissioning and has achieved Handover of the New City Infrastructure to the City of Toronto. Such Notice to Contracting Authority shall include the following:
 - (i) a clear identification of the New City Infrastructure that is the subject of the Notice;
 - (ii) the date of Handover of the New City Infrastructure (as set out in the written confirmation required by Section 23.12(g)(iii)); and
 - (iii) a written confirmation, signed by an authorized representative of the City of Toronto, in respect of the New City Infrastructure, that Commissioning and Handover of the New City Infrastructure has been completed, including the confirmed date of Handover.
 - (h) the City of Toronto and Contracting Authority, in respect of the New City Infrastructure, and Contracting Authority, may,
 - (i) at any time and from time to time, on providing thirty (30) Business Days' Notice to Project Co, require a joint interim inspection of the New City Infrastructure to be carried out for the purposes of:
 - (A) assessing whether such New City Infrastructure has been constructed in accordance with the Output Specifications and is otherwise in compliance with the requirements of this Agreement; and
 - (B) identifying any defects or deficiencies to the New City Infrastructure;
 - (ii) at any time and from time to time, on providing thirty (30) Business Days' Notice to Project Co, require a joint warranty inspection to be carried out in respect of the New City Infrastructure for the purpose of identifying any defects or deficiencies.
 - (i) In addition to the warranty inspections that may be performed from time to time pursuant to Section 23.12(h), a joint warranty inspection of the New City Infrastructure shall be carried out no earlier than sixty (60) days and no later than thirty (30) days prior to the end of the TPA Warranty Period or DMCA Warranty Period for such New City Infrastructure.
 - (j) In the event of a dispute between Project Co and Contracting Authority (including Contracting Authority as a representative of the interests of the City of Toronto with respect to final inspection, Commissioning or Handover of the New City Infrastructure), the following shall apply:

- (i) Project Co shall make commercially reasonable efforts to resolve all outstanding concerns of Contracting Authority and the City of Toronto in a prompt manner; and
- (ii) any Commissioning or Handover issue that is unresolved after the expiration of ninety (90) days after Project Co and Contracting Authority, or Project Co and the applicable third party owner (where a Notice of Delegation has been provided), have carried out the joint inspection pursuant to Section 23.12(c) shall be referred to dispute resolution in accordance with Schedule 27 – Dispute Resolution Procedure.

23.13 Inspection, Commissioning and Handover of New TTC Infrastructure

- (a) Project Co acknowledges and agrees that New TTC Infrastructure may be inspected, commissioned and handed over to the TTC on a component by component basis and from time to time.
- (b) No later than five (5) days prior to the anticipated completion of New TTC Infrastructure, Project Co shall provide Notice to Contracting Authority, and to the TTC, of the date on which the New TTC Infrastructure will be completed and ready for inspection. Contracting Authority shall inspect the New TTC Infrastructure no later than ninety (90) days after the date of completion of the New TTC Infrastructure. Such inspection shall be for the purposes of,
 - (i) assessing whether the New TTC Infrastructure has been constructed in accordance with the Output Specifications; and
 - (ii) identifying any defects or deficiencies that Project Co must correct before Project Co completes the commissioning of the New TTC Infrastructure and/or before Project Co completes the Handover of the New TTC Infrastructure to the TTC.
- (c) For the purposes of this Section 23.13, Contracting Authority shall be deemed to have delegated the responsibility for carrying out interim and final inspections, and Commissioning and Handover activities, on behalf of Contracting Authority, to the TTC. Contracting Authority may, in its sole discretion, revise such delegation by Notice to Project Co. For clarity, for the purposes of this Section 23.13 Project Co shall Handover all New TTC Infrastructure directly to the TTC.
- (d) After the inspection of the New TTC Infrastructure, pursuant to Section 23.13(b), Project Co shall make all arrangements in respect of the applicable New TTC Infrastructure to,
 - (i) correct all defects or deficiencies;
 - (ii) complete commissioning in accordance with Schedule 14 – Commissioning to the TTC; and
 - (iii) seek, receive, and document confirmation from the TTC that such commissioning and Handover has been completed.
- (e) Project Co shall provide Notice to Contracting Authority when the New TTC Infrastructure has been commissioned and has achieved Handover to the TTC. Such Notice shall include,
 - (i) a clear identification of that portion or component of the New TTC Infrastructure that is the subject of the Notice;

- (ii) the date of Handover of the applicable New TTC Infrastructure (consistent with the written confirmation required by Section 23.13(e)(iii)); and
 - (iii) a written confirmation, signed by an authorized representative of the TTC, that commissioning and Handover of the applicable New TTC Infrastructure has been completed including the confirmed date of Handover.
- (f) The TTC may,
- (i) carry out interim inspections of the New TTC Infrastructure and any construction activity within the TTC Zone of Influence and to identify any defects or deficiencies that the TTC finds in an interim inspection; and
 - (ii) carry out warranty inspections in respect of the New TTC Infrastructure following completion of any New TTC Infrastructure for the purpose of identification of any defects or deficiencies.
- (g) Project Co shall arrange, schedule, and facilitate all interim inspection of any construction activity within the TTC Zone of Influence and commissioning and Handover activities in respect of the New TTC Infrastructure and shall report to Contracting Authority on the status of all such inspections, commissioning and Handover in accordance with this Section 23.13 and on a regular basis as part of the Works Report.

24. HUMAN RESOURCES

24.1 Admittance of Personnel

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

24.2 Staff Competency

- (a) Project Co shall ensure that:
 - (i) there shall at all times be a sufficient number of persons employed or engaged by Project Co or any Project Co Party (including all relevant grades of supervisory staff) engaged in

the performance of the Works with the requisite level of skill and experience to perform the Works in accordance with this Agreement. For greater certainty, this obligation shall include ensuring that there are a sufficient number of such skilled and experienced persons employed or engaged by Project Co or any Project Co Party to complete the Works in accordance with the Project Works Schedules;

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

24.3 Notification of Convictions

- (a) Project Co (to the extent permitted by Applicable Law) shall, and shall cause such Project Co Party to, ensure that all potential employees (including, for greater certainty, permanent, temporary, full time and part time employees) and persons who may otherwise perform the Works:
 - (i) are questioned concerning Relevant Convictions; and
 - (ii) are required to complete and deliver to Project Co a criminal records search form.
- (b) To the extent permitted by Applicable Law, Project Co shall, and shall cause each Project Co Party to, ensure that no person who discloses any Relevant Conviction, or who is found to have any Relevant Conviction following the completion of a criminal records search, in either case of which Project Co or a Project Co Party is aware or ought to be aware, is allowed access to the Lands, the Project Co Infrastructure or the New Third Party Infrastructure to perform any Works, without the prior written consent of Contracting Authority, in its sole discretion.
- (c) To the extent permitted by Applicable Law, Project Co shall ensure that Contracting Authority is kept immediately notified and kept advised at all times of any person employed or engaged by Project Co or any Project Co Party in the provision of any of the Works who, subsequent to the commencement of such employment or engagement,
 - (i) has been arrested or detained;
 - (ii) receives a Relevant Conviction; or
 - (iii) is charged with an offence that could lead to a Relevant Conviction (of which Project Co or a Project Co Party becomes aware or whose previous Relevant Convictions become known to Project Co or a Project Co Party).

Project Co shall use commercially reasonable efforts to obtain, or to cause all Project Co Parties to obtain, all consents as may be required by Applicable Law or otherwise authorizing the disclosure of such information to Contracting Authority as contemplated in this Section 24.3.

24.4 Disciplinary Action

- (a) Contracting Authority, acting reasonably, may notify Project Co of any Project Co or Project Co Party employee who engages in misconduct or is incompetent or negligent in the performance of duties or whose presence or conduct on the Lands or at work is otherwise considered by Contracting Authority to be undesirable, to constitute a threat to the health and/or safety of any of the users of the Lands or which Contracting Authority considers may potentially compromise:
 - (i) Contracting Authority’s reputation or integrity; or
 - (ii) the nature of the public transit system within the City of Toronto or the Province of Ontario so as to affect public confidence in any of the public transit systems within such area or the Project.

Upon investigation, Project Co may institute, or cause the relevant Project Co Party to institute, disciplinary proceedings, which shall be in accordance with the requirements of Applicable Law, and shall advise Contracting Authority in writing of the outcome of any disciplinary action taken in respect of such person.

24.5 Human Resources Policies

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

24.6 Management Organizations

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

24.7 Governmental Authority

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

25. CONTRACTING AUTHORITY'S REMEDIAL RIGHTS

25.1 Exercise of Remedial Rights

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

provided that:

- (F) in respect of a breach by Project Co of any obligation under this Agreement or any act or omission on the part of Project Co or any Project Co Party which can reasonably be expected to cause any of the consequences set out in Sections 25.1(a)(i)(A), 25.1(a)(i)(B), 25.1(a)(i)(D) and 25.1(a)(i)(E), Contracting Authority shall not exercise its rights under this Section 25 unless Project Co has failed to cure the relevant breach, act or omission within five Business Days after Notice from Contracting Authority or, if such breach, act or omission cannot reasonably be cured within such five Business Day period, Project Co thereafter fails to diligently and continuously pursue such cure and to cure such breach, act or omission within a reasonable period thereafter, provided that Project Co shall not be entitled to a cure period if any of the consequences set out in Sections 25.1(a)(i)(A), 25.1(a)(i)(B), 25.1(a)(i)(D) and 25.1(a)(i)(E) actually occur; and
- (G) in respect of Section 25.1(a)(i)(C), Contracting Authority shall not exercise its rights under this Section 25 unless Project Co has failed to cure the relevant breach, act or omission within five Business Days after Notice from Contracting Authority or, if such breach, act or omission cannot reasonably be cured within such five

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

- (ii) Project Co has not caused the COR-Qualified Construction Project Co Party or the COR-Certified Construction Project Co Party, as the case may be, to perform its obligations with respect to its COR Certification, OHSAS 18001 Accreditation or ISO 45001 Accreditation, as the case may be, in accordance with Section 11.24, or Project Co has not caused the COR-Qualified Construction Project Co Party or the COR-Certified Construction Project Co Party, as the case may be, to perform its obligations with respect to H&S Construction Inspections in accordance with Section 15.1(b), or to perform its obligations to rectify any non-compliance noted in any H&S Construction Inspection Report in accordance with Section 15.1(e);
- (iii) Project Co has not performed or is not performing its obligations in respect of the Demolition Requirements in accordance with Section 11.25 or Project Co has not performed or is not performing its obligations to rectify any Demolition Default Event in accordance with Section 11.25; or
- (iv) Project Co has failed to comply with any written direction issued by or on behalf of Contracting Authority.

25.2 Emergency

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

25.3 Rectification

- (a) Without prejudice to Contracting Authority's rights under Section 30 and any other rights under this Agreement, in any of the circumstances set out in Sections 25.1 or 25.2, Contracting Authority may, by written Notice, require Project Co to take such steps as Contracting Authority, acting reasonably, considers necessary or expedient to mitigate, rectify or protect against such circumstance, including, if applicable, the termination and replacement of Subcontractors or a limited suspension of the performance of the Works, and Project Co shall use commercially reasonable efforts to comply with Contracting Authority's requirements as soon as reasonably practicable.
- (b) If Contracting Authority gives Notice to Project Co pursuant to Section 25.3(a) and either:
 - (i) Project Co does not either confirm, within five Business Days after such Notice or such shorter period as is appropriate in the case of an Emergency that it is willing to take the steps required in such Notice or present an alternative plan to Contracting Authority to mitigate, rectify and protect against such circumstances that Contracting Authority may accept or reject acting reasonably; or

- (ii) Project Co fails to take the steps required in such Notice or accepted alternative plan within such time as set out in such Notice or accepted alternative plan or within such longer time as Contracting Authority, acting reasonably, shall think fit,

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

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

25.4 Costs and Expenses

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

25.5 Reimbursement Events

- (a) In this Section 25.5, a "**Reimbursement Event**" means:
 - (i) an act or omission of Project Co or any Project Co Party or a breach by Project Co or any Project Co Party of any obligation under this Agreement, but only to the extent such act, omission or breach is caused by Contracting Authority, a Contracting Authority Party, RSSOM Project Co, a RSSOM Project Co Party, South Civil Project Co, a South Civil Project Co Party, EGS Project Co, an EGS Project Co Party, a TOC Contractor or any TOC Contractor Party; or
 - (ii) an Emergency, except to the extent that such Emergency is caused or contributed to by an act or omission of Project Co or any Project Co Party or a breach by Project Co or any Project Co Party of any obligation under this Agreement.
- (b) If Contracting Authority either takes steps itself or requires Project Co to take steps in accordance with this Section 25 as a result of a Reimbursement Event, then, subject to and in accordance with Schedule 21 – Risk Allocations, Project Co may be entitled to an Adjustment Event for additional costs incurred by Project Co in relation to the exercise of Contracting Authority's rights pursuant to this Section 25 that would not otherwise have been incurred by Project Co in the proper performance of its obligations under this Agreement.

25.6 Reimbursement if Improper Exercise of Rights

- (a) If Contracting Authority exercises its rights pursuant to this Section 25, but Contracting Authority was not entitled to do so, Contracting Authority shall reimburse Project Co for Defined Cost 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 Agreement and that are directly and reasonably incurred by Project Co in complying with those written requirements of Contracting Authority issued as a result of Contracting Authority having exercised such rights.

- (b) Project Co acknowledges and agrees that Project Co has no right to require a determination of whether or not Contracting Authority is entitled to exercise its rights pursuant to this Section 25 before taking any such action that Contracting Authority may require and Project Co shall comply with all of Contracting Authority's requirements. Only concurrently with or after complying with Contracting Authority's requirements shall Project Co be entitled to refer any Dispute for resolution in accordance with Schedule 27 – Dispute Resolution Procedure.

26. RECORDS, INFORMATION, AUDIT AND CLAIMS MANAGEMENT

26.1 Records Provisions

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

26.2 Information and General Audit Rights

- (a) Project Co shall provide, and shall cause each Subcontractor to provide, to Contracting Authority all information, reports, documents, records and the like, including as referred to in Schedule 26 – Record Provisions, in the possession of, or available to, Project Co as Contracting Authority may require from time to time for any purpose in connection with this 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, any Subcontractor shall be available to Project Co and Project Co shall include relevant terms in all Subcontracts to this effect.
- (b) Project Co shall also provide to Contracting Authority, and shall require each Subcontractor, to provide to Contracting Authority, all information, reports, documents, records and the like required to be provided pursuant to Section 26.2(a) which subsequently come into the possession of, or become available to, Project Co or each Subcontractor, as Contracting Authority may reasonably require from time to time to enable Contracting Authority to provide reports, notices, returns and the like pursuant to Applicable Law, including information and documentation pertaining to the physical condition of the Lands, the Project Co Infrastructure and the New Third Party Infrastructure, security, health and safety, fire safety, emergency preparedness, environmental matters, employees and human resources related matters, other than Sensitive Information.
- (c) Project Co shall promptly after receipt provide Contracting Authority with a copy of any material notice, order, direction, requirement or other similar communication received by it or by any Subcontractor from any Governmental Authority in relation to any of the Works, the Lands, the Project Co Infrastructure and the New Third Party Infrastructure, and Project Co shall include relevant terms in all Subcontracts to this effect.
- (d) Project Co shall promptly notify Contracting Authority of any actions, suits, proceedings, or investigations commenced, pending or threatened against Project Co or, to Project Co's knowledge, any Subcontractor at law or in equity before any Governmental Authority or arbitral body (whether or not covered by insurance) that individually or in the aggregate could result in any material

adverse effect on the business, properties, or assets or the condition, financial or otherwise, of Project Co or in any impairment of its ability to perform its obligations under this Agreement.

- (e) All information, reports, documents and records in the possession of, or available to, Project Co, including as referred to in Schedule 26 – Record Provisions, which are required to be provided to or available to Contracting Authority hereunder, shall be subject and open to inspection and audit by Contracting Authority at any time and from time to time, which inspection and audit shall take place during normal business hours and at Project Co’s normal places of business unless Contracting Authority and Project Co otherwise agree. Contracting Authority shall also have the right to monitor and audit the performance of any and all parts of the Works wherever located, and Project Co shall cooperate with, and shall require each Subcontractor to cooperate with, and provide access to the representatives of Contracting Authority (as it may designate in writing from time to time, which may include RSSOM Project Co or any RSSOM Project Co Party, subject to and in accordance with Section 37) monitoring and auditing such parts of the Works, including providing them with access and copies (at Contracting Authority’s reasonable cost) of all relevant information, reports, documents and records pertaining to the performance of such parts of the Works.
- (f) In conducting an audit of Project Co under Section 26.2(e) or as otherwise provided under this Agreement, Contracting Authority shall have all rights necessary or incidental to conducting an audit, including the right to have access to and inspect and take copies of all books and records of Project Co required to be provided to or available to Contracting Authority hereunder, upon reasonable Notice and at reasonable times. Project Co shall fully cooperate with Contracting Authority and its auditors in the conduct of any audits, including by making available all such records and accounts (other than Sensitive Information) in existence at that time as they may require to perform a full and detailed audit, and Project Co further agrees to promptly review and settle with Contracting Authority all matters arising from such audits, including the refunding of monies to Contracting Authority where applicable. At the request of Contracting Authority’s auditors, Project Co shall provide such information, reports, documents and records as Contracting Authority’s auditors may require, other than Sensitive Information.
- (g) Contracting Authority’s rights pursuant to this Section 26.2 shall be in addition to, and shall not limit, any other audit, information, inspection or similar rights under this Agreement.
- (h) Contracting Authority’s rights pursuant to this Section 26.2 shall not limit or restrict any Governmental Authority’s right of review, audit, information or inspection under Applicable Law. Contracting Authority’s right pursuant to this Section 26.2 may also be exercised by the Auditor General of Ontario, His Majesty the King in right of Canada and the Auditor General of Canada without the requirement for further action on the part of Contracting Authority.
- (i) Without limiting the generality of Section 26.2(a) and subject to Section 37.4, in the event that Contracting Authority is required to provide information, including financial information, in relation to the Project, to the Province for corporate or financial reporting purposes, Project Co shall provide such information to Contracting Authority as Contracting Authority may require in order to comply with its corporate or financial reporting obligations. Project Co acknowledges and agrees that such information may include Sensitive Information.
- (j) For greater certainty, for the purposes of this Section 26.2, “Sensitive Information” shall not include any information that Project Co or any Subcontractor is required to provide to Contracting

Authority or that Contracting Authority is otherwise entitled to receive from Project Co or any Subcontractor under this Agreement, including pursuant to Section 26.3.

26.3 Claims Management

- (a) In addition to Project Co’s obligations pursuant to Sections 26.2(d), 27, 39 and 41, Project Co shall promptly notify Contracting Authority of all actions, suits, proceedings, or investigations commenced, pending or threatened against Project Co by any third party (other than any Project Co Party) at law or in equity before any Governmental Authority or arbitral body (whether or not covered by insurance) (each, for the purposes of this Section 26.3, a “**Public Claim**”) and shall provide Contracting Authority with details of the same.
- (b) Project Co may, at any time, propose a process for the timely and efficient exchange of the information required in Section 26.3(a) subject to Contracting Authority’s approval, not to be unreasonably withheld.
- (c) Project Co shall, at all times, respond to any Public Claim in a timely manner and so as not to compromise (i) Contracting Authority’s reputation or integrity, or (ii) the nature of the public transit system in the City of Toronto or the Province of Ontario, so as to affect public confidence in that system or the Project.
- (d) Contracting Authority may, at any time and in its sole discretion, upon written notice to Project Co, defend, dispute or otherwise take conduct of such Public Claim in the name of Project Co at Contracting Authority’s own expense in which case Contracting Authority shall indemnify Project Co for all losses it may incur in connection with such Public Claim (except to the extent that such losses were caused by a breach of this Agreement by Project Co, including a breach of Section 26.3(c), above).
- (e) In the event Contracting Authority takes conduct of a Public Claim pursuant to this Section 26.3, Project Co shall give Contracting Authority all reasonable cooperation, access and assistance in respect of such Public Claim, and the provisions of Section 41.3 shall apply as if Project Co is the Beneficiary and Contracting Authority is the Indemnifier.

26.4 Transparency

- (a) Project Co agrees to operate and to cause the Subcontractors to operate with complete transparency and sharing of information with respect to the performance of the Works and this Agreement on an open book basis, including to:
 - (i) honestly and openly answer any questions Contracting Authority, the Independent Commissioning Agent or the Contracting Authority’s other advisors, may ask in connection with the Works, including in connection with the Works Submittals;
 - (ii) make its and the Subcontractors’ records and other documentation that relate to the Works available to Contracting Authority (or its nominated auditor) as required by this Agreement or otherwise promptly upon request; and
 - (iii) make available to Contracting Authority (or its nominated auditor) any existing documentation or information, in whatever form, relating to the Works as required by this

Agreement or otherwise promptly upon request, including (A) documentation and information at any time relating to the Defined Cost incurred by Project Co directly or relating to any entity or individual undertaking any part of the Works and (B) a summary of the amount of Project Co's Corporate Overhead and Profit in respect of such Defined Cost.

- (b) For the purposes of achieving value for money and transparency with respect to this Agreement and the Project, Project Co agrees that its obligations in this Section 26.4 shall include, in accordance with this Agreement or otherwise promptly at the request of Contracting Authority, Project Co providing complete, accurate and detailed information and documentation to Contracting Authority for the purposes of Contracting Authority understanding, and all reasonable requested assistance to allow Contracting Authority to understand:
- (i) all incurred and future anticipated Project costs under this Agreement, including:
 - (A) any payment sought or to be sought from Contracting Authority by Project Co;
 - (B) Project Co's cost forecasts, such that both Parties have confidence that they are based on justifiable numbers and appropriate forecasting techniques;
 - (C) in relation to any Target Price and Estimated Fee; and
 - (D) to facilitate the use of the Target Price painshare/ gainshare mechanism set out in this Agreement;
 - (ii) the Project Works Schedules, including for Contracting Authority to understand:
 - (A) the progression of the Works, including as it relates to the completion of individual works packages, the achievement of any milestones during the Project Term, and the development, submission and finalization of the Works Submittals; and
 - (B) schedule forecasts such that both Parties have confidence that they reflect appropriate schedule forecasting techniques and a logical sequence of events;
 - (iii) the Works Submittals and Project Co's performance under and conformance with this Agreement, including its performance in relation to:
 - (A) this Agreement's plans, design, construction and quality requirements;
 - (B) Key Result Areas and Key Performance Indicators, and, if applicable, Project Co's achievement of the incentive milestones, as set out in Schedule 43 – Incentives and Construction Enforcement Regime; and
 - (C) the engagement of Subcontractors, and Project Co's compliance with the Procurement Management Plan and its other procurement and procurement transparency obligations under this Agreement;
 - (iv) the impact of changes to the Project, including:

- (A) the quantitative impact of any changes that could affect the Project’s costs and schedule and to identify how these changes could be mitigated and/or reflected in Project Co’s prices under this Agreement; and
- (B) to allow the Parties to review and address issues with and re-forecast progress in relation to the Works; and
- (v) how best to achieve continuous improvement in respect of the Project, including to allow the Parties to:
 - (A) challenge each other with ideas for efficiency and improvements;
 - (B) achieve continuous improvement in relation to their performance under this Agreement; and
 - (C) enable Contracting Authority to demonstrate that Project Co is performing the Works consistent with the Value for Money Statement.
- (c) Without limiting the generality of Sections 26.4(a) and 26.4(b), Project Co acknowledges that its compliance with such provisions includes Project Co providing to Contracting Authority, in accordance with this Agreement or otherwise promptly at the request of Contracting Authority, the following documents and information, on a complete, accurate and detailed basis:
 - (i) all Project cost data, with supporting documentation, including in support of Project Co’s Defined Cost, in accordance with this Agreement, and any other costs and savings in respect of the Project broken down by deliverable, including:
 - (A) actual capital expenditures, including unit cost, quantities, and total actual costs of all assets, hardware, and software;
 - (B) actual operating expenditures, including unit costs, quantities of consumables, and total operating costs;
 - (C) costs of staff, including number of human resources, associated grade, roles and responsibilities, costs, and time spent in carrying out the Works;
 - (D) any costs associated with Subcontractors (including all Suppliers, sub-trades and sub-consultants to Project Co), including the following supporting documentation:
 - (I) application for payment or invoicing from any Subcontractor;
 - (II) interim payment certificates and corresponding cost ledger transactions; and
 - (III) final payment certificates;
 - (E) [intentionally deleted];
 - (F) contingencies, including associated the type and value of risk and contingencies associated with the provision of services including the amount of money attributed

to each risk and/or contingency, and associated back-up in establishing these values; and

- (G) savings or potential savings, including credits, efficiencies, discounts or rebates (e.g. volume-related, cash settlement discounts, associated with membership of specialist supply chain, or any other saving to an invoice or application for payment, or which results in a repayment or reimbursement), from Subcontractors, including second-tier subcontractors, Suppliers or other sub-trades or sub-consultants, to reflect true net costs to Project Co;
- (ii) all Project Works Schedules data, including in respect of:
 - (A) the methodologies for Project Co’s development of the Works Schedules and assumptions used;
 - (B) the Works achievement of interface milestones and conformance with construction constraints from adjacent stakeholders, TTC’s “Rail Operating Rules and Operation Procedures”, and other applicable interfacing stakeholder requirements and rail corridor access requirements;
 - (C) the type and impact of schedule risk and contingencies; and
 - (D) basis of schedule, and schedule constraints and assumptions;
- (iii) performance data, including in relation to each of the Key Result Areas; and
- (iv) copies of all Subcontracts and amendments, restatements, supplements and other modifications thereto, and final account agreements and settlement agreements with or between Subcontractors.
- (d) Contracting Authority acknowledges that nothing in this Section 26.4 applies to and entitles Contracting Authority to receive any information or documentation that may be subject to legal professional privilege or are confidential lawyer-client communications.
- (e) Without limiting any other provision of this Agreement, Contracting Authority agrees that nothing in this Section 26.4 applies to and entitles Contracting Authority to receive Project cost data from a Subcontractor in respect of the actual costs incurred by the Subcontractor in performing the Works in the event that the Subcontractor performs such Works on a lump sum basis pursuant to its Subcontract.
- (f) Project Co agrees that compliance with its obligations set out in this Section 26.4 is fundamental to the principle of fairness expected by Contracting Authority.

26.5 Value for Money Statement

- (a) Contracting Authority and Project Co shall comply with the provisions of Schedule 28 – Value for Money Statement.

- (b) Project Co shall ensure that the Works Submittals and all other relevant documents provided to Contracting Authority by Project Co under this Agreement are compliant with the Value for Money Statement in all respects.
- (c) The Parties acknowledge and agree that the Value for Money Statement sets out Contracting Authority’s fundamental requirements for the assessment of value in respect of the scope of the Works and will be a significant factor in Contracting Authority’s review and comment on or approval of each document described in Section 26.5(b) in accordance with this Agreement.

27. COMMUNICATIONS

27.1 Communications

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

28. CHANGES IN LAW

28.1 Performance after Change in Law

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

28.2 Works Change in Law

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

- (C) Contracting Authority shall not be entitled to withdraw any such Variation Enquiry unless the Parties otherwise agree;
- (D) Project Co shall proceed to implement the Variation within such period as will enable it to comply with the Works Change in Law as soon as reasonably practicable; and
- (E) Project Co shall not be entitled to any payment or other compensation or relief from performance of its obligations under this Agreement in respect of any Works Change in Law or associated Variation other than as established pursuant to Schedule 22 – Estimates, Variations and Proposals.

28.3 Relevant Change in Law

- (a) On the occurrence of a Relevant Change in Law, either Party shall be entitled to seek a Schedule Adjustment or a Target Price Adjustment in accordance with Schedule 21 – Risk Allocations. Such Relevant Change in Law shall be treated as an Adjustment Event, subject to and in accordance with Schedule 21 – Risk Allocations. Any entitlement to an Adjustment as a result of the occurrence of such Adjustment Event shall be subject to this Section 28.3 and Schedule 21 – Risk Allocations.
- (b) On the occurrence of a Relevant Change in Law:
 - (i) either Party may give Notice to the other of the need for a Variation as a result of such Relevant Change in Law;
 - (ii) the Parties shall meet within 10 Business Days after such Notice to consult with respect to the effect of the Relevant Change in Law and to reach an agreement on whether a Variation is required as a result of such Relevant Change in Law, and, if the Parties have not, within 10 Business Days after this meeting, reached an agreement, either Party may refer the question of whether a Relevant Change in Law has occurred or the effect of any Relevant Change in Law for resolution in accordance with Schedule 27 – Dispute Resolution Procedure; and
 - (iii) Contracting Authority shall, within 10 Business Days after agreement or determination that a Variation is required, issue a Variation Enquiry and the relevant provisions of Schedule 22 – Estimates, Variations and Proposals shall apply except that:
 - (A) Project Co may only object to any such Variation Enquiry on the grounds that the implementation of the Variation would not enable it to comply with the Relevant Change in Law;
 - (B) Project Co shall be responsible for obtaining all Development Approvals and Project Co Permits, Licences, Approvals and Agreements required in respect of the Variation;
 - (C) Contracting Authority shall not be entitled to withdraw any such Variation Enquiry unless the Parties otherwise agree;

- (D) Project Co shall proceed to implement the Variation within such period as will enable it to comply with the Relevant Change in Law as soon as reasonably practicable;
 - (E) the Parties shall, without prejudice to their respective general obligations to comply with the terms of this Agreement:
 - i. use commercially reasonable efforts to mitigate the adverse effects of any Relevant Change in Law and take commercially reasonable steps to minimize any increase in costs arising from such Relevant Change in Law; and
 - ii. use commercially reasonable efforts to take advantage of any positive or beneficial effects of any Relevant Change in Law and take commercially reasonable steps to maximize any reduction in costs arising from such Relevant Change in Law; and
 - (F) any entitlement to compensation payable shall be in accordance with this Section 28.3, and any calculation of compensation shall take into consideration, *inter alia*:
 - i. any failure by a Party to comply with Section 28.3(b)(iii)(E);
 - ii. any increase or decrease in its costs resulting from such Relevant Change in Law; and
 - iii. any amount which Project Co recovers under any insurance policy (or would recover if it complied with its obligations to insure under this Agreement or the terms of any policy of insurance required under this 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 Schedule 21 – Risk Allocations, relief in respect of any Relevant Change in Law, or the consequences thereof, other than in accordance with Section 28.3.

28.4 Pandemic and Epidemic Change in Law

- (a) Subject to Section 28.4(c), on the occurrence of a Pandemic and Epidemic Change in Law, either Party shall be entitled to seek compensation for any increase or decrease (as the case may be) in the Target Price payable to Project Co for the performance of the TPA Works (“**Pandemic and Epidemic Change in Law Compensation**”). Such Pandemic and Epidemic Change in Law shall be treated as an Adjustment Event, and subject to and in accordance with Schedule 21 – Risk Allocations, Project Co may be entitled to an Adjustment. Any entitlement to an Adjustment pursuant to such Adjustment Event (including any such compensation) shall be subject to this Section 28.4 and Schedule 21 – Risk Allocations.
- (b) On the occurrence of a Pandemic and Epidemic Change in Law:
 - (i) either Party may give Notice to the other of the need for a Variation as a result of such Pandemic and Epidemic Change in Law;

- (ii) the Parties shall meet within 10 Business Days of such notice (or such longer period of time agreed to between the Parties, acting reasonably) to consult with respect to the effect of the Pandemic and Epidemic Change in Law and to reach an agreement on whether a Variation is required as a result of such Pandemic and Epidemic Change in Law, and, if the Parties have not, within 10 Business Days (or such longer period of time agreed to between the Parties, acting reasonably) of this meeting, reached an agreement, either Party may refer the question of whether a Pandemic and Epidemic Change in Law has occurred or the effect of any Pandemic and Epidemic Change in Law for resolution in accordance with Schedule 27 – Dispute Resolution Procedure; and
- (iii) Contracting Authority shall, within 10 Business Days (or such longer period of time agreed to between the Parties, acting reasonably) of agreement or determination that a Variation is required, issue a Variation Enquiry and the relevant provisions of Schedule 22 – Estimates, Variations and Proposals shall apply except that:
 - (A) no Profit shall be payable to Project Co or any Subcontractor as Pandemic and Epidemic Change in Law Compensation;
 - (B) any Pandemic and Epidemic Change in Law Compensation shall include Pandemic CIL Overhead;
 - (C) Project Co may only object to any such Variation Enquiry on the grounds that the implementation of the Variation would not enable it to comply with the Pandemic and Epidemic Change in Law;
 - (D) Contracting Authority shall not be entitled to withdraw any such Variation Enquiry unless the Parties otherwise agree;
 - (E) without limiting any requirement of this Agreement, including Schedule 22 – Estimates, Variations and Proposals, Project Co shall provide Contracting Authority with any evidence and proper documentation that Contracting Authority may reasonably require in order to assess the reasonableness of the Pandemic and Epidemic Change in Law Compensation. The Parties agree that evidence and proper documentation shall include:
 - i. proof of the Pandemic and Epidemic Change in Law;
 - ii. any proposed changes to the Critical Path of the Works;
 - iii. detailed information quantifying the change in costs incurred or to be incurred by Project Co and its Subcontractors in performing the Works related to the Pandemic and Epidemic Change in Law, including information on the financial impact of the Pandemic and Epidemic Change in Law on Project Co and its Subcontractors, invoices, proof of payments, and information setting out overhead, labour rates, unit rates, and other prices and quantities for materials, products, supplies, equipment, services, facilities and transportation and any other Defined Cost; and

- iv. information confirming any amounts described in Section 28.4(b)(iii)(H)iii received or that will or are likely to be received by Project Co and its Subcontractors;
 - (F) Project Co shall proceed to implement the Variation within such period as will enable it to comply with the Pandemic and Epidemic Change in Law as soon as reasonably practicable;
 - (G) the Parties shall, without prejudice to their respective general obligations to comply with the terms of this Agreement:
 - i. use commercially reasonable efforts to mitigate the adverse effects of any Pandemic and Epidemic Change in Law and take commercially reasonable steps to minimize any increase in costs arising from such Pandemic and Epidemic Change in Law; and
 - ii. use commercially reasonable efforts to take advantage of any positive or beneficial effects of any Pandemic and Epidemic Change in Law and take commercially reasonable steps to maximize any reduction in costs arising from such Pandemic and Epidemic Change in Law; and
 - (H) any entitlement to Pandemic and Epidemic Change in Law Compensation payable shall be in accordance with this Section 28.4, and any calculation of such compensation shall take into consideration, *inter alia*:
 - i. any failure by a Party to comply with Section 28.4(b)(iii)(D) or Section 28.4(b)(iii)(F);
 - ii. any increase or decrease in its costs resulting from such Pandemic and Epidemic Change in Law; and
 - iii. any amount which Project Co or a Subcontractor:
 - (I) recovers under any insurance policy (or would recover if it complied with its obligations to insure under this Agreement or the terms of any policy of insurance required under this Agreement), which amount, for greater certainty, shall not include the amount of any excess or deductibles or any amount above the maximum insured amount applicable to any such insurance policy; or
 - (II) receives as financial relief or support from a Governmental Authority.
- (c) Project Co's entitlement to relief in respect of any Pandemic and Epidemic Change in Law, or the consequences thereof, shall only be in accordance with this Section 28.4 and Schedule 21 – Risk Allocations.
- (d) Project Co shall not be entitled to any relief under this Section 28.4 for a Pandemic and Epidemic Supply Chain Delay that may result from a Pandemic and Epidemic Change in Law. Any relief for

Project Co for any Pandemic and Epidemic Supply Chain Delay shall be addressed in accordance with Section 5 (*Relief Events*) of Schedule 21 – Risk Allocations.

29. VARIATIONS

29.1 Variation Procedure

- (a) Except as otherwise expressly provided in this Agreement, Schedule 22 – Estimates, Variations and Proposals shall apply in respect of Variations.
- (b) For greater certainty, Project Co shall, subject to and in accordance with Schedule 22 – Estimates, Variations and Proposals, be entitled to a Variation if a written direction issued by or on behalf of Contracting Authority to Project Co or any Project Co Party results in a variation, addition, reduction, substitution, omission, modification, deletion, removal or other change to the whole or any part of the Works.
- (c) Without limiting Project Co’s obligations pursuant to Section 11.10(a) and Schedule 22 – Estimates, Variations and Proposals, 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.
- (d) Project Co shall promptly advise Contracting Authority as to any circumstances or events arising pursuant to this Agreement that, in its reasonable opinion, comprise or require a Variation.
- (e) For greater certainty, Project Co may and is encouraged to propose Variations pursuant to Schedule 22 – Estimates, Variations and Proposals for value engineering, cost reduction, schedule acceleration and efficiency enhancing purposes, provided that Contracting Authority shall be under no obligation whatsoever to accept any such proposals.

30. ADJUSTMENT EVENTS

- (a) If the Works are behind schedule for a reason other than an Adjustment Event, or if a Project Co Party delays the progress of any portion of the Works necessary to complete the Works pursuant to the Project Works Schedule:
 - (i) Project Co shall use all reasonable measures to bring the Works back on schedule;
 - (ii) Project Co shall exercise all means within its discretion, such as directing any Project Co Party that is creating delays to increase their labour forces and equipment, to improve the organization and expediting of the Works, or to work overtime as may be necessary; and
 - (iii) there shall be no extension to any TPA Scheduled Substantial Completion Date, any TPA Scheduled Final Completion Date, any applicable Critical Works Deadline, any applicable Critical Data Deadline or any applicable No Later Than Date for the purpose of calculating any incentives pursuant to Schedule 43 – Incentives and Construction Enforcement Regime or any other relief.
- (b) Any TPA Longstop Date, TPA Scheduled Substantial Completion Date, any TPA Scheduled Final Completion Date, any applicable Critical Works Deadline, and any applicable Critical Data Deadline will only be adjusted where this Agreement specifically and expressly refers to an

Adjustment to any TPA Longstop Date, any TPA Scheduled Substantial Completion Date, any TPA Scheduled Final Completion Date, any applicable Critical Works Deadline, or any applicable Critical Data Deadline in accordance with Schedule 21 – Risk Allocations, and no claim for any adjustment to any such date on any legal or equitable basis outside of the specific and express rights to an Adjustment of any TPA Longstop Date, TPA Scheduled Substantial Completion Date, TPA Scheduled Final Completion Date, any applicable Critical Works Deadline, or any applicable Critical Data Deadline set out in this Agreement will be allowed.

31. PROJECT CO DEFAULT

31.1 Project Co Events of Default

- (a) For the purposes of this Agreement, “**Project Co Event of Default**” means any one or more of the following events or circumstances:
- (i) the occurrence of any of the following events other than as a consequence of a breach by Contracting Authority of its payment obligations hereunder:
 - (A) Project Co admits in writing its inability to pay its debts generally as they become due, or makes a general assignment for the benefit of creditors, or a receiver, manager, administrator, administrative receiver, receiver and manager, trustee, custodian or other similar official or any other like person is appointed by or on behalf of or at the instance of a creditor of Project Co with respect to Project Co or any of the property, assets or undertaking of Project Co, or any creditor of Project Co takes control, or takes steps to take control, of Project Co or any of Project Co’s assets, or any proceedings are instituted against Project Co that result in Project Co being declared or ordered bankrupt or in administration, liquidation, winding-up, reorganization, compromise, arrangement, adjustment, protection, relief or composition of it or with respect to it or its debts or obligations, or any such proceedings are instituted by Project Co seeking any such result, or any such proceedings are instituted by a person other than Project Co, Contracting Authority, a Contracting Authority Party or a person related to any of them seeking such result and such proceedings have or will have a material adverse effect on the performance of the Works or of the Contracting Authority Activities (where such proceedings have not been withdrawn, stayed, discharged, or are otherwise of no further effect, within 90 days after being instituted), under any Applicable Law (including the *Bankruptcy and Insolvency Act* (Canada) and the *Companies’ Creditors Arrangement Act* (Canada)) relating to bankruptcy, insolvency or reorganization of or relief with respect to debtors or debtors’ obligations or assets or other similar matters, or seeking the appointment of a receiver, manager, administrator, administrative receiver, receiver and manager, trustee, custodian or other similar official or like person for it or with respect to any of its assets, or any resolutions are passed or other corporate actions of Project Co are taken to authorize any of the actions set forth in this Section 31.1(a)(i);
 - (B) Project Co ceases performing a substantial portion of its business, or a substantial portion of such business is suspended or is not being performed, whether voluntarily or involuntarily, that has or will have a material adverse effect on Project Co’s ability to perform its obligations under this Agreement;

- (C) if any execution, sequestration, extent, garnishment or other process of or order by any court becomes enforceable against Project Co or if a distress or analogous process is levied against any property of Project Co that materially adversely affects Project Co's ability to perform its obligations hereunder;
 - (D) Project Co suffers any event, or any event or set of circumstances occurs or comes about, analogous to the foregoing events or sets of circumstances set out in this Section 31.1(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 31.1(a)(i)(A), (B) or (C), constitute a Project Co Event of Default; or
 - (E) any of the circumstances or events described in (A) to (D) above occur with respect to a Parent Guarantor.
- (ii) the Total Liability of Project Co is equal to or exceeds the Maximum Liability Amount;
 - (iii) notwithstanding any other terms hereof, and for certainty, without any grace or cure period, Project Co failing to achieve TPA Substantial Completion by the TPA Longstop Date;
 - (iv) [intentionally deleted];
 - (v) Project Co:
 - (A) failing to deliver a Recovery Works Schedule under Section 16.1(b)(i) (*Failure to Maintain Schedule for the Works*) of Schedule 12 – Works Schedule Requirements; or
 - (B) delivering a Recovery Works Schedule under Section 16.1(b)(i) (*Failure to Maintain Schedule for the Works*) of Schedule 12 – Works Schedule Requirements which indicates that Project Co will not achieve TPA Substantial Completion by the TPA Longstop Date;
 - (vi) Project Co making any representation or warranty herein that is false or misleading when made, and that has or will have at any time a material adverse effect on the performance of Works, the Governmental Activities, on Contracting Authority's ability to exercise its rights under the Assignment of Project Documents or any Assignment of Subcontract, or that may compromise:
 - (A) Contracting Authority's reputation or integrity; or
 - (B) the nature of the public transit system in the City of Toronto or the Province of Ontario so as to affect public confidence in the public transit system within such area or the Project.
- and, in the case of a false or misleading representation or warranty that is capable of being remedied, such breach is not remedied within 10 Business Days after receipt of Notice of the same from Contracting Authority;
- (vii) Project Co committing a breach of Sections 37 or 38;

- (viii) Project Co committing a breach of its obligations under this Agreement or any Target Price Agreement which has or will have a material adverse effect on the performance of Governmental Activities (other than a breach that is otherwise referred to in Sections 31.1(a)(i) to (vii) inclusive or (ix) to (xvii) inclusive or the failure of Project Co to achieve any of the milestones listed in Section 42.1(a)(iv)) other than where such breach is a consequence of a breach by Contracting Authority of its obligations under this Agreement, and upon becoming aware of such breach Project Co failing to remedy such breach in accordance with all of the following:
- (A) Project Co shall:
- i. immediately commence and thereafter diligently continue to remedy the breach and to mitigate any adverse effects on Contracting Authority and the performance of Contracting Authority's operations and the Contracting Authority Activities;
 - ii. put forward, within seven Business Days after receipt of Notice of such breach from Contracting Authority, a reasonable plan and schedule for diligently remedying the breach and mitigating its effect, which plan and schedule shall specify in reasonable detail the manner in which, and the latest date by which, such breach is proposed to be remedied, which latest date shall in any event be within 90 days after Notice of such breach, or if such breach is not capable of being rectified in such period then such longer period as is reasonable in the circumstances; and
 - iii. thereafter perform its obligations to achieve all elements of such plan and schedule in accordance with its terms within the time for the performance of its obligations thereunder;
- (ix) Project Co wholly abandoning the TPA Works for a period which exceeds three Business Days from receipt by Project Co of a written request to return to the relevant portions of the Site, other than as a consequence of a breach by Contracting Authority of its obligations under this Agreement;
- (x) Project Co failing to comply with Sections 11.38, 11.40 or 44.1;
- (xi) the occurrence of any Change in Ownership or Change in Control which is prohibited by Section 44.3;
- (xii) Project Co failing to remove an Encumbrance that arose:
- (A) due to an act or omission of Project Co or any Project Co Party; or
- (B) in relation to the Works (other than any Encumbrance derived through Contracting Authority),
- in either case, within 45 days following the earlier of:
- i. the registration of such Encumbrance against title to the Lands or any part thereof; and

- ii. the date on which Project Co or any Project Co Party knew, or ought to have known, about the existence of the Encumbrance;
- (xiii) Project Co failing to pay any sum or sums due to Contracting Authority under this Agreement, which sum or sums are not being disputed in accordance with Schedule 27 – Dispute Resolution Procedure or have not been set-off by Project Co pursuant to Section 5.4(a)(ii), and which sum or sums, either singly or in aggregate, exceed(s) \$[REDACTED] (index linked), and such failure continues for 45 days from receipt by Project Co of a Notice of non-payment from Contracting Authority;
- (xiv) Project Co failing to comply with Section 45;
- (xv) Project Co failing to obtain any bond, security or insurance required to be obtained by or on behalf of Project Co pursuant to this 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 Agreement, other than as a consequence of a breach by Contracting Authority of its obligations under this Agreement, and:
 - (A) in respect of insurance, such breach by Project Co is not remedied within 10 Business Days after the occurrence of the breach; and
 - (B) in respect of a bond or security, such breach by Project Co is not remedied within five Business Days after Project Co becoming aware of such breach;
- (xvi) Project Co failing to comply with any determination, decision, order or award made against Project Co in accordance with Schedule 27 – Dispute Resolution Procedure;
- (xvii) a default by Project Co or any Project Co Party under any of the Ancillary Documents following the expiry of any applicable notice and cure periods thereunder;
- (xviii) a Major Subcontract is executed and delivered by the parties thereto notwithstanding and in contravention of any Major Subcontract Objection Notice given by Contracting Authority to Project Co pursuant to Section 11.38(d)(i) that has not been withdrawn by Contracting Authority, or Project Co fails to comply with Section 11.38(q);
- (xix) [intentionally deleted];
- (xx) prior to entering into a Target Price Agreement, Project Co withdraws or modifies a TPA Proposal before the expiry of the applicable TPA Proposal Validity Period contrary to the provisions of Schedule 2 – Development Works Submissions and Project Development Process, including Sections 6.4(c) (*Submission of TPA Proposals*) and 6.6(c) (*TPA Proposal Negotiations*) of Schedule 2 – Development Works Submissions and Project Development Process; or
- (xxi) Project Co fails to comply with its obligations under Section 3.1(a) (*Completion Documents*) of a Target Price Agreement, including to execute and deliver any agreements and other documents it is required to deliver in accordance with such Section, prior to the applicable TPA Close Target Date.

31.2 Notification of Occurrence

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

31.3 Right to Termination

- (a) On the occurrence of a Project Co Event of Default, or at any time after Contracting Authority becomes aware of a Project Co Event of Default (and, if the occurrence of a Project Co Event of Default is disputed by Project Co in good faith, then following confirmation in accordance with Schedule 27 – Dispute Resolution Procedure that a Project Co Event of Default has occurred), Contracting Authority may, subject to Section 31.4, take any or all of the following actions:
- (i) terminate this Agreement and any Target Price Agreement then in effect in their entirety by written Notice having immediate effect, such Notice to be given to Project Co;
 - (ii) terminate any Target Price Agreement then in effect in its entirety by written Notice having immediate effect, such Notice to be given to Project Co;
 - (iii) direct Project Co to cease or suspend any Works by written Notice having immediate effect, such Notice to be given to Project Co;
 - (iv) require the termination and replacement of any Subcontractor who caused or contributed to a Project Co Event of Default; or
 - (v) take such steps as Contracting Authority considers appropriate, either themselves or by engaging others (including a third party) to take such steps, to perform or obtain the performance of Project Co's obligations under this Agreement or to remedy such Project Co Event of Default.
- (b) Notwithstanding Section 31.3(a), on the occurrence of a Project Co Event of Default set out in:
- (i) Section 31.1(a)(i);
 - (ii) Section 31.1(a)(ii);
 - (iii) Section 31.1(a)(xi) but only in respect of a breach of Section 44.3(a) or Section 44.3(b)(i); or
 - (iv) Section 31.1(a)(xiv),

Contracting Authority may, subject to Section 31.4, terminate this Agreement and any Target Price Agreement in their entirety by written Notice having immediate effect, prior to and without the need to obtain confirmation in accordance with, Schedule 27 – Dispute Resolution Procedure, such Notice to be given to Project Co. The Parties agree that no irreparable harm shall occur if this Agreement or any Target Price Agreement is terminated by Contracting Authority pursuant to this Section 31.3(b), and that any such termination by Contracting Authority would be adequately compensated by an award of damages to Project Co if it is subsequently determined in accordance

with Schedule 27 – Dispute Resolution Procedure that Contracting Authority was not entitled to do so in accordance with this Agreement.

- (c) In the event that Contracting Authority exercises its right pursuant to Section 31.3(a) to terminate this Agreement or any Target Price Agreement, or direct Project Co to cease any portion of the Works, Contracting Authority may require Project Co to assign to Contracting authority any Subcontracts relating to the agreements that are terminated or portions of the Works which are ceased.
- (d) In the event that this Agreement is terminated, any Target Price Agreement then in effect shall automatically terminate.

31.4 Remedy Provisions

- (a) In the case of a Project Co Event of Default referred to in Sections 31.1(a)(i)(B), 31.1(a)(i)(C), 31.1(a)(i)(D) (where Project Co Event of Default referred to in Section 31.1(a)(i)(D) is analogous to a Project Co Event of Default referred to in Section 31.1(a)(i)(B) or 31.1(a)(i)(C)), 31.1(a)(i)(E), 31.1(a)(v), 31.1(a)(vi), 31.1(a)(vii), 31.1(a)(ix), 31.1(a)(x), 31.1(a)(xi) (where Project Co Event of Default referred to in Section 31.1(a)(xi) is capable of being remedied), 31.1(a)(xiii), 31.1(a)(xv) (where Project Co Event of Default referred to in Section 31.1(a)(xv) is not in respect of insurance), 31.1(a)(xvi), or 31.1(a)(xvii), Contracting Authority shall, prior to being entitled to terminate this Agreement, give Notice of default to Project Co and Project Co shall:
 - (i) within seven Business Days after such Notice of default, put forward a reasonable plan and schedule for diligently remedying 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 45 days after the Notice of default, or if such breach is not capable of being remedied in such period then such longer period as is acceptable to Contracting Authority, acting reasonably; and
 - (ii) thereafter, perform its obligations to achieve all elements of such plan and schedule in accordance with its terms within the time for the performance of its obligations thereunder.
- (b) Where Project Co puts forward a plan and schedule in accordance with Section 31.4(a)(i) that has a date for the Project Co Event of Default to be remedied that is beyond 30 days from the Notice of default, Contracting Authority shall have five Business Days from receipt of the same within which to notify Project Co that Contracting Authority does not accept such longer period in the plan and schedule and that the 30 day limit will apply, failing which Contracting Authority shall be deemed to have accepted the longer period in the plan and schedule.
- (c) If a Project Co Event of Default, of which a Notice of default was given under Section 31.4(a), occurs and:
 - (i) Project Co fails to immediately commence and thereafter diligently continue to remedy Project Co Event of Default and to mitigate any adverse effects on Contracting Authority and the Governmental Activities; or
 - (ii) Project Co fails to put forward a plan and schedule pursuant to Section 31.4(a)(i); or

- (iii) such Project Co Event of Default is not remedied within 30 days after such Notice of default or such longer period as is established pursuant to the plan and schedule established pursuant to Sections 31.4(a) and (b); or
- (iv) where Project Co puts forward a plan and schedule pursuant to Section 31.4(a)(i) and Project Co fails to perform its obligations thereunder necessary to achieve all elements of such plan and schedule in accordance with its terms within the time for the performance of its obligations,

then Contracting Authority may terminate this Agreement in its entirety by written Notice with immediate effect, such Notice to be given to Project Co.

- (d) Notwithstanding that Contracting Authority may give the Notice referred to in Section 31.4(a), and without prejudice to the other rights of Contracting Authority in this Section 31.4, at any time during which a Project Co Event of Default is continuing, Contracting Authority may, at Project Co's risk and expense, take such steps as Contracting Authority considers appropriate, either 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 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 31.4, such occurrence of a Project Co Event of Default shall thereafter cease to be a Project Co Event of Default and Contracting Authority shall not be entitled to terminate this Agreement and any Target Price Agreement then in effect for that occurrence of a Project Co Event of Default.

31.5 Contracting Authority Costs

- (a) Project Co shall reimburse Contracting Authority for all reasonable costs (including all applicable Taxes and all legal or professional services, legal costs being on a full indemnity basis) properly incurred by Contracting Authority in exercising its rights under this Section 31, including any relevant increased administrative expenses. Contracting Authority shall take commercially reasonable steps to mitigate such costs. Notwithstanding the foregoing, to the extent that the Contracting Authority incurs any cost or expense in connection with the remediation of any Project Co Event of Default which would have been reimbursed to Project Co as a Defined Cost had such amount been incurred by Project Co directly, then such amounts shall not be recovered from Project Co, but rather shall be counted towards the calculation of the Defined Cost component of the Reimbursable Price.

31.6 No Other Rights to Terminate

- (a) Contracting Authority shall have no right or entitlement to terminate this Agreement or any Target Price Agreement then in effect, or to accept any repudiation thereof, and shall not purport to exercise any such right or entitlement except as set forth in Sections 31 and 33.

32. CONTRACTING AUTHORITY DEFAULT

32.1 Contracting Authority Events of Default

(a) For the purposes of this Agreement, “**Contracting Authority Event of Default**” means any one or more of the following events or circumstances:

(i) Contracting Authority failing to pay any sum or sums due to Project Co under this Agreement or any Target Price Agreement, which sum or sums are not being disputed in accordance with Schedule 27 – Dispute Resolution Procedure or have not been set off by Contracting Authority pursuant to Section 5.4(a)(i), and which sum or sums, either singly or in aggregate, exceed(s) \$[REDACTED] (index linked), and:

(A) in respect of Legislative Holdback, such failure continues for a period of 10 Business Days;

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

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

(ii) Contracting Authority committing a material breach of its obligations under Section 16 (other than as a consequence of a breach by Project Co of its obligations under this Agreement), which breach materially adversely affects the ability of Project Co to perform all or substantially all of its remaining Works obligations under this Agreement and any Target Price Agreement then in effect for a continuous period of not less than 60 days, and after receipt of a Notice of such breach from Project Co, Contracting Authority failing to remedy such breach in accordance with all of the following:

(A) Contracting Authority shall:

i. immediately commence and thereafter diligently continue to remedy the breach and to use commercially reasonable efforts to mitigate any adverse effects on Project Co;

ii. put forward, within five Business Days of receipt of the Notice referred to in this Section 32.1(a)(ii), a reasonable plan and schedule for diligently remedying the breach and mitigating its effect, which plan and schedule shall specify in reasonable detail the manner in which, and the latest date by which, such breach is proposed to be remedied, which latest day shall in any event be within 60 days of such Notice, or if such breach is not capable of being rectified in such period, then such longer period as is reasonable in the circumstances; and

iii. thereafter, perform its obligations to achieve all elements of such plan and schedule in accordance with its terms within the time for the performance of its obligations thereunder; or

- (iii) an act of any Governmental Authority which renders it impossible for Project Co to perform all or substantially all of its remaining Works obligations under this Agreement and any Target Price Agreement then in effect (other than as a consequence of a breach by Project Co of its obligations under this Agreement or any Target Price Agreement) for a continuous period of not less than 60 days, provided that, for greater certainty, the non-issuance of, or the imposition of any conditions or limitations in, any of Project Co Permits, Licences, Approvals and Agreements shall not constitute an “act of any Governmental Authority”.

32.2 Project Co’s Options

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

32.3 Project Co’s Costs

- (a) Contracting Authority shall reimburse Project Co for all reasonable costs (including all applicable Taxes and all legal or professional services, legal costs being on a full indemnity basis) properly incurred by Project Co in exercising its rights under this Section 32, including any relevant increased administrative expenses. Project Co shall take commercially reasonable steps to mitigate such costs.

32.4 No Other Rights to Terminate

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

33. NON DEFAULT TERMINATION

33.1 Termination for Relief Event

- (a) If a Relief Event occurs and the effects of the Relief Event continue for 180 days from the date on which the Party affected gives Notice to the other Party pursuant to Section 5.2(c) (*Mitigation and Process*) of Schedule 21 – Risk Allocations, either Party may, at any time thereafter, terminate this Agreement and any Target Price Agreement then in effect by written Notice to the other Party having immediate effect, provided that the effects of the Relief Event continue during such period

to prevent either Party from performing all or substantially all of its obligations thereunder (including Development Works).

- (b) In the event this Agreement is terminated under this Section 33.1, upon such termination, Project Co shall be released from liability that may arise in relation to the use by Contracting Authority or by a third party from and after the date of termination of this Agreement of the design produced as a result of the Design Works, provided however that the foregoing release shall not apply to limit Contracting Authority's rights in relation to applicable Subcontractors if Contracting Authority enforces its rights under the Assignment of Project Documents or any Assignment of Subcontract.

33.2 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 Agreement or any Target Price Agreement then in effect pursuant to Section 6.3 (*Modifications*) of Schedule 21 – Risk Allocations within 180 days after the date on which the Party affected gives Notice to the other Party as set out in Section 6.2(c) (*Mitigation and Process*) of Schedule 21 – Risk Allocations, either Party may, at any time thereafter, terminate this Agreement and any Target Price Agreement then in effect by written Notice to the other Party having immediate effect, provided that the effects of the event of Force Majeure continue during such period to prevent either Party from performing all or substantially all of its obligations thereunder (including Development Works).
- (b) In the event this Agreement is terminated under this Section 33.2, upon such termination, Project Co shall be released from liability that may arise in relation to the use by Contracting Authority or by a third party from and after the date of termination of this Agreement of the design produced as a result of the Design Works, provided however that the foregoing release shall not apply to limit Contracting Authority's rights in relation to applicable Subcontractors if Contracting Authority enforces its rights under the Assignment of Project Documents or any Assignment of Subcontract.

33.3 Intentionally Deleted

33.4 Termination due to Protest Action

- (a) If a Protest Action occurs which entitles Project Co to an Adjustment and the effects of such Protest Action continue for 180 days from the date on which Project Co gives Notice to Contracting Authority pursuant to Section 3.2(b) (*Schedule Adjustments – Process*) or Section 4.2(b) (*Target Price Adjustments – Process*) of Schedule 21 – Risk Allocations, Contracting Authority may, at any time thereafter, terminate this Agreement and any Target Price Agreement then in effect by written Notice to Project Co having immediate effect, provided that the effects of such Protest Action continue during such period.

33.5 Termination for Convenience

- (a) Contracting Authority shall, in its sole discretion and for any reason whatsoever, be entitled to terminate this Agreement or any Target Price Agreement then in effect at any time on 60 days written Notice to Project Co.

- (b) In the event of Notice being given by Contracting Authority in accordance with this Section 33.5, Contracting Authority shall, at any time before the expiration of such Notice, be entitled to direct Project Co to refrain from commencing, or allowing any third party to commence, the Works, or any part or parts of the Works where such Works have not yet been commenced.
- (c) In the event this Agreement is terminated under this Section 33.5, upon such termination, Project Co shall be released from liability that may arise in relation to the use by Contracting Authority or by a third party from and after the date of termination of this Agreement of the design produced as a result of the Design Works, provided however that the foregoing release shall not apply to limit Contracting Authority's rights in relation to applicable Subcontractors if Contracting Authority enforces its rights under the Assignment of Project Documents or any Assignment of Subcontract.

33.6 Automatic Expiry on Expiry Date

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

34. EFFECT OF TERMINATION

34.1 Termination

- (a) Notwithstanding any provision of this Agreement or any Target Price Agreement, upon the service of a Notice of termination or termination on the Expiry Date pursuant to Section 33.6, this Section 34 shall apply in respect of such termination.

34.2 Continued Effect – No Waiver

- (a) Notwithstanding any breach of this Agreement or any Target Price Agreement by a Party, the other Party may elect to continue to treat this Agreement or such Target Price Agreement, as applicable, as being in full force and effect and to enforce its rights thereunder 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 Agreement or any Target Price Agreement, including any right to terminate this Agreement or such Target Price Agreement and any right to claim damages, shall not be deemed to be a waiver of such right for any continuing or subsequent breach.

34.3 Continuing Performance

- (a) Subject to any exercise by Contracting Authority of its rights to perform, or to seek, pursuant to this Agreement, a third party to perform, the obligations of Project Co, the Parties shall continue to perform their obligations under this Agreement (including, if applicable, pursuant to Schedule 23 – Compensation on Termination) and under any Target Price Agreement then in effect, notwithstanding the giving of any Notice of default or Notice of termination, until the termination of this Agreement and such Target Price Agreement becomes effective in accordance with this Section 34.

34.4 Effect of Notice of Termination – Development Works

- (a) Upon the termination of this Agreement, for a reasonable period both before and after such termination, Project Co shall with respect to the Development Works, in addition to its other obligations under this Agreement and at Applicable Law:
- (i) at the request of Contracting Authority, provide Contracting Authority with any completed or partially completed Development Works other than any TPA Proposal in the formats requested by Contracting Authority, including all design and other technical drawings and data, reports, working drafts and all other information directly related to the Development Works;
 - (ii) provide Contracting Authority with a report detailing: (A) the current state of the provision of the Development Works at the date of termination; and (B) any other information requested by Contracting Authority pertaining to the provision of Development Works and performance by Project Co under this Agreement;
 - (iii) execute such documentation as may be required by Contracting Authority to give effect to the termination of this Agreement; and
 - (iv) cooperate with Contracting Authority and any Contracting Authority Parties, provide information to Contracting Authority and any Contracting Authority Parties, and comply with all reasonable instructions provided by Contracting Authority or any Contracting Authority Party to Project Co (including instructions for Project Co and the Project Co Parties to complete any unfinished specific Development Works) in order to provide for an orderly, efficient and safe transition of Project Co's role in and works and services with respect to the Project to Contracting Authority and to permit Contracting Authority to complete the Project or develop a project similar to the Project by way of a development model that may be different than the development model contemplated herein and by persons that exclude Project Co and some or all of the Project Co Parties.

34.5 Effect of Notice of Termination – Construction Works

- (a) On the service of a Notice of termination, or termination on the Expiry Date pursuant to Section 33.6:
- (i) if termination is prior to the Project Substantial Completion Date, in so far as any transfer shall be necessary to fully and effectively transfer such property to Contracting Authority as shall not already have been transferred to Contracting Authority pursuant to Section 40.1, Project Co shall transfer to, and there shall vest in, Contracting Authority, free from all Encumbrances (other than the Encumbrances caused or consented to by Contracting Authority), such part of any Construction Works, the Project Co Infrastructure, and the New Third Party Infrastructure as shall have been constructed and such items of the Plant, infrastructure and equipment as shall have been procured by Project Co, and, if Contracting Authority so elects:
 - (A) all Plant, equipment and materials (other than those referred to in Section 34.5(a)(i)(B) and unless otherwise identified by Contracting Authority) on

or near to the Lands shall remain available to Contracting Authority for the purposes of completing the Construction Works; and

- (B) all Construction Plant shall remain available to Contracting Authority for the purposes of completing the Works, subject to payment by Contracting Authority of Project Co's reasonable charges;
- (ii) if termination is prior to the Project Substantial Completion Date, Project Co shall deliver to Contracting Authority (to the extent such items have not already been delivered to Contracting Authority) one complete set of all Project Data and Intellectual Property relating to the design, construction and completion of the applicable Construction Works, the Project Co Infrastructure, and the New Third Party Infrastructure;
- (iii) in so far as title shall not have already passed to Contracting Authority pursuant to Section 40.1 or Section 34.5(a)(i), Project Co shall hand over to, and there shall vest in, Contracting Authority, free from all Encumbrances (other than any Encumbrances caused or consented to by Contracting Authority), the Project Co Infrastructure and the New Third Party Infrastructure together with all other assets and rights capable of being transferred that are necessary for the performance of the Project and the Construction Works and all facilities and equipment, and to the extent that any such assets or rights are not capable of being transferred by Project Co to Contracting Authority, Project Co shall enter into agreements or make other arrangements in order to permit the use of the assets or rights by Contracting Authority in order to enable them, or their designated agents or subcontractors, to continue to perform the activities which would have otherwise been performed by Project Co if this Agreement had not been terminated;
- (iv) if Contracting Authority so elects, Project Co shall ensure that any of the Subcontracts between Project Co and a Subcontractor, any other instrument entered into between any such Subcontractor and Project Co for securing the performance by such Subcontractor of its obligations in respect of the Works or to protect the interests of Project Co, shall be novated or assigned to Contracting Authority or its nominee, provided that where termination occurs other than as a result of a Project Co Event of Default, the consent of the relevant Subcontractor shall be required;
- (v) Project Co shall, or shall ensure that any Project Co Party shall, offer to sell (and if Contracting Authority so elects, execute such sale) to Contracting Authority at a fair value (determined as between a willing vendor and willing purchaser, with any Disputes as to such fair value being resolved in accordance with Schedule 27 – Dispute Resolution Procedure), free from all Encumbrances (other than any Encumbrances caused or consented to by Contracting Authority), all or any part of the stocks of material and other assets, road vehicles, construction equipment, spare parts and other moveable property owned by Project Co or any Project Co Parties and dedicated to or predominantly used in respect of the Project Co Infrastructure, and reasonably required by Contracting Authority in connection with the operation of the Project Co Infrastructure;
- (vi) Project Co shall use commercially reasonable efforts to assign, or otherwise transfer, to Contracting Authority, free from all Encumbrances (other than any Encumbrances caused or consented to by Contracting Authority), the benefit of all manufacturers' warranties, including all documentation in respect thereof, in respect of mechanical and electrical Plant

and equipment used or made available by Project Co under this Agreement and included in the Project Co Infrastructure and the New Third Party Infrastructure; and

- (vii) Project Co shall deliver to Contracting Authority all information, reports, documents, records and the like referred to in Section 26, including as referred to in Schedule 26 – Record Provisions, except where such are required by Applicable Law to be retained by Project Co or Project Co Parties (in which case complete copies shall be delivered to Contracting Authority).

34.6 Ownership of Information

- (a) Subject to Section 36, all information obtained by Project Co, including the As Built Drawings, Record Drawings, and other technical drawings and data, supplier agreements and contracts, utilities consumption information, environmental and technical reports, static building information, lease, licence and subletting data and contracts, asset condition data, standard operating procedures, processes and manuals and all other information directly related to the Works accumulated over the course of the Project Term shall be the property of Contracting Authority and upon termination of this Agreement shall be provided or returned to Contracting Authority, as applicable, in electronic format acceptable to Contracting Authority, acting reasonably, where it exists in electronic format, and in its original format, when not in electronic format.

34.7 Provision in Subcontracts

- (a) Project Co shall make provision in all Subcontracts to which it is a party (including requiring the relevant Project Co Parties to make such provision and to require other Project Co Parties to make such provision) to ensure that Contracting Authority shall be in a position to exercise its rights, and Project Co shall be in a position to perform its obligations, under this Section 34.

34.8 Transitional Arrangements

- (a) On the termination of this Agreement for any reason, for a reasonable period both before and after any such termination, Project Co shall:
 - (i) as soon as practicable remove from the Lands all property belonging to Project Co or any Project Co Party that is not acquired by Contracting Authority pursuant to Section 34.4 or otherwise, and, if Project Co has not done so within 60 days after any Notice from Contracting Authority requiring it to do so, Contracting Authority may, without being responsible for any loss, damage, costs or expenses, remove and sell any such property and shall hold any proceeds, less all costs incurred to the credit of Project Co;
 - (ii) forthwith deliver to the Contracting Authority Representative:
 - (A) all keys to, and any pass cards and other devices used to gain access to any part of the Project Co Infrastructure; and
 - (B) to the extent transferable and without prejudice to Contracting Authority's rights pursuant to Section 36, any copyright licences for any computer programs, or licences to use the same, used in connection with the operation of the Project Co Infrastructure; and

- (iii) as soon as practicable vacate the Lands and shall leave the Lands and the Project Co Infrastructure in a safe, clean and orderly condition.

34.9 Termination upon Aforesaid Transfer

- (a) On completion of Project Co's obligations pursuant to this Section 34, this Agreement shall terminate and, except as provided in Section 34.10, all rights and obligations of Contracting Authority and Project Co under this Agreement shall cease and be of no further force and effect.

34.10 Survival

- (a) Except as otherwise provided in this Agreement, termination of this Agreement shall be without prejudice to, and shall not affect:

- (i) all representations, warranties and indemnities under this Agreement; and
- (ii) Sections 1, 5.4, 5.5, 5.6, 5.7, 6, 7, 8, 11.16, 11.17, 11.18, 11.31(b), 16.4, 16.10, 16.11, 17.2, 17.3(a), 17.3(b), 18.1, 18.2, 18.3(a), 18.3(f), 18.4(a), 18.4(b), 18.5(a), 18.5(b), 18.6(c), 18.7(a), 23.11, 25, 26, 31.5, 32.3, 33.6, 34, 35, 36, 37, 38, 39.3, 40, 41, 42, 43, 45.3, 46.1, 46.5, 49.4, 49.8, 49.9, 49.10, 49.11, 49.12 of this Agreement, Schedule 1 – Definitions and Interpretation, Schedule 20 – Warranty Letter of Credit, Schedule 14 – Commissioning, Schedule 23 – Compensation on Termination, Schedule 37 – Intellectual Property, Sections 1.2 to 1.8 of Schedule 26 – Record Provisions, Schedule 27 – Dispute Resolution Procedure, Schedule 47 – Corporate Overhead and Profit, Schedule 48 – Defined Cost, Schedule 49 – Target Price Gainshare / Painshare Regime and any other provisions of this Agreement which are expressed to survive termination or which are required to give effect to such provisions which survive termination or to such termination or the consequences of such termination, the Parent Guarantee, the Assignment of Project Documents and the Assignments of Development Works Subcontracts,

all of which shall survive the termination of this Agreement, including for termination on the Expiry Date pursuant to Section 33.6. For clarity, any termination of this Agreement shall be without prejudice to, and shall not affect, the Parent Guarantee, which shall survive the termination of this Agreement, including termination on the Expiry Date pursuant to Section 33.6, in respect of any and all of such surviving provisions of this Agreement.

35. COMPENSATION ON TERMINATION

35.1 Compensation on Termination

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

35.2 Full and Final Settlement

- (a) Except as otherwise provided in Section 35.2(b), any compensation paid pursuant to this Section 35, including pursuant to Schedule 23 – Compensation on Termination in the total amount owing thereunder, shall be in full and final settlement of any claims, demands and proceedings of Project Co and Contracting Authority, and each shall be released from all liability to the other in relation

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

- (b) Section 35.2(a) shall be without prejudice to:
- (i) any liability of either Party to the other, including under the indemnities contained in this 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 5.4 or taken into account pursuant to Schedule 23 – Compensation on Termination in determining or agreeing upon the Contracting Authority Default/Convenience Termination Sum, Non-Default Termination Sum, Project Co Default Termination Sum or any other termination sum, as the case may be; and
 - (ii) any liabilities arising under or in respect of any breach by either Party of their obligations under Section 34.10 of this Agreement, or the Sections referred to therein, which did not lead to such termination and which arises or continues after the Termination Date.

36. INTELLECTUAL PROPERTY

36.1 Ownership of Intellectual Property

- (a) Subject to Section 36.3(a), the Ownership of Intellectual Property shall be as set out in Schedule 37 – Intellectual Property. Project Co and Contracting Authority shall each comply with the requirements of Schedule 37 – Intellectual Property.

36.2 Licences to Intellectual Property

- (a) Schedule 37 – Intellectual Property sets out the terms on which Intellectual Property used or supplied in connection with the Project will be licenced.

36.3 Representation and Warranty

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

- (A) Project Co has not received any alleged infringement or misappropriation notices from third parties regarding any Intellectual Property Rights; and
- (B) no fact is known to Project Co (including in respect of any actual, pending or threatened disputes, claims, suits, actions or proceedings or any other circumstance or event) that will, or could reasonably, effect, limit or prevent Project Co from fully complying with Section 36.1(a) and Schedule 37 – Intellectual Property.

36.4 Jointly Developed Materials

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

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

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

- (b) Contracting Authority hereby grants Project Co a royalty free, non-exclusive and non-transferable licence, with a right to grant sub-licences to each Subcontractor, to use the Contracting Authority Jointly Developed Materials during the Project Term for the sole purposes of Project Co or any Subcontractor performing its obligations under this Agreement or its Subcontract, as applicable. For clarity, the licence granted to Project Co in accordance with this Section 36.4(b) shall not extend to any City of Toronto Jointly Developed Materials or TTC Jointly Developed Materials.
- (c) Upon termination of this Agreement, all rights and licences whatsoever granted to Project Co in the Jointly Developed Materials shall automatically terminate, and Project Co shall return any and all Jointly Developed Materials in the custody or possession of Project Co to,
 - (i) Contracting Authority, in the case of the Contracting Authority Jointly Developed Materials;
 - (ii) the City of Toronto, in the case of the City of Toronto Jointly Developed Materials; and
 - (iii) the TTC, in the case of the TTC Jointly Developed Materials.
- (d) In the event of any inconsistency between this Section 36.4 and any provision of Schedule 37 – Intellectual Property, the wording of this Section 36.4 shall prevail.

36.5 Maintenance of Data

- (a) To the extent that any of the data, materials and documents referred to in this 36 or Schedule 37 – Intellectual Property are generated by, or maintained on, a computer or similar system, Project Co shall procure for the benefit of Contracting Authority, either at no charge or at the lowest reasonable fee, the grant of a licence or sub-licence for any relevant software to enable Contracting Authority or its nominee to access and otherwise Use (subject to the payment by Contracting Authority of any relevant fee) such data, materials and documents in accordance with rights granted pursuant to Schedule 37 – Intellectual Property.
- (b) For the purposes of Section 36.5(a), “Use” has the meaning set out in Schedule 37 – Intellectual Property, and includes the Limited Modification Rights.
- (c) Without limiting the obligations of Project Co under Section 36.5(a), Project Co shall ensure the back-up and storage in safe custody of the data, materials and documents referred to in this Section 36 in accordance with Good Industry Practice. Project Co shall submit to the Contracting Authority Representative Project Co’s proposals for the back-up and storage in safe custody of such data, materials and documents and Contracting Authority shall be entitled to object if the same is not in accordance with Good Industry Practice. Project Co shall comply, and shall cause all Project Co Parties to comply, with all procedures to which the Contracting Authority Representative has not objected. Project Co may vary its procedures for such back-up and storage subject to submitting its proposals for change to the Contracting Authority Representative, who shall be entitled to object on the basis set out above. Any Disputes in connection with the provisions of this Section 36.5(c) may be referred for resolution in accordance with Schedule 27 – Dispute Resolution Procedure with reference to Good Industry Practice.

36.6 Contracting Authority Trademarks

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

36.7 Confidential Information

- (a) It is expressly acknowledged and agreed that nothing in this Section 36 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.

36.8 Government Use of Documents

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

36.9 Restrictions

- (a) The Parties hereby agree that either Party may use the Project Know-How for any purpose, provided, however, that neither Project Co nor any Subcontractor shall use the Project Know-How to the extent that such Project Know-How incorporates, references or is otherwise based on the Project Data, the Intellectual Property Rights, the Jointly Developed Materials, the Intellectual Property of Contracting Authority, the Intellectual Property of any Contracting Authority Party or any third party provided by Contracting Authority, the Confidential Information of Contracting Authority, or the Confidential Information of any Contracting Authority Party or any third party provided by Contracting Authority, including the Output Specifications unless such use is otherwise permitted pursuant to this Agreement in order to enable Project Co and the Project Co Parties to meet Project Co's obligations under this Agreement.
- (b) Project Co hereby covenants and agrees that it will not make any commercial use, including use in any other request for proposal or similar procurement process, of the Project Data, the Intellectual Property Rights, the Jointly Developed Materials, the Intellectual Property of Contracting Authority, the Intellectual Property of any Contracting Authority Party or any third party provided by Contracting Authority, the Confidential Information of Contracting Authority, or the Confidential Information of any Contracting Authority Party or any third party provided by

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

- (c) Nothing in this Section 36.9 shall be deemed to grant to any party (including any Subcontractor or any personnel thereof) any right or licence in respect of any other party's or other persons' Intellectual Property.

37. CONFIDENTIALITY

37.1 Restrictions on Use and Disclosure

- (a) Except as otherwise expressly authorized hereunder, a Receiving Party may only use Confidential Information as reasonably required for the purposes of enabling that Receiving Party to perform its obligations or enforce its rights under this Agreement.
- (b) Except as otherwise expressly authorized hereunder, and subject to Section 37.1(c), a Receiving Party may only disclose or grant access to Confidential Information to:
 - (i) those agents, directors, officers, employees and professional advisors of that Receiving Party who need to use that Confidential Information to enable that Receiving Party to perform its obligations or enforce its rights under this Agreement; or
 - (ii) such persons as Disclosing Party may specifically consent in writing.
- (c) The Receiving Party must ensure that any recipient of Confidential Information pursuant to Sections 37.1, 37.2 or 37.3(b)(i) and 37.3(b)(ii) is bound by written obligations regarding the Handling of that Confidential Information that are substantially similar to those set out in this Agreement (including, in particular, Section 37 and, to the extent applicable, Section 38).
- (d) The Receiving Party will remain fully liable for any breach of the obligations regarding the Handling of that Confidential Information that is attributable to any person to whom Receiving Party has disclosed or granted access to such Confidential Information pursuant to Sections 37.1, 37.2 or 37.3.
- (e) Without limiting the generality of this Section 37, Project Co shall comply with the document control and security protocol submitted by Project Co in accordance with Schedule 10 – Review Procedure; such protocol shall prescribe limitations on the use, disclosure and storage of this Agreement and any other Confidential Information of Contracting Authority specified by Contracting Authority (the “**Document Control and Security Protocol**”). The Document Control and Security Protocol shall be the first document submitted by Project Co pursuant to Schedule 10 – Review Procedure and, in any event, shall be submitted within five Business Days following the DMCA Effective Date.

37.2 Confidentiality Exceptions – Project Co

- (a) Subject to Sections 37.1(c) and 37.1(d), Project Co may disclose the Confidential Information of Contracting Authority to any Project Co Party and their professional advisors, to the extent necessary for the performance by that Project Co Party of obligations under this Agreement.

37.3 Confidentiality Exceptions – Contracting Authority

- (a) Notwithstanding any other provision of this Agreement that restricts the use of information, Contracting Authority may use the Confidential Information of Project Co for purposes not specific to the Project, but for other general governmental purposes, including but not limited to the development by Contracting Authority or the Province of alternate procurement and financing policies and frameworks. Contracting Authority will advise Project Co prior to using any Confidential Information of Project Co for non-Project purposes.
- (b) Notwithstanding any other provision of this Agreement that restricts the use or disclosure of information, Contracting Authority may disclose:
 - (i) any Confidential Information of Project Co to any Government Entity;
 - (ii) any Confidential Information of Project Co (excluding any Sensitive Information) to RSSOM Project Co or any RSSOM Project Co Party for the purpose of designing, constructing, operating or maintaining the Ontario Line Subway System (for greater certainty, Project Co acknowledges and agrees that any Confidential Information that is required to be disclosed to RSSOM Project Co pursuant to the applicable requirements of this Agreement, including Schedule 10 – Review Procedure, the Construction Technical Requirements, Schedule 45 – Integration with RSSOM Project and the RSSOM Interface Agreement (including the Integration Dispute Resolution Procedure) shall not be considered Sensitive Information), subject to Section 37.1(c); and
 - (iii) any Confidential Information of Project Co (excluding any Sensitive Information) to a TOC Contractor or TOC Contractor Party to the extent required for the purposes of facilitating TOC Developments, subject to Section 37.1(c).
- (c) Notwithstanding any other provision of this Agreement that restricts the use or disclosure of information, Contracting Authority may disclose any Confidential Information of Project Co (excluding any Sensitive Information) to any third party who has entered into a non-disclosure agreement, or any other agreement having confidentiality provisions similar to those contained herein, with Contracting Authority with respect to this Project.

37.4 Certain Voluntary Disclosures

- (a) As a separate disclosure right from Contracting Authority's other disclosure rights set out in this Section 37 or otherwise in this Agreement, but notwithstanding anything else in this Agreement to the contrary, Project Co acknowledges and agrees that Contracting Authority and IO have a right to disclose or publish (including on websites) this Agreement, any or all terms hereof, including any or all contractual submissions and other records kept in accordance with this Agreement, any information related to the performance of Project Co (or any Project Co Party) or any information derived from this Agreement or the information related to the performance of Project Co (or any

Project Co Party) as Contracting Authority, in its sole discretion, may consider appropriate, provided that:

- (i) in determining what to disclose under this Section 37.4(a), Contracting Authority will be guided by the relevant principles in FIPPA, and Contracting Authority will not disclose any information if (had an access request under FIPPA been made for such information) that information would be exempt from disclosure under section 17(1) of FIPPA, provided that Contracting Authority may override the notional application of section 17(1) of FIPPA if it determines that there is a compelling public interest in the disclosure of the information which clearly outweighs the public interest in limiting the disclosure of that information; and
- (ii) prior to disclosing or publishing such information under this Section 37.4(a):
 - (A) Contracting Authority shall provide to Project Co a redacted version of this Agreement or other documents or information to be disclosed or published, on the basis that the information so redacted constitutes information which should not be disclosed based on a notional application of section 17(1) of FIPPA (and taking into account the foregoing public interest override); and
 - (B) if Project Co, acting in good faith, contends that any of the information not redacted constitutes information that (if an access request under FIPPA been made for such information) that information would be exempt from disclosure under section 17(1) of FIPPA and not subject to a compelling public interest override, the dispute may be referred for resolution in accordance with Schedule 27 – Dispute Resolution Procedure, and Contracting Authority shall not disclose any information in dispute under this Section 37.4(a) until a determination is made.

37.5 Legally Compelled Disclosure

- (a) If a Receiving Party is legally compelled to disclose any Confidential Information, it shall:
 - (i) provide the Disclosing Party with prompt Notice (unless prohibited by Applicable Law from doing so) to allow the Disclosing Party to seek any appropriate remedies and cooperate with the Disclosing Party and its legal counsel in connection therewith; and
 - (ii) disclose only that portion of the Confidential Information that it is legally required to disclose by Applicable Law.
- (b) This Section 37.5 shall not apply to a requirement for Contracting Authority to disclose records pursuant to Section 37.6(a) or Section 37.7(a).

37.6 Digital and Data Directive

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

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

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

37.8 Safeguards

- (a) A Receiving Party shall protect all Confidential Information from loss, theft, or other unauthorized Handling (and, where Project Co or a Project Co Party is the Receiving Party, the unavailability or loss of integrity of the Confidential Information of Contracting Authority), with the same degree of care as it uses to protect its own confidential information of a similar nature or character from such occurrences, but in no event with less than a reasonable degree of care.
- (b) A Receiving Party shall:
 - (i) promptly notify the Disclosing Party in writing of any incident of loss, theft or unauthorized Handling of Confidential Information (and where the Receiving Party is Project Co, the unavailability or loss of integrity of the Confidential Information), or any attempt to effect any of the foregoing, of which it becomes aware;
 - (ii) promptly give the Disclosing Party details of such incident or attempt, and assist the Disclosing Party in investigating or preventing the recurrence of same;
 - (iii) cooperate with the Disclosing Party in any litigation and investigation involving third parties deemed necessary by the Disclosing Party to protect its Confidential Information, to the extent such litigation or investigation is related to this Agreement;
 - (iv) take all actions necessary or requested by the Disclosing Party to mitigate the effects and to minimize any damage resulting from any such incident or attempt (including taking all commercially reasonable steps to enforce against any person that is engaging in any such activities any rights the Receiving Party has to require such person to cease such activities); and
 - (v) promptly use best efforts to prevent a recurrence of any such incident or attempt.

37.9 Delivery

- (a) Receiving Party shall provide the Confidential Information to the Disclosing Party upon demand by the Disclosing Party. This Section 37.9 shall not apply to Confidential Information in relation to which a Party has been provided a licence pursuant to Schedule 37 – Intellectual Property provided that the use of such Confidential Information is in accordance with Schedule 37 – Intellectual Property.

37.10 Exceptions to Confidential Information

- (a) Information of a Disclosing Party, other than Personal Information, will not be considered to be Confidential Information in the following circumstances:
- (i) the Disclosing Party advises the Receiving Party that the information is not required to be treated as Confidential Information;
 - (ii) the information is as of the DMCA Effective Date, or becomes at any time thereafter, generally available to or accessible by the public through no fault or wrongdoing of the Receiving Party;
 - (iii) the information is a matter of public record or in the public domain;
 - (iv) the information was in the possession of the Receiving Party prior to its disclosure by the Disclosing Party, as evidenced by written records, and the Receiving Party came into possession of such information without being in breach of this Agreement or any other agreement with the Disclosing Party;
 - (v) the information is received by the Receiving Party on a non-confidential basis from a source other than the Disclosing Party, as evidenced by written records, provided that to the best of the Receiving Party's knowledge such source is not bound by a confidentiality agreement with the Disclosing Party or otherwise prohibited from disclosing the information to the Receiving Party by a contractual, legal or fiduciary obligation;
 - (vi) the information was independently developed by the Receiving Party without access to the Confidential Information, as evidenced by written records; or
 - (vii) the information is disclosed to Contracting Authority upon a termination of this Agreement or any Target Price Agreement, pursuant to Section 33 or is otherwise required by Contracting Authority for the purposes of performing (or having performed) the Works, or any other operations or services the same as, or similar to, the Works.
- (b) Subject to Section 37.3(b), the Parties acknowledge and agree that the (i) the aggregate of the Target Price and the Estimated Fee and (ii) the Reimbursable Price, but not any breakdown thereof, is not the Confidential Information of Project Co and may be disclosed by Contracting Authority.

37.11 Survival of Confidentiality

- (a) The obligations in Section 37 will cease on the date that is 35 years after the Termination Date and accordingly shall survive the termination of this Agreement and any Target Price Agreement.

37.12 Confidentiality of Intellectual Property

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

38. PERSONAL INFORMATION

38.1 Handling Personal Information

- (a) Project Co acknowledges the importance of maintaining the privacy of Personal Information and compliance with Applicable Privacy Law.
- (b) Project Co shall not subcontract or delegate to any third party any of the Works that involve or may involve the Handling of Personal Information without the express consent of Contracting Authority and without obtaining written contractual commitments of such third party substantially the same as those hereunder (including, for greater certainty, Sections 37 and 38).
- (c) Project Co shall, and shall require each Project Co Party to, only Handle Personal Information: (i) with the prior consent of Contracting Authority; and (ii) to the extent necessary to perform Project Co’s obligations under this Agreement.
- (d) Project Co shall, and shall require each Project Co Party to, at all times comply with all applicable requirements of the Output Specifications and Applicable Privacy Law when Handling or supporting the Handling of Personal Information.

38.2 Protection of Personal Information

- (a) Project Co shall implement and use, and shall require each Project Co Party to implement and use, appropriate technical, organizational and physical security measures to protect Personal Information against loss, theft and unauthorized access, disclosure, copying, use, modification or disposal, and shall otherwise ensure that Project Co, the Project Co Parties, and its and their staff shall protect, secure and keep confidential any Personal Information.
- (b) Project Co shall and shall cause each Project Co Party to restrict access to Personal Information to only those authorized employees and permitted Project Co Parties that require access to such Personal Information to fulfil their job requirements in connection with the Works and that are subject to obligations of confidentiality and Personal Information protection no less stringent than those of this Section 38.
- (c) Upon termination of this Agreement or upon request of Contracting Authority, whichever comes first, Project Co shall immediately cease all use of and return to Contracting Authority or, at the direction of Contracting Authority, dispose of, destroy or render permanently anonymous all Personal Information, in each case using appropriate technical, organizational and physical security measures to protect Personal Information against loss, theft and unauthorized access, disclosure, copying, use or modification.
- (d) To the extent that any of the Works involve or may involve destruction or disposal of Personal Information, including any disposal or destruction pursuant to Section 38.2(c), such activities shall

include, at a minimum, irreversible destruction, shredding or pulverizing of all documents, records or media containing Personal Information to a size or state that ensures that the document, record or other medium is permanently destroyed and that no information contained therein can be read, reconstructed or deciphered.

- (e) Project Co shall immediately inform Contracting Authority of any actual or suspected loss, theft or accidental or unauthorized access, disclosure, copying, use, modification or destruction of Personal Information by Project Co or any Project Co Party or any other breach of this Section 38.
- (f) Contracting Authority may from time to time require that Project Co and any Project Co Party or member of its or their staff execute and deliver within two Business Days after such request an agreement satisfactory to Contracting Authority, acting reasonably, requiring such person to keep Personal Information confidential.

38.3 Return or Destruction of Personal Information

- (a) Upon termination of this Agreement or upon request of Contracting Authority, whichever comes first, Project Co shall immediately cease all use of and return to Contracting Authority or, at the direction of Contracting Authority, dispose of, destroy or render permanently anonymous all Personal Information, in each case using appropriate technical, organizational and physical security measures to protect Personal Information against loss, theft and unauthorized Handling (and, in the event of a return of Personal Information, loss of availability or loss of integrity).
- (b) To the extent that any of the Works involve or may involve destruction or disposal of Personal Information, including any disposal or destruction pursuant to Section 38.3(a), such activities shall include, at a minimum, irreversible destruction, shredding or pulverizing of all documents, records or media containing Personal Information to a size or state that ensures that the document, record or other medium is permanently destroyed and that no information contained therein can be read, reconstructed or deciphered.

38.4 Privacy Incidents, Inspections, Investigations, Audits, Enquiries

- (a) Project Co shall allow Contracting Authority on reasonable Notice to inspect any Personal Information in the custody of Project Co or a Project Co Party and to audit Project Co and each Project Co Party's compliance with this Section 38 including the measures and systems used by Project Co and each Project Co Party to protect Personal Information, and otherwise promptly and properly respond to all reasonable inquiries of Contracting Authority with respect to Project Co or each Project Co Party's Handling of Personal Information.
- (b) Project Co shall provide, and shall cause each Project Co Party to provide, in a timely manner, all necessary and reasonable information and co-operation to Contracting Authority and to any Governmental Authority with jurisdiction or oversight over Applicable Privacy Law in connection with any investigations, audits or inquiries made under Applicable Privacy Law.

38.5 Conflict and Survival

- (a) To the extent of any conflict or inconsistency between this Section 38 and any other provision of this Agreement, this Section 38 shall prevail.

- (b) The obligations in this Section 38 shall survive the termination of this Agreement.

39. INSURANCE, BOND REQUIREMENTS AND PARENT GUARANTEE

39.1 General Requirements

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

39.2 No Relief from Liabilities and Obligations

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

39.3 Parent Guarantee

- (a) At all times from and after the DMCA Effective Date, Project Co shall ensure that a valid and binding Parent Guarantee in favour of Contracting Authority from the Parent Guarantor (or a party of comparable financial strength, capacity and stability, as determined by Contracting Authority acting in its sole discretion) and in the form of guarantee attached as Schedule 24 – Form of Parent Guarantee.

40. TITLE

40.1 Title

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

41. INDEMNITIES

41.1 Project Co Indemnities to Contracting Authority

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

- (i) [intentionally deleted];
- (ii) any physical loss of or damage to all or any part of the Lands, lands owned by Contracting Authority that are adjacent to the Lands (but that are not Metrolinx Lands), the Project Co Infrastructure, any part of the New Third Party Infrastructure, the Existing Infrastructure, or to any equipment, assets or other property forming part thereof;
- (iii) the death or personal injury of any person;
- (iv) any physical loss of or damage to property or assets of any third party (other than RSSOM Project Co and EGS Project Co), including, for clarity, any physical loss of or damage to Existing Third Party Infrastructure, or New Third Party Infrastructure;
- (v) save to the extent relating to a claim for Injurious Affection (without prejudice to Section 41.1(a)(xi)), any other loss or damage of any third party (other than RSSOM Project Co, any RSSOM Project Co Party, EGS Project Co or any EGS Project Co Party);
- (vi) any fines or penalties levied or imposed under Applicable Law with respect to privacy;
- (vii) any physical loss of or damage to property or assets of RSSOM Project Co including, for clarity, any physical loss of or damage to any RSSOM Project Infrastructure;
- (viii) any loss or damage of RSSOM Project Co resulting from a third party claim against RSSOM Project Co;
- (ix) any physical loss of or damage to property or assets of EGS Project Co including, for clarity, any physical loss of or damage to any EGS Project Infrastructure;
- (x) any loss or damage of EGS Project Co resulting from a third party claim against EGS Project Co; or
- (xi) Injurious Affection claims made by third parties,

in the case of Sections 41.1(a)(ii) to 41.1(a)(vi), arising, directly or indirectly, out of, or in consequence of, or involving or relating to, the performance or any breach of this Agreement or any Target Price Agreement by Project Co or any act or omission of Project Co or any Project Co Party, and in the case of Section 41.1(a)(vii) to 41.1(a)(xi), arising, directly or indirectly, out of, or in consequence of, or involving or relating to, any breach of this Agreement or any Target Price Agreement by Project Co or any Project Co Party, except, in all cases, to the extent caused, or contributed to, by:
 - (xii) the breach of this Agreement or any Target Price Agreement by Contracting Authority;
 - (xiii) [intentionally deleted]; or
 - (xiv) in respect of Sections 41.1(a)(ii), 41.1(a)(iii), 41.1(a)(iv), 41.1(a)(v), 41.1(a)(vi), 41.1(a)(vii), 41.1(a)(viii), 41.1(a)(ix) or 41.1(a)(x), any act or omission of Contracting Authority or any Province Person.

- (b) Project Co shall indemnify and save harmless Contracting Authority and each of their directors, officers, employees, agents and representatives from and against any and all Direct Losses which may be suffered, sustained, incurred or brought against them as a result of, in respect of, or arising out of:
- (i) any breach of a representation or warranty by Project Co contained in this Agreement or any Target Price Agreement;
 - (ii) the enforcement by Contracting Authority of any performance security for which Project Co is responsible under this Agreement or any Target Price Agreement as a result of a Project Co Event of Default; and
 - (iii) the exercise by Contracting Authority of any rights under the Assignment of Project Documents or any Assignment of Subcontract as a result of a Project Co Event of Default.
- (c) Project Co shall indemnify and save harmless Contracting Authority and each of their directors, officers, employees, agents and representatives from and against any and all Direct Losses which may be suffered, sustained, incurred or brought against them as a result of, in respect of, arising out of, or involving or relating to any one or more of the following:
- (i) the performance by Project Co of this Agreement or any Target Price Agreement not in accordance with or in breach of the requirements of any Permits, Licences, Approvals and Agreements, Applicable Law or requirements of Governmental Authorities, or the failure of Project Co to obtain all necessary Project Co Permits, Licences, Approvals and Agreements in accordance with this Agreement or any Target Price Agreement;
 - (ii) any Project Co On-Site Contamination that is Project Co Caused Contamination, any Project Co Off-Site Migrating Contamination or any Worsened Contamination; or
 - (iii) the provision of assistance by Contracting Authority to Project Co pursuant to Section 11.13(d),
- except to the extent that such Direct Losses are caused, or contributed to, by the breach of this Agreement or any Target Price Agreement by Contracting Authority or by any act or omission of Contracting Authority or any Contracting Authority Party.
- (d) Project Co shall indemnify Contracting Authority for damages suffered or incurred on account of:
- (i) any payment not duly made by Project Co pursuant to the terms of this Agreement on the due date;
 - (ii) any overpayment to or underpayment by Project Co; or
 - (iii) an amount determined as payable by Project Co to Contracting Authority under Schedule 27 – Dispute Resolution Procedure,
- by payment of an amount equal to the Payment Compensation Amount calculated from day to day at a rate per annum from the day after the date on which payment was due, the day on which overpayment was made by Contracting Authority, or from the date identified (if any) applicable to

an amount determined as payable by Project Co to Contracting Authority under Schedule 27 – Dispute Resolution Procedure, up to and including the date of payment.

- (e) [Intentionally deleted].
- (f) Project Co shall defend, in accordance with the procedures of Section 41.3, and indemnify and save harmless Contracting Authority and the Province Persons, and any Governmental Authority and each of their respective directors, officers, employees, agents and representatives from and against any and all Direct Losses which may be suffered, sustained, incurred or brought against them as a result of, in respect of, or arising out of any one or more of the following:
 - (i) any breach of Section 3 (*Licences*) of Schedule 37 – Intellectual Property;
 - (ii) any claim, suit, action or proceeding by a person alleging that (x) any Intellectual Property licensed or assigned to and used by Contracting Authority, any Province Person or any Governmental Authority pursuant to this Agreement; or (y) any Intellectual Property or other materials used by Project Co or any Project Co Party or any Subcontractor in the performance of the Works and the Project, infringes or misappropriates any Intellectual Property rights of that person, other than where such claim, suit, action or proceeding is directly caused by,
 - (A) the use of such Intellectual Property by Contracting Authority not in accordance with this Agreement or the applicable Technical Information; or
 - (B) the use of such Intellectual Property by Contracting Authority in combination with other products, software or equipment not supplied by or on behalf of Project Co or the Subcontractors and not authorized by any of them;
 - (iii) any claim, suit, action or proceeding arising out of the alleged infringement or misappropriation of any rights in or to any Project Data or Intellectual Property Rights or the use thereof by Contracting Authority Party, any Province Persons or any Governmental Authority or due to the use of any materials, machinery or equipment in connection with the Works infringes any rights in or to any Intellectual Property of a third party unless such infringement has arisen out of the use of any Project Data or Intellectual Property Rights by Contracting Authority or a Province Person otherwise than in accordance with the terms of this Agreement or the applicable Technical Information; and
 - (iv) any claim, suit, action or proceeding by any Licensor alleging that Project Co or any Project Co Party or any Subcontractor has used any Contracting Authority Supplied Third Party Intellectual Property in breach of Sections 3.1(a)(ii), 3.1(b), 3.1(c) or 3.1(d) of Schedule 37 – Intellectual Property.
- (g) Without limiting and in addition to the obligations in Section 41.1(f), if, as a result of a claim under Section 41.1(f)(i) or Section 41.1(f)(ii), all or any part of any Intellectual Property licensed or assigned to and used by Contracting Authority pursuant to this Agreement, or any Intellectual Property or other materials used by Project Co or any Subcontractor in the performance of the Works and the Project (any or all of the foregoing the “**Infringing Material**”) becomes, or in Project Co’s opinion is likely to be, enjoined from use, Project Co will:

- (i) give Notice to Contracting Authority of the same; and
- (ii) at its sole option and expense, either:
 - (A) procure for itself and Contracting Authority, to the extent required, the right to continue to use the infringing element or component of the Infringing Material as contemplated in this Agreement; or
 - (B) modify the infringing element or component of the Infringing Material so that it is non-infringing without materially affecting the quality, performance and functionality of such infringing element or component, or replace the infringing element or component with a substitute of materially equivalent quality, performance and functionality.

41.2 Contracting Authority Indemnities to Project Co

- (a) Contracting Authority shall indemnify and save harmless Project Co and 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 Agreement or any Target Price Agreement by Contracting Authority or any act or omission of any Province Person, or any act or omission of RSSOM Project Co, EGS Project Co or any TOC Contractor (but only where such act or omission of such TOC Contractor is in connection with it carrying out work on a TOC Development), except to the extent caused, or contributed to, by the breach of this 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 Agreement or any Target Price Agreement by Contracting Authority or any deliberate or negligent act or omission of any Province Person, or any deliberate or negligent act or omission of RSSOM Project Co, EGS Project Co or any TOC Contractor (but only where such act or omission of such TOC Contractor is in connection with it carrying out work on a TOC Development), except to the extent caused, or contributed to, by the breach of this Agreement by Project Co or by any act or omission of Project Co or any Project Co Party; and
 - (iii) any loss or damage of any third party (other than RSSOM Project Co, EGS Project Co or any TOC Contractor (but only where such loss or damage of such TOC Contractor is in connection with it carrying out work on a TOC Development)), arising, directly or indirectly, out of, or in consequence of, or involving or relating to, breach of this Agreement or any Target Price Agreement by Contracting Authority or any deliberate or negligent act or omission of any Province Person, or any act or omission of RSSOM Project Co, EGS Project Co or any TOC Contractor (but only where such act or omission of such TOC Contractor is in connection with it carrying out work on a TOC Development), except

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

provided that there shall be excluded from the indemnity given by Contracting Authority any liability for the occurrence of risks against which Project Co is required to insure under this Agreement or any Target Price 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 Agreement or any Target Price Agreement.

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

by payment of an amount equal to the Payment Compensation Amount calculated from day to day at a rate per annum from the day after the date on which payment was due, the day on which overpayment was made by Project Co, or from the date identified (if any) applicable to an amount determined as payable by Contracting Authority to Project Co under Schedule 27 – Dispute Resolution Procedure, up to and including the date of payment.

41.3 Conduct of Claims

- (a) This Section 41.3 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 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 41, the Beneficiary shall give written Notice to the Indemnifier as soon as reasonably practicable and in any event within 10 Business Days after receipt of the same. Such Notice shall specify with reasonable particularity, to the extent that information is available, the factual basis for the claim and the amount of the claim.
- (c) Subject to Sections 41.3(d), 41.3(e) and 41.3(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 41.3 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 Agreement if:
- (i) the Indemnifier is not entitled to take conduct of the claim in accordance with Section 41.3(c);
 - (ii) the Indemnifier fails to notify the Beneficiary of its intention to take conduct of the relevant claim as soon as reasonably practicable and in any event within 10 Business Days following the Indemnifier's receipt of the Notice from the Beneficiary under Section 41.3(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 41.3(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 41.3(c) applies. For greater certainty, Project Co acknowledges and agrees that where Contracting Authority is the Beneficiary, Contracting Authority may retain or take over such conduct in any matter involving Personal Information or any matter involving public policy. On receipt of such Notice the Indemnifier shall promptly take all steps necessary to transfer the conduct of such claim to the Beneficiary, and shall provide to the Beneficiary all relevant documentation and all reasonable cooperation, access and assistance for the purposes of considering and resisting such claim. If the Beneficiary gives any

Notice pursuant to this Section 41.3(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 41.3 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 Agreement.

41.4 Mitigation – Indemnity Claims

- (a) For greater certainty, Section 49.4 applies to any indemnity given under this 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.

41.5 Integration Disputes

- (a) Despite any provision in this Section 41 to which Schedule 27 – Dispute Resolution Procedure applies, the provisions of the Integration Dispute Resolution Procedure in the form attached as Appendix A (*Integration Dispute Resolution Procedure*) to Schedule 39 – Form of RSSOM Interface Agreement apply and shall govern in respect of all Integration Disputes under:
- (i) Sections 41.1(a)(vii) or 41.1(a)(viii); or
 - (ii) Sections 41.2(a)(i), 41.2(a)(ii) or 41.2(a)(iii) arising, directly or indirectly, out of, or in consequence of, or involving or relating to any act or omission or any deliberate or negligent act or omission (as applicable) of RSSOM Project Co.

42. LIMITS ON LIABILITY

42.1 Indirect Losses

- (a) Without prejudice to the Parties’ rights in respect of payments provided for herein, the indemnities under this Agreement or any Target Price Agreement shall not apply and there shall be no right to

claim damages for breach of this Agreement, in tort or on any other basis whatsoever, to the extent that any loss claimed by either Party is:

- (i) for punitive, exemplary or aggravated damages;
- (ii) for loss of profits, loss of use, loss of production, loss of business or loss of business opportunity;
- (iii) a claim for consequential loss or for indirect loss of any nature suffered or allegedly suffered by either Party;
- (iv) for damages caused by Project Co failing to achieve, perform or provide the Works in accordance the Development Works Schedule or the Progress Works Schedule, including Project Co failing to achieve, perform or provide (i) any TPA Substantial Completion by the TPA Scheduled Substantial Completion Date or, subject to Section 42.1(b), the TPA Longstop Date, (ii) any TPA Final Completion by the TPA Scheduled Final Completion Date, (iii) any Critical Works by the applicable Critical Works Deadline, (iv) any Critical Data by the applicable Critical Data Deadline, (v) any Development Works by the applicable Development Works Milestone Dates, (vi) any Project Co Infrastructure Section by the applicable No Later Than Date, or (vii) any DMCA Construction Works Substantial Completion by the applicable DMCA Construction Works Scheduled Substantial Completion Date approved by Contracting Authority, including any costs of Contracting Authority or any Contracting Authority Party related thereto during such period of delay, and including delay claims arising from delay to any project that is managed or controlled by Contracting Authority;
- (v) the loss of any form of revenue or income to the TTC, including, for certainty, any passenger fare revenue;
- (vi) without prejudice to Sections to 42.1(a)(i) to 42.1(a)(v), with respect to the indemnity in Section 41.1(a)(viii), a claim for loss of profits, loss of use, loss of production, loss of business or loss of business opportunity of RSSOM Project Co or a RSSOM Project Co Party or of any third party that claims such loss against RSSOM Project Co or a RSSOM Project Co Party; or
- (vii) without prejudice to Sections to 42.1(a)(i) to 42.1(a)(v), with respect to the indemnity in Section 41.1(a)(x), a claim for loss of profits, loss of use, loss of production, loss of business or loss of business opportunity of EGS Project Co or an EGS Project Co Party or of any third party that claims such loss against EGS Project Co or an EGS Project Co Party,

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

- (b) For clarity, nothing in this Section 42.1 shall affect Contracting Authority’s right to be paid the Project Co Default Termination Sum in the event Contracting Authority terminates this Agreement or any Target Price Agreement on the basis of a Project Co Event of Default described in Section 31.1(a)(iii).

42.2 No Liability in Tort

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

42.3 Sole Remedy

- (a) Nothing in this Agreement or any Target Price Agreement shall prevent or restrict the right of Contracting Authority to seek injunctive relief or a decree of specific performance or other discretionary remedies of a court of competent jurisdiction.
- (b) Notwithstanding any other provision of this Agreement or any Target Price Agreement, and except to the extent recovered under any of the insurances required pursuant to Schedule 25 – Insurance and Bond Requirements or Attachment 3 (*Additional Insurance and Performance Security Requirements*) of the Target Price Agreement, neither Party shall be entitled to recover compensation or make a claim under this Agreement, any Target Price 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 Agreement, or otherwise.

42.4 Maximum Liability

- (a) Notwithstanding anything to the contrary in this Agreement or any Target Price Agreement other than, and subject to, Sections 42.4(c) and 42.4(d), the maximum aggregate liability of each Party to the other Party arising under or relating to this Agreement and any Target Price Agreement (including in respect of any delay by Project Co in the performance of the Works, any indemnity provided by either Party to the other Party under this Agreement, or as a consequence of any termination of this Agreement or any Target Price Agreement) (the “**Total Liability**”) shall not exceed:
- (i) prior to the execution of any Target Price Agreement, the greater of:
- (A) \$[REDACTED] (index linked); and
- (B) an amount that is equal to [REDACTED]% of all cumulative amounts paid or that may become payable under this Agreement with respect to Development Works or DMCA Construction Works, which, for the purposes of this Agreement shall be equal to the cumulative amount of all Defined Cost, Corporate Overhead and Profit in respect thereof, up to a maximum of \$[REDACTED] (index linked); and
- (ii) upon the execution of a Target Price Agreement, \$[REDACTED] (index linked),
- (as applicable, the “**Maximum Liability Amount**”).
- (b) [Intentionally deleted].

- (c) The Maximum Liability Amount:
- (i) in the case of Project Co:
 - (A) shall be exclusive of any insurance or performance security (other than the Parent Guarantee) proceeds received or which will be received pursuant to insurance policies or performance security (other than the Parent Guarantee) maintained pursuant to this Agreement or which would have been received if Project Co and the Project Co Parties had obtained and maintained insurance in accordance with this Agreement;
 - (B) shall be exclusive of Project Co's liability for any Painshare (subject to the Painshare Cap), as determined pursuant to this Agreement;
 - (C) shall not apply in cases of wilful misconduct, deliberate acts of wrongdoing, fraud, gross negligence, or for claims for death or personal injury;
 - (D) shall be exclusive of Project Co's liability for any Construction Period Deductions or the Performance Liability Amount up to the Maximum Performance Liability Amount, each as determined pursuant to this Agreement; and
 - (E) shall not apply in respect of:
 - (I) any claims by Contracting Authority pursuant to Section 41.1(f) or Section 41.1(g);
 - (II) any claims by Contracting Authority against Project Co in relation to its performance (or failure to perform) any of Project Co's covenants, obligations and activities with respect to Warranty Work, including pursuant to Sections 11.16 and 11.17;
 - (III) any breach by Project Co of any of Sections 6.1(a)(xvii), 6.1(a)(xviii), 11.38(k) or 44.3 as such provisions apply in relation to Restricted Persons;
 - (IV) any claim by Contracting Authority for Direct Losses arising due to Project Co abandoning the Works;
 - (V) any costs or expenses incurred by Contracting Authority in enforcing a claim under this Agreement or in relation to any insurance or performance security (including the Parent Guarantee); and
 - (VI) any liabilities arising under any Encumbrance created or caused by Project Co (or any Project Co Party).
 - (ii) in the case of Contracting Authority:

- (A) shall be exclusive of any insurance or performance security proceeds received or which will be received pursuant to insurance policies or performance security maintained pursuant to this Agreement;
 - (B) shall be exclusive of Contracting Authority’s liability for any Gainshare (subject to the Gainshare Cap), as determined pursuant to this Agreement;
 - (C) shall not apply in cases of wilful misconduct, deliberate acts of wrongdoing, fraud, gross negligence, or for claims for death or personal injury; and
 - (D) shall not apply in respect of any amounts paid or owing to Project Co pursuant to Sections 5.1(c), 5.2(d) or 5.3(a).
- (d) Project Co’s maximum aggregate liability in respect of Contracting Authority’s right to deduct Construction Period Deductions from any subsequent amounts payable by Contracting Authority to Project Co described in Section 4.2 (*Construction Period Deductions*) of Schedule 43 – Incentives and Construction Enforcement Regime shall not exceed \$[REDACTED].
- (e) Nothing in this Section 42.4 shall restrict, limit, prejudice or in any other way impair the rights and/or remedies of the Parties under any other provision of this Agreement.

43. DISPUTE RESOLUTION PROCEDURE

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

44. ASSIGNMENT AND CHANGES IN CONTROL

44.1 Project Co Assignment

- (a) Project Co shall not sell, assign, transfer, charge, mortgage, encumber, dispose of or otherwise alienate all or any part of any interest, whether legal or beneficial, in this Agreement, any Target Price Agreement or any Ancillary Document without the prior written consent of Contracting Authority, which consent may be withheld in the sole discretion of Contracting Authority, provided however that no assignment, transfer, charge, disposition or other alienation shall be permitted to a person where that person or its Affiliate is a Restricted Person or a person whose standing or activities may compromise:
- (i) Contracting Authority’s reputation or integrity; or
 - (ii) the nature of the public transit system within the City of Toronto or the Province of Ontario so as to affect public confidence in any of the public transit systems within such area or the Project.
- (b) This Agreement may only be assigned by Project Co if any Target Price Agreement then in force is simultaneously assigned to the same assignee.

44.2 Contracting Authority Assignment

- (a) Contracting Authority may assign, transfer, dispose of or otherwise alienate any interest in this Agreement, any Target Price Agreement or any agreement in connection with this Agreement or any Target Price Agreement to which Project Co and Contracting Authority are parties:
- (i) to the Province;
 - (ii) as may be required to comply with Applicable Law;
 - (iii) to any minister of the Province;
 - (iv) to an agency of the Province having the legal capacity, power, authority and ability to become a party to and to perform the obligations of Contracting Authority under this Agreement provided that such person confirms in writing to Project Co that it will perform all of Contracting Authority's obligations hereunder and under the other Project Documents to which Contracting Authority is a party in respect of the period from and after the assignment; and
 - (v) in circumstances other than those described in Sections 44.2(a)(i) to 44.2(a)(iv) with the prior written consent of Project Co; provided that the person to whom any such assignment, transfer, disposition or other alienation is made has the capacity to perform, and confirms in writing to Project Co that it will perform all the obligations of Contracting Authority hereunder and under any agreement in connection with this Agreement to which Project Co and Contracting Authority are parties in respect of the period from and after the assignment.
- (b) Contracting Authority shall not be released of any of its obligations under this Agreement or any Target Price Agreement except upon an assignment, transfer, disposition or other alienation of its interest in this Agreement in accordance with this Section 44.2.
- (c) This Agreement may only be assigned by Contracting Authority if any Target Price Agreement then in force is simultaneously assigned to the same assignee.

44.3 Changes in Ownership and Control

- (a) No Restricted Person or a person whose standing or activities are inconsistent with the Province's reputation or integrity shall be permitted to have at any time or acquire, Direct or Indirect Power or Control over any member of Project Co Group in relation to the decisions, management, actions or policies of Project Co or in relation to the operation, management and ownership of the Project.
- (b) No Change in Ownership of Project Co, or of any Control Party, shall be permitted:
- (i) where the person acquiring the ownership interest is a Restricted Person;
 - (ii) where the person acquiring the ownership interest is a person whose standing or activities may compromise:
 - (A) Contracting Authority's reputation or integrity, or

- (B) the nature of the public transit system within the City of Toronto or the Province of Ontario so as to affect public confidence in any of the public transit systems within such area or the Project; or
 - (iii) if such Change in Ownership would have a material adverse effect on the performance of the Works or the Governmental Activities.
- (c) In the event that:
 - (i) a person having Direct or Indirect Power or Control over any member of Project Co Group in relation to the decisions, management, actions or policies of Project Co or in relation to the operation, management and ownership of the Project becomes a Restricted Person, or
 - (ii) a person who, directly or indirectly, has an Economic Interest in Project Co or the Project becomes a Restricted Person as set out in paragraph (a) of the definition of Restricted Person,

Contracting Authority may:

- (iii) in the case of an individual who becomes a Restricted Person, require that such Restricted Person be divested of his or her Direct or Indirect Power or Control or Economic Interest, as applicable; or
 - (iv) in any other circumstance, require a Change in Ownership so that the Restricted Person shall be divested of its Direct or Indirect Power or Control,
- in each case, on such terms as are satisfactory to Contracting Authority, in its discretion.
- (d) Project Co shall provide Notice to Contracting Authority of any Change in Ownership of Project Co or of any Control Party, as the case may be, that is not a Change in Control within five Business Days after such Change in Ownership, and such Notice shall include a statement identifying all persons with an ownership interest in Project Co or the relevant Control Party, as the case may be, and their respective holdings of such ownership interests, in each case prior to and following such Change in Ownership.
 - (e) Subject to Sections 44.3(a), 44.3(b), 44.3(c) and 44.3(d), no Change in Control of Project Co, or of any Control Party, shall be permitted without the prior written consent of Contracting Authority.
 - (f) Project Co shall provide Notice to Contracting Authority of any proposed Change in Control of Project Co or of any Control Party, as the case may be, not less than 20 Business Days prior to such proposed Change in Control, and such Notice shall include:
 - (i) a statement identifying all persons with an ownership interest in Project Co or the relevant Control Party, as the case may be, and their respective holdings of such ownership interests in each case prior to and following any such proposed Change in Control; and
 - (ii) as applicable, the legal name, registered address, directors and officers of, and nature of the business and activities carried on by, the person who would acquire control over Project Co or the relevant Control Party pursuant to such Change in Control.

Following the delivery to Contracting Authority of the Notice referred to in this Section 44.3(f), Project Co shall provide Contracting Authority with such other information pertaining to the proposed Change in Control as Contracting Authority may reasonably request.

- (g) Upon request by Project Co and delivery of the information required by Contracting Authority, Contracting Authority shall advise Project Co whether the person described in such particulars is a Restricted Person or a person whose standing or activities may compromise:
 - (i) Contracting Authority’s reputation or integrity; or
 - (ii) the nature of the public transit system within the City of Toronto or the Province of Ontario so as to affect public confidence in any of the public transit systems within such area or the Project.
- (h) Notwithstanding the definition of “Control Parties” set out in Schedule 1 – Definitions and Interpretation, this Section 44.3 shall not apply to a Change in Ownership or Change in Control of persons whose equity securities or units evidencing ownership or any other ownership interests are listed on a recognized stock exchange.
- (i) Section 44.3(d) shall not apply to a Change in Ownership of a Control Party that arises from a change in the shareholdings of such Control Party or an Affiliate of such Control Party (the “**Relevant Entity**”) owned by an employee of such Relevant Entity, unless such changes individually or in the aggregate determined since the date of this Agreement, would result in a Change in Control of Project Co, in which case Section 44.3(f) shall apply.

45. PROHIBITED ACTS

45.1 Definition

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

provided that this Section 45.1(a)(i) shall not apply to Project Co or any Project Co Party (or anyone employed by or acting on their behalf) providing consideration to Contracting Authority or any public body in the ordinary course, or as reasonably necessary, to fulfill or comply with the obligations and liabilities of Project Co under this Agreement or any other agreement with Contracting Authority or any public body in connection with the Project;

- (ii) entering into this Agreement or any other agreement with Contracting Authority or any public body in connection with the Project if a commission or a fee has been paid or has been agreed to be paid by Project Co, or on its behalf or to its knowledge, Contracting Authority or any public body (or anyone employed by or acting on their behalf), or to any family member of such person, unless, before the relevant agreement is entered into, particulars of any such commission or fee have been disclosed in writing to Contracting Authority, provided that this Section 45.1(a)(ii) shall not apply to a fee or commission paid by Project Co or any Project Co Party (or anyone employed by or acting on their behalf) to Contracting Authority or any public body pursuant to an agreement where such fee or commission is paid in the ordinary course, or as reasonably necessary, to fulfill or comply with the obligations and liabilities of Project Co under this Agreement or any other agreement with Contracting Authority or any public body in connection with the Project without contravening the intent of this Section 45.1(a);
- (iii) breaching or committing any offence under Applicable Law in respect of corrupt or fraudulent acts in relation to this Agreement or any other agreement with Contracting Authority or any public body in connection with the Project; or
- (iv) defrauding or attempting to defraud or conspiring to defraud Contracting Authority or any other public body.

45.2 Remedies

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

employee's employment and ensures that the relevant part of the Works shall be performed by another person; and

- (v) if the Prohibited Act is committed on behalf of Project Co or a Project Co Party by a person not specified in Sections 45.2(a)(i) to 45.2(a)(iv), then Contracting Authority may give Notice to Project Co and Section 30 shall apply, unless, within 30 days after receipt of such Notice, Project Co causes the termination of such person's employment or the appointment of their employer and, if necessary, ensures that the relevant part of the Works shall be performed by another person.
- (b) Any Notice of termination under this Section 45.2 shall specify:
 - (i) the nature of the Prohibited Act;
 - (ii) the identity of the person whom Contracting Authority believes has committed the Prohibited Act; and
 - (iii) the date of termination in accordance with the applicable provisions of this Agreement.
- (c) Without prejudice to its other rights or remedies under this Section 45.2, Contracting Authority shall be entitled to recover from Project Co any Direct Loss sustained in consequence of any breach of this Section 45.

45.3 Permitted Payments

- (a) Nothing contained in this Section 45 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.

45.4 Notification

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

45.5 Replacement of Project Co Party

- (a) Where Project Co is required to replace any Project Co Party pursuant to this Section 45, 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 Agreement shall be construed accordingly.

46. NOTICES

46.1 Notices to Parties

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

If to Project Co: [REDACTED]

If to Contracting Authority: Metrolinx
[REDACTED]

46.2 Notices to Representatives

- (a) In addition to the Notice requirements set out in Section 46.1, where any Notice is to be provided or submitted to the Contracting Authority Representative or Project Co Representative it shall be provided or submitted by sending the same by registered mail, by hand (in each case with a copy by electronic submission to the Contracting Authority Representative), or by electronic submission as follows:

If to Project Co Representative: [REDACTED]

If to the Contracting Authority
Representative: Metrolinx
[REDACTED]

46.3 Electronic Submission

- (a) Where any Notice is provided or submitted to a Party via electronic submission, an original of the Notice sent via electronic submission shall promptly be sent by regular mail or registered mail. For greater certainty, a Notice given via electronic submission shall not be invalid by reason only of a Party's failure to comply with this Section 46.3.

46.4 Change of Contact Information

- (a) Either Party to this Agreement may, from time to time, change any of its contact information set forth in Sections 46.1 or 46.2 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.

46.5 Deemed Receipt of Notices

- (a) Subject to Sections 46.5(b), 46.5(c) and 46.5(d):
- (i) a Notice given by registered mail shall be deemed to have been received on the third Business Day after mailing;

- (ii) a Notice given by hand delivery shall be deemed to have been received on the day it is delivered; and
 - (iii) a Notice given by electronic submission shall be deemed to have been received on the day it is transmitted by electronic submission.
- (b) If the Party giving the Notice knows or ought reasonably to know of difficulties with the postal system which might affect negatively the delivery of mail, any such Notice shall not be mailed but shall be made or given by personal delivery or by electronic submission in accordance with this Section 46.
 - (c) If any Notice delivered by hand or transmitted by electronic submission is so delivered or transmitted, as the case may be, either on a day that is not a Business Day or on a Business Day after 4:00 p.m. (recipient's local time), then such Notice shall be deemed to have been received by such recipient on the next Business Day.
 - (d) A Notice given by electronic submission shall be deemed to have been received by the recipient on the day it is transmitted only if an electronic submission report (maintained by the sender) indicates that the transmission of such Notice was successful.

46.6 Service on Contracting Authority

- (a) Where any Notice is required to be served on Contracting Authority, the obligation to serve such Notice shall be fulfilled by serving it on Contracting Authority in accordance with the provisions of this Section 46.

47. EMERGENCY MATTERS

47.1 Emergency

- (a) From the DMCA Effective Date until the completion of the Works, upon the occurrence of an Emergency, Project Co shall comply with the Project Co Site Specific Safety Manual.
- (b) If, in respect of any Emergency, Contracting Authority notifies Project Co that it requires compliance with any additional or overriding procedures as may be determined by Contracting Authority or any other statutory body, then Project Co shall, subject to Schedule 22 – Estimates, Variations and Proposals (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 47.1(a)).

48. CONTRACTING AUTHORITY'S DESIGNATE

48.1 Right to Designate

- (a) At any time and from time to time, the Crown may designate any ministry, branch, agency, division, department or office of the Government of Ontario to carry out administrative responsibility for the rights and obligations of Contracting Authority under this Agreement or any Target Price Agreement (including review of all documentation submitted by Project Co, a Project Co Representative or a Project Co Party to Contracting Authority for review, approval, comment,

evaluation or otherwise as described in this Agreement or any Target Price Agreement, engagement in discussions, consultations and meetings with Project Co, submission of Notices and documentation to Contracting Authority, issuances of Notices, documentation, Variation Confirmations and related matters) and Project Co may deal exclusively with the designated person in respect of all such matters and is entitled to rely on the actions, directions, requests, Notices, consents, approvals, waivers, and comments relating to the review of documentation and other administrative matters and decisions determined by such designated person from time to time, until the Crown has notified Project Co in writing that such designated person is no longer the person designated by the Crown hereunder and such Notice shall have effect on the later of the date of delivery of such Notice and the date specified in the written Notice. The Crown shall advise Project Co in writing of any designation hereunder. The rights and obligations of the Parties to this Agreement shall be in no way affected by reason of any such designation. Project Co acknowledges the right of the Crown to delegate administrative responsibilities hereunder as set forth in this Section 48.1.

- (b) At any time and from time to time, Contracting Authority may designate the Delivery Partner or IO, as applicable, to carry out any of Contracting Authority's rights or obligations relating to the Works and Project Co may deal with the Delivery Partner or IO, as applicable, in respect of all such matters and is entitled to rely on the actions, directions, requests, notices, consents, approvals, waivers, and comments relating to such construction oversight and management matters and decisions determined by the Delivery Partner or IO, as applicable, from time to time, until Contracting Authority has notified Project Co in writing that such designated Delivery Partner or IO, as applicable, is no longer the person designated by Contracting Authority hereunder in respect of such matters and such notice shall have effect on the later of the date of delivery of such notice and the date specified in the written notice. Contracting Authority shall advise Project Co in writing of any designation hereunder. The rights and obligations of the parties to this Agreement shall be in no way affected by reason of any such designation. Project Co acknowledges the right of Contracting Authority to delegate responsibilities hereunder as set forth in this Section 48.1(b).

49. GENERAL

49.1 Amendments

- (a) This Agreement and any Target Price Agreement then in effect 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 Agreement or any Target Price Agreement then in effect.

49.2 Waiver

- (a) No waiver made or given by a Party under or in connection with this Agreement or any Target Price Agreement then in effect shall be binding or effective unless the waiver is in writing, signed by an authorized representative of the Party giving such waiver, and delivered by such Party to the other Parties. No waiver made with respect to any right, power or remedy in one instance will be deemed to be a waiver with respect to any other instance involving the exercise of such right, power, or remedy or with respect to any other right, power, or remedy. No further waiver in writing is required in order to give effect to the waivers provided for in accordance with the terms of Sections 23.3 and 23.10.

- (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.

49.3 Relationship Between the Parties

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

49.4 General Duty to Mitigate

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

49.5 Actual Knowledge

- (a) Except where limited to actual knowledge and/or such knowledge which they, at law, may from time to time, be deemed to have, Project Co and Contracting Authority shall, for all purposes of

this Agreement and any Target Price Agreement then in effect, be deemed to have such knowledge in respect of the Project as is actually held (or ought reasonably to be held) by their respective directors, officers and senior management, or by the Contracting Authority Representative or the Project Co Representative, as applicable. For clarity, except as expressly set out to the contrary, a reference in this Agreement, or any Target Price Agreement then in effect, to the “knowledge” of Project Co or of Contracting Authority shall be construed in a manner consistent with the foregoing sentence.

49.6 Entire Agreement

- (a) Except where provided otherwise in (i) this Agreement or (ii) any Target Price Agreement then in effect, this Agreement and any Target Price Agreement then in effect constitute the entire agreement between the Parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings, whether oral, written, express or implied, concerning the subject matter of this Agreement and any Target Price Agreement then in effect.

49.7 No Reliance

- (a) Each of the Parties acknowledge that:
- (i) it has not entered into this Agreement or any Target Price Agreement then in effect on the basis of and does not rely, and has not relied, upon any statement or representation, whether negligent or innocent, or warranty or other provision, whether oral, written, express or implied, made or agreed to by any person, whether a Party to this Agreement or any Target Price Agreement then in effect, or not, except those expressly made, given or repeated in this Agreement or any Target Price Agreement then in effect and the only remedy or remedies available in respect of any misrepresentation or untrue statement made to it shall be those expressly provided for in this Agreement or any Target Price Agreement then in effect; and
 - (ii) this Section 49.7 shall not apply to any statement, representation or warranty made fraudulently, or to any provision of this Agreement or any Target Price Agreement then in effect which was induced by fraud, for which the remedies available shall be all those available under the law governing this Agreement or any Target Price Agreement then in effect.

49.8 Severability

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

49.9 Enurement

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

49.10 Governing Law and Jurisdiction

- (a) This Agreement, any Target Price Agreement then in effect and each of the documents contemplated by or delivered under or in connection with this Agreement or any Target Price Agreement then in effect, 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 Agreement or any Target Price Agreement then in effect affects the rights, protections and immunities of the Crown under the *Proceedings Against the Crown Act* (Ontario).

49.11 Cumulative Remedies

- (a) Except as otherwise set forth in this Agreement or any Target Price Agreement then in effect, the rights, powers and remedies of each Party set forth in this Agreement and any Target Price Agreement then in effect 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 Agreement or any Target Price Agreement then in effect.

49.12 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 Agreement and any Target Price Agreement then in effect.

49.13 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 Agreement.

49.14 Language of Agreement

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

readable matter required in accordance with, or for purposes envisaged by, this Agreement or any Target Price Agreement then in effect shall be in English.

49.15 Proof of Authority

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

49.16 Counterparts

- (a) This Agreement and any Target Price Agreement then in effect may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all of the Parties shall constitute a full, original and binding agreement for all purposes. Delivery of an executed counterpart by sending a copy by electronic mail or other electronic transmission shall be as effective as the manual delivery of an executed counterpart.

49.17 Province Persons and Contracting Authority Parties as Third Party Beneficiaries

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

49.18 Time is of the Essence

- (a) Time is of the essence in this Agreement and any Target Price Agreement then in effect.

49.19 Copyright Notice

- (a) The Parties acknowledge that the King’s Printer for Ontario is the exclusive owner of the copyright in this Agreement and any Target Price Agreement then in effect.

[SIGNATURE PAGES IMMEDIATELY FOLLOW]

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

METROLINX

By:

Name: **[REDACTED]**

Title: **[REDACTED]**

I have authority to bind the corporation.

Development and Master Construction Agreement – OL (PTUS)
Signature Page

Confidential

PAPE NORTH CONNECT, [REDACTED]:

[REDACTED]

By:

Name: **[REDACTED]**

Title: **[REDACTED]**

Name: **[REDACTED]**

Title: **[REDACTED]**

We have authority to bind the corporation.

[REDACTED]

By:

Name: **[REDACTED]**

Title: **[REDACTED]**

I have authority to bind the corporation.

Development and Master Construction Agreement – OL (PTUS)
Signature Page

Confidential

SCHEDULE 1

DEFINITIONS AND INTERPRETATION

1. **Definitions.** In this Agreement, unless the context otherwise requires:
 - 1.1 “**AACE International**” or “**AACE**” has the meaning given in Schedule 12 – Works Schedule Requirements.
 - 1.2 “**Acceptable Issuer**” means any of the Schedule I Canadian chartered banks or any other financial institutions approved by Contracting Authority in Contracting Authority’s sole and absolute discretion, in each case, whose current long-term issuer rating is at least “A” by Standard & Poor’s and “A2” by Moody’s Investor Services or an equivalent rating by another party acceptable to Contracting Authority, in its sole and absolute discretion.
 - 1.3 “**Access Pack**” has the meaning given in Schedule 40 – Rail Corridor Access and Flagging.
 - 1.4 “**Access Ready**” has the meaning given in Schedule 45 – Integration with RSSOM Project.
 - 1.5 “**Acknowledgement and Consent Agreement**” has the meaning given to it in the Assignment of Project Documents.
 - 1.6 “**Actualized Rates**” has the meaning given in Schedule 48 – Defined Cost.
 - 1.7 “**Ad-hoc Hourly Fee**” has the meaning given in Schedule 27 – Dispute Resolution Procedure or Appendix A (*Integration Dispute Resolution Procedure*) of Schedule 39 – Form of RSSOM Interface Agreement, as applicable.
 - 1.8 “**Additional Contractor**” means any independent contractor (not being, for the avoidance of doubt, any of the Early Works Contractors, Third Party Contractors, EGS Project Co or Project Co) or Contracting Authority’s own forces, engaged by Contracting Authority to carry out the Additional Works. For greater certainty, (i) RSSOM Project Co shall be considered to be an Additional Contractor (subject to the terms of Schedule 45 – Integration with RSSOM Project) and (ii) a TOC Contractor and TOC Contractor Party shall be considered to be an Additional Contractor when carrying out Additional Works.
 - 1.9 “**Additional Lands**” has the meaning given in Section 16.6(d) (*Adjustments to Metrolinx Lands Available to Project Co*) of this Agreement.
 - 1.10 “**Additional Lands Request**” has the meaning given in Section 16.6(a) (*Adjustments to Metrolinx Lands Available to Project Co*) of this Agreement.
 - 1.11 “**Additional PLAA Completion Requirements**” has the meaning given in Schedule 34 – Permits, Licences, Approvals and Agreements.
 - 1.12 “**Additional Works**” means those works or services, (i) in relation to any of the Project Co Infrastructure or in relation to any New Third Party Infrastructure; or (ii) being carried out on the Site or Existing Metrolinx Infrastructure, which are not Works and which are to be carried out by

- an Additional Contractor, including works or services to be performed either before or after Project Substantial Completion.
- 1.13 “**Adjacent Developer**” means a developer or applicant in respect of any Adjacent Development who, or whose lands, is subject to the *Building Transit Faster Act (2020)*.
- 1.14 “**Adjacent Developments**” means any development works or like activity, which is subject to the *Building Transit Faster Act (2020)* (Ontario), carried out during the Project Term by or on behalf of any third party adjacent to the Lands, Project Co Infrastructure or New Third Party Infrastructure and which otherwise affects or may potentially affect any part of the Works, the Lands or the Project Co Infrastructure or New Third Party Infrastructure, other than the TOC Developments.
- 1.15 “**Adjudication**” has the meaning given in Schedule 27 – Dispute Resolution Procedure.
- 1.16 “**Adjudicator**” has the meaning given in Schedule 27 – Dispute Resolution Procedure.
- 1.17 “**Adjustment**” has the meaning given in Schedule 21 – Risk Allocations, and with respect to TPA Works, has the meaning given in Attachment 4 (*Adjustment Events*) of the Target Price Agreement.
- 1.18 “**Adjustment Event**” has the meaning given in Schedule 21 – Risk Allocations.
- 1.19 “**Affiliate**” means in respect of a specified person, any other person who directly or indirectly, through one or more intermediaries, Controls, is Controlled by, or is under common Control with, such specified person.
- 1.20 “**Affiliated Subcontract**” has the meaning given in Section 11.39(a) (*Affiliated Subcontractors*) of this Agreement.
- 1.21 “**Affiliated Subcontractor**” has the meaning given in Section 11.39(a) (*Affiliated Subcontractors*) of this Agreement.
- 1.22 “**Agreement**” has the meaning given in the recitals to this Agreement.
- 1.23 “**Alert Level**” has the meaning given in the Output Specifications.
- 1.24 “**Ancillary Documents**” means the Bonds.
- 1.25 “**Annual Environmental Compliance Monitoring Report**” has the meaning given in Schedule 17 – Environmental Obligations.
- 1.26 “**Anti-Racism**” means a process, a systematic method of analysis, and a proactive course of action rooted in the recognition of the existence of racism, including Systemic Racism, which actively seeks to identify, challenge, prevent, and mitigate racially inequitable outcomes and power imbalances between groups and change the structures that sustain inequities.
- 1.27 “**Anticipated COVID-19 Impact End Date**” means, in respect of any Target Price Agreement, the date that is 180 days following the applicable TPA Proposal Submission Date.

- 1.28 “**Anticipated DMCA Construction Works Substantial Completion Date**” has the meaning given in Section 23.5(a) (*Countdown Notice, Section Substantial Completion Deliverables and Substantial Completion Deliverables*) of this Agreement.
- 1.29 “**Anticipated Final Completion Date**” has the meaning given in Section 23.9(a) (*Final Completion Countdown Notice*) of this Agreement.
- 1.30 “**Anticipated Section Substantial Completion Date**” has the meaning given in Section 23.5(a) (*Countdown Notice, Section Substantial Completion Deliverables and Substantial Completion Deliverables*) of this Agreement.
- 1.31 “**Anticipated TPA Substantial Completion Date**” has the meaning given in Section 23.5(a) (*Countdown Notice, Section Substantial Completion Deliverables and Substantial Completion Deliverables*) of this Agreement.
- 1.32 “**Applicable Law**” means:
- (a) any statute or proclamation or any delegated or subordinate legislation including regulations and by-laws;
 - (b) any Authority Requirement; and
 - (c) any judgment of a relevant court of law, board, arbitrator or administrative agency which is a binding precedent in the Province of Ontario,
- in each case, in force in the Province of Ontario, or otherwise binding on Project Co, any Project Co Party, Contracting Authority, any Contracting Authority Party or any Province Person.
- 1.33 “**Applicable Privacy Law**” means any Applicable Law that relates to the Handling of Personal Information, including FIPPA.
- 1.34 “**Application for Access**” has the meaning given in Schedule 40 – Rail Corridor Access and Flagging.
- 1.35 “**Arborist Report – Metrolinx Lands**” has the meaning given in Schedule 17 – Environmental Obligations.
- 1.36 “**Arborist Report – Third Party Lands**” has the meaning given in Schedule 17 – Environmental Obligations.
- 1.37 “**Archaeological Reports**” means the archaeological reports set out in Appendix B (*Environmental Reference Documents*) to Schedule 17 – Environmental Obligations.
- 1.38 “**Archaeological Risk Management Plan**” has the meaning given in Schedule 17 – Environmental Obligations.
- 1.39 “**Archaeological Risk Management Plan Update**” has the meaning given in Schedule 17 – Environmental Obligations.

- 1.40 “**As Built Drawings**” or “**As-Built Drawings**” means drawings prepared by Project Co in a format and with content and details that Contracting Authority, acting reasonably, considers appropriate.
- 1.41 “**Assignment of Project Documents**” means the agreement assigning the Subcontracts, including the Design Agreements, and other contracts and documents entered into by Project Co relating to the Project to Contracting Authority, subject to the terms thereof, on the DMCA Effective Date.
- 1.42 “**Assignment of Subcontract**” means each agreement assigning a Subcontract, entered into among Contracting Authority, Project Co and the applicable Subcontractors, subject to the terms thereof and in the form set out in Schedule 3 – Form of Assignment of Subcontract.
- 1.43 “**Associated Liabilities**” has the meaning given in Section 5.13(b)(iv) (*Taxes – Indemnity*) of this Agreement.
- 1.44 “**Authority Requirements**” means any order, direction, directive, request for information, policy, administrative interpretation, guideline or rule of or by any Governmental Authority and includes, for clarity, any direction or instruction from Transport Canada arising from any contractual arrangement.
- 1.45 “**Background Information**” means other than any Critical RSSOM Infrastructure Data and RSSOM Infrastructure Technical Specifications, any and all drawings, reports (including the Environmental Reports, the Archaeological Reports, the Cultural Heritage Reports, the Environmental Assessments, the Subsurface Utility Engineering (SUE) Reports, the Project GBR, except to the extent set out in Schedule 44 – Geotechnical Baseline Reports (and any other report given or otherwise referred to in the Output Specifications), any and all drawings, reports, studies, plans, data, documents, or other information given or made available to Project Co or any Project Co Party by Contracting Authority or any Contracting Authority Party, or which was obtained from or through any other sources.
- 1.46 “**Bankruptcy and Insolvency Act (Canada)**” means the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended from time to time.
- 1.47 “**Baseline Works Schedule**” has the meaning given in Schedule 12 – Works Schedule Requirements.
- 1.48 “**Basis of Works Schedule Report**” has the meaning given in Schedule 12 – Works Schedule Requirements.
- 1.49 “**Beneficiary**” has the meaning given in Section 41.3(a) (*Conduct of Claims*) of this Agreement.
- 1.50 “**Best for Project**” has the meaning given in Schedule 19 – Governance, Meetings and Progress Reporting.
- 1.51 “**BIM**” has the meaning given in the Output Specifications.
- 1.52 “**Board Order**” means a legal order issued by the Canadian Transportation Agency imposing a constraint on the operation of the railway.

- 1.53 “**Bonding Submission**” has the meaning given in Schedule 25 – Insurance and Bond Requirements.
- 1.54 “**Bonds**” means, collectively, the DMCA Bonds and the TPA Bonds.
- 1.55 “**Building Code**” or “**Ontario Building Code**” means the regulations made under Section 34 of the *Building Code Act*, S.O. 1992, c. 23 (Ontario), as amended from time to time.
- 1.56 “**Building Transit Faster Act (2020) (Ontario)**” means the *Building Transit Faster Act, 2020*, S.O. 2020, c. 12, and the regulations enacted thereunder, all as amended from time to time.
- 1.57 “**Built to Specification and Design**” has the meaning given in Schedule 45 – Integration with RSSOM Project.
- 1.58 “**Business Corporations Act (Ontario)**” means the *Business Corporations Act*, R.S.O. 1990, c. B. 16, as amended from time to time.
- 1.59 “**Business Day**” means any day other than a Saturday, a Sunday, a statutory holiday in the Province of Ontario or any day on which banks are not open for business in the City of Toronto, Ontario.
- 1.60 “**CA Approval**” has the meaning given in Schedule 2 – Development Works Submissions and Project Development Process.
- 1.61 “**CA Reinstatement Work**” has the meaning given in Section 11.9(b)(vi) (*Protection of Works and Property and Reinstatement Work*) of this Agreement.
- 1.62 “**CA Section Substantial Completion Deliverables Confirmation**” has the meaning given in Section 23.3(d)(i) (*Section Substantial Completion Certificates and Substantial Completion Certificates*) of this Agreement.
- 1.63 “**CA Section Substantial Completion Deliverables Deficiencies List**” has the meaning given in Section 23.3(d)(ii) (*Section Substantial Completion Certificates and Substantial Completion Certificates*) of this Agreement.
- 1.64 “**CA Substantial Completion Deliverables Confirmation**” has the meaning given in Section 23.3(d)(i) (*Section Substantial Completion Certificates and Substantial Completion Certificates*) of this Agreement.
- 1.65 “**CA Substantial Completion Deliverables Deficiencies List**” has the meaning given in Section 23.3(d)(ii) (*Section Substantial Completion Certificates and Substantial Completion Certificates*) of this Agreement.
- 1.66 “**Canadian and Industry Standards**” means, at the applicable time, those standards, practices, methods and procedures applicable to Good Industry Practice.
- 1.67 “**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.

- 1.68 “**Car**” means any subway or metro car to be supplied by RSSOM Project Co and which will be used to carry passengers on the Ontario Line Subway System.
- 1.69 “**Category of Access**” has the meaning given in Schedule 40 – Rail Corridor Access and Flagging.
- 1.70 “**CDB**” has the meaning given in Schedule 27 – Dispute Resolution Procedure.
- 1.71 “**CDB Chair**” has the meaning given in Schedule 27 – Dispute Resolution Procedure.
- 1.72 “**CDB Member Agreement**” has the meaning given in Schedule 27 – Dispute Resolution Procedure.
- 1.73 “**CDB Member Statement**” has the meaning given in Schedule 27 – Dispute Resolution Procedure.
- 1.74 “**Centre Platform**” has the meaning given in the Output Specifications.
- 1.75 “**Certificate of Recognition**” means the certification issued by IHSA to a person confirming that the health and safety management systems of such person comply with the terms, provisions and conditions of the COR Program.
- 1.76 “**Certified H&S Inspector**” means an individual who is an employee or contractor of the IHSA and has the necessary credentials recognized by the COR Program for the purpose of such individual performing any inspections as may be required to be performed in accordance with Section 15.1(b) (*Quality Management*) of this Agreement.
- 1.77 “**Change in Control**” means, with respect to a person:
- (a) any Change in Ownership, where the effect of such change is to result in control of the decisions made by or on behalf of such person subsequently being with a different entity or entities than prior to such change;
 - (b) any other change in respect of the power to elect a majority of the directors of the person or otherwise control the decisions made on behalf of such person; or
 - (c) any other change of direct or indirect power or authority through any contractual right or other power or interest with or over a person to influence, direct, cause to change or prevent from changing the approval of a decision, direction of the management, actions or policies of such person, to direct or cause the direction of the management, actions or policies of such person.
- 1.78 “**Change in Law**” means the coming into effect or repeal (without re-enactment or consolidation) in Ontario of any Applicable Law, or any amendment or variation of any Applicable Law, including

any judgment of a relevant court of law which changes binding precedent in Ontario in each case after the Technical Reference Date.

- 1.79 “**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.
- 1.80 “**Change Request**” has the meaning given in Schedule 2 – Development Works Submissions and Project Development Process.
- 1.81 “**CIDB**” has the meaning given in Appendix A (*Integration Dispute Resolution Procedure*) of Schedule 39 – Form of RSSOM Interface Agreement.
- 1.82 “**CIDB Chair**” has the meaning given in Appendix A (*Integration Dispute Resolution Procedure*) of Schedule 39 – Form of RSSOM Interface Agreement.
- 1.83 “**CIDB Member**” has the meaning given in Appendix A (*Integration Dispute Resolution Procedure*) of Schedule 39 – Form of RSSOM Interface Agreement.
- 1.84 “**CIDB Member Agreement**” has the meaning given in Appendix A (*Integration Dispute Resolution Procedure*) of Schedule 39 – Form of RSSOM Interface Agreement.
- 1.85 “**CIDB Member Statement**” has the meaning given in Appendix A (*Integration Dispute Resolution Procedure*) of Schedule 39 – Form of RSSOM Interface Agreement.
- 1.86 “**CIDB Technical Member**” has the meaning given in Appendix A (*Integration Dispute Resolution Procedure*) of Schedule 39 – Form of RSSOM Interface Agreement.
- 1.87 “**City of Toronto**” means the City of Toronto and all operating divisions thereof.
- 1.88 “**City of Toronto Act (Ontario)**” means the *City of Toronto Act* (Ontario), 2006, S.O. 2006, C. 11, Sched. A, as amended from time to time.
- 1.89 “**City of Toronto Jointly Developed Materials**” has the meaning given in Section 36.4(a)(ii) (*Jointly Developed Materials*) of this Agreement.
- 1.90 “**City of Toronto Standards**” means the standards of the City of Toronto as set out in the Output Specifications.
- 1.91 “**City Road Allowance**” has the meaning given in Schedule 35 – Lands.
- 1.92 “**Civil Structures**” has the meaning given in the Output Specifications.
- 1.93 “**Closing Meeting**” has the meaning given in Schedule 11 – Quality Management.
- 1.94 “**CN Rail**” means the Canadian National Railway Company, and its successors.

- 1.95 “**Collective Agreements e-Library Portal**” means the website found at the following link: https://sp.ltc.gov.on.ca/sites/mol/drs/ca/Pages/default_en.aspx, as may be amended from time to time.
- 1.96 “**Commissioning**” has the meaning given in Schedule 14 – Commissioning.
- 1.97 “**Commissioning Tests**” means all commissioning tests:
- (a) described in Schedule 14 - Commissioning;
 - (b) required by Applicable Law, Canadian and Industry Standards or CSA Standards; and
 - (c) recommended by the manufacturer of any part of the Project Co Infrastructure or the New Third Party Infrastructure.
- 1.98 “**Communications Calendar**” has the meaning given in Schedule 18 – Communication and Public Engagement Protocol.
- 1.99 “**Communications Plan**” has the meaning given in Schedule 18 – Communication and Public Engagement Protocol.
- 1.100 “**Communications Protocol**” has the meaning given in Schedule 18 – Communication and Public Engagement Protocol.
- 1.101 “**Companies’ Creditors Arrangement Act (Canada)**” means the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended from time to time.
- 1.102 “**Complaints Protocol**” has the meaning given in Schedule 18 – Communication and Public Engagement Protocol.
- 1.103 “**Complex Structure**” means any post-tensioned or pre-tensioned structure that has undergone significant structural alteration making it difficult for personnel at the Site to predict the direction of forces or likely collapse mechanism to be experienced by such structure in connection with any Demolition of all or any part of such structure.
- 1.104 “**Complex Structure Demolition**” means any Demolition where any one or more of the following is applicable:
- (a) significant structural elements, such as girders, columns, shearwalls or slabs, or Complex Structures are being removed, de-stressed, altered or removed;
 - (b) large penetrations are being created through slabs;
 - (c) any Demolition that may cause the collapse of any building or structure (or any portion thereof) and such collapse may directly impact adjacent occupied areas of a building or structure and potentially jeopardize the safety of workers, staff or the general public using such building or structure;

- (d) the Demolition of any building or structure (or any portion thereof) has the potential to result in any materials collapsing onto or interfering with any pedestrian right-of-way or into an occupied part of any building or structure; and
- (e) any apparent or inferable risk associated with the Demolition poses a significant risk to workers, the public or adjacent property.
- 1.105 “**Confidential Information**” means all confidential and proprietary information which is supplied by or on behalf of one Party (the “**Disclosing Party**”) to the other Party (the “**Receiving Party**”) (directly or indirectly), whether before or after the DMCA Effective Date.
- 1.106 “**Consolidated Change Request Submittals**” has the meaning given in Part B (*Consolidated Change Request Submittal Review Procedure*) to Schedule 10 – Review Procedure.
- 1.107 “**Construction Act (Ontario)**” or “**Construction Act**” means the *Construction Act*, R.S.O. 1990, c. C. 30, and regulations enacted thereunder, all as amended from time to time and subject to the application of the transition provisions in section 87.3 of the *Construction Act* (Ontario).
- 1.108 “**Construction Activities**” means construction, Demolition, rehabilitation, Reinstatement Work, rectification work, Warranty Work and any other aspect of the Construction Works that:
- (a) comprises the alteration, augmenting, upgrading, construction, completion, inspection, calibration, testing or commissioning of any part of the Project Co Infrastructure and the New Third Party Infrastructure;
- (b) comprises the assessment of any Project Co Infrastructure or New Third Party Infrastructure;
- (c) may affect the structural integrity of any Project Co Infrastructure or New Third Party Infrastructure and including any such aspect of the Works carried out as part of any Force Majeure event, Relief Event, or Variation; or
- (d) comprises Construction Clearing and Grubbing.
- 1.109 “**Construction Certificate**” means a certificate with contents described in Attachment 2 (*Sample Construction Certificates*) to Appendix A (*Minimum Works Submittals*) of Schedule 10 – Review Procedure.
- 1.110 “**Construction Clearing and Grubbing**” means the stage of the Construction 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).
- 1.111 “**Construction Defect**” has the meaning given in Section 11.15(a)(i) (*Defective Works*) of this Agreement.
- 1.112 “**Construction Document Submittals**” has the meaning given in Section 11.1(d)(ii) (*Development of Design*) of this Agreement.

- 1.113 “**Construction Integration Working Group**” has the meaning given in Schedule 39 – Form of RSSOM Interface Agreement.
- 1.114 “**Construction Latent Defect**” means, in respect of any Construction Works, a Construction Defect that could not reasonably have been ascertained by a competent person in accordance with Good Industry Practice during a visual inspection of the Construction Works if such inspection took place prior to the expiry of the applicable warranty period in respect of such Construction Defect set out in paragraph (a) of the definition of TPA Warranty Period, with respect to TPA Works, and prior to the expiry of the DMCA Warranty Period with respect to DMCA Construction Works.
- 1.115 “**Construction Management Plan**” has the meaning given in the Output Specifications.
- 1.116 “**Construction Period Deductions**” has the meaning given in Schedule 43 – Incentives and Construction Enforcement Regime.
- 1.117 “**Construction Plant**” means apparatus, facilities, plant, equipment, materials, products, processes, temporary works, machinery and other things used in performing the Construction Works but not forming part of the Construction Works.
- 1.118 “**Construction Quality Management Plan**” has the meaning given in Schedule 11 – Quality Management.
- 1.119 “**Construction Technical Requirements**” means in respect of any of the Construction Works, (i) the TPA Technical Requirements or (ii) requirements set out in any Notice issued by Contracting Authority with respect to any DMCA Construction Works.
- 1.120 “**Construction Works**” means all TPA Works and DMCA Construction Works (including all Construction Activities).
- 1.121 “**Contaminated Materials**” means any equipment, tank, container, conduit, structure, or thing that contains, is associated with, or is impacted by any Hazardous Substance.
- 1.122 “**Contamination**” means the presence of: (a) any Hazardous Substance in the environment, except Hazardous Substances present in the environment in concentrations below applicable standards as set by Applicable Law, or (b) Contaminated Materials. If Contamination is present in soil, surface water, sediment or groundwater, then the soil, surface water, sediment or groundwater, as applicable, containing the Contamination shall also be deemed to be Contamination for the purposes of this Agreement.
- 1.123 “**Contamination Management Plan**” has the meaning given in Schedule 17 – Environmental Obligations.
- 1.124 “**Contracting Authority**” means Metrolinx.
- 1.125 “**Contracting Authority Activities**” means all governmental services and activities provided in connection or otherwise associated with the Ontario Line Subway System or Contracting Authority’s work with respect to the Province of Ontario’s New Subway Transit Plan.

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- 1.126 “**Contracting Authority Contamination**” has the meaning given in Section 18.3(e) (*Contamination*) of this Agreement.
- 1.127 “**Contracting Authority Default/Convenience Termination Sum**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.128 “**Contracting Authority Design Team**” means any of Contracting Authority, its agents, contractors and subcontractors of any tier and its or their directors, officers and employees, and other persons engaged in respect of design reviews, design evaluation, or design consultation processes with respect to the Project Co Infrastructure or the New Third Party Infrastructure or the Contracting Authority Activities, but excluding Project Co and any Project Co Party.
- 1.129 “**Contracting Authority Event of Default**” has the meaning given in Section 32.1(a) (*Contracting Authority Events of Default*) of this Agreement.
- 1.130 “**Contracting Authority HR Policy**” means Contracting Authority’s human resources policies and guidelines, as they may be amended from time to time and provided to Project Co in writing.
- 1.131 “**Contracting Authority Jointly Developed Materials**” has the meaning given in Section 36.4(a)(i) (*Jointly Developed Materials*) of this Agreement.
- 1.132 “**Contracting Authority Party**” means any of Contracting Authority’s agents, contractors and subcontractors of any tier (including the Delivery Partner) engaged with respect to the Works and its or their directors, officers and employees, but excluding Project Co and any Project Co Party, RSSOM Project Co and any RSSOM Project Co Party, South Civil Project Co and any South Civil Project Co Party, and EGS Project Co and any EGS Project Co Party, and “**Contracting Authority Parties**” shall be construed accordingly.
- 1.133 “**Contracting Authority Permits, Licences, Approvals and Agreements**” has the meaning given in Schedule 34 – Permits, Licences, Approvals and Agreements.
- 1.134 “**Contracting Authority Representative**” means the person designated as such by Contracting Authority on or prior to the date of this Agreement and any permitted replacement.
- 1.135 “**Contracting Authority Supplied Third Party Intellectual Property**” has the meaning given in Schedule 37 – Intellectual Property.
- 1.136 “**Contracting Authority Taxes**” means taxes, or payments in lieu of taxes, imposed on Contracting Authority and HST and property taxes for which Contracting Authority is responsible pursuant to Section 5.7 (*Taxes*) of this Agreement.
- 1.137 “**Contracting Authority Third Party Beneficiaries**” has the meaning given in Section 49.17(a)(i) (*Province Persons and Contracting Authority Parties as Third Party Beneficiaries*) of this Agreement.
- 1.138 “**Contracting Authority Trademarks**” has the meaning given in Schedule 37 – Intellectual Property.

- 1.139 “**Contracting Authority Utility Infrastructure**” has the meaning given in Section 18.6(b) (*Mislocated or Unknown Utility Infrastructure*) of this Agreement.
- 1.140 “**Control**” means, with respect to a specified person, the ability to direct or to cause the direction of the affairs or management of such specified person, and such specified person shall be deemed to be controlled by another person if controlled in any manner whatsoever that results in control in fact by that other person (or that other person and any person or persons with whom that other person is acting jointly or in concert), whether directly or indirectly, and whether through the ownership of securities, a trust, a contract or otherwise, and “**Controls**” and “**Controlled**” shall have a similarly extended meaning.
- 1.141 “**Control Party**” means:
- (a) any person with any form of direct ownership interest in Project Co;
 - (b) [REDACTED];
 - (c) [REDACTED];
 - (d) [REDACTED]; and
 - (e) [REDACTED]
- 1.142 “**Copyrights**” means all copyrights (registered or otherwise) and registrations and applications for registration thereof, and all rights therein provided by multinational treaties or conventions.
- 1.143 “**COR Certification**” means, in respect of a person, receipt by such person of its (i) Certificate of Recognition; and (ii) Letter of Good Standing.
- 1.144 “**COR Program**” means the national safety program known as “The Certificate of Recognition (COR™)”, being a safety program that enables persons to assess their health and safety management systems to manage risks, establish controls, and minimize the incidence of injury and illness to their workers, and being nationally trademarked and endorsed by participating members of the Canadian Federation of Construction Safety Associations, or such other national safety program approved by Contracting Authority.
- 1.145 “**COR-Certified Construction Project Co Party**” has the meaning given in Section 11.24(a)(ii) (*COR Certification*) of this Agreement.
- 1.146 “**COR-Qualified Construction Project Co Party**” means one of the following:
- (a) where Project Co is a single legal entity, Project Co;
 - (b) where Project Co is a joint venture, each member of the joint venture; or
 - (c) where Project Co is a partnership, each partner of the partnership,
- provided that each such person has current ISO 45001 Accreditation in good standing.

- 1.147 “**Corporate Overhead**” has the meaning given in Schedule 47 – Corporate Overhead and Profit.
- 1.148 “**Corrected Works Schedule**” has the meaning given in Schedule 12 – Works Schedule Requirements.
- 1.149 “**Corrective Action**” has the meaning given in Schedule 11 – Quality Management.
- 1.150 “**Corrective Action Plan**” has the meaning given in Schedule 11 – Quality Management.
- 1.151 “**Cost Element Allocation Table**” has the meaning given in Schedule 48 – Defined Cost.
- 1.152 “**Countdown Notice**” has the meaning given in Section 23.5(a) (*Countdown Notice, Section Substantial Completion Deliverables and Substantial Completion Deliverables*) of this Agreement.
- 1.153 “**COVID-19**” means the infectious disease commonly known as “COVID-19” or the novel coronavirus disease 2019, caused by the SARS-CoV-2 virus, including any and all clades or variants of such disease.
- 1.154 “**COVID-19 Change in Law Reference Date**” means the date that is seven (7) days prior to the DMCA Effective Date.
- 1.155 “**COVID-19 Emergency Public Health Physical Distancing Requirements**” means the requirements under the applicable regulations and orders made under the *Reopening Ontario (A Flexible Response to COVID-19) Act*, 2020, S.O. 2020, c. 17 in effect as of the COVID-19 Change in Law Reference Date or any substantially similar Applicable Law with respect to COVID-19 regarding physical distancing requirements of at least two meters.
- 1.156 “**CP Rail**” means Canadian Pacific Railway Company Ltd., and its successors.
- 1.157 “**CP Rail Corridor Lands**” has the meaning given in Schedule 35 – Lands.
- 1.158 “**CPI**” means, as at the date of this Agreement, CPI XFET and, thereafter, the latest available Consumer Price Index Canada (all items) as published by Statistics Canada from time to time (whether preliminary or final), or failing such publication, such other index as the Parties may agree, or as may be determined in accordance with Schedule 27 – Dispute Resolution Procedure, most closely resembles such index.
- 1.159 “**CPI XFET**” means the Consumer Price Index excluding food, energy and the effect of changes in indirect taxes.
- 1.160 “**CPI_n**” is the value of CPI on April 1 of the relevant year, to be determined by reference to the relevant index in the month of February most recently preceding the indexation date.
- 1.161 “**CPI_o**” is the value of CPI on the DMCA Effective Date, to be determined by reference to the relevant index in the month immediately preceding the DMCA Effective Date.
- 1.162 “**Critical Data**” has the meaning given in Schedule 45 – Integration with RSSOM Project.

- 1.163 “**Critical Data Deadline**” has the meaning given in Schedule 45 – Integration with RSSOM Project.
- 1.164 “**Critical Non-Conformance**” means any Non-Conformance or combination of Major Non-Conformances, that:
- (a) in the reasonable opinion of Contracting Authority, demonstrates that Project Co is performing the TPA Works in a manner that may result in Project Co becoming unable to satisfy the requirements for TPA Substantial Completion;
 - (b) is persistent, ongoing and repeated; or
 - (c) in the reasonable opinion of Contracting Authority, by its continued existence or through the process of rectification, would:
 - (i) result or is reasonably expected to result in material disruption to the public or a materially adverse disruption to vehicular traffic flow or the public transit system in the City of Toronto;
 - (ii) prejudice or is reasonably expected to materially prejudice the performance of any Governmental Activities;
 - (iii) create or is reasonably expected to create a serious threat to the health, safety or security of any person, including any user of any part of or the whole of the Project Co Infrastructure, New Third Party Infrastructure and/or Existing Infrastructure, volunteers and visitors to the Project Co Infrastructure, New Third Party Infrastructure and/or Existing Infrastructure, and members of the public;
 - (iv) materially increase Contracting Authority’s risk or transfer risk to Contracting Authority or any Contracting Authority Party;
 - (v) materially adversely affect the ability of any Contracting Authority Party, Other Contractor, each Railway Company or Go Transit to perform their activities as permitted or contemplated by this Agreement;
 - (vi) materially adversely affect or change the Critical Path of the Project as defined in the Progress Works Schedule, adversely affect Project Co’s ability to achieve TPA Substantial Completion by the TPA Scheduled Substantial Completion Date, require a material resequencing of the TPA Works or cause any delay in achieving TPA Substantial Completion;
 - (vii) potentially compromise the reputation or integrity of Contracting Authority and/or any Contracting Authority Party or the nature of the public transit system in the City of Toronto or the Province of Ontario so as to affect public confidence in the public transit system in the City of Toronto or the Province of Ontario or the Project; or

- (viii) materially adversely affect the ability of the Contracting Authority to achieve the dates set out in Appendix A (*Integration Dispute Resolution Procedure*) of Schedule 45 – Integration with RSSOM Project.
- 1.165 “**Critical Path**” has the meaning given in Schedule 12 – Works Schedule Requirements.
- 1.166 “**Critical RSSOM Infrastructure Data**” has the meaning given in Schedule 45 – Integration with RSSOM Project.
- 1.167 “**Critical RSSOM Infrastructure Works**” has the meaning given in Schedule 45 – Integration with RSSOM Project.
- 1.168 “**Critical RSSOM Infrastructure Works Complete**” has the meaning given in Schedule 45 – Integration with RSSOM Project.
- 1.169 “**Critical RSSOM Infrastructure Works Deadline**” has the meaning given in Schedule 45 – Integration with RSSOM Project.
- 1.170 “**Critical Works**” has the meaning given in Schedule 45 – Integration with RSSOM Project.
- 1.171 “**Critical Works Complete**” has the meaning given in Schedule 45 – Integration with RSSOM Project.
- 1.172 “**Critical Works Deadline**” has the meaning given in Schedule 45 – Integration with RSSOM Project.
- 1.173 “**Crown**” means His Majesty the King in right of Ontario.
- 1.174 “**Crown Agency Act (Ontario)**” means the *Crown Agency Act*, R.S.O. 1990, c. 48, as amended from time to time.
- 1.175 “**CSA Standards**” means, at the applicable time, the Canadian Standards Association standards.
- 1.176 “**Cultural Heritage Reports**” means the cultural heritage reports set out in Appendix B (*Environmental Reference Documents*) to Schedule 17 – Environmental Obligations.
- 1.177 “**Cultural Heritage Risk Management Plan**” has the meaning given in Schedule 17 – Environmental Obligations.
- 1.178 “**Defined Cost**” has the meaning given in Schedule 48 – Defined Cost.
- 1.179 “**Delivery Partner**” means a third party designated by the Crown to provide construction oversight and management services on behalf of the Contracting Authority.
- 1.180 “**Demolition**” means the removal of a building or structure, as the case may be, or of any material part of a building or structure.
- 1.181 “**Demolition Default Event**” has the meaning given in Section 11.25(b) (*Demolition Requirements*) of this Agreement.

- 1.182 “**Demolition Guidelines**” means those guidelines set forth in the document entitled “Professional Engineers Providing Services for Demolition of Buildings and other Structures” published by the Professional Standards Committee established by the Professional Engineers of Ontario and having a publication date of April 2011.
- 1.183 “**Demolition Plan**” means a plan or other document prepared by a Professional Engineer, limited licence holder or provisional licence holder in accordance with section 3 of the Performance Standards Regulation with respect to the Demolition of a building or structure and includes any changes to the plan or other document that are made by a Professional Engineer, limited licence holder or provisional licence holder.
- 1.184 “**Demolition Requirements**” has the meaning given in Section 11.25(a) (*Demolition Requirements*) of this Agreement.
- 1.185 “**Demolition Specifications**” means those specifications relating to any Demolition prepared by Project Co in accordance with Section 11.25(a)(iv)(A) (*Demolition Requirements*) of this Agreement.
- 1.186 “**Demolition Supervisor**” has the meaning given in Section 11.25(a)(ii) (*Demolition Requirements*) of this Agreement.
- 1.187 “**Design Agreements**” means each contract entered into between Project Co and any Design Works Subcontractor or between any Design Works Subcontractor and any other Subcontractor at any tier in accordance with this Agreement.
- 1.188 “**Design and Construction Certification Procedure**” has the meaning given in Schedule 11 – Quality Management.
- 1.189 “**Design and Construction Data**” has the meaning given in Schedule 45 – Integration with RSSOM Project.
- 1.190 “**Design Certificate**” means a certificate with contents described in Attachment 1 (*Sample Design Certificates*) to Appendix A (*Minimum Works Submittals*) of Schedule 10 – Review Procedure.
- 1.191 “**Design Data**” means all drawings, reports, documents, plans, software, formulae, calculations, and other data prepared or obtained by Project Co relating to the design, construction, testing or monitoring of the Project Co Infrastructure and the New Third Party Infrastructure, but excluding Intellectual Property Rights of third parties, such as CAD software, that is used only in the process of design and construction.
- 1.192 “**Design Development Submittals**” has the meaning given in Section 11.1(d)(i) (*Development of Design*) of this Agreement.
- 1.193 “**Design Integration Working Group**” has the meaning given in Schedule 39 – Form of RSSOM Interface Agreement.
- 1.194 “**Design Management Plan**” has the meaning given in the Output Specifications.

- 1.195 “**Design Presentation Meetings**” has the meaning given in Schedule 19 – Governance, Meetings and Progress Reporting.
- 1.196 “**Design Quality Management Plan**” has the meaning given in Schedule 11 – Quality Management.
- 1.197 “**Design Review Meetings**” has the meaning given in Schedule 19 – Governance, Meetings and Progress Reporting.
- 1.198 “**Design Team**” means:
- (a) [REDACTED];
 - (b) [REDACTED];
 - (c) [REDACTED]; and
 - (d) [REDACTED].

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

- 1.199 “**Design Works**” means any of the following:
- (a) the activities directly related to the design of any Construction Works, as contemplated in the Design Management Plan and as required for the development of the Design Development Submittals specified in Appendix A (*Minimum Works Submittals*) to Schedule 10 – Review Procedure of this Agreement, including issuance of Design Certificates, Record Drawings and As Built Drawings;
 - (b) the design of temporary Works, or any other design services requiring the oversight and approval of a Professional Engineer or licensed architect;
 - (c) the participation of professional engineering and architect staff in Commissioning;
 - (d) the services provided during construction of the Construction Works (excluding any work or services performed by construction quality staff), being the following:
 - (i) oversight for the purpose of acting as engineer of record or architect of record;
 - (ii) issuance of Construction Certificates;
 - (iii) issuance of As Built Drawings and data;
 - (iv) dispositioning of Non-Conformance as required from the engineer of record or architect of record; or

- (v) services similar to those specified in (i) to (iv) above which Contracting Authority has, in its sole discretion, agreed (in writing) constitute “Design Works”; and
- (e) the work or services performed by architects, engineers and technicians executing field investigations,
- provided that “Design Works”:
- (f) excludes any Project management activities, construction management activities, quality management activities, environmental management activities, schedule and cost management activities or communications management and other management services;
- (g) includes design management services related to the management, coordination, and delivery of the Design Works.
- 1.200 “**Design Works Subcontractor**” means any Subcontractor engaged by or through Project Co to perform any of the Design Works, including any consultant and any other subcontractor at any tier.
- 1.201 “**Designated Substances and Hazardous Materials**” has the meaning given in Schedule 17 – Environmental Obligations.
- 1.202 “**Designated Substances and Hazardous Materials Management Plan**” has the meaning given in Schedule 17 – Environmental Obligations.
- 1.203 “**Development Approvals**” means development permits, building permits, zoning approvals and any other planning or development permit, consent or applicable Permits, Licences, Approvals and Agreements, required from time to time for construction of the Project Co Infrastructure and the New Third Party Infrastructure.
- 1.204 “**Development Variation**” has the meaning given in Schedule 22 – Estimates, Variations and Proposals.
- 1.205 “**Development Variation Confirmation**” has the meaning given in Schedule 22 – Estimates, Variations and Proposals.
- 1.206 “**Development Variation Directive**” has the meaning given in Schedule 22 – Estimates, Variations and Proposals.
- 1.207 “**Development Variation Enquiry**” has the meaning given in Schedule 22 – Estimates, Variations and Proposals.
- 1.208 “**Development Works**” means the performance of certain Works, the activities described in the Project Execution Plan, and other obligations as set out in Schedule 2 – Development Works Submissions and Project Development Process. For clarity, Development Works shall not include the TPA Works or DMCA Construction Works.
- 1.209 “**Development Works Charter**” has the meaning given in Schedule 19 – Governance, Meetings and Progress Reporting.

- 1.210 “**Development Works Deliverables**” has the meaning given in Schedule 2 – Development Works Submissions and Project Development Process.
- 1.211 “**Development Works Execution Plan**” has the meaning given in Schedule 2 – Development Works Submissions and Project Development Process.
- 1.212 “**Development Works Milestone Dates**” has the meaning given in Schedule 2 – Development Works Submissions and Project Development Process.
- 1.213 “**Development Works Project Deliverables**” has the meaning given in Schedule 2 – Development Works Submissions and Project Development Process.
- 1.214 “**Development Works Schedule**” has the meaning given in Schedule 2 – Development Works Submissions and Project Development Process.
- 1.215 “**Development Works Submittals**” has the meaning given in Schedule 2 – Development Works Submissions and Project Development Process.
- 1.216 “**Differing Geotechnical Site Condition**” has the meaning given in Section 18.2(a) (*Geotechnical Site Conditions*) of this Agreement.
- 1.217 “**Digital and Data Directive**” means the Management Board of Cabinet’s Digital and Data Directive dated February 1, 2021, as may be amended or superseded from time to time.
- 1.218 “**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.
- 1.219 “**Direct or Indirect Power or Control**” means the direct or indirect power or control over the decisions, management, actions or policies of a person, including through the direct or indirect power or control over the decisions, management, actions or policies of any persons having direct or indirect power or control over the decisions, management, actions or policies of any other person, whether through:
- (a) ownership, beneficial or otherwise, of greater than **[REDACTED]** of any of the shares, units or equity interests of a person;
 - (b) the direct or indirect power to vote any of the shares, units or equity interests of a person where an individual’s ownership, beneficial or otherwise, is equal to or exceeds **[REDACTED]** percent of the voting securities, units or equity interests of such person; or
 - (c) the direct or indirect power or authority to influence or direct the approval of a decision, the management, actions or policies of a person or to prevent the approval of a decision, the management, actions or policies of a person through any contractual right or other power or interest with or over a person.
- 1.220 “**Disclosing Party**” has the meaning given in the definition of Confidential Information.

- 1.221 “**Discriminatory Change in Law**” means any Change in Law which applies expressly to:
- (a) transit systems, including subways or metros whose design, construction, and financing are procured by a contract similar to this Agreement and not to other similar transit systems;
 - (b) the Project Co Infrastructure or New Third Party Infrastructure and not to other transit systems, including subways or metros;
 - (c) Project Co and not to other persons; or
 - (d) persons undertaking projects for design, construction, and financing that are procured by a contract similar to this Agreement and not to other persons undertaking similar projects procured on a different basis,
- except that such Change in Law shall not be a Discriminatory Change in Law:
- (e) where it is in response to any act or omission on the part of Project Co which contravenes Applicable Law (other than an act or omission rendered illegal by virtue of the Discriminatory Change in Law itself);
 - (f) solely on the basis that its effect on Project Co is greater than its effect on other companies; or
 - (g) where such Change in Law affects companies generally.
- 1.222 “**Dispute**” has the meaning given in Schedule 27 – Dispute Resolution Procedure.
- 1.223 “**Dispute Resolution Procedure**” means the procedure set out in Schedule 27 – Dispute Resolution Procedure.
- 1.224 “**DMCA Bonds**” has the meaning given in Schedule 25 – Insurance and Bond Requirements.
- 1.225 “**DMCA Construction Warranty Cash Amount**” has the meaning given in Section 11.18(b) (*Warranty Security*) of this Agreement.
- 1.226 “**DMCA Construction Warranty Security**” means either the DMCA Construction Works Warranty Letter of Credit or the DMCA Construction Warranty Cash Amount, as the case may be.
- 1.227 “**DMCA Construction Warranty Security Return Date**” means, in respect of any DMCA Construction Works, the date that is five Business Days following the date that is two years following the applicable DMCA Construction Works Substantial Completion Date.
- 1.228 “**DMCA Construction Works**” has the meaning given to it in Section 4.4(a) (*DMCA Construction Works*) of this Agreement.
- 1.229 “**DMCA Construction Works Final Completion**” means, in respect of any DMCA Construction Works, the completion of such DMCA Construction Works (including completion of all applicable Minor Deficiencies) in accordance with this Agreement.

- 1.230 “**DMCA Construction Works Final Completion Date**” means, in respect of any DMCA Construction Works, the date on which the applicable DMCA Construction Works Final Completion is achieved in respect thereof as evidenced by the applicable DMCA Construction Works Final Completion Certificate, as such date shall be stated therein.
- 1.231 “**DMCA Construction Works Final Completion Certificate**” means, in respect of any DMCA Construction Works, the certificate to be issued by the Independent Commissioning Agent in accordance with Section 23.10 (*Final Completion Certificate*) of this Agreement.
- 1.232 “**DMCA Construction Works Implementation Plan**” has the meaning given in Schedule 2 – Development Works Submissions and Project Development Process.
- 1.233 “**DMCA Construction Works Required Amount**” has the meaning given to it in Schedule 6 – DMCA Construction Works.
- 1.234 “**DMCA Construction Works Scheduled Final Completion Date**” means, in respect of any DMCA Construction Works, the date which is twelve (12) months following the applicable DMCA Construction Works Scheduled Substantial Completion Date.
- 1.235 “**DMCA Construction Works Scheduled Substantial Completion Date**” has the meaning given to it in Schedule 6 – DMCA Construction Works.
- 1.236 “**DMCA Construction Works Submittals**” has the meaning given in Schedule 6 – DMCA Construction Works.
- 1.237 “**DMCA Construction Works Substantial Completion**” means, in respect of any DMCA Construction Works, the point at which:
- (a) the applicable Project Co Infrastructure and the New Third Party Infrastructure have been completed in accordance with this Agreement;
 - (b) the Independent Commissioning Agent has certified the substantial performance of such DMCA Construction Works and the related certificate of substantial performance has been published, each in accordance with the *Construction Act* (Ontario); and
 - (c) all requirements for the applicable DMCA Construction Works Substantial Completion described in Schedule 14 – Commissioning, other than in respect of applicable Minor Deficiencies, have been satisfied in respect of the applicable Project Co Infrastructure and the New Third Party Infrastructure as a whole.
- 1.238 “**DMCA Construction Works Substantial Completion Date**” means, in respect of any DMCA Construction Works, the date upon which the applicable DMCA Construction Works Substantial Completion Certificate is issued by the Independent Commissioning Agent.
- 1.239 “**DMCA Construction Works Substantial Completion Certificate**” means the certificate to be issued by the Independent Commissioning Agent in accordance with Section 23.3(g) (*Section Substantial Completion Certificates and Substantial Completion Certificates*) of this Agreement.

- 1.240 “**DMCA Construction Works Warranty Letter of Credit**” means an unconditional and irrevocable letter of credit from any one or more Acceptable Issuers in favour and for the direct and exclusive benefit of Contracting Authority, in the form set out in Schedule 20 – Warranty Letter of Credit.
- 1.241 “**DMCA Effective Date**” has the meaning given in Section 2.1(a) (*DMCA Effective Date*) of this Agreement.
- 1.242 “**DMCA Initial Proposal**” has the meaning given in Schedule 6 – DMCA Construction Works.
- 1.243 “**DMCA Surety**” has the meaning given in Schedule 25 – Insurance and Bond Requirements.
- 1.244 “**DMCA Variation**” has the meaning given in Schedule 22 – Estimates, Variations and Proposals.
- 1.245 “**DMCA Variation Confirmation**” has the meaning given in Schedule 22 – Estimates, Variations and Proposals.
- 1.246 “**DMCA Variation Directive**” has the meaning given in Schedule 22 – Estimates, Variations and Proposals.
- 1.247 “**DMCA Variation Enquiry**” has the meaning given in Schedule 22 – Estimates, Variations and Proposals.
- 1.248 “**DMCA Warranty Period**” means, in respect of any DMCA Construction Works,
- (a) in connection with any Construction Defect, in the case of,
 - (i) Project Co Infrastructure (other than the Mechanical Systems), a period beginning on Section Substantial Completion of the applicable Project Co Infrastructure Section and expiring on the date that is two (2) years following such date;
 - (ii) the Mechanical Systems, a period beginning on the applicable Section Substantial Completion Date and expiring on the date that is two (2) years following the Project Substantial Completion Date; and
 - (iii) New City Infrastructure and New TTC Infrastructure, or a portion thereof, a period beginning on Handover of New City Infrastructure or New TTC Infrastructure, or a portion thereof, and expiring on the date that is two (2) years following such date of Handover of New City Infrastructure or New TTC Infrastructure, or a portion thereof; and
 - (b) in connection with any Construction Latent Defect, in the case of,
 - (i) Project Co Infrastructure (other than the Mechanical Systems), a period beginning on Section Substantial Completion of the applicable Project Co Infrastructure Section and expiring on the date that is five (5) years following such date;

- (ii) the Mechanical Systems, a period beginning on the applicable Section Substantial Completion Date and expiring on the date that is five (5) years following the Project Substantial Completion Date; and
 - (iii) New City Infrastructure and New TTC Infrastructure, or a portion thereof, a period beginning on Handover of New City Infrastructure or New TTC Infrastructure, or a portion thereof, and expiring on the date that is five (5) years following such date of Handover of New City Infrastructure or New TTC Infrastructure, or a portion thereof.
- 1.249 “**Document Control and Security Protocol**” has the meaning given in Section 37.1(e) (*Restrictions on Use and Disclosure*) of this Agreement.
- 1.250 “**Documents Relating to Indigenous Nations**” has the meaning given in Schedule 17 – Environmental Obligations.
- 1.251 “**Draft TPA Negotiations Process**” has the meaning given in Schedule 2 – Development Works Submissions and Project Development Process.
- 1.252 “**Early Warning Event**” means an event or circumstance that may happen or has happened, which has the potential to: (i) cause a delay or other negative impact in the progress or quality of the Works (irrespective of whether such delays are potential Adjustment Events pursuant to Schedule 21 – Adjustment Events); (ii) contribute to Project Co missing the TPA Scheduled Substantial Completion Date, TPA Longstop Date, TPA Scheduled Final Completion Date, Critical Works Deadline, Critical Data Deadline, Development Works Milestone Date, No Later Than Date or DMCA Construction Works Scheduled Substantial Completion Date or (iii) materially adversely affect the Target Price.
- 1.253 “**Early Warning Meeting**” has the meaning given in Section 13.5(c) (*Early Warnings*) of this Agreement.
- 1.254 “**Early Warning Register**” means the register of all Early Warning Events to be maintained by Project Co pursuant to Schedule 12 – Work Schedule Requirements and the terms of this Agreement, which includes relevant specific data, discussion and analysis discussed at Early Warning Meetings and the status of the Early Warning Events from the date of Notice thereof to resolution or closing of the event.
- 1.255 “**Early Contractor Activities**” has the meaning given in the Request for Proposals.
- 1.256 “**Early Works Construction Defect**” has the meaning set out in Schedule 41 – Early Works Handover.
- 1.257 “**Early Works Contractor**” means each of the contractors delivering the Early Works Infrastructure.
- 1.258 “**Early Works Infrastructure**” means the infrastructure that each Early Works Contractor designs, constructs, installs, tests, supplies, delivers and commissions and hands over to Project Co as contemplated in Schedule 41 – Early Works Handover.

- 1.259 “**Early Works Infrastructure Section**” has the meaning set out in Schedule 41 – Early Works Handover.
- 1.260 “**Early Works Section Handover**” has the meaning given in Schedule 41 – Early Works Handover.
- 1.261 “**Early Works Section Handover Date**” has the meaning set out in Schedule 41 – Early Works Handover.
- 1.262 “**Early Works Warranty Work**” has the meaning set out in Schedule 41 – Early Works Handover.
- 1.263 “**Earned Value Management Plan**” has the meaning given in Schedule 12 – Works Schedule Requirements.
- 1.264 “**Economic Interest**” means any right to receive, directly or indirectly and whether in cash or in kind, a payment, repayment, fee, interest, dividend, distribution, redemption or any other consideration of benefit or value to the recipient of any nature whatsoever, but excluding wages, salaries or other employment-related benefits.
- 1.265 “**EGS DMCA**” means the contract between Contracting Authority and EGS Project Co with respect to the Elevated Guideway and Stations Project to be entered into on or about February 14, 2024.
- 1.266 “**EGS Infrastructure Access Date**” has the meaning given in Schedule 38 – Integration with EGS Project.
- 1.267 “**EGS Project Co**” means the party entering into the EGS DMCA with Contracting Authority.
- 1.268 “**EGS Project Co Party**” means any person engaged by EGS Project Co in connection with the Elevated Guideway and Stations Project, and/or any of its contractors, and their subcontractors of any tier, agents, employees, officers and directors, and “**EGS Project Co Parties**” shall be construed accordingly.
- 1.269 “**EGS Project Infrastructure**” has the meaning given in Schedule 38 – Integration with EGS Project.
- 1.270 “**Elevated Guideway and Stations Project**” means the design, construction, supply, integration, commissioning and handover of three kilometers of elevated guideway, five elevated stations and line 5 TTC interface.
- 1.271 “**Emergency**” means any situation, event, occurrence, multiple occurrences or circumstances:
- (a) that:
 - (i) constitutes or may constitute a hazard to or jeopardizes or may jeopardize or pose a threat to health and safety of any persons (including Province Persons) or any part of or the whole of the Project Co Infrastructure, the New Third Party Infrastructure or the Existing Infrastructure;

- (ii) causes or may cause damage or harm to property, buildings and/or equipment;
- (iii) constitutes a hostage situation or state of emergency declared as such by the Contracting Authority Representative or Contracting Authority (acting reasonably);
- (iv) materially interferes with or prejudices or may materially interfere with or prejudice the safe operation of the Project Co Infrastructure or New Third Party Infrastructure, any part of the Lands, the conduct of Works, or the conduct of Governmental Activities; or
- (v) constitutes a period of transition to or from war,

and which, in the opinion of Contracting Authority, requires immediate action to prevent and/or mitigate the occurrence (or risk of the occurrence) of the foregoing; or

- (b) which gives rise to an emergency, as determined by any statutory body including (notwithstanding the generality of the foregoing) an Emergency Service Provider.

- 1.272 “**Emergency Egress Building**” or “**EEB**” has the meaning given in the Output Specifications.
- 1.273 “**Emergency Rail Situation**” has the meaning given in Schedule 40 – Rail Corridor Access and Flagging.
- 1.274 “**Emergency Response Plan**” means the plan to be prepared, submitted and implemented by Project Co in accordance with the Output Specifications.
- 1.275 “**Emergency Service Providers**” means any Police Service, firefighting service, ambulance service, armed forces or other authority with emergency service authority pursuant to Applicable Law which may require access to the Project Co Infrastructure or New Third Party Infrastructure from time to time.
- 1.276 “**Employed Staff**” has the meaning given in Schedule 48 – Defined Cost.
- 1.277 “**Encumbrances**” means the Encumbrances listed in Schedule 16 – Encumbrances and any other encumbrances deemed to be Encumbrances as described in and for the purposes set out in Section 17.2(d) (*No Encumbrances*) of this Agreement.
- 1.278 “**Endangered Species Act (Ontario)**” means the *Endangered Species Act, 2007*, S.O. 2007, c. 6, as amended from time to time.
- 1.279 “**Enhanced Design**” means development of design, including plans and specifications, in accordance with the TPA Development Phase Lockdown Submittals requirements in Schedule 10 – Review Procedure to a level that allows confirmation that applicable Construction Works can be constructed and that the submitted plans and specifications will meet the objectives of the applicable Construction Works without significant design changes, including:

- (a) identify and reduce risk to a level that is understood and accepted to determine a Target Price for the applicable Construction Works;
 - (b) finalization of layouts for major elements and facilities (e.g., elevated guideway pier and foundation locations, tunnel section, geometry, and alignment, stations, bus terminals, entrances, EEBs, TPSS);
 - (c) finalization of approach for Permits, Licences, Approvals and Agreements, including identifying list of required Permits, Licences, Approvals and Agreements and schedule for obtaining same;
 - (d) completion of Utility Infrastructure relocation designs;
 - (e) confirmation of compliance to Stakeholder requirements;
 - (f) confirmation of constructability of the applicable Construction Works;
 - (g) finalization of Project interface register and interface management submittals;
 - (h) preparation of specifications; and
 - (i) identification of equipment, materials, and finishes.
- 1.280 “**Environmental Approvals**” has the meaning given in Schedule 17 – Environmental Obligations.
- 1.281 “**Environmental Assessments**” has the meaning given in Schedule 17 – Environmental Obligations.
- 1.282 “**Environmental Audit Report**” has the meaning given in Schedule 17 – Environmental Obligations.
- 1.283 “**Environmental Director**” has the meaning given in Schedule 17 – Environmental Obligations.
- 1.284 “**Environmental Law**” has the meaning given in Schedule 17 – Environmental Obligations.
- 1.285 “**Environmental Management Plans**” has the meaning given in Schedule 17 – Environmental Obligations.
- 1.286 “**Environmental Management System**” or “**EMS**” has the meaning given in Schedule 17 – Environmental Obligations.
- 1.287 “**Environmental Reports**” means, collectively, (a) each report set out in Appendix B (*Environmental Reference Documents*) to Schedule 17 – Environmental Obligations and (b) the Environmental Assessments.
- 1.288 “**Environmental Specialists Qualifications Plan**” has the meaning given in Schedule 17 – Environmental Obligations.

- 1.289 “**Erosion and Sediment Control Plan**” has the meaning given in Schedule 17 – Environmental Obligations.
- 1.290 “**Estimate**” has the meaning given in Part A (*Development Variations and DMCA Variations*) or Part B (*TPA Variations*) Schedule 22 – Estimates, Variations and Proposals, as applicable.
- 1.291 “**Estimate Approval**” has the meaning given in Schedule 22 – Estimates, Variations and Proposals.
- 1.292 “**Estimated Fee**” has the meaning given in the Target Price Agreement.
- 1.293 “**Excise Tax Act (Canada)**” means the *Excise Tax Act*, R.S.C. 1985, c. E-15, as amended from time to time.
- 1.294 “**Existing COVID-19 Laws Extension**” means the continuation in force of the COVID-19 Emergency Public Health Physical Distancing Requirements beyond the Anticipated COVID-19 Impact End Date.
- 1.295 “**Existing Infrastructure**” means the Existing Metrolinx Infrastructure and the Existing Third Party Infrastructure.
- 1.296 “**Existing Metrolinx Infrastructure**” means existing infrastructure located on the Metrolinx Lands that is owned by Contracting Authority.
- 1.297 “**Existing Third Party Infrastructure**” means existing road, highway, transit, hospital, Utility Infrastructure, drainage works, landscaping or any other public realm infrastructure and any other infrastructure situated on the Lands, that is owned by MTO, the City of Toronto, any Utility Company, or any other third party.
- 1.298 “**Existing TTC Infrastructure**” means any asset, improvement, facility or infrastructure situated on the Lands operated by the TTC, including but not limited to subway stations, subway tunnels, bus terminals, signals and electrical equipment, entrances, ventilation shafts and commuter parking lots.
- 1.299 “**Expiry Date**” means the first anniversary of the Project Final Completion Date.
- 1.300 “**External Quality Audit**” has the meaning given in Schedule 11 – Quality Management.
- 1.301 “**Facilities**” has the meaning given in the Output Specifications.
- 1.302 “**Final Completion Countdown Notice**” has the meaning given in Section 23.9(a) (*Final Completion Countdown Notice*) of this Agreement.
- 1.303 “**Final Completion Notice**” has the meaning given in Section 23.10(b) (*Final Completion Certificate*) of this Agreement.
- 1.304 “**Final Incident Report**” has the meaning given in Schedule 29 – Safety, System Assurance and Security.

- 1.305 “**Financial Administration Act (Ontario)**” means the *Financial Administration Act*, R.S.O. 1990, c. F. 12, as amended from time to time.
- 1.306 “**FIPPA**” means the *Freedom of Information and Protection of Privacy Act (Ontario)*, R.S.O. 1990, c. F. 31, as amended from time to time.
- 1.307 “**First Checkpoint**” has the meaning given in Schedule 2 – Development Works Submissions and Project Development Process.
- 1.308 “**First Checkpoint Date**” has the meaning given in Schedule 2 – Development Works Submissions and Project Development Process.
- 1.309 “**First Development Phase**” has the meaning given in Schedule 2 – Development Works Submissions and Project Development Process.
- 1.310 “**Fisheries Act (Canada)**” means the *Fisheries Act*, R.S.C. 1985, c. F-14, as amended from time to time.
- 1.311 “**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 Agreement:
- (a) war, civil war, armed conflict, terrorism, acts of foreign enemies or hostilities;
 - (b) nuclear or radioactive contamination of the Works, the Project Co Infrastructure and/or the Lands, unless Project Co or any Project Co Party is the source or cause of the contamination;
 - (c) chemical or biological contamination of the Works, the Project Co Infrastructure and/or the Lands from any event referred to in this definition;
 - (d) pressure waves caused by devices traveling at supersonic speeds; or
 - (e) the discovery of any Species-at-Risk, or Items of Interest or Value, which, as a result of Applicable Law, requires the Works to be abandoned.
- 1.312 “**Form of Utility Agreement**” has the meaning given in Section 11.35(a) (*Utility Agreements*) of this Agreement.
- 1.313 “**Funeral, Burial and Cremations Services Act (Ontario)**” means the *Funeral, Burial and Cremations Services Act*, S.O. 2002, c. 33, as amended from time to time.
- 1.314 “**Gainshare**” has the meaning given in Schedule 49 – Target Price Gainshare / Painshare Regime.
- 1.315 “**Gainshare Cap**” means has the meaning given in Schedule 49 – Target Price Gainshare / Painshare Regime.
- 1.316 “**Geotechnical Baseline Statement**” has the meaning given in Schedule 44 – Geotechnical Baseline Report.

- 1.317 “**Geotechnical Instrumentation and Monitoring Plan**” has the meaning given in the Output Specifications.
- 1.318 “**Geotechnical Reports**” means the Geotechnical Data Report, Geotechnical Interpretive Report, Hydrogeological Investigation Report and other geotechnical reports provided as Background Information.
- 1.319 “**Geotechnical Site Condition**” means any Site Condition under the Lands other than any,
- (a) Contamination;
 - (b) Items of Interest or Value;
 - (c) Major Existing Infrastructure;
 - (d) Utility Infrastructure; or
 - (e) Species-at-Risk.
- 1.320 “**GO Passenger Charter**” means the GO Transit passenger charter set out on GO Transit’s website (http://www.gotransit.com/passengercharter/en/passenger_charter.aspx), as amended from time to time.
- 1.321 “**GO Transit**” means GO Transit, an operating division of Contracting Authority and its successors.
- 1.322 “**Good Industry Practice**” means using standards, practices, methods and procedures to a good commercial and rail safety standard, conforming to Applicable Law and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a qualified, skilled and experienced person engaged in a similar type of undertaking under the same or similar circumstances, including professionals, manufacturers, contractors and trades who are experienced in work on infrastructure that is comparable to the Project Co Infrastructure and New Third Party Infrastructure.
- 1.323 “**Government Entity**” means any one or more of the Province, IO, MOI and MTO.
- 1.324 “**Government Sensitive Information**” means any information which is designated as such by Contracting Authority from time to time, or which a reasonable person having regard to the circumstances, would regard as sensitive, including (i) all confidential information that is designated as such by Applicable Law, and (ii) any record, the disclosure of which could be injurious to the interests of Contracting Authority.
- 1.325 “**Governmental Activities**” means the provision of all governmental services and the conduct of all activities provided in connection or otherwise associated with the Lands, Project Co Infrastructure and New Third Party Infrastructure by any Governmental Authority or Emergency Service Provider and includes the Contracting Authority Activities.

- 1.326 “**Governmental Authority**” means any federal, provincial, territorial, regional, municipal or local governmental authority, quasi-governmental authority, court, government or self-regulatory organization, commission, board, tribunal, organization, or any regulatory, administrative or other agency, or any political or other subdivision, department, or branch of any of the foregoing, having legal jurisdiction in any way over Contracting Authority (including the Management Board of Cabinet), any aspect of the performance of this Agreement or the operation of the Project Co Infrastructure or the Governmental Activities, in each case to the extent it has or performs legislative, judicial, regulatory, administrative or other functions within its jurisdiction, including for clarity, the TTC.
- 1.327 “**Groundwater Management and Dewatering Implementation Report**” has the meaning given in Schedule 17 – Environmental Obligations.
- 1.328 “**Groundwater Management and Dewatering Plan**” has the meaning given in Schedule 17 – Environmental Obligations.
- 1.329 “**Groundwater Management Monthly Dashboard**” has the meaning given in Schedule 17 – Environmental Obligations.
- 1.330 “**Guidelines**” has the meaning given in Schedule 2 – Development Works Submissions and Project Development Process.
- 1.331 “**H&S Certification Default Event**” has the meaning given in Section 11.24(b) (*COR Certification*) of this Agreement.
- 1.332 “**H&S Certification Maintenance Plan**” has the meaning given in Section 11.24(b)(vii)(B) (*COR Certification*) of this Agreement.
- 1.333 “**H&S Certification Reinstatement Plan**” has the meaning given in Section 11.24(b)(vi)(B) (*COR Certification*) of this Agreement.
- 1.334 “**H&S Construction Inspection**” has the meaning given in Section 15.1(b) (*Quality Management*) of this Agreement.
- 1.335 “**H&S Construction Inspection Report**” has the meaning given in Section 15.1(d) (*Quality Management*) of this Agreement.
- 1.336 “**H&S Construction Re-Inspection**” has the meaning given in Section 15.1(e)(ii) (*Quality Management*) of this Agreement.
- 1.337 “**H&S Construction Re-Inspection Report**” has the meaning given in Section 15.1(e)(iii) (*Quality Management*) of this Agreement.
- 1.338 “**Handling**” means any collection, use or disclosure of information, including, for greater certainty, any access, modification, retention, safeguarding, permitted de-identification or anonymization, destruction of information (whether or not by automatic means) or any other handling of information. “**Handled**” and “**Handle**” have a corresponding meaning.

- 1.339 “**Handover**” means the successful handover by Project Co of:
- (a) the New City Infrastructure to Contracting Authority or, where Notice of Delegation has been provided by Contracting Authority in respect of New City Infrastructure in accordance with Section 23.12 (*Inspection, Commissioning and Handover of New City Infrastructure*) of this Agreement including, for clarity, the receipt of Contracting Authority's or the City of Toronto's (as the case may be) confirmation that Handover has been successfully achieved and the provision of the Notice to Contracting Authority in accordance with Section 23.12(g) (*Inspection, Commissioning and Handover of New City Infrastructure*) of this Agreement; or
 - (b) the New TTC Infrastructure, or a component thereof, to Contracting Authority or, where a Notice of Delegation has been provided by Contracting Authority in respect of New TTC Infrastructure, to the TTC, in accordance with Section 23.13 (*Inspection, Commissioning and Handover of New TTC Infrastructure*) of this Agreement, including, for clarity, the receipt of Contracting Authority's or the TTC's (as the case may be) confirmation that Handover has been successfully achieved and the provision of the Notice to Contracting Authority in accordance with Section 23.13(e) (*Inspection, Commissioning and Handover of New TTC Infrastructure*) of this Agreement.
- 1.340 “**Hazardous Substances**” means any contaminant, pollutant, mould, dangerous substance, toxic substance, liquid Waste, industrial Waste, gaseous Waste, hauled liquid waste, hazardous material, or hazardous substance as defined in or identified pursuant to any Applicable Law.
- 1.341 “**Hazardous Waste**” has the meaning given in Schedule 17 – Environmental Obligations.
- 1.342 “**Headwalls**” has the meaning given in the Output Specifications.
- 1.343 “**Highway Traffic Act (Ontario)**” means the *Highway Traffic Act*, R.S.O. 1990, c. H. 8, as amended from time to time.
- 1.344 “**HST**” means the value-added tax imposed pursuant to Part IX of the *Excise Tax Act* (Canada), and any successor legislation thereto.
- 1.345 “**Identified Contaminated Material**” has the meaning given in Schedule 17 – Environmental Obligations.
- 1.346 “**IHSA**” means Infrastructure Health and Safety Association, a not-for-profit occupational safety organization formed on January 1, 2010 that provides health and safety training material and services to Ontario construction, electrical utilities and transportation industries, and is accredited in Ontario to issue and grant Certificates of Recognition and Letters of Good Standing, or such other person so accredited in Ontario to issue and grant Certificates of Recognition and Letters of Good Standing.
- 1.347 “**Income Tax Act (Canada)**” means the *Income Tax Act*, R.S.C., 1985, c. 1, as amended from time to time.

- 1.348 “**Indemnifiable Taxes**” has the meaning given in Section 5.13(b)(iii) (*Taxes – Indemnity*) of this Agreement.
- 1.349 “**Indemnifier**” has the meaning given in Section 41.3(a) (*Conduct of Claims*) of this Agreement.
- 1.350 “**Independent Commissioning Agent**” means the person, firm, or entity identified as such by Contracting Authority to act as the Independent Commissioning Agent on the Project as set out in Section 22.1 (*Independent Commissioning Agent*) of this Agreement.
- 1.351 “**Independent Quality Audit**” has the meaning given in Schedule 11 – Quality Management.
- 1.352 “**Indigenous Entities**” means organizations and/or businesses that are Indigenous run and/or represent Indigenous interests as identified by Contracting Authority.
- 1.353 “**Indigenous Nations**” means, collectively, the First Nations, Métis and Inuit communities in Canada.
- 1.354 “**Indirect Losses**” has the meaning given in Section 42.1(a) (*Indirect Losses*) of this Agreement.
- 1.355 “**Infrastructure Ontario**” or “**IO**” means the Ontario Infrastructure and Lands Corporation, continued and amalgamated under the *Ontario Infrastructure and Lands Corporation Act, 2011*, S.O. 2011, c. 9, Schedule 32, as amended from time to time.
- 1.356 “**Infringing Material**” has the meaning given in Section 41.1(g) (*Project Co Indemnities to Contracting Authority*) of this Agreement.
- 1.357 “**Initial Fee**” has the meaning given in Appendix A (*Integration Dispute Resolution Procedure*) of Schedule 39 – Form of RSSOM Interface Agreement.
- 1.358 “**Initial Subcontracts**” means the Subcontracts, including the Design Agreements, that have been executed as of the DMCA Effective Date and as indicated in Schedule 8 – Subcontracts.
- 1.359 “**Initial TPA**” has the meaning given in Section 4.3(b) (*Target Price Agreements*) of this Agreement.
- 1.360 “**Injurious Affection**” has the meaning given in the *Expropriations Act*, R.S.O. 1990, c. E. 26, as amended from time to time.
- 1.361 “**Inspection and Test Plan**” has the meaning given in Schedule 11 – Quality Management.
- 1.362 “**Insurance**” means the insurance contemplated in Schedule 25 – Insurance and Bond Requirements.
- 1.363 “**Integration Committee**” has the meaning given in Schedule 39 – Form of RSSOM Interface Agreement.
- 1.364 “**Integration Dispute**” has the meaning given in in Schedule 39 – Form of RSSOM Interface Agreement.

- 1.365 “**Integration Dispute Resolution Procedure**” has the meaning given in in Schedule 39 – Form of RSSOM Interface Agreement.
- 1.366 “**Integration Incentive Payment**” has the meaning given in Schedule 43 – Incentives and Construction Enforcement Regime.
- 1.367 “**Intellectual Property**” means all intellectual and industrial property, including: (i) Trade-Marks; (ii) Patents; (iii) Copyrights; (iv) inventions, whether or not patentable, whether or not reduced to practice or whether or not yet made the subject of a pending patent application or applications; (v) ideas and conceptions of potentially patentable subject matter, including any patent disclosures, whether or not reduced to practice and whether or not yet made the subject of a pending patent application or applications; (vi) trade secrets and confidential, technical or business information (including ideas, formulas, compositions, designs, inventions, and conceptions of inventions whether patentable or unpatentable and whether or not reduced to practice); (vii) whether or not confidential, technology (including know-how and show-how), manufacturing and production processes and techniques, methodologies, research and development information, drawings, specifications, designs, plans, proposals, technical data, copyrightable works, marketing and business data, pricing and cost information, business and marketing plans; (viii) copies and tangible embodiments of all the foregoing, in whatever form or medium; (ix) all rights to obtain and rights to apply for any of the foregoing and all rights therein provided by multinational treaties or conventions; (x) all rights under any agreements or instruments with respect to items in (i) to (ix) above; and (xi) all rights to sue and recover and retain damages and costs and attorneys’ fees for present and past infringement or other violation of any of the intellectual property rights hereinabove set out.
- 1.368 “**Intellectual Property Rights**” means all right, title and interest in, to and under the Intellectual Property in or associated with the Project Data, any deliverables and all Intellectual Property which, or the subject matter of which, is at any time before or after DMCA Effective Date created, brought into existence, acquired, used or intended to be used by Project Co, any Subcontractor or by other third parties (for such third parties’ use by or on behalf of or for the benefit of Project Co) for any or all of the purposes of:
- (a) the Works, including the design and construction of the Project Co Infrastructure and the New Third Party Infrastructure (excluding Intellectual Property Rights of third parties, such as CAD software, that is used only in the process of design and construction); or
 - (b) this Agreement.
- 1.369 “**Interface Control Document**” has the meaning given in the Output Specifications.
- 1.370 “**Internal Quality Audit**” has the meaning given in Schedule 11 – Quality Management.
- 1.371 “**Investment Canada Act**” means the *Investment Canada Act*, R.S.C. 1985, c. 28 (1st Supp.), and regulations enacted thereunder, all as amended from time to time.
- 1.372 “**IRO**” means the Indigenous Relations Office, or the division of Contracting Authority primarily responsible for managing Indigenous relations and/or outreach.

- 1.373 “**Irrecoverable Tax**” has the meaning given in Section 5.9(b) (*Changes in Recoverability of Tax Credits*) of this Agreement.
- 1.374 “**ISO 45001**” means the international standard that specifies requirements for an occupational health and safety management systems developed by the International Organization of Standardization.
- 1.375 “**ISO 45001 Accreditation**” means, in respect of a person, such person having received certification in respect of its health and safety management systems that such systems comply with the requirements of ISO 45001.
- 1.376 “**Issuing Authority**” means the issuing authorities set out in Appendix A (*Contracting Authority Permits, Licences, Approvals and Agreements*), Appendix B (*Project Co Permits, Licences, Approvals and Agreements*) and Appendix D (*Listed Project Co Permits, Licences, Approvals and Agreements*), as applicable, to Schedule 34 – Permits, Licences, Approvals and Agreements.
- 1.377 “**Items of Interest or Value**” has the meaning given in Section 18.4(a) (*Items of Geological, Historical or Archaeological Interest or Value*) of this Agreement.
- 1.378 “**Jointly Developed Materials**” has the meaning given in Section 36.4(a) (*Jointly Developed Materials*) of this Agreement.
- 1.379 “**Key Individuals**” means those Project Co Parties listed in Schedule 9 – Key Individuals.
- 1.380 “**Key Performance Indicator**” has the meaning given in Schedule 43 – Incentives and Construction Enforcement Regime.
- 1.381 “**Key Result Areas**” has the meaning given in Schedule 43 – Incentives and Construction Enforcement Regime.
- 1.382 “**Knowledge of the Project Manager**” means knowledge that is actually held by the person who was identified as the project manager (or analogous position) for the Project in Project Co’s proposal in response to the Request for Proposals but does not include any knowledge obtained as a result of the review of Background Information pursuant to Section 7.1 (*Review of Background Information*) of this Agreement, including the Project GBR.
- 1.383 “**Land Tracker**” has the meaning given in Schedule 35 – Lands.
- 1.384 “**Lands**” has the meaning given in Schedule 35 – Lands.
- 1.385 “**Lane Closure Adjustment**” has the meaning given in Schedule 7 – Mobility Matters.
- 1.386 “**Lane Closure Analysis Report**” has the meaning given in Schedule 7 – Mobility Matters.
- 1.387 “**Lane Closure Measurement and Verification Plan**” has the meaning given in Schedule 7 – Mobility Matters.
- 1.388 “**Lane Closure Target Letter**” has the meaning given in Schedule 7 – Mobility Matters.

- 1.389 “**Leadership Team**” has the meaning given in Schedule 19 – Governance, Meetings and Progress Reporting.
- 1.390 “**Legislative Holdback**” means the basic holdback to be retained pursuant to section 22(1) of the *Construction Act* (Ontario).
- 1.391 “**Letter of Good Standing**” means the document issued by IHSA to a person confirming that the internal maintenance audit performed by such person regarding its health and safety management systems has been approved by IHSA, and that such person has successfully completed such internal audit pursuant to the terms and conditions of the COR Program.
- 1.392 “**Licensor**” has the meaning given in Schedule 37 – Intellectual Property.
- 1.393 “**Limitations Act, 2002 (Ontario)**” means the *Limitations Act, 2002*, S.O. 2002, c. 24, as amended from time to time.
- 1.394 “**Limited Modification Rights**” has the meaning given in Schedule 37 – Intellectual Property.
- 1.395 “**Listed Project Co PLAA**” has the meaning given in Schedule 34 – Permits, Licences, Approvals and Agreements.
- 1.396 “**Listed Project Co PLAA Application**” has the meaning given in Schedule 34 – Permits, Licences, Approvals and Agreements.
- 1.397 “**Listed Project Co PLAA Deadline**” has the meaning given in Schedule 34 – Permits, Licences, Approvals and Agreements.
- 1.398 “**Load-Path Diagram**” means a graphically illustrated diagram that indicates in all relevant detail (including by use of colour-coded arrows indicating the directions of forces caused by dead loads, live loads, vertical loads and lateral loads) how the structural loads are transferred throughout a building or structure that is to be the subject of a Demolition.
- 1.399 “**Major Existing Infrastructure**” has the meaning given in the Target Price Agreement.
- 1.400 “**Major Existing Infrastructure Condition**” means the condition of the Major Existing Infrastructure, including its geographic location and physical and structural condition.
- 1.401 “**Major Existing Infrastructure Condition Reports**” means the documents, assessments, surveys and other reports set out in the column titled “Major Existing Infrastructure Condition Reports” in Appendix A to this Schedule 1.
- 1.402 “**Major Non-Conformance**” means any Non-Conformance, or combination of Minor Non-Conformances, that:
- (a) contains significant deficiencies or does not generally conform with the requirements of this Agreement; or

- (b) the continued existence of which is reasonably expected to result in Project Co becoming unable to satisfy the requirements of TPA Substantial Completion.

1.403 “**Major Subcontract**” means any:

- (a) [REDACTED];
- (b) [REDACTED];
- (i) [REDACTED]; or
- (ii) [REDACTED],
- [REDACTED];
- (c) [REDACTED];
- (d) [REDACTED];
- (e) [REDACTED];
- (f) [REDACTED]; or
- (g) [REDACTED],

but excludes any Subcontract that Contracting Authority has identified, in its sole discretion, by Notice to Project Co as not being a Major Subcontract.

1.404 “**Major Subcontract Objection Notice**” has the meaning given in Section 11.38(d) (*Subcontracting*) of this Agreement.

1.405 “**Major Track Closure**” has the meaning given in Schedule 40 – Rail Corridor Access and Flagging.

1.406 “**Make Good**”, “**Made Good**”, “**Making Good**” and derivatives thereof, means, as applicable, repairing, restoring, refurbishing, rehabilitating, removing and replacing or performing filling operation on: (a) the Works as required under this Agreement; or (b) any existing components disturbed (including Existing Infrastructure) due to the Works, to at least the condition existing at the commencement of the Works, in terms of construction integrity, finishes, alignment with existing adjoining surfaces, compatibility of materials, sound attenuation criteria, exfiltration/infiltration requirements, air/vapour barrier and thermal continuity.

1.407 “**Management Team**” has the meaning given in Schedule 19 – Governance, Meetings and Progress Reporting.

1.408 “**Materials**” means, in respect of the TPA Works, material, machinery, equipment and fixtures forming part of such TPA Works but does not include material, equipment or machinery used to prepare, fabricate, convey or erect such TPA Works.

- 1.409 “**Maximum Liability Amount**” has the meaning given in Section 42.4(a) (*Maximum Liability*) of this Agreement.
- 1.410 “**Maximum Performance Liability Amount**” has the meaning given in Schedule 43 – Incentives and Construction Enforcement Regime.
- 1.411 “**Mechanical Systems**” has the meaning given in the Output Specifications.
- 1.412 “**MECP**” means the Ontario Ministry of the Environment, Conservation and Parks, and any successor ministry thereto.
- 1.413 “**Member**” has the meaning given in Schedule 27 – Dispute Resolution Procedure.
- 1.414 “**Metrolinx**” means Metrolinx, a non-share capital corporation continued under the *Metrolinx Act, 2006* (Ontario) and includes all operating divisions thereof and any successors thereto.
- 1.415 “**Metrolinx Act, 2006 (Ontario)**” means the *Metrolinx Act, 2006*, S.O. 2006, c. 16, as amended from time to time.
- 1.416 “**Metrolinx Developer Review Process**” means the process and requirements set out in the Metrolinx Developer’s Guide.
- 1.417 “**Metrolinx Developer’s Guide**” means the Metrolinx Adjacent Development Guideline for Priority Transit Projects (Scarborough Subway Extension, Ontario Line, Yonge North Subway Extension and Eglinton Crosstown West Extension), dated December 2020, as may be amended from time to time, that serves as a guideline to any third party that is seeking approval and permits from Contracting Authority for design and construction of development on lands that are within the transit corridor land (as referred to therein), pursuant to the *Building Transit Faster Act (2020)* (Ontario) and applicable regulations.
- 1.418 “**Metrolinx Lands**” has the meaning given in Schedule 35 – Lands.
- 1.419 “**MFIPPA**” means the *Municipal Freedom of Information and Protection of Privacy Act* (Ontario), R.S.O. 1990, c. M. 56, as amended from time to time.
- 1.420 “**Milestone Payment**” has the meaning given in Schedule 43 – Incentives and Construction Enforcement Regime.
- 1.421 “**Minor Deficiencies**” means, in respect of the TPA Works or DMCA Construction Works, as applicable, any defects, deficiencies and items of outstanding work (including Seasonal Minor Deficiencies) arising from or related to the work required to achieve TPA Substantial Completion or DMCA Construction Works Substantial Completion, as applicable, and that would not materially impair:
- (a) the public’s or Contracting Authority’s use and enjoyment of the Project Co Infrastructure or any third parties use and enjoyment of their respective New Third Party Infrastructure;
 - (b) the performance of the Governmental Activities; or

- (c) safety, security, or traffic or track flow on the Project Co Infrastructure or New Third Party Infrastructure in any relevant respect.
- 1.422 “**Minor Deficiencies List**” has the meaning given in Section 23.6(a)(ii) (*Section Minor Deficiencies and Minor Deficiencies*) of this Agreement.
- 1.423 “**Minor Non-Conformance**” means any Non-Conformance that:
- (a) generally, conforms to the requirements of this Agreement, but in which immaterial deficiencies have been found; or
 - (b) the continued existence of which is not reasonably expected to result in Project Co becoming unable to satisfy the requirements for TPA Substantial Completion or DMCA Construction Works Substantial Completion, as applicable, but may result in a Minor Deficiency.
- 1.424 “**Mislocated Utility Infrastructure**” means:
- (a) [REDACTED];
 - (b) [REDACTED];
 - (c) [REDACTED];
 - (d) [REDACTED];
 - (e) [REDACTED]; or
 - (f) [REDACTED],
- provided that the following shall be excluded from the definition of “Mislocated Utility Infrastructure”:
- (i) any relocations of Utility Infrastructure pursuant to (a) through (f) above, carried out at the Site subsequent to the applicable dates specified in the Subsurface Utility Engineering (SUE) Report, including with respect to:
 - (A) the Works; and
 - (B) Third Party Works and Additional Works, including the Preparatory Activities.
- 1.425 “**MLITSD**” means His Majesty the King in right of Ontario as represented by the Minister of Labour, Immigration, Training and Skills Development and includes any successors thereto or persons exercising delegated power under the Minister’s authority.
- 1.426 “**Modification**” has the meaning given in Schedule 37 – Intellectual Property.

- 1.427 “**MOI**” means His Majesty the King in right of Ontario as represented by the Minister of Infrastructure and includes any successors thereto or persons exercising delegated power under the Minister’s authority.
- 1.428 “**Monthly Environmental Report**” has the meaning given in Schedule 17 – Environmental Obligations.
- 1.429 “**Monthly Management Fee**” has the meaning given in Schedule 27 – Dispute Resolution Procedure.
- 1.430 “**Monthly Non-Conformance Report**” has the meaning given in Schedule 11 – Quality Management.
- 1.431 “**MTO**” means His Majesty the King in right of Ontario, as represented by the Minister of Transportation, and includes any successors thereto or persons exercising delegate power and such Minister’s authority.
- 1.432 “**Municipal Act (Ontario)**” means the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended from time to time.
- 1.433 “**Municipal Lane Closure**” has the meaning given in Schedule 7 – Mobility Matters.
- 1.434 “**Municipal Standards**” means the City of Toronto Standards.
- 1.435 “**Negotiable Draft TPA Provisions**” has the meaning given in Schedule 2 – Development Works Submissions and Project Development Process.
- 1.436 “**New City Infrastructure**” means, in respect of all TPA Works and DMCA Construction Works, the New Third Party Infrastructure to be installed, relocated, upgraded, abandoned, reinstated, restored, designed and/or built by Project Co for the City of Toronto as described in the Output Specifications or Construction Technical Requirements, including restoration of roads and roadway structures, road realignment, associated landscaping, streetscaping and Utility Infrastructure, all as described in the Output Specifications or Construction Technical Requirements.
- 1.437 “**New Third Party Infrastructure**” means, in respect of all TPA Works and DMCA Construction Works, new public realm, highway, subway, utility, bus and railway infrastructure, as described in the Output Specifications or Construction Technical Requirements, to be installed, relocated, upgraded, abandoned, reinstated, restored, designed and/or built by Project Co, for third parties,
- (a) in accordance with this Agreement;
 - (b) in the case of new infrastructure to be constructed for the City of Toronto, in accordance with this Agreement, with reference to the City of Toronto Standards; and
 - (c) in the case of new infrastructure to be constructed for a Utility Company, in accordance with this Agreement, with reference to the applicable standards of the relevant Utility Company.

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

- 1.438 “**New TTC Infrastructure**” means, in respect of all TPA Works and DMCA Construction Works, the New Third Party Infrastructure to be installed, relocated, upgraded, abandoned, reinstated, restored, designed and/or built by Project Co for the TTC as described in the Output Specifications or Construction Technical Requirements.
- 1.439 “**New Utility Company Infrastructure**” means, in respect of all TPA Works and DMCA Construction Works, the New Third Party Infrastructure to be installed, relocated, upgraded, abandoned, demolished, reinstated, restored, designed and/or built by Project Co in accordance with this Agreement and the specifications of the Utility Companies.
- 1.440 “**No Comment**” has the meaning given in Part A (*Works*) to Schedule 10 – Review Procedure.
- 1.441 “**No Later Than Access Date**” has the meaning given in Schedule 38 – Integration with EGS Project.
- 1.442 “**No Later Than Date**” has the meaning given in Schedule 41 – Early Works Handover, Section 2 of Schedule 43 – Incentives and Construction Enforcement Regime, or Schedule 45 – Integration with RSSOM Project, as applicable.
- 1.443 “**Nominated Subcontract**” means a Subcontract entered into between (a) either Project Co or a Subcontractor, and (b) a Nominated Subcontractor.
- 1.444 “**Nominated Subcontractor**” has the meaning given in Schedule 2 – Development Works Submissions and Project Development Process.
- 1.445 “**Non-Conformance**” has the meaning given in Schedule 11 – Quality Management.
- 1.446 “**Non-Conformance Report**” has the meaning given in Schedule 11 – Quality Management.
- 1.447 “**Non-Conformance Tracking System**” has the meaning given in Schedule 11 – Quality Management.
- 1.448 “**Non-Default Termination Sum**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.449 “**Non-Primary Project Co Team Subcontract**” has the meaning given in Schedule 48 – Defined Cost.
- 1.450 “**Non-Primary Project Co Team Subcontractor**” has the meaning given in Schedule 48 – Defined Cost.
- 1.451 “**Non-Primary Team Subcontract**” means a Subcontract entered into by a Primary Team Member with a Non-Primary Team Subcontractor.

- 1.452 “**Non-Primary Team Subcontractor**” means a Subcontractor which is not a Primary Team Member.
- 1.453 “**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).
- 1.454 “**Notice**” has the meaning given in Section 46.1(a) (*Notice to Parties*) of this Agreement.
- 1.455 “**Notice of Adjudication**” has the meaning given in Schedule 27 – Dispute Resolution Procedure.
- 1.456 “**Notice of Completed Review**” means a notice issued by the City of Toronto to Project Co, following completion of review of a final site plan review submittal, pursuant to Schedule 34 – Permits, Licences, Approvals and Agreements.
- 1.457 “**Notice of Delegation**” has the meaning given in Section 23.12(b) (*Inspection, Commissioning and Handover of New City Infrastructure*) of this Agreement.
- 1.458 “**Notice of Dispute**” has the meaning given in Schedule 27 – Dispute Resolution Procedure.
- 1.459 “**Notice of Project**” means a notice of project filed with the Ministry of Labour, Training and Skills Development in compliance with O. Reg 213/91 under the *Occupational Health and Safety Act* (Ontario).
- 1.460 “**Notice to Proceed**” has the meaning given in Schedule 6 – DMCA Construction Works.
- 1.461 “**Occupancy Agreement**” means an agreement to be entered into between Project Co and the Delivery Partner, with respect to Project Co’s use and occupancy of the Project Office.
- 1.462 “**Occupational Health and Safety Act (Ontario)**” or “**OHSA**” means the *Occupational Health and Safety Act*, R.S.O. 1990, C. o. 1, as amended from time to time.
- 1.463 “**Ontario Heritage Act (Ontario)**” means the *Ontario Heritage Act*, R.S.O. 1990, c. O. 18, as amended from time to time.
- 1.464 “**Ontario Infrastructure and Lands Corporation Act, 2011 (Ontario)**” means the *Ontario Infrastructure and Lands Corporation Act*, 2011, S.O. 2011, c. 9, Sch. 32, as amended from time to time.
- 1.465 “**Ontario Line Subway**” means the Project Co Infrastructure, the Early Works Infrastructure subject to and in accordance with Schedule 41 – Early Works Handover, the South Civil Project Infrastructure, and the RSSOM Project Infrastructure.
- 1.466 “**Ontario Line Subway System**” means the integrated passenger subway or metro system comprised of the (a) Ontario Line Subway and (b) associated RSSOM Project Co operation and maintenance of the passenger subway or metro system.
- 1.467 “**Ontario Water Resources Act**” has the meaning given in Schedule 17 – Environmental Obligations.

- 1.468 “**Optional Lands**” means the lands owned or to be acquired by Metrolinx or lands in respect of which Metrolinx has acquired or will acquire certain rights, all as set out in the table in Part B (*Metrolinx Lands*) of Schedule 35 – Lands, and as indicated by “Optional Land” in the “Restriction / Requirement” column.
- 1.469 “**Other Contractor**” means an Additional Contractor or a Third Party Contractor.
- 1.470 “**Other Reinstatement Work**” has the meaning given in Section 11.9(b)(vii) (*Protection of Works and Property and Reinstatement Work*) of this Agreement.
- 1.471 “**Other Works**” means the Additional Works and the Third Party Works.
- 1.472 “**Output Specifications**” means Schedule 15 – Output Specifications.
- 1.473 “**Ownership**” has the meaning given in Schedule 37 – Intellectual Property.
- 1.474 “**Painshare**” has the meaning given in Schedule 49 – Target Price Gainshare / Painshare Regime.
- 1.475 “**Painshare Cap**” has the meaning given in Schedule 49 – Target Price Gainshare / Painshare Regime.
- 1.476 “**Pandemic and Epidemic Change in Law**” means any Change in Law that:
- (a) came into effect after the COVID-19 Change in Law Reference Date, including any changes to the COVID-19 Emergency Public Health Physical Distancing Requirements;
 - (b) is directly the result of and is directly related to the occurrence, increase or decrease in severity, or ending of a pandemic (including COVID-19) or epidemic;
 - (c) directly affects (i) the performance of the Works, or (ii) the cost to Project Co of performing the Works; and
 - (d) is not a Works Change in Law or a Relevant Change in Law.

For the purposes of this Agreement, this definition shall:

- (e) include:
 - (i) any new, amendment or other modification to or repeal or replacement of any Applicable Law that satisfies the foregoing requirements of paragraphs (a) to (d); and
 - (ii) any Existing COVID-19 Laws Extension from and after the Anticipated COVID-19 Impact End Date; and
- (f) apply only to a Change in Law in respect of Applicable Laws in the Province of Ontario and the laws of Canada applicable therein that satisfies such requirements.

- 1.477 “**Pandemic and Epidemic Change in Law Compensation**” has the meaning given in Section 28.4(a) (*Pandemic and Epidemic Change in Law*) of this Agreement.
- 1.478 “**Pandemic and Epidemic Response and Mitigation Plan**” means the pandemic and epidemic response and mitigation plan included in Project Co’s proposal submitted in response to the RFP, including any revisions to such part of the submission that were agreed upon by Contracting Authority and Project Co as part of the RFP process.
- 1.479 “**Pandemic and Epidemic Supply Chain Delay**” means a delay in the performance of the Construction Works directly arising from a delay in the delivery of material or supplies in support of the applicable Works, to the extent such delay in delivery:
- (a) directly results from the occurrence of:
 - (i) a pandemic or epidemic other than COVID-19; or
 - (ii) a material increase in the spread of COVID-19 after the COVID-19 Change in Law Reference Date,which directly and adversely affects the delivery of such materials or supplies by a Supplier or Subcontractor; and
 - (b) prevents, delays or otherwise interferes with the performance of the applicable Construction Works.
- 1.480 “**Pandemic CIL Overhead**” has the meaning given in Schedule 22 – Estimates, Variations and Proposals.
- 1.481 “**Parent Guarantees**” means the performance guarantees given by each Parent Guarantor in the form set out in Schedule 24 – Form of Parent Guarantee, and “**Parent Guarantee**” means any one of them.
- 1.482 “**Parent Guarantors**” means [REDACTED] and [REDACTED], and “**Parent Guarantor**” means any one of them.
- 1.483 “**Party**” means either Contracting Authority or Project Co, and “**Parties**” means collectively Contracting Authority and Project Co, but, for greater certainty, such definitions do not include MOI and MTO.
- 1.484 “**Party Representative**” has the meaning given in Schedule 27 – Dispute Resolution Procedure.
- 1.485 “**Patents**” includes all national (including the United States and Canada), regional and multinational statutory invention registrations, patents, patent registrations, patent applications, provisional patent applications, industrial designs, industrial models, including all reissues, divisions, continuations, continuations-in-part, extensions and re-examinations, and all rights therein provided by multinational treaties or conventions and all improvements to the inventions disclosed in each such registration, patent or application.

- 1.486 “**Payment Compensation Amount**” means, with respect to an amount and a specified period of time, (i) such amount multiplied by (ii) such period of time in days divided by the actual number of days in the current year multiplied by (iii) the rate of interest per annum in effect on each such day equal to [REDACTED]% over the rate of interest per annum quoted by [REDACTED] from time to time as its reference rate for Canadian Dollar demand loans made to its commercial customers in Canada and which it refers to as its “prime rate”, as such rate may be changed by it from time to time.
- 1.487 “**Payment Period**” has the meaning given in Schedule 42 – Payment Procedures.
- 1.488 “**Performance Liability Amount**” has the meaning given in Schedule 43 – Incentives and Construction Enforcement Regime.
- 1.489 “**Performance Reward Amount**” has the meaning given in Schedule 43 – Incentives and Construction Enforcement Regime.
- 1.490 “**Performance Standards Regulation**” means Ontario Regulation 260/08 made under the *Professional Engineers Act* (Ontario).
- 1.491 “**Permits, Licences, Approvals and Agreements**” has the meaning given in Schedule 34 – Permits, Licences, Approvals and Agreements.
- 1.492 “**Permitted Rail Corridor Access**” has the meaning given in Schedule 40 – Rail Corridor Access and Flagging.
- 1.493 “**Personal Information**” means all personal information (as the term “personal information” is defined in the *Personal Information Protection and Electronic Documents Act* (Canada)) in the custody or control of Project Co or any Project Co Party other than personal information of the employees of Project Co or the Project Co Parties and other than personal information that is wholly unrelated to the Works and not derived directly or indirectly from Contracting Authority in respect of the Project.
- 1.494 “**Personal Information Protection and Electronic Documents Act (Canada)**” means the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5, as amended from time to time.
- 1.495 “**PLAA Plan**” has the meaning given in Schedule 34 – Permits, Licences, Approvals and Agreements.
- 1.496 “**Planning Act (Ontario)**” means the *Planning Act*, R.S.O. 1990, c. P. 13, as amended from time to time.
- 1.497 “**Plant**” means all buildings, building services, infrastructure, building fabric, and mechanical and electrical services, which are required to meet the operational needs of Contracting Authority as defined in the Output Specifications.

- 1.498 **“Police Service”** means the Royal Canadian Mounted Police, the Ontario Provincial Police, the Toronto Police Service and any other law enforcement agency with jurisdiction pursuant to Applicable Law, as applicable.
- 1.499 **“Post-CC Utility Agreement Amendment”** means any amendment or modification to the Form of Utility Agreement (or to the form of Utility Agreement otherwise agreed between Project Co and the subject Utility Company) unilaterally initiated by the subject Utility Company (other than minor or administrative revisions or revisions to complete any schedules to such Form of Utility Agreement) related to the specific work to be performed under such agreement, such amendment or modification not having been caused by or contributed to by Project Co or a Project Co Party.
- 1.500 **“Post-CC Utility Agreement Amendment Notice”** has the meaning given in Section 11.35(c)(i) (*Utility Agreements*) of this Agreement.
- 1.501 **“Preliminary Design”** means, in respect of any Construction Works, performance of design, including plans, analysis, calculations, and reports, to a level that allows definition of the major design elements of such Construction Works, and confirmation of scope of such Construction Works, in accordance with the Second Development Phase Lockdown Submittals requirements in Schedule 10 – Review Procedure, including:
- (a) confirmation of incorporation of Stakeholder needs into design;
 - (b) finalization of footprint for major elements and facilities (e.g., elevated guideway pier and foundation locations, tunnel section, geometry, and alignment, stations, bus terminals, entrances, EEBs, TPSS);
 - (c) finalization of property requirements;
 - (d) finalization of Utilities conflict matrix; and
 - (e) outline of the technical specifications required for the Project.
- 1.502 **“Preparatory Activities”** has the meaning given in the Output Specifications.
- 1.503 **“Prequalification Submission”** means Project Co’s response to the request for qualifications issued in respect of the Project on [REDACTED].
- 1.504 **“Prequalified Subcontractor”** means any Subcontractor that was identified in the list of subcontractors submitted as part of Project Co’s Prequalification Submission, as amended pursuant to the process set out in the Request for Proposals.
- 1.505 **“Primary Construction Team”** means, collectively, the following persons:
- (a) [REDACTED]; and
 - (b) [REDACTED],
- and any replacement or substitute thereof as may be permitted by this Agreement.

- 1.506 “**Primary Construction Team Member**” means a member of the Primary Construction Team.
- 1.507 “**Primary Design Team**” means, collectively, the following persons:
- (a) [REDACTED]; and
 - (b) [REDACTED],
- and any replacement or substitute thereof as may be permitted by this Agreement.
- 1.508 “**Primary Design Team Member**” means a member of the Primary Design Team.
- 1.509 “**Primary Team**” means, collectively:
- (a) Project Co;
 - (b) each Primary Construction Team Member; and
 - (c) each Primary Design Team Member.
- 1.510 “**Primary Team Member**” means a member of the Primary Team.
- 1.511 “**Primary Team Self-Performed Design Work**” means any of the Design Works performed by any Primary Team Member.
- 1.512 “**Primary Team Self-Performed Development Work and Construction Work**” means any of the Development Work and Construction Works (not including, for the avoidance of doubt, any Design Work) performed by any Primary Team Member.
- 1.513 “**Primary Team Subcontract**” means a Subcontract entered into by a Primary Team Member with a Primary Team Subcontractor.
- 1.514 “**Primary Team Subcontracted Design Work**” means any of the Design Works performed by a Subcontractor where:
- (a) such Subcontractor is not a Primary Team Subcontractor;
 - (b) such Subcontractor has been engaged by a Primary Team Member; and
 - (c) pursuant to the applicable Subcontract, the work and services to be performed thereunder are Design Works.
- 1.515 “**Primary Team Subcontracted Development Work and Construction Work**” means any of the Development Work and Construction Works (not including, for the avoidance of doubt, any Design Work) performed by a Subcontractor where:
- (a) such Subcontractor is not a Primary Team Member;
 - (b) such Subcontractor has been engaged by a Primary Team Member; and

- (c) pursuant to the applicable Subcontract, the work and services to be performed thereunder are Development Works or Construction Works.
- 1.516 “**Primary Team Subcontractor**” means a Primary Team Member which has entered into a Subcontract with another Primary Team Member and such first-mentioned Primary Team Member shall perform certain Works under such Subcontract as the subcontractor thereunder.
- 1.517 “**Proceedings Against the Crown Act (Ontario)**” means the *Proceedings Against the Crown Act*, R.S.O. 1990, c. P. 27, as amended from time to time.
- 1.518 “**Procured TBM**” has the meaning given in Section 11.30(a) (*Tunnel Boring Machine*) of this Agreement.
- 1.519 “**Procurement Management Plan**” means the Procurement Management Plan to be submitted as part of the Project Execution Plan pursuant to the requirements set out in Appendix 5 (*Project Execution Plan Outline*) of Schedule 2 – Development Works Submissions and Project Development Process.
- 1.520 “**Product**” or “**Products**” means material, machinery, equipment and fixtures forming the TPA Works but does not include equipment or machinery used to prepare, fabricate, convey or erect the TPA Works, which is referred to as construction machinery and equipment.
- 1.521 “**Professional Engineer**” means a professional engineer licensed by Professional Engineers Ontario to practice in the Province of Ontario.
- 1.522 “**Profit**” has the meaning given in Schedule 47 – Corporate Overhead and Profit.
- 1.523 “**Progress Works Schedule**” has the meaning given in Schedule 12 – Works Schedule Requirements.
- 1.524 “**Prohibited Act**” has the meaning given in Section 45.1(a) (*Prohibited Acts – Definition*) of this Agreement.
- 1.525 “**Project**” has the meaning given in the recitals to this Agreement.
- 1.526 “**Project Checkpoints**” has the meaning given in Schedule 2 – Development Works Submissions and Project Development Process.
- 1.527 “**Project Co**” has the meaning given in the introductory paragraph of this Agreement.
- 1.528 “**Project Co Amount**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.529 “**Project Co Caused Contamination**” has the meaning given in Section 18.3(a)(vi) (*Contamination*) of this Agreement.
- 1.530 “**Project Co Communications Plan**” has the meaning given in Schedule 18 – Communication and Public Engagement Protocol.

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- 1.531 “**Project Co Contamination**” has the meaning given in Section 18.3(d) (*Contamination*) of this Agreement.
- 1.532 “**Project Co Default Termination Sum**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.533 “**Project Co Event of Default**” has the meaning given in Section 31.1(a) (*Project Co Events of Default*) of this Agreement.
- 1.534 “**Project Co Group**” means Project Co together with any person or group of persons, who, either individually or collectively, have Direct or Indirect Power or Control of Project Co.
- 1.535 “**Project Co Infrastructure**” means, in respect of any applicable TPA Works and DMCA Construction Works, the new, modified, restored or improved infrastructure at or associated with the Tunnel, Facilities, Civil Structures and Tunnel Ventilation System, and, in each case, as described in the Output Specifications or Construction Technical Requirements and all associated data, records, drawings, plans, reports and systems, all as described in this Agreement. Project Co Infrastructure excludes the New Third Party Infrastructure.
- 1.536 “**Project Co Infrastructure Section**” has the meaning given in Schedule 45 – Integration with RSSOM Project.
- 1.537 “**Project Co Infrastructure Subsection**” has the meaning given in Schedule 45 – Integration with RSSOM Project.
- 1.538 “**Project Co Land Inspections**” has the meaning given in Section 16.9(a) (*Inspection and Investigation of the Lands*) of this Agreement.
- 1.539 “**Project Co Off-Site Migrating Contamination**” has the meaning given in Section 18.3(c) (*Contamination*) of this Agreement.
- 1.540 “**Project Co On-Site Contamination**” has the meaning given in Section 18.3(b) (*Contamination*) of this Agreement.
- 1.541 “**Project Co Party**” means:
- (a) any person engaged by Project Co from time to time as may be permitted by this Agreement to procure or manage the provision of the Works (or any of them); and
 - (b) 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.
- 1.542 “**Project Co Permits, Licences, Approvals and Agreements**” has the meaning given in Schedule 34 – Permits, Licences, Approvals and Agreements.

- 1.543 “**Project Co PLAA Requirements**” has the meaning given in Schedule 34 – Permits, Licences, Approvals and Agreements.
- 1.544 “**Project Co Quality Audit Report**” has the meaning given in Schedule 11 – Quality Management.
- 1.545 “**Project Co Representative**” means the person designated as such by Project Co on or prior to the DMCA Effective Date and any permitted replacement.
- 1.546 “**Project Co Site Specific Safety Manual**” means the document describing Project Co’s health and safety management program for the Project and the Site commencing no later than the first Business Day following the TPA Construction Commencement Date until the TPA Final Completion Date, all in accordance with the minimum requirements set out in Schedule 29 – Safety, System Assurance and Security.
- 1.547 “**Project Co TPA Variation Notice**” has the meaning given in Schedule 22 – Estimates, Variations and Proposals.
- 1.548 “**Project Data**” has the meaning given in Schedule 37 – Intellectual Property.
- 1.549 “**Project Documents**” means this Agreement, the Ancillary Documents and the Target Price Agreements.
- 1.550 “**Project Execution Plan**” has the meaning given in Schedule 2 – Development Works Submissions and Project Development Process.
- 1.551 “**Project Final Completion**” means the last to occur of the TPA Final Completion and final completion of any DMCA Construction Works.
- 1.552 “**Project Final Completion Date**” means the date Project Final Completion is achieved.
- 1.553 “**Project GBR**” has the meaning given in Schedule 44 – Geotechnical Baseline Report.
- 1.554 “**Project Know-How**” means all ideas, concepts, alternatives, methodologies, processes, recommendations and suggestions developed by or through Project Co or any Project Co Party and revealed to or discovered by Contracting Authority, whether before or after the DMCA Effective Date, which may be connected in any way to:
- (a) the Works, including the design and construction of the Project Co Infrastructure and the New Third Party Infrastructure; or
 - (b) this Agreement.
- 1.555 “**Project Office**” has the meaning given in Schedule 19 – Governance, Meetings and Progress Reporting.
- 1.556 “**Project Substantial Completion**” shall occur on the later of (i) the TPA Substantial Completion Date and (ii) the last DMCA Construction Works Substantial Completion Date.

- 1.557 “**Project Substantial Completion Date**” means the date Project Substantial Completion is achieved.
- 1.558 “**Project Term**” has the meaning given in Section 3.2(a) (*Project Term*) of this Agreement.
- 1.559 “**Project Website and Social Media Calendar**” has the meaning given in Schedule 18 – Communication and Public Engagement Protocol.
- 1.560 “**Project Works Schedule**” has the meaning given in Schedule 12 – Works Schedule Requirements.
- 1.561 “**Project Zone of Influence**” has the meaning given in the Output Specifications.
- 1.562 “**Proper Invoice**” has the meaning given in Schedule 42 – Payment Procedures.
- 1.563 “**Proposal Part**” means a part of Project Co’s proposal submitted in response to the RFP, including any revisions to such part of the submission that were agreed upon by Contracting Authority and Project Co as part of the RFP process.
- 1.564 “**Protest Action**” means any civil disobedience, protest action, riot, civil commotion or demonstration, including any action taken or threatened to be taken by any person or persons protesting or demonstrating against the carrying out of any part of the Works, or against the construction or operation of rail transit systems in general, occurring after DMCA Effective Date, but excluding any labour dispute or any other strike, lockout or industrial relations dispute or job action by, of or against workers carrying out any part of the Works.
- 1.565 “**Protesters**” has the meaning given in Section 11.13(a) (*Protest and Trespass*) of this Agreement.
- 1.566 “**Province**” or “**Province of Ontario**” means His Majesty the King in right of Ontario.
- 1.567 “**Province Person Third Party Beneficiaries**” has the meaning given in Section 49.17(a)(i) (*Province Persons and Contracting Authority Parties as Third Party Beneficiaries*) of this Agreement.
- 1.568 “**Province Persons**” means Contracting Authority Parties, and, while attending in their official capacity at the Lands, Project Co Infrastructure or New Third Party Infrastructure, the following:
- (a) any person to which authority is designated pursuant to Section 48.1 (*Right to Designate*) of this Agreement and any agents and employees of any such person; or
 - (b) contractors of Contracting Authority (not including RSSOM Project Co, any RSSOM Project Co Party, EGS Project Co and any EGS Project Co Party) or of any person to which authority is delegated pursuant to Section 48.1 (*Right to Designate*) of this Agreement and subcontractors of any tier and its or their directors, officers and employees,
- but excluding Project Co and any Project Co Party.
- 1.569 “**PTUS Project Schedule**” has the meaning given in Schedule 12 – Works Schedule Requirements.

- 1.570 “**Quality Audit Program Plan**” has the meaning given in Schedule 11 – Quality Management.
- 1.571 “**Quality Documentation**” has the meaning given in Schedule 11 – Quality Management.
- 1.572 “**Quality Director**” has the meaning given in Schedule 11 – Quality Management.
- 1.573 “**Quality Management System**” has the meaning given in Schedule 11 – Quality Management.
- 1.574 “**Quality Manual**” has the meaning given in Schedule 11 – Quality Management.
- 1.575 “**Quality Plans**” means the Quality Manual, the Construction Quality Management Plan, the Design Quality Management Plan and the Quality Audit Program Plan.
- 1.576 “**Rail Corridor**” has the meaning given in Schedule 40 – Rail Corridor Access and Flagging.
- 1.577 “**Rail Corridor Access**” has the meaning given in Schedule 40 – Rail Corridor Access and Flagging.
- 1.578 “**Rail Corridor Access Plan**” has the meaning given in Schedule 40 – Rail Corridor Access and Flagging.
- 1.579 “**Rail Transit Specific Change in Law**” means any Change in Law which principally affects or principally relates only to the design or construction of rail transit systems.
- 1.580 “**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.
- 1.581 “**Railway Company**” means CP Rail, CN Rail, VIA Rail and any other railway company that owns or operates a rail service, any part of which is on any part of the Lands during the Project Term and “**Railway Companies**” means all of them.
- 1.582 “**Railway Foreman**” has the meaning given in Schedule 40 – Rail Corridor Access and Flagging.
- 1.583 “**Railway Order**” means any order of the Canadian Transportation Agency:
- (a) granted in favour of Contracting Authority allowing or providing for:
 - (i) infrastructure comprising or to comprise Project Co Infrastructure or New Third Party Infrastructure to be located upon and across land or improvements of a Railway Company; and
 - (ii) the construction, maintenance and use of such infrastructure upon and across such land or improvements; or
 - (b) for the carrying out of any applicable Works on land or improvements of a Railway Company,

and all amendments thereto.

- 1.584 “**Receiving Party**” has the meaning given in the definition of Confidential Information.
- 1.585 “**Reconciled Payment Amount**” has the meaning given in Schedule 42 – Payment Procedures.
- 1.586 “**Record Drawings**” has the meaning given by the Professional Engineers of Ontario and Ontario Association of Architects as those drawings prepared and sealed by the reviewing engineer or architect after confirming in accordance with Good Industry Practice that the Works or part thereof are completed in conformance with the final approved drawings and specifications required pursuant to this Agreement.
- 1.587 “**Recoverable Tax**” has the meaning given in Section 5.9(c) (*Changes in Recoverability of Tax Credits*) of this Agreement.
- 1.588 “**Recovery Amount**” has the meaning given in Section 41.3(g) (*Conduct of Claims*) of this Agreement.
- 1.589 “**Recovery Works Schedule**” has the meaning given in Schedule 12 – Works Schedule Requirements.
- 1.590 “**Recovery Works Schedule Report**” has the meaning given in Schedule 12 – Works Schedule Requirements.
- 1.591 “**Reference Concept Design**” means any conceptual designs provided by Contracting Authority for the information of Project Co, not intended to represent designs fully compliant with the requirements of this Agreement.
- 1.592 “**Reimbursable Price**” has the meaning given in Schedule 49 – Target Price Gainshare / Painshare Regime.
- 1.593 “**Reimbursement Event**” has the meaning given in Section 25.5(a) (*Reimbursement Events*) of this Agreement.
- 1.594 “**Reinstatement Plan**” has the meaning given in Section 11.9(g) (*Protection of Works and Property and Reinstatement Work*) of this Agreement.
- 1.595 “**Reinstatement Works**” has the meaning given in Section 11.9(b)(vii) (*Protection of Works and Property and Reinstatement Work*) of this Agreement.
- 1.596 “**Relevant Change in Law**” means a Discriminatory Change in Law or a Rail Transit Specific Change in Law.
- 1.597 “**Relevant Conviction**” means a charge or conviction, at any time within the previous six years, of any offense:
- (a) of moral turpitude in Canada or elsewhere;

- (b) for which records exist under the *Criminal Records Act*; or
 - (c) otherwise designated as a Relevant Conviction by Contracting Authority from time to time, and that conviction remains in effect at that time and is one for which a pardon has not been granted.
- 1.598 “**Relevant Entity**” has the meaning given in Section 44.3(i) (*Changes in Ownership and Control*) of this Agreement.
- 1.599 “**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 Agreement:
- (a) fire, explosion, lightning, storm, tempest, hurricane, tornado, flood, bursting or overflowing of water tanks, apparatus or pipes, ionizing radiation (to the extent it does not constitute Force Majeure), or earthquake;
 - (b) failure (other than in circumstances where Project Co has entered into an agreement for the design and construction of Utility Infrastructure and the applicable Utility Company has failed to comply with its obligations under such an agreement) by any Utility Company, local authority or other like body to perform works or provide services (solely in its role as utility service provider or similar service provider to the Project), where the Utility Company is providing services to Project Co of the type provided by the Utility Company in the normal course of its business, provided, however, that such a failure shall not, in any event, be cause for a Relief Event, unless Project Co:
 - (A) has performed its obligations under any applicable agreement with the Utility Company with respect to the provision of such services and the relevant Utility Company has failed to meet its obligations thereunder; and
 - (B) has made all, and is continuing to make all, commercially reasonable efforts to diligently enforce its legal rights under any applicable agreement in respect of such services and otherwise cause the Utility Company to perform those works or services;
 - (c) accidental loss or damage to the Works and/or the Project Co Infrastructure or any roads servicing the Lands;
 - (d) without prejudice to any obligation of Project Co to provide stand-by power facilities in accordance with this Agreement, failure or shortage of power, fuel or transport;
 - (e) blockade or embargo that is not a Protest Action and that falls short of an event of Force Majeure;
 - (f) any official or unofficial strike, lockout, work to rule or other labour-related action generally affecting the Project Co Infrastructure, the New Third Party Infrastructure or construction industry (or a significant sector of that industry) in the Province of Ontario; or

- (g) the occurrence of a Pandemic and Epidemic Supply Chain Delay,
- provided, in each case, that such event does not arise (directly or indirectly) as a result of any act or omission of the Party claiming relief and/or (i) in the case of Project Co claiming relief, as a result of any act or omission of any Project Co Party, and (ii) in the case of Contracting Authority claiming relief, as a result of any act or omission of any Contracting Authority Party.
- 1.600 “**Request for Proposals**” or “**RFP**” means the request for proposals issued in respect of the Project on April 3, 2023, as amended from time to time.
- 1.601 “**Required Amount**” has the meaning given in Section 11.18(a) (*Warranty Security*) of this Agreement.
- 1.602 “**Restricted Person**” means any person who, or any member of a group of persons acting together, any one of which:
- (a) (i) is subject to any economic or political sanctions imposed by Canada or Ontario, or (ii) has, directly or indirectly, its principal or controlling office in a country that is subject to any economic or political sanctions imposed by Canada or Ontario;
 - (b) has as its primary business the illegal manufacture, sale, distribution or promotion of narcotics substances or arms, or is or has been involved in terrorism;
 - (c) (i) is subject to a final order (including being subject to conditions or undertakings prescribed by the order) issued under Part IV.1 of the *Investment Canada Act* (Investments Injurious to National Security) that would prevent such person from undertaking the Project in whole or in part in a manner which Contracting Authority considers unacceptable in its sole discretion or (ii) is currently, or could become, subject to a review of an investment by a non-Canadian under Part IV.1 of the *Investment Canada Act* (Investments Injurious to National Security) that could result in an order described in (i) being issued (as determined by Contracting Authority in its sole discretion);
 - (d) in the case of an individual, (i) he or she has been convicted of any indictable offence less than five years prior to the date at which the consideration of whether such individual is a “Restricted Person” is made hereunder, whether or not such person received a custodial sentence; or (ii) he or she has been sentenced to a custodial sentence, other than a suspended sentence, for any regulatory offence other than under the *Highway Traffic Act* (Ontario) or corresponding legislation in any other jurisdiction less than five years prior to the date at which the consideration of whether such individual is a “Restricted Person” is made hereunder;
 - (e) in the case of a person other than an individual, (i) it or any of the members of its (or its general partner’s) board of directors or its senior executive managers has been convicted of any indictable offence less than five years prior to the date at which the consideration of whether such person is a “Restricted Person” is made hereunder, whether or not such person received a custodial sentence; or (ii) any of the members of its (or its general partner’s) board of directors or its senior executive managers has been sentenced to a custodial sentence, other than a suspended sentence, for any regulatory offence other than under *the*

Highway Traffic Act (Ontario) or corresponding legislation in any other jurisdiction less than five years prior to the date at which the consideration of whether such person is a “Restricted Person” is made hereunder;

- (f) has as its primary business the acquisition of distressed assets or investments in companies or organizations which are or are believed to be insolvent or in a financial standstill situation or potentially insolvent;
 - (g) is subject to a material claim of Contracting Authority under any proceedings (including regulatory proceedings) which have been concluded or are pending at the time at which the consideration of whether such person is a “Restricted Person” is made hereunder, and which (in respect of any such pending claim, if it were to be successful) would, in Contracting Authority’s view, in either case, be reasonably likely materially to affect the ability of Project Co to perform its obligations under this Agreement; or
 - (h) has a material interest in the production of tobacco products.
- 1.603 “**Revenue Service Commencement**” means the point at which rapid transit services has commenced, and provided to passengers, on the Ontario Line Subway.
- 1.604 “**Review Procedure**” means the procedure set out in Schedule 10 – Review Procedure.
- 1.605 “**Review Procedure Activities Register**” has the meaning given in Schedule 12 – Works Schedule Requirements.
- 1.606 “**Reviewed As Noted – Major Issues**” has the meaning given in Part A (*Works*) to Schedule 10 – Review Procedure.
- 1.607 “**Reviewed As Noted – Minor Issues**” has the meaning given in Part A (*Works*) to Schedule 10 – Review Procedure.
- 1.608 “**Risk Allocations Matrix**” has the meaning given in Schedule 21 – Risk Allocations.
- 1.609 “**RSSOM Infrastructure Technical Specifications**” has the meaning given in Schedule 45 – Integration with RSSOM Project.
- 1.610 “**RSSOM Integration Dispute Resolution Procedure**” has the meaning given to the term “Integration Dispute Resolution Procedure” in Schedule 39 – Form of RSSOM Interface Agreement.
- 1.611 “**RSSOM Interface Agreement**” means the interface agreement entered into among Contracting Authority, Project Co and RSSOM Project Co with respect to the RSSOM Project, in substantially the form of Schedule 39 – Form of RSSOM Interface Agreement.
- 1.612 “**RSSOM Project**” means the (a) design, construction, financing, supply, installation, testing and commissioning of the RSSOM Project Infrastructure, (b) design, construction and financing of the new third party infrastructure under and pursuant to the RSSOM Project Agreement, and (c) RSSOM Project Co operation and maintenance of the Ontario Line Subway System.

- 1.613 “**RSSOM Project Agreement**” means the contract between Contracting Authority and RSSOM Project Co with respect to the RSSOM Project dated November 15, 2022.
- 1.614 “**RSSOM Project Co**” means Connect 6ix General Partnership, [REDACTED], and any successor or permitted assign thereof.
- 1.615 “**RSSOM Project Co Debt Service Amounts**” means, for any period, the principal, interest, commitment fees, makewhole payments, breakage fees, penalties and all other fees, costs and expenses payable by RSSOM Project Co or any RSSOM Project Co Party to any third party arm’s length lenders providing financing to RSSOM Project Co or any RSSOM Project Co Party (or any amounts payable to hedge providers in respect of any such interest).
- 1.616 “**RSSOM Project Co Party**” means any person engaged by RSSOM Project Co in connection with the RSSOM Project, and/or any of its contractors, and their subcontractors of any tier, agents, employees, officers and directors, and “**RSSOM Project Co Parties**” shall be construed accordingly.
- 1.617 “**RSSOM Project Infrastructure**” means the infrastructure that RSSOM Project Co designs, constructs, installs, tests, supplies, delivers and commissions pursuant to the RSSOM Project Agreement, including any early works infrastructure delivered to RSSOM Project Co pursuant to the RSSOM Project Agreement.
- 1.618 “**Safety Improvement Plan**” has the meaning given in Schedule 29 – Safety, System Assurance and Security.
- 1.619 “**Safety Work Plan**” has the meaning given in Schedule 29 – Safety, System Assurance and Security.
- 1.620 “**Schedule**” means a schedule to this Agreement.
- 1.621 “**Schedule Adjustment**” has the meaning given in Schedule 21 – Risk Allocations.
- 1.622 “**Seasonal Minor Deficiencies**” has the meaning given in Section 23.6(c) (*Section Minor Deficiencies and Minor Deficiencies*) of this Agreement.
- 1.623 “**Second Checkpoint**” has the meaning given in Schedule 2 – Development Works Submissions and Project Development Process.
- 1.624 “**Second Development Phase**” has the meaning given in Schedule 2 – Development Works Submissions and Project Development Process.
- 1.625 “**Second Development Phase Lockdown Date**” has the meaning given in Schedule 2 – Development Works Submissions and Project Development Process.
- 1.626 “**Second Development Phase Lockdown Submittals**” has the meaning given in Schedule 2 – Development Works Submissions and Project Development Process.

- 1.627 “**Section Minor Deficiencies**” means any defects, deficiencies and items of outstanding work (including Seasonal Minor Deficiencies) arising from or related to the work required to achieve each Section Substantial Completion, and that would not materially impair:
- (a) the public’s or Contracting Authority’s use and enjoyment of the applicable Project Co Infrastructure Section or any third parties use and enjoyment of their respective New Third Party Infrastructure applicable to such Project Co Infrastructure Section;
 - (b) the performance of the Governmental Activities; or
 - (c) safety, security, or traffic or track flow on the applicable Project Co Infrastructure Section or the New Third Party Infrastructure applicable to such Project Co Infrastructure Section in any relevant respect.
- 1.628 “**Section Minor Deficiencies List**” has the meaning given in Section 23.6(a)(i) (*Section Minor Deficiencies and Minor Deficiencies*) of this Agreement.
- 1.629 “**Section Substantial Completion**” means the point at which (i) a Project Co Infrastructure Section has been completed in accordance with this Agreement and (ii) all requirements for Section Substantial Completion for such Project Co Infrastructure Section described in Schedule 14 – Commissioning, other than in respect of Section Minor Deficiencies for such Project Co Infrastructure Section, have been satisfied.
- 1.630 “**Section Substantial Completion 10-Day Notice**” has the meaning given in Section 23.3(a) (*Section Substantial Completion Certificates and Substantial Completion Certificates*) of this Agreement.
- 1.631 “**Section Substantial Completion Certificate**” means a certificate to be issued by the Independent Commissioning Agent in accordance with Section 23.3(g) (*Section Substantial Completion Certificates and Substantial Completion Certificates*) of this Agreement.
- 1.632 “**Section Substantial Completion Date**” means the date upon which a Section Substantial Completion Certificate for a Project Co Infrastructure Section is issued by the Independent Commissioning Agent.
- 1.633 “**Section Substantial Completion Deliverables**” has the meaning given in Section 23.5(d)(i) (*Countdown Notice, Section Substantial Completion Deliverables and Substantial Completion Deliverables*) of this Agreement.
- 1.634 “**Section Substantial Completion Deliverables List**” has the meaning given in Section 23.5(d)(i) (*Countdown Notice, Section Substantial Completion Deliverables and Substantial Completion Deliverables*) of this Agreement.
- 1.635 “**Section Substantial Completion Notice**” has the meaning given in Section 23.3(b)(i) (*Section Substantial Completion Certificates and Substantial Completion Certificates*) of this Agreement.
- 1.636 “**Senior Executives Team**” has the meaning given in Schedule 19 – Governance, Meetings and Progress Reporting.

- 1.637 “**Sensitive Information**” means proprietary technical, financial or commercial information which would, if disclosed to a competitor of Project Co or any Project Co Party, give that competitor a competitive advantage over Project Co or such Project Co Party and thereby prejudice the business of Project Co or such Project Co Party.
- 1.638 “**Sequential Excavation Method**” or “**SEM**” has the meaning given in the Output Specifications.
- 1.639 “**Shafts**” has the meaning given in the Output Specifications.
- 1.640 “**Shop Drawings**” means drawings, diagrams, illustrations, schedules, performance charts, brochures and other data which are to be provided by Project Co to illustrate details of a portion of the Works, indicating materials, methods of construction and attachment or anchorage, erection diagrams, connections, explanatory notes and other information necessary for completion of the Works.
- 1.641 “**Site**” means, at any time and from time to time, that portion of the Lands,
- (a) on which Project Co or any Project Co Party is engaged in any construction or Demolition activities or is otherwise engaged in completing the Works;
 - (b) on which any of the Works have been commenced but not completed in their entirety;
 - (c) that are hoarded, cordoned, or otherwise fenced off by Project Co, and any Lands immediately surrounding such hoarding, cordons or fencing; or
 - (d) within the active construction footprint of the Works.
- 1.642 “**Site Conditions**” means the condition of the Lands and the Existing Infrastructure, including the physical, geophysical, climatic, ecological, environmental, geotechnical and archaeological conditions.
- 1.643 “**Site Investigation Plan**” has the meaning given in Section 16.6(b)(iii) (*Adjustments to Metrolinx Lands Available to Project Co*) of this Agreement.
- 1.644 “**Site Investigation Reports**” has the meaning given in Section 16.6(b)(iii) (*Adjustments to Metrolinx Lands Available to Project Co*) of this Agreement.
- 1.645 “**Site Labour**” has the meaning given in Schedule 48 – Defined Cost.
- 1.646 “**Site Office**” has the meaning given in the Output Specifications.
- 1.647 “**Soil and Excavated Material Management Plan**” has the meaning given in Schedule 17 – Environmental Obligations.
- 1.648 “**South Civil Project**” means the design, construction and financing of a tunnel for the underground portion of the southern alignment between Exhibition Station and a portal location within the Don Yard.

- 1.649 “**South Civil Project Agreement**” means the contract between the Contracting Authority and South Civil Project Co dated November 8, 2022.
- 1.650 “**South Civil Project Infrastructure**” means the infrastructure that South Civil Project Co designs, constructs, installs, tests, supplies, delivers and commissions pursuant to the South Civil Project Agreement.
- 1.651 “**South Civil Project Co**” means Ontario Transit Group Inc.
- 1.652 “**South Civil Project Co Party**” means any person engaged by South Civil Project Co in connection with the South Civil Project, and/or any of its contractors, and their subcontractors of any tier, agents, employees, officers and directors, and “**South Project Co Parties**” shall be construed accordingly.
- 1.653 “**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.
- 1.654 “**Spill Prevention and Response Plan**” has the meaning given in Schedule 17 – Environmental Obligations.
- 1.655 “**SPR Submittals**” has the meaning given in Attachment 1 (*Site Plan Review Checklist*) to Appendix B (*City of Toronto Works Submittals*) of to Schedule 10 – Review Procedure.
- 1.656 “**Standards & Guidelines for Conservation of Provincial Heritage Properties**” means the Standards & Guidelines for Conservation of Provincial Heritage Properties issued under the *Ontario Heritage Act* (Ontario) on April 28, 2010, as amended from time to time.
- 1.657 “**Stakeholders**” means individuals and organizations with an interest in the Project, including those listed in the Output Specifications, but excluding Contracting Authority.
- 1.658 “**Start-Up Meeting**” has the meaning given in Schedule 19 – Governance, Meetings and Progress Reporting.
- 1.659 “**Station**” has the meaning given in the Output Specifications.
- 1.660 “**Subcategory of Access**” has the meaning given in Schedule 40 – Rail Corridor Access and Flagging.
- 1.661 “**Subcontract**” or “**Subcontracts**” means the contracts entered into by or between Project Co and any Subcontractor or between any Subcontractor at any tier and any other Subcontractor at any tier in relation to any aspect of the Works.
- 1.662 “**Subcontractor**” means any subcontractor of Project Co engaged by or through Project Co to perform any of the Works, any Supplier or consultant, and any subcontractor of any other subcontractor at any tier.

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- 1.663 “**Subsection RSSOM Access Date**” has the meaning given in Schedule 45 – Integration with RSSOM Project.
- 1.664 “**Subsection RSSOM Access Period**” has the meaning given in Schedule 45 – Integration with RSSOM Project.
- 1.665 “**Subsequent TPA**” has the meaning given in Section 4.3(b) (*Target Price Agreements*) of this Agreement.
- 1.666 “**Substantial Completion 10-Day Notice**” has the meaning given in Section 23.3(a) (*Section Substantial Completion Certificates and Substantial Completion Certificates*) of this Agreement.
- 1.667 “**Substantial Completion Deliverables**” has the meaning given in Section 23.5(d)(ii) (*Countdown Notice, Section Substantial Completion Deliverables and Substantial Completion Deliverables*) of this Agreement.
- 1.668 “**Substantial Completion Deliverables List**” has the meaning given in Section 23.5(d)(ii) (*Countdown Notice, Section Substantial Completion Deliverables and Substantial Completion Deliverables*) of this Agreement.
- 1.669 “**Substantial Completion Notice**” has the meaning given in Section 23.3(b) (*Section Substantial Completion Certificates and Substantial Completion Certificates*) of this Agreement.
- 1.670 “**Substation**” has the meaning given in the Output Specifications.
- 1.671 “**Subsurface Utility Engineering (SUE) Report**” means the following report(s):
- (a) [REDACTED]
- 1.672 “**Supplier**” means a person who supplies to Project Co, or to any Subcontractor, any equipment, materials, supplies or services as part of, or for, the Works.
- 1.673 “**Support of Excavation**” or “**SOE**” has the meaning given in the Output Specifications.
- 1.674 “**Systemic Racism**” means organizational and institutional culture, biases, policies, directives, practices or procedures that may appear neutral on their surface but have the effect of disadvantaging, excluding, displacing or marginalizing Indigenous, Black and other racialized groups or creating unfair barriers for them to access valuable benefits and opportunities.
- 1.675 “**Systems**” has the meaning given in the Output Specifications.
- 1.676 “**System User**” has the meaning given in the Output Specifications.
- 1.677 “**Target Price**” has the meaning given in the Target Price Agreement.
- 1.678 “**Target Price Adjustment**” has the meaning given in Schedule 21 – Risk Allocations.

- 1.679 “**Target Price Agreement**” means, in respect of the TPA Scope, the agreement substantially in the form of Schedule 4 – Form of Target Price Agreement, in respect of the TPA Scope to be entered into by Contracting Authority and Project Co in accordance with the terms of this Agreement.
- 1.680 “**Tax**” or “**Taxes**” means any and all taxes, levies, imposts, duties, fees, withholdings, assessments, deductions or charges whatsoever, imposed, assessed, levied or collected by any Governmental Authority, together with interest thereon and penalties with respect thereto, and includes all HST except where stated to the contrary. “**Taxes**” shall not include Contracting Authority Taxes.
- 1.681 “**TBM Marine Event**” has the meaning given in Section 11.30(a) (*Tunnel Boring Machine*) of this Agreement.
- 1.682 “**Technical Information**” has the meaning given in Schedule 37 – Intellectual Property.
- 1.683 “**Technical Member**” has the meaning given in Schedule 27 – Dispute Resolution Procedure.
- 1.684 “**Technical Reference Date**” means the latest to occur of any TPA Proposal Submission Date (being the latest such date if more than one Target Price Agreement is entered into).
- 1.685 “**Technical Reports**” means the Environmental Reports, the Geotechnical Reports and the Archaeological Reports.
- 1.686 “**Template Third Party Agreement**” has the meaning given in Section 10.2(j) (*General Responsibilities and Standards – Construction Works*) of this Agreement.
- 1.687 “**Termination Date**” means the earlier of the Expiry Date and such other date, if any, on which termination of this Agreement takes effect in accordance with its terms.
- 1.688 “**Third Party Agreement**” has the meaning given in Section 10.2(j) (*General Responsibilities and Standards – Construction Works*) of this Agreement.
- 1.689 “**Third Party Contractors**” means any person (not being, for the avoidance of doubt, Project Co or any Project Co Party or Additional Contractors) that carries out any Third Party Works, provided that RSSOM Project Co, South Project Co, EGS Project Co or any TOC Contractor shall not be deemed to be a Third Party Contractor.
- 1.690 “**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 or other third party (not including, for the avoidance of doubt, Project Co or any Project Co Party).
- 1.691 “**Third Party Lands**” has the meaning given in Schedule 35 – Lands.
- 1.692 “**Third Party Operators**” has the meaning given in Schedule 40 – Rail Corridor Access and Flagging.

- 1.693 “**Third Party Works**” means any work performed by a Third Party Contractor on the Lands, including works in relation to,
- (a) an Encumbrance;
 - (b) Existing Third Party Infrastructure;
 - (c) Third Party Facilities; and
 - (d) Utility Work and work pursuant to a Utility Agreement or an encroachment permit or other permitting authority of any Governmental Authority under Applicable Law.
- 1.694 “**Three Week Look-Ahead Schedule**” has the meaning given in Schedule 12 – Works Schedule Requirements.
- 1.695 “**TOC Contractor**” means any party to an agreement with Contracting Authority for or in respect of a TOC Development.
- 1.696 “**TOC Contractor Party**” means any person engaged by a TOC Contractor in connection with a TOC Development, and/or any of its contractors, and their subcontractors of any tier, agents, employees, officers and directors, and “**TOC Contractor Parties**” shall be construed accordingly.
- 1.697 “**TOC Developments**” means a development project of any nature or kind and for any usage in connection with the construction or operation of a Station that is part of a priority transit project and includes a development project located on transit corridor land within the meaning of the *Building Transit Faster Act, 2020*.
- 1.698 “**TOC Representative**” has the meaning given in Schedule 5 – TOC Development Requirements.
- 1.699 “**Total Liability**” has the meaning given in Section 42.4(a) (*Maximum Liability*) of this Agreement.
- 1.700 “**TPA Bonds**” has the meaning given in Schedule 25 – Insurance and Bond Requirements.
- 1.701 “**TPA Close Target Date**” has the meaning given in Schedule 2 – Development Works Submissions and Project Development Process.
- 1.702 “**TPA Construction Commencement Date**” means the earliest to occur of all TPA Effective Dates.
- 1.703 “**TPA Development Checkpoint**” has the meaning given in Schedule 2 – Development Works Submissions and Project Development Process.
- 1.704 “**TPA Development Checkpoint Date**” has the meaning given in Schedule 2 – Development Works Submissions and Project Development Process.
- 1.705 “**TPA Development Phase**” has the meaning given in Schedule 2 – Development Works Submissions and Project Development Process.

- 1.706 “**TPA Development Phase Lockdown Date**” has the meaning given in Schedule 2 – Development Works Submissions and Project Development Process.
- 1.707 “**TPA Development Phase Lockdown Submittals**” has the meaning given in Schedule 2 – Development Works Submissions and Project Development Process.
- 1.708 “**TPA Effective Date**” means, in respect of the Target Price Agreement, the date of execution thereof.
- 1.709 “**TPA Final Completion**” means, in respect of the TPA Works, the completion of such TPA Works (including completion of all applicable Minor Deficiencies) in accordance with this Agreement and the Target Price Agreement.
- 1.710 “**TPA Final Completion Certificate**” means, in respect of the TPA Works, the certificate to be issued by the Independent Commissioning Agent in accordance with Section 23.10 (*Final Completion Certificate*) of this Agreement.
- 1.711 “**TPA Final Completion Date**” means, in respect of the TPA Works, the date on which the TPA Final Completion is achieved in respect thereof as evidenced by the TPA Final Completion Certificate, as such date shall be stated therein.
- 1.712 “**TPA Finishing Holdback**” means the finishing construction lien holdback to be retained pursuant to section 22(2) of the *Construction Act* (Ontario).
- 1.713 “**TPA Longstop Date**” has the meaning given in the Target Price Agreement.
- 1.714 “**TPA Proposal**” has the meaning given in Schedule 2 – Development Works Submissions and Project Development Process.
- 1.715 “**TPA Proposal Negotiations**” has the meaning given in Schedule 2 – Development Works Submissions and Project Development Process.
- 1.716 “**TPA Proposal Submission Date**” means in respect of any TPA Proposal, the date that such TPA Proposal is submitted to Contracting Authority in accordance with Schedule 2 – Development Works Submissions and Project Development Process.
- 1.717 “**TPA Proposal Validity Period**” has the meaning given in Schedule 2 – Development Works Submissions and Project Development Process.
- 1.718 “**TPA Scheduled Final Completion Date**” means, in respect of the TPA Works, the date which is twelve (12) months following the TPA Scheduled Substantial Completion Date, as such date may be amended pursuant to Schedule 21 – Risk Allocations.
- 1.719 “**TPA Scheduled Substantial Completion Date**” means, in respect of the TPA Works, the TPA Scheduled Substantial Completion Date as defined in the Target Price Agreement, as such date may be amended pursuant to Schedule 21 – Risk Allocations.

- 1.720 “**TPA Scope**” means the scope identified as applying to the Target Price Agreement as determined pursuant to Schedule 2 – Development Works Submissions and Project Development Process.
- 1.721 “**TPA Substantial Completion**” means the point at which, in respect of the TPA Works performed pursuant to the Target Price Agreement and this Agreement:
- (a) the applicable Project Co Infrastructure and the New Third Party Infrastructure, have been completed in accordance with this Agreement;
 - (b) the Independent Commissioning Agent has certified the substantial performance of such Target Price Agreement in respect of the TPA Works and the related certificate of substantial performance has been published, each in accordance with the *Construction Act* (Ontario); and
 - (c) all requirements for the TPA Substantial Completion described in Schedule 14 – Commissioning, other than in respect of applicable Minor Deficiencies, have been satisfied in respect of the applicable Project Co Infrastructure and the New Third Party Infrastructure as a whole.
- 1.722 “**TPA Substantial Completion Certificate**” means the certificate to be issued by the Independent Commissioning Agent in accordance with Section 23.3(g) (*Section Substantial Completion Certificates and Substantial Completion Certificates*) of this Agreement.
- 1.723 “**TPA Substantial Completion Date**” means, in respect of the TPA Works, the date upon which the TPA Substantial Completion Certificate is issued by the Independent Commissioning Agent.
- 1.724 “**TPA Surety**” has the meaning given in Schedule 25 – Insurance and Bond Requirements.
- 1.725 “**TPA Technical Requirements**” means, in respect of the TPA Works, the drawings, requirements, specifications and standards set out in Attachment 1 (*TPA Technical Requirements*) to the Target Price Agreement applicable to such TPA Works.
- 1.726 “**TPA Term**” means, in respect of the applicable Target Price Agreement, the period of time from the TPA Effective Date and ending on the expiry of the TPA Warranty Period, unless terminated earlier in accordance with the terms of this Agreement.
- 1.727 “**TPA Variation**” has the meaning given in Schedule 22 – Estimates, Variations and Proposals.
- 1.728 “**TPA Variation Confirmation**” has the meaning given in Schedule 22 – Estimates, Variations and Proposals.
- 1.729 “**TPA Variation Directive**” has the meaning given in Schedule 22 – Estimates, Variations and Proposals.
- 1.730 “**TPA Variation Enquiry**” has the meaning given in Schedule 22 – Estimates, Variations and Proposals.

- 1.731 “**TPA Warranty Cash Amount**” has the meaning given in Section 11.18(b) (*Warranty Security*) of this Agreement.
- 1.732 “**TPA Warranty Letter of Credit**” means an unconditional and irrevocable letter of credit from any one or more Acceptable Issuers in favour and for the direct and exclusive benefit of Contracting Authority, in the form set out in Schedule 20 – Warranty Letter of Credit.
- 1.733 “**TPA Warranty Period**” means, in respect of the TPA Works,
- (a) in connection with any Construction Defect, in the case of,
 - (i) Project Co Infrastructure (other than the Mechanical Systems), a period beginning on Section Substantial Completion of the applicable Project Co Infrastructure Section and expiring on the date that is two (2) years following such date;
 - (ii) the Mechanical Systems, a period beginning on the applicable Section Substantial Completion Date and expiring on the date that is two (2) years following the Project Substantial Completion Date; and
 - (iii) New City Infrastructure and New TTC Infrastructure, or a portion thereof, a period beginning on Handover of New City Infrastructure or New TTC Infrastructure, or a portion thereof, and expiring on the date that is two (2) years following such date of Handover of New City Infrastructure or New TTC Infrastructure, or a portion thereof; and
 - (b) in connection with any Construction Latent Defect, in the case of,
 - (i) Project Co Infrastructure (other than the Mechanical Systems), a period beginning on Section Substantial Completion of the applicable Project Co Infrastructure Section and expiring on the date that is five (5) years following such date;
 - (ii) the Mechanical Systems, a period beginning on the applicable Section Substantial Completion Date and expiring on the date that is five (5) years following the Project Substantial Completion Date; and
 - (iii) New City Infrastructure and New TTC Infrastructure, or a portion thereof, a period beginning on Handover of New City Infrastructure or New TTC Infrastructure, or a portion thereof, and expiring on the date that is five (5) years following such date of Handover of New City Infrastructure or New TTC Infrastructure, or a portion thereof.
- 1.734 “**TPA Warranty Security**” means either the TPA Warranty Letter of Credit or the TPA Warranty Cash Amount, as the case may be.
- 1.735 “**TPA Warranty Security Return Date**” means, in respect of the TPA Works, the date that is five (5) Business Days following the date that is two years following the TPA Substantial Completion Date.

- 1.736 “**TPA Works**” means, in respect of each Target Price Agreement, the TPA Works defined therein.
- 1.737 “**Traction Power Substation**” or “**TPSS**” has the meaning given in the Output Specifications.
- 1.738 “**Trade-Marks**” means all trademarks, service marks, trade dress, logos, distinguishing guises and indicia, trade names, corporate names, business names, domain names, whether or not registered, including all common law rights, and registrations, applications for registration and renewals thereof, including, but not limited to, all marks registered in the Canadian Intellectual Property Office and the trademark offices of other nations throughout the world, and all rights therein provided by multinational treaties or conventions.
- 1.739 “**Traffic and Transit Management Plan**” means the plans prepared by Project Co to manage traffic on and around the Lands in accordance with the Output Specifications.
- 1.740 “**Train**” means two or more coupled Cars.
- 1.741 “**Transit System**” means any operating transit system that Project Co may encounter during the performance of its obligations under this Agreement.
- 1.742 “**Transport Canada**” means Transport Canada and its successors and assigns.
- 1.743 “**TRCA**” means the Toronto and Region Conservation Authority.
- 1.744 “**Tree Tracker**” has the meaning given in Schedule 17 – Environmental Obligations.
- 1.745 “**Trespassers**” has the meaning given in Section 11.13(a) (*Protest and Trespass*) of this Agreement.
- 1.746 “**TTC**” means Toronto Transit Commission, a body corporate continued pursuant to the *City of Toronto Act* (Ontario).
- 1.747 “**TTC Jointly Developed Materials**” has the meaning given in Section 36.4(a)(iii) (*Jointly Developed Materials*) of this Agreement.
- 1.748 “**TTC Lands**” has the meaning given in Schedule 35 – Lands.
- 1.749 “**TTC Station Weekend Closure**” has the meaning given in Schedule 46 – TTC Station Weekend Closures.
- 1.750 “**TTC Zone of Influence**” means all areas within 60 meters of any Existing TTC Infrastructure (other than minor surface infrastructure, including bus stops, streetcar tracks and associated streetcar infrastructure), within which all Works in respect of Existing TTC Infrastructure, New TTC Infrastructure, or Project Co Infrastructure is subject to review by the TTC in accordance with Schedule 10 – Review Procedure and the Output Specifications.
- 1.751 “**Tunnel**” has the meaning given in the Output Specifications.
- 1.752 “**Tunnel Boring Machine**” or “**TBM**” has the meaning set out in the Output Specifications.

- 1.753 “**Tunnel Ventilation System**” has the meaning given in the Output Specifications.
- 1.754 “**Utilities**” means energy/power supplies, communications, data transmission and waste recovery, including electricity, natural gas/fuel oil, water, sanitary waste and stormwater.
- 1.755 “**Utility Agreement**” means any agreement entered into by Project Co with a Utility Company in connection with the design removal, construction, installation, repair, preservation, relocation or maintenance of Utility Infrastructure in, on, under, over or adjacent to the Lands, and includes any site or other permits issued thereunder or pursuant thereto, all as amended, supplemented or replaced from time to time.
- 1.756 “**Utility Company**” means the owner or operator of any Utility Infrastructure or any company or companies designated by Project Co to provide Utilities.
- 1.757 “**Utility Infrastructure**” means privately, publicly or cooperatively owned lines, facilities or systems for transmitting or distributing electricity, lighting, data, communications, gas, oil and petroleum products, water, stormwater or sewage, wireless, or other similar commodity or substance which serve the public directly or indirectly, including underground, surface and overhead facilities as well as facilities which use common poles, ducts or conduits on a shared basis, and all related infrastructure.
- 1.758 “**Utility Work**” means temporary and permanent installation, protection, removal, relocation, upgrading, reinstatement, restoration, downsizing, designing, and/or building works relating to Utility Infrastructure carried out in connection with or as part of the Works, including design, construction, installation, commissioning, protection, removal and relocation of poles, pole lines, conduits, gas pipes, oil pipes, sewers and tile lines, and related and ancillary works.
- 1.759 “**Value for Money Statement**” or “**VFM Statement**” means the set for principles be followed, and to serve as a point of reference, regarding Contracting Authority’s requirements and expectations with respect to achieving value for money in the planning and delivery of the Project as set forth in Schedule 28 – Value for Money Statement.
- 1.760 “**Variation**” means any of a Development Variation, DMCA Variation or TPA Variation, as applicable.
- 1.761 “**Variation Confirmation**” means any of a Development Variation Confirmation, DMCA Variation Confirmation or TPA Variation Confirmation, as applicable.
- 1.762 “**Variation Directive**” means any of a Development Variation Directive, DMCA Variation Directive or TPA Variation Directive, as applicable.
- 1.763 “**Variation Enquiry**” means any of a Development Variation Enquiry, DMCA Variation Enquiry or a TPA Variation Enquiry, as applicable.
- 1.764 “**Variation Procedure**” means the procedure set out in Part A (*Development Variations and DMCA Variations*) or Part B (*TPA Variations*) of Schedule 22 – Estimates, Variations and Proposals, as applicable.

- 1.765 “**VIA Rail**” means Via Rail Canada and its successors.
- 1.766 “**Warranty Work**” has the meaning given in Section 11.17(a) (*Warranty Work and Prompt Repair of Warranty Work*) of this Agreement.
- 1.767 “**Waste**” means any substances or materials that are defined as “designated wastes” under or regulated or governed by Ontario Regulation 347 under the Ontario *Environmental Protection Act*.
- 1.768 “**Witness and Hold Point**” has the meaning given in Schedule 11 – Quality Management.
- 1.769 “**Work Breakdown Structure**” or “**WBS**” has the meaning given in Schedule 12 – Works Schedule Requirements.
- 1.770 “**Working Day**” has the meaning given in Schedule 12 – Works Schedule Requirements.
- 1.771 “**Working Group**” has the meaning given in Schedule 19 – Governance, Meetings and Progress Reporting.
- 1.772 “**Workplace Safety and Insurance Act (Ontario)**” means the *Workplace Safety and Insurance Act*, S.O. 1997, c. 16, Schedule A, as amended from time to time.
- 1.773 “**Works**” means the design, construction, installation, testing, commissioning and completion of the Project Co Infrastructure and the New Third Party Infrastructure, the integration of the Early Works Infrastructure with the Project Co Infrastructure and the rectification of any Section Minor Deficiencies and Minor Deficiencies, Warranty Work, all other work under the Permits, Licences, Approvals and Agreements, and all work which is implied by this Agreement and that is necessary for the stability or safe and proper design, construction, installation, testing, commissioning and completion of the Project Co Infrastructure and the New Third Party Infrastructure, except for all work which is expressly described in Schedule 34 – Permits, Licences, Approvals and Agreements as being the responsibility of Contracting Authority, and including, for clarity, the Development Works, the TPA Works applicable at such time under the Target Price Agreement then in effect, if any, and the DMCA Construction Works.
- 1.774 “**Works Change in Law**” means any Change in Law that:
- (a) is not a Relevant Change in Law;
 - (b) occurs after the Technical Reference Date;
 - (c) requires Project Co to perform any work of alteration, addition, Demolition, extension or variation in the quality or function of the Project Co Infrastructure or the New Third Party Infrastructure which is similar in nature to the Works but is not Works or capital replacement work which Project Co would otherwise be required to perform in order to comply with its obligations under this Agreement; and
 - (d) was not reasonably foreseeable at the Technical Reference Date by an experienced contractor carrying out activities and/or performing design and/or other operations similar

to those to be carried out and/or performed by any Project Co Party in relation to the Project.

- 1.775 “**Works Report**” has the meaning given in Schedule 33 – Works Report Requirements.
- 1.776 “**Works Schedule Report**” has the meaning given in Schedule 12 – Works Schedule Requirements.
- 1.777 “**Works Submittal**” or “**Works Submittals**” has the meaning given in Part A (*Works*) to Schedule 10 – Review Procedure.
- 1.778 “**Worsened Contamination**” means any Worsened Project Co Contamination and any Worsened Contracting Authority Contamination.
- 1.779 “**Worsened Contracting Authority Contamination**” means the Worsening of any Contracting Authority Contamination which was caused:
- (a) directly or indirectly by Project Co or a Project Co Party; or
 - (b) by a failure of Project Co or any Project Co Party to comply with its obligations under this Agreement; and
 - (c) in respect of which Project Co did not comply with its obligations pursuant to Sections 18.3(h) and 18.3(i) (*Contamination*) of this Agreement,
- but only to the extent of the Worsening.
- 1.780 “**Worsened Project Co Contamination**” means the Worsening of any Project Co Contamination which was caused by:
- (a) directly or indirectly by Project Co or a Project Co Party; or
 - (b) by a failure of Project Co or any Project Co Party to comply with its obligations under this Agreement,
- but only to the extent of the Worsening.
- 1.781 “**Worsens**” means any act or omission of Project Co or any Project Co Party which, other than as required by Applicable Law, Good Industry Practice, or the terms of this Agreement (including the Output Specifications and Schedule 17 – Environmental Obligations), excavates, disturbs, exposes, spills, releases or otherwise affects (directly or indirectly) any Contamination with the effect of aggravating, exacerbating, migrating, diverting or otherwise increasing the area, volume, impact or costs of dealing with such Contamination, and “**Worsened**” and “**Worsening**” shall have the corresponding meanings wherever used in Section 18.3 (*Contamination*) of this Agreement.
- 1.782 “**WSIB**” means the Ontario Workplace Safety and Insurance Board that is responsible for administering the *Workplace Safety and Insurance Act* (Ontario).

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2. **Interpretation.** This 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 this Agreement are for convenience of reference only, shall not constitute a part of this Agreement, and shall not be taken into consideration in the interpretation of, or affect the meaning of, this 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 this Agreement) references to specific Sections, Articles, Clauses, Paragraphs, Subparagraphs, Schedules, and other divisions of this Agreement are references to such Sections, Articles, Clauses, Paragraphs, or Subparagraphs of, Schedules to, or divisions of this Agreement and the terms “Section”, “Article” and “Clause” are used interchangeably and are synonymous.
- 2.3 Except where the context requires otherwise, references to specific Sections, Articles, Clauses, Paragraphs, Subparagraphs, Schedules, and other divisions of this Agreement followed by a number are references to the whole of the Section, Article, Clause, Paragraph, Subparagraphs, Schedule or other division of this Agreement as applicable, bearing that number, including all subsidiary provisions containing that same number as a prefix.
- 2.4 Except where the context requires otherwise, references in the Output Specifications to specific Parts, Sections, Articles, Clauses, Paragraphs, Subparagraphs, Schedules, and other divisions of the Output Specifications shall be construed such that each such reference on a page of the Output Specifications will be read to be preceded by and to include the prefix Section number or other reference at the top of the applicable page, and all cross-references to any Section in the Output Specifications shall be interpreted to include the applicable prefix Section number or other reference.
- 2.5 The Schedules to this Agreement are an integral part of this Agreement and a reference to this Agreement includes a reference to the Schedules.
- 2.6 All references in this Agreement to a Schedule shall be to a Schedule of this Agreement.
- 2.7 All capitalized terms used in a Schedule shall have the meanings given to such terms in Schedule 1, unless stated otherwise in a particular Schedule in which case such definition shall have the meaning given to it in that Schedule solely for the purposes of that Schedule.
- 2.8 The language of the Output Specifications and other documents comprising this 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 this Agreement, all accounting and financial terms used in this 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 this 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 this Agreement or in any Project Document to any right, power, obligation or responsibility of any Governmental Authority shall be deemed to be a reference to the Governmental Authority that, pursuant to Applicable Laws has such right, power, obligation or responsibility at the relevant time.
- 2.17 References to a deliberate act or omission or deliberate or negligent act or omission of any Province Person shall be construed having regard to the interactive nature of the activities of the Province Person and Project Co and further having regard to:
- (a) acts contemplated by the Output Specifications; or
 - (b) acts otherwise provided for in this Agreement.
- 2.18 The words in this Agreement shall bear their natural meaning.
- 2.19 Each of Project Co's and Contracting Authority's respective obligations shall be construed as separate obligations owed to the other.
- 2.20 References containing terms such as:

- (a) “hereof”, “herein”, “hereto”, “hereinafter”, and other terms of like import are not limited in applicability to the specific provision within which such references are set forth but instead refer to this 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 this 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 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 this 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 this 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 this Agreement states that an obligation shall be performed “on” a stipulated date, the latest time for performance shall be 5:00 p.m. on that day, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- 2.25 Any reference to time of day or date means the local time or date in Toronto, Ontario. Any reference to a stipulated “day” which is not specifically referred to as a “Business Day” shall be deemed to be a calendar day measured from midnight to midnight.
- 2.26 Unless otherwise indicated, time periods will be strictly construed.
- 2.27 Whenever the terms “will” or “shall” are used in this Agreement in relation to Project Co or Contracting Authority they shall be construed and interpreted as synonymous and to read “Project Co shall” or “Contracting Authority shall” as the case may be.
- 2.28 Any reference to currency is to Canadian currency and any amount advanced, paid or calculated is to be advanced, paid or calculated in Canadian currency.
- 2.29 Unless otherwise identified in this Agreement, all units of measurement in any documents submitted by Project Co to Contracting Authority shall be in accordance with the SI system of units.

- 2.30 Terms not defined herein and used in this Agreement which have a technical meaning commonly understood by the transit system construction industry will be construed as having that meaning unless the context otherwise requires.
- 2.31 Save where expressly stated otherwise, references to amounts or sums expressed to be “indexed” or “index linked” are references to amounts or sums which require adjustment to reflect the effects of inflation. Such adjustment shall be calculated in accordance with the following formula:

Adjusted amount or sum = **[REDACTED]**

- 2.32 The terms “properly inferable”, “readily apparent” and “readily discoverable” as used in this Agreement, shall be interpreted by taking into consideration Project Co’s and any Project Co Party’s experience and the investigations, inspections and examinations of the Background Information and in respect of the Lands, including the Existing Infrastructure, carried out by Project Co or by any Project Co Party during the Request for Proposals process or other due diligence; and by taking into consideration reasonable, normal course and industry standard investigations, inspections or other due diligence; in each case in accordance with Good Industry Practice.

SCHEDULE 2**DEVELOPMENT WORKS SUBMISSIONS AND PROJECT DEVELOPMENT PROCESS****1. GENERAL PROVISIONS****1.1 Contents of this Schedule 2**

- (a) This Schedule 2 consists of the main body of this Schedule and the following Appendices:
- (i) Appendix 1 – Development Works Submittals, Deliverables and Requirements;
 - (ii) Appendix 2 – TPA Proposal Content and Requirements;
 - (iii) Appendix 3 – Project Co’s Proposed Mobilization Plan;
 - (iv) Appendix 4 – Project Co’s Proposed Development Works Schedule;
 - (v) Appendix 5 – Project Execution Plan Outline; and
 - (vi) Appendix 6 – Form of Change Request.

1.2 Definitions

In this Schedule 2, unless the context indicates a contrary intention, terms which are defined in this Agreement (and not otherwise defined in this Schedule 2) shall have the meanings given to them in this Agreement and the following terms shall have the following meanings:

- (a) **“CA Approval”** means a written Notice by the Contracting Authority Representative, delivered in its sole discretion to the Project Co Representative, confirming its approval of the applicable plan, schedule, document or change thereto.
- (b) **“Change Request”** means a request for a change to the Output Specifications in support of the design development process, and any corresponding changes to this Agreement relating thereto, submitted in the form attached as Appendix 6 (*Form of Change Request*) to this Schedule 2.
- (c) **“Configuration Control Management Board”** has the meaning given in Section 8.1(a).
- (d) **“Consolidated Change Request Submittals”** has the meaning given in Schedule 10 – Review Procedure.
- (e) **“Development Works Deliverables”** means, collectively, any and all items, documents and anything else required or specified by this Schedule 2 to be submitted to Contracting Authority, including:
- (i) the First Checkpoint Works Deliverables;

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- (ii) the Second Checkpoint Works Deliverables; and
 - (iii) all applicable TPA Development Checkpoint Works Deliverables.
- (f) **“Development Works Execution Plan”** has the meaning given in Section 2.3(c)(i).
- (g) **“Development Works Milestone Dates”** means, collectively:
- (i) the First Checkpoint Date;
 - (ii) the Second Checkpoint Date;
 - (iii) the Second Development Phase Lockdown Date;
 - (iv) each applicable TPA Development Checkpoint Date; and
 - (v) each applicable TPA Development Phase Lockdown Date.
- (h) **“Development Works Project Deliverables”** means (i) the applicable Development Works Submittals, (ii) the applicable Development Works Deliverables, and (iii) the applicable TPA Proposal, all as may be updated by the Project Execution Plan.
- (i) **“Development Works Schedule”** has the meaning given in Section 2.3(f).
- (j) **“Development Works Submittals”** means, collectively, any and all items, documents and anything else required or specified by this Agreement in respect of the Development Works to be submitted to, reviewed or otherwise processed by Contracting Authority in accordance with the provisions of Schedule 10 – Review Procedure, including:
- (i) the First Development Phase Works Submittals;
 - (ii) the Second Development Phase Lockdown Submittals;
 - (iii) all applicable TPA Development Phase Lockdown Submittals;
 - (iv) the DMCA Construction Works Submittals; and
 - (v) the Consolidated Change Request Submittals,
- but excluding any TPA Proposal.
- (k) **“DMCA Construction Works Implementation Plan”** has the meaning given in Section 2.3(c)(ii).
- (l) **“Draft TPA Negotiations Process”** has the meaning given in Section 5.1(a)(i).
- (m) **“First Checkpoint”** has the meaning given in Section 2.3(j)

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- (n) “**First Checkpoint Date**” means the date that is (90) days following the DMCA Effective Date, or as such later date identified as the “First Checkpoint Date” in the Development Works Schedule, provided Contracting Authority has delivered a CA Approval in respect thereof.
- (o) “**First Checkpoint Works Deliverables**” means all those deliverables indicated as being delivered at the First Checkpoint in Appendix 1 (*Development Works Submittals, Deliverables and Requirements*) to this Schedule 2, or as otherwise set out in the Project Execution Plan.
- (p) “**First Development Phase**” means the period beginning on the DMCA Effective Date and ending on the First Checkpoint Date.
- (q) “**First Development Phase Works Submittals**” means all those submittals indicated as being submitted at the First Checkpoint in Appendix A (*Minimum Works Submittals*) to Schedule 10 – Review Procedure, or as otherwise set out in the Project Execution Plan and indicated as First Development Phase Works Submittals.
- (r) “**Guidelines**” means the ‘Target Price Development Guideline’, ‘Design and Scope Development Guideline’ and ‘TPA Works Schedule Development Guideline’, provided by Contracting Authority to Project Co as Background Information.
- (s) “**Negotiable Draft TPA Provisions**” means [REDACTED].
- (t) “**Nominated Subcontractor**” has the meaning given in Section 2.7(d).
- (u) “**Nominated Subcontractor Notice**” has the meaning given in Section 2.7(a).
- (v) “**Project Checkpoints**” has the meaning given in Section 2.2(b).
- (w) “**Project Co’s Proposed Development Works Schedule**” means the development works schedule proposed by Project Co pursuant to Section 2.1, Table 2 of Part 1 Schedule 3 of the RFP and as modified during any negotiations in accordance with the RFP, and attached as Appendix 4 (*Project Co’s Proposed Development Works Schedule*) to this Schedule 2.
- (x) “**Project Co’s Proposed Mobilization Plan**” means the mobilization and staffing plan proposed by Project Co pursuant to Section 1.1, Table 2 of Part 1 Schedule 3 of the RFP, as modified during any negotiations in accordance with the RFP, and attached as Appendix 3 (*Project Co’s Proposed Mobilization Plan*) to this Schedule 2.
- (y) “**Project Execution Plan**” has the meaning given in Section 2.3(b).
- (z) “**Second Checkpoint**” has the meaning given in Section 2.4(d).
- (aa) “**Second Checkpoint Date**” means such date that is identified as the “Second Checkpoint Date” in the Development Works Schedule, as such date may be updated in accordance with the terms of this Agreement.

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- (bb) **“Second Checkpoint Works Deliverables”** means all those deliverables indicated as being delivered at the Second Checkpoint in Appendix 1 (*Development Works Submittals, Deliverables and Requirements*) to this Schedule 2, or as otherwise set out in the Project Execution Plan.
- (cc) **“Second Development Phase”** means the period commencing on the day following the First Checkpoint Date and ending on the Second Checkpoint Date.
- (dd) **“Second Development Phase Lockdown Date”** means such date that is identified as the “Second Development Phase Lockdown Date” in the Development Works Schedule, as such date may be updated in accordance with the terms of this Agreement.
- (ee) **“Second Development Phase Lockdown Submittals”** means all those submittals indicated as being submitted at the Second Checkpoint in Appendix A (*Minimum Works Submittals*) to Schedule 10 – Review Procedure, or as otherwise set out in the Project Execution Plan.
- (ff) **“TPA Close Target Date”** has the meaning given in Section 7.1(a).
- (gg) **“TPA Development Checkpoint”** has the meaning given in Section 2.6(c).
- (hh) **“TPA Development Checkpoint Date”** means:
- (i) with respect to the first TPA Scope in respect of which a Target Price Agreement is to be entered into, such date that is identified as the first “TPA Development Checkpoint Date” in the Development Works Schedule, as such date may be updated in accordance with the terms of this Agreement;
 - (ii) with respect to the second TPA Scope in respect of which a Target Price Agreement is to be entered into, such date that is identified as the second “TPA Development Checkpoint Date” in the Development Works Schedule, as such date may be updated in accordance with the terms of this Agreement;
 - (iii) with respect to any subsequent TPA Scope in respect of which a Target Price Agreement is to be entered into, such date as is identified as the applicable “TPA Development Checkpoint Date” in the Development Works Schedule, as such date may be updated in accordance with the terms of this Agreement.
- (ii) **“TPA Development Checkpoint Works Deliverables”** means all those deliverables indicated as being delivered at the applicable TPA Development Checkpoint in Appendix 1 (*Development Works Submittals, Deliverables and Requirements*) to this Schedule 2, or as otherwise set out in the Project Execution Plan.
- (jj) **“TPA Development Phase”** means (i) in respect of the first TPA Scope, the period commencing on the day following the Second Checkpoint Date and ending on the TPA Development Checkpoint Date applicable to such TPA Scope, and (ii) for subsequent TPA Scopes, the period commencing on the day following the preceding TPA Development Checkpoint Date and ending on the TPA Development Checkpoint Date applicable to such subsequent TPA Scope.
- (kk) **“TPA Development Phase Lockdown Date”** means:

- (i) with respect to the first TPA Scope in respect of which a Target Price Agreement is to be entered into, such date that is identified as the first “TPA Development Phase Lockdown Date” in the Development Works Schedule, as such date may be updated in accordance with the terms of this Agreement;
 - (ii) with respect to the second TPA Scope in respect of which a Target Price Agreement is to be entered into, such date that is identified as the second “TPA Development Phase Lockdown Date” in the Development Works Schedule, as such date may be updated in accordance with the terms of this Agreement;
 - (iii) with respect to any subsequent TPA Scope in respect of which a Target Price Agreement is to be entered into, such date as is identified as the applicable “TPA Development Phase Lockdown Date” in the Development Works Schedule, as such date may be updated in accordance with the terms of this Agreement.
- (ll) “**TPA Development Phase Lockdown Submittals**” means all those submittals indicated as being submitted at the applicable TPA Development Checkpoint in Appendix A (*Minimum Works Submittals*) to Schedule 10 – Review Procedure, or as otherwise set out in the Project Execution Plan.
- (mm) “**TPA Proposal**” has the meaning given in Section 6.1(a).
- (nn) “**TPA Proposal Negotiations**” has the meaning given in Section 6.6(a).
- (oo) “**TPA Proposal Validity Period**” has the meaning given in Section 6.4(c).
- (pp) “**Value Engineering Options**” has the meaning given in Appendix 1 (*Development Works Submittals, Deliverables and Requirements*) to this Schedule 2.
- (qq) “**Value Engineering Options Report**” has the meaning given in Appendix 1 (*Development Works Submittals, Deliverables and Requirements*) to this Schedule 2.

1.3 Project Co Development Works Obligations

- (a) Without limiting any other obligation of Project Co in this Agreement:
- (i) Project Co shall perform and shall cause the performance of the Development Works:
 - A. at all times, fully, diligently and in a professional and competent manner;
 - B. to be undertaken by persons qualified and skilled in their occupations and with the care and skill reasonably to be expected of persons providing a scope of works and services similar to each aspect of the Development Works, and on a project of similar size, scope, complexity and quality to the Project; and
 - C. in accordance with Good Industry Practice and Applicable Law; and
 - (ii) Project Co shall:

- A. undertake the Development Works in accordance with the terms of the Project Execution Plan (or, prior to the Project Execution Plan receiving CA Approval, Project Co’s Proposed Mobilization Plan) and Development Works Schedule;
 - B. organize the workshops described in the Project Execution Plan (or, prior to the Project Execution Plan receiving CA Approval, Project Co’s Proposed Mobilization Plan);
 - C. communicate, attend meetings and consult regularly with and provide progress reporting to Contracting Authority during the performance of the Development Works, including at the request of Contracting Authority or as otherwise required by Project Co to perform and complete the Development Works;
 - D. comply with the directions of Contracting Authority relating to the performance of the Development Works that are consistent with this Agreement, and advise Contracting Authority if any such direction would comprise or require a Variation;
 - E. inform itself of Contracting Authority’s requirements for the Project and the Development Works, including by familiarising itself and keeping itself familiarised with the Background Information; and
 - F. carefully examine any additional Background Information from time to time provided to or obtained by Project Co to the extent necessary to properly perform Project Co’s obligations under this Agreement and perform the Development Works and in order to conform and comply with Good Industry Practice; and
- (iii) if any of the Development Works fail to satisfy the requirements of this Agreement, Project Co shall promptly correct and rectify such failure following the earlier to occur of the date Project Co becomes aware of such failure or of Contracting Authority’s provision of Notice to Project Co outlining such failure.

1.4 Estimates

- (a) Notwithstanding any other provision of this Agreement to the contrary, Contracting Authority reserves the right to direct Project Co not to perform any Development Work until such time as Project Co provides an Estimate to Contracting Authority and such Estimate is approved by Contracting Authority in writing in accordance with Schedule 22 – Estimates, Variations and Proposals.

2. PROJECT DEVELOPMENT PROCESSES

2.1 General

- (a) For the purposes of this Schedule 2, Project Co shall perform its obligations under and submit to Contracting Authority each of the Development Works Submittals and Development Works Deliverables, in accordance with:

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- (i) this Agreement, including Schedule 10 – Review Procedure and Schedule 12 – Works Schedule Requirements thereof, and any applicable requirements of Appendix 1 (*Development Works Submittals, Deliverables and Requirements*) to this Schedule 2, and
 - (ii) the Project Execution Plan (or, prior to the Project Execution Plan receiving CA Approval, Project Co’s Proposed Mobilization Plan) and the Development Works Schedule (or, prior to the Development Works Schedule receiving CA Approval, Project Co’s Proposed Development Works Schedule).
- (b) The Parties shall be bound by and perform all of their respective obligations with respect to the Development Works in accordance with the terms of any Project Execution Plan in respect of which Contracting Authority has provided a CA Approval, and in the event of any conflict between the terms of the Project Execution Plan and any terms of this Agreement or any Target Price Agreement, this Agreement or Target Price Agreement, as applicable, shall govern.
 - (c) In developing a draft of the Project Execution Plan or Development Works Schedule, as applicable, for submission to Contracting Authority, Project Co shall be responsible for organizing any activities, meetings and interim deliverables that are necessary or desirable to obtain Contracting Authority input and agreement as such draft is being developed. Project Co shall be responsible for providing revised drafts of the Project Execution Plan or Development Works Schedule, as applicable, to Contracting Authority that are responsive to Contracting Authority’s comments thereon.
 - (d) Any comments on or requested revisions by Contracting Authority to Project Co’s Proposed Mobilization Plan, Project Co’s Proposed Development Works Schedule, the Project Execution Plan or the Development Works Schedule, shall not entitle Project Co to a Variation.

2.2 Development Phases and Project Checkpoints Process

- (a) The Project development shall proceed on a phased approach, comprising the First Development Phase followed by the Second Development Phase, at the end of which the TPA Development Phase shall commence in respect of the first Target Price Agreement, followed by further TPA Development Phases (if any and as applicable) for subsequent Target Price Agreements.
- (b) The purpose of each of the First Checkpoint and Second Checkpoint and each applicable TPA Development Checkpoint (collectively, the “**Project Checkpoints**”) is for the Parties to obtain a holistic snapshot of the scope and requirements, design development process, cost and scheduling, and the estimating and procurement strategy as the Development Works progress.
- (c) Project Co may, at any time during the performance of the Development Works and subject to the requirements of Schedule 10 – Review Procedure, submit DMCA Construction Works Submittals to Contracting Authority.

2.3 First Development Phase

- (a) The purpose of the First Development Phase is for:

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- (i) the Parties to collaboratively commence the development of the Project Execution Plan; and
 - (ii) Project Co to mobilize its resources with respect to the Development Works, in accordance with:
 - A. Project Co’s Proposed Mobilization Plan; and
 - B. Project Co’s Proposed Development Works Schedule.
- (b) During the First Development Phase, Project Co shall develop and submit to Contracting Authority for approval, a draft plan consistent with Appendix 5 (*Project Execution Plan Outline*) to this Schedule 2 which:
- (i) will be a comprehensive execution strategy and project management plan for the performance of the Development Works and DMCA Construction Works,
 - (ii) will govern the interaction between Project Co and Contracting Authority,
 - (iii) will define the structure and processes that will be carried out to perform the Development Works and DMCA Construction Works,
 - (iv) will describe how the core function of TPA Scope refinement, design development, scheduling, risk management and cost estimating will be sequenced, integrated and managed by the Parties in developing each Target Price,
 - (v) will describe workflow, forums, decision making, Contracting Authority engagement with Project Co, and specific requirements for Development Works Project Deliverables,
 - (vi) will describe how DMCA Construction Works will be managed, implemented and coordinated with other Works, and
 - (vii) may update the Development Works Project Deliverables requirements,
- (such plan, as it may be updated and approved pursuant to a CA Approval from time to time, the “**Project Execution Plan**”).
- (c) The Project Execution Plan shall have the following two sub-components:
- (i) the “**Development Works Execution Plan**” which shall address elements of the Project Execution Plan relating to Development Works; and
 - (ii) the “**DMCA Construction Works Implementation Plan**” which shall address elements of the Project Execution Plan relating to DMCA Construction Works and coordination with other Works.

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- (d) In developing the Project Execution Plan, Project Co may have regard to, refine and improve upon, the following documents which were submitted as part of the RFP by Project Co or have been provided by Contracting Authority to Project Co:
- (i) the Proposed Mobilization and Staffing Plan,
 - (ii) the Proposed Design Development Plan,
 - (iii) the Proposed Target Price Development Plan,
 - (iv) the Value-for-Money Methodology,
 - (v) the Proposed Development Works Schedule and Schedule Development Narrative,
 - (vi) the Proposed Risk Register and Risk Management Narrative, and
 - (vii) the Guidelines.
- (e) Until CA Approval of the initial Project Execution Plan, Project Co’s Proposed Mobilization Plan shall govern the performance of the Development Works and all references herein to the Parties complying with the terms of or performing activities pursuant to, the Project Execution Plan, shall be deemed to refer to Project Co’s Proposed Mobilization Plan.
- (f) During the First Development Phase, Project Co shall develop and submit to Contracting Authority for its approval a schedule for the performance of the Development Works, including any proposed updates to the Development Works Milestone Dates set out in this Schedule 2. Following resolution of any comments provided by Contracting Authority to Project Co with respect to such schedule, Contracting Authority may deliver to Project Co a CA Approval in respect of such schedule (such schedule, as it may be updated and approved pursuant to a CA Approval from time to time, the “**Development Works Schedule**”) and henceforth the progress of the Development Works shall be governed by the Development Works Schedule.
- (g) Notwithstanding anything to the contrary in this Agreement, at any time 30 days prior to the TPA Effective Date applicable in respect of any TPA Scope to which the Project Execution Plan or Development Works Schedule relates:
- (i) Contracting Authority may, in its sole discretion and at any time, direct Project Co by written Notice to make revisions and updates to the then current Project Execution Plan or Development Works Schedule in respect of such TPA Scope, provided that where any such revision is inconsistent with a TPA Proposal that has been submitted in respect of such TPA Scope, Project Co shall promptly notify Contracting Authority, and Contracting Authority may, in its sole discretion (A) revoke its direction to revise and update the then current Project Execution Plan or Development Works Schedule, (B) revise and re-issue its direction in a manner that is consistent with the applicable TPA Proposal, (C) return the TPA Proposal to Project Co for updating and resubmission in accordance with this Schedule 2, or (D) seek to negotiate revisions to the TPA Proposal pursuant to Section 6.6;

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- (ii) Project Co may at any time propose revisions and updates to the then current Project Execution Plan or Development Works Schedule in respect of such TPA Scope which Contracting Authority may, in its sole discretion, approve or reject by written Notice to Project Co (or in case of approval, by way of a CA Approval); and
 - (iii) no change to the Project Execution Plan or Development Works Schedule relating to such TPA Scope shall be binding on the Parties until such time as Contracting Authority has delivered a CA Approval in respect thereof.
- (h) Neither the Project Execution Plan nor the Development Works Schedule shall apply to any Works that have been subsumed by a Target Price Agreement.
- (i) During the First Development Phase, in addition to the submission of the First Development Phase Works Submittals and delivery of the First Checkpoint Works Deliverables, Project Co shall, without limitation, perform the following key activities:
- (i) **Onboarding Activities**
 - A. participation in the initial meetings and workshops described in Schedule 19 – Governance, Meetings and Progress Reporting; and
 - B. review of certain existing information, technology and other matters in respect of the Project requested by Contracting Authority (e.g., the data room, construction schedule, stakeholder interfaces, Permits, Licences, Approvals and Agreements, design options, etc.);
 - (ii) **Project Term Governance, Working Groups and Progress Reporting**
 - A. the development of, and agreement upon, the Development Works Charter in accordance with Schedule 19 – Governance, Meetings and Progress Reporting;
 - B. with Contracting Authority, constitute the Senior Executives Team, the Leadership Team and the Management Teams and reach agreement with Contracting Authority on the approach to and constitute the Working Groups, in accordance with Schedule 19 – Governance, Meetings and Progress Reporting;
 - C. reach agreement with Contracting Authority on Development Works and Works reporting in accordance with Schedule 19 – Governance, Meetings and Progress Reporting;
 - D. develop the approach to risk management with Contracting Authority in accordance with the Project Execution Plan; and
 - E. reach agreement with Contracting Authority on the stakeholder engagement process with key Stakeholders.
 - (iii) **Design Validation**

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- A. in collaboration with Contracting Authority and other relevant Stakeholders, performing design validation on the Reference Concept Design and other accelerated designs provided by Contracting Authority, in accordance with Project Co's Proposed Mobilization Plan to:
- (1) determine areas of opportunity to save cost or shorten schedule and submit a Value Engineering Options Report;
 - (2) determine which elements of any TPA Scope design will continue to be based on the Reference Concept Design and other accelerated designs provided by Contracting Authority; and
 - (3) determine which elements of any TPA Scope design will require redesign relative to the Reference Concept Design and other accelerated designs provided by Contracting Authority;
- to allow for the development and submission of the Development Works Schedule;
- (iv) **DMCA Construction Works Scope Validation and Other DMCA Construction Works Activities**
- A. identify potential DMCA Construction Works activities that could be beneficial for the Project, and review and perform the validation of same;
- (v) **Due Diligence Validation**
- A. review due diligence that has been completed for the purposes of:
- (1) identifying any areas where additional due diligence during the performance of Development Works would reduce Project risks; and
 - (2) including and reflecting additional due diligence in the Project Execution Plan;
- (vi) **Concept Design**
- A. participate in the Working Group process and other relevant meetings set out in Schedule 19 – Governance, Meetings and Progress Reporting;
- B. review and validate the Lands identified in Schedule 35 – Lands and submit an Additional Lands Request, that identifies, in Project Co's reasonable opinion:
- (1) which Lands require an earlier or later "Commencement Date" from that set out in the Metrolinx Lands Table;
 - (2) which Lands require a shorter or longer "duration" of use and access from that set out in the Metrolinx Lands Table;

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- (3) any additional Lands required; and
 - (4) any Lands that are not required,

in order for Project Co to perform the TPA Work under any Target Price Agreement to be entered into; and
- C. following the completion of Project Co’s review and validation work in respect of the Lands pursuant to Section 2.3(i)(vi)B, provide to Contracting Authority the Additional Lands Request in accordance with Section 16.6(a) (*Adjustments to Metrolinx Lands Available to Project Co*) of this Agreement.
- (j) Unless otherwise agreed by Contracting Authority, the First Development Phase shall conclude when the following has occurred:
- (i) Project Co has submitted all applicable First Development Phase Works Submittals to Contracting Authority for review in accordance with Schedule 10 – Review Procedure;
 - (ii) Project Co has submitted all applicable First Checkpoint Works Deliverables to Contracting Authority for review;
 - (iii) Project Co has submitted a draft of the Project Execution Plan to Contracting Authority for review;
 - (iv) Contracting Authority shall have delivered a CA Approval in respect of the Development Works Schedule; and
 - (v) Project Co has submitted the Additional Lands Request in accordance with Section 16.6(a) (*Adjustments to Metrolinx Lands Available to Project Co*) of this Agreement following the completion of Project Co’s review and validation work in respect of the Lands pursuant to Section 2.3(i)(vi)B,

(the “**First Checkpoint**”).

2.4 Second Development Phase

- (a) From the First Checkpoint and until the Second Development Phase Lockdown Date, Project Co shall, without limitation:
- (i) unless otherwise agreed by Contracting Authority, resolve all comments received from Contracting Authority pursuant to Schedule 10 – Review Procedure with respect to the applicable First Development Phase Works Submittals;
 - (ii) unless otherwise agreed by Contracting Authority, resolve all comments received from Contracting Authority with respect to the applicable First Checkpoint Works Deliverables to the satisfaction of Contracting Authority;

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- (iii) submit each Second Development Phase Works Submittal to Contracting Authority in accordance with Schedule 10 – Review Procedure by no later than the Second Development Phase Lockdown Date;
 - (iv) participate in the Working Group process and other relevant meetings set out in Schedule 19 – Governance, Meetings and Progress Reporting;
 - (v) prepare and present any DMCA Construction Works and each applicable TPA Scope described in the Project Execution Plan to be approved by Contracting Authority pursuant to Section 2.4(d) and submit to Contracting Authority an updated draft Project Execution Plan reflecting such TPA Scopes;
 - (vi) prepare a proposal for Contracting Authority review and approval for the methodology that will be used for developing a risk adjusted cost estimate, including the proposed modeling approach, all proposed modeling inputs, and the outputs that will be developed;
 - (vii) propose and present Value Engineering Options to Contracting Authority; and
 - (viii) propose and present Change Requests to Contracting Authority.
- (b) From the Second Development Phase Lockdown Date until the Second Checkpoint Date, Project Co shall:
- (i) submit each Second Checkpoint Works Deliverable to Contracting Authority in accordance with Appendix 1 (*Development Works Submittals, Deliverables and Requirements*) to this Schedule 2 by no later than the Second Checkpoint Date;
 - (ii) participate in the Working Group process and other relevant meetings set out in Schedule 19 – Governance, Meetings and Progress Reporting;
 - (iii) collaborate with Contracting Authority to finalize the draft Project cost estimate, prepare and present the finalized draft cost estimate to Contracting Authority, and following any comments thereon received from Contracting Authority, submit a reconciled Project cost estimate to Contracting Authority which addresses to the satisfaction of Contracting Authority any such comments, no later than the Second Checkpoint Date;
 - (iv) collaborate with Contracting Authority to finalize the draft Project schedule, prepare and present the finalized draft PTUS Project Schedule to Contracting Authority, and following any comments thereon received from Contracting Authority, submit a reconciled PTUS Project Schedule to Contracting Authority which addresses to the satisfaction of Contracting Authority any such comments, no later than the Second Checkpoint Date;
 - (v) collaborate with Contracting Authority to finalize the draft Project risk register, including quantifying the cost and schedule impacts of all listed risks and opportunities; and
 - (vi) conduct a Monte Carlo simulation and prepare and submit a risk adjusted cost estimate and the risk modeling results, based on the reconciled draft Project risk register, quantification of the risks and opportunities, and the approved risk modeling approach.

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- (c) During the Second Development Phase, the Parties may, pursuant to Section 2.3(g), continue to update and revise the Project Execution Plan and the Development Works Schedule.
- (d) Unless otherwise agreed by Contracting Authority, the Second Development Phase shall conclude when Project Co:
- (i) has delivered the Second Checkpoint Works Deliverables to Contracting Authority in accordance with Appendix 1 (*Development Works Submittals, Deliverables and Requirements*) to this Schedule 2;
 - (ii) Contracting Authority has delivered a CA Approval in respect of the Project Execution Plan; and
 - (iii) Contracting Authority has provided a CA Approval in respect of each of the items listed in Sections 2.4(b)(iii), 2.4(b)(iv) and 2.4(b)(v),
- (the “**Second Checkpoint**”).

2.5 Appointment of the CDB

- (a) Within twenty (20) Business Days of the DMCA Effective Date, Contracting Authority shall identify in writing to Project Co the Technical Member of its choice for the CDB in accordance with the requirements of Schedule 27 – Dispute Resolution Procedure.
- (b) Within ten (10) Business Days of Contracting Authority identifying in writing to Project Co the Technical Member of its choice for the CDB in accordance with Section 2.5(a), Project Co shall identify in writing to Contracting Authority the Technical Member of its choice for the CDB in accordance with the requirements of Schedule 27 – Dispute Resolution Procedure.
- (c) Within ten (10) Business Days following the identification of Project Co’s Technical Member of its choice for the CDB pursuant to Section 2.5(b), Contracting Authority and Project Co shall exert commercially reasonable efforts to agree to the identity of the CDB Chair in accordance with the requirements of Schedule 27 – Dispute Resolution Procedure.
- (d) Prior to the earlier of the commencement of any DMCA Construction Work and the execution of the first Target Price Agreement, the Parties shall:
- (i) complete the process for the identification of the Technical Members and the CDB Chair set out in this Section 2.5; and
 - (ii) finalize and agree to the form of CDB Member Statement and CDB Member Agreement (including the fees set out in each CDB Member Agreement) with each of the Technical Members and the CDB Chair,
- (“**CDB Finalization**”).

- (e) If the Parties have not identified any Technical Member or the CDB Chair in accordance with this Section 2.5 by the Second Checkpoint Date, then the identification of such person may be referred by a Party for resolution in accordance with the Dispute Resolution Procedure.
- (f) Project Co shall deliver the CDB Member Statement for the Technical Member put forward by Project Co, the CDB Member Statement for the CDB Chair, and each of the CDB Member Agreements, and Contracting Authority shall deliver the CDB Member Statement for the Technical Member put forward by Contracting Authority, the CDB Member Statement for the CDB Chair, and each of the CDB Member Agreements, each in the form finalized and agreed to during the CDB Finalization process, such that all of the Members of the CDB are appointed and the CDB is fully constituted on or prior to the earlier of the commencement of any DMCA Construction Work and the execution of the first Target Price Agreement.

2.6 TPA Development Phase Applicable to each TPA Scope

- (a) With respect to the first TPA Scope to be developed and constructed, from the Second Checkpoint Date, or with respect to each subsequent TPA Scope from the last to occur TPA Development Checkpoint Date, and in each case until the TPA Development Phase Lockdown Date applicable to such TPA Scope has occurred, Project Co shall, without limitation:
 - (i) propose and present Value Engineering Options to Contracting Authority;
 - (ii) propose and present Change Requests to Contracting Authority;
 - (iii) submit in respect of the applicable TPA Scope a Value Engineering Report described in, and by no later than the date set out in, Appendix 1 (*Development Works Submittals, Deliverables and Requirements*) to this Schedule 2 in accordance with Schedule 10 – Review Procedure;
 - (iv) unless otherwise agreed by Contracting Authority, resolve all comments received from Contracting Authority pursuant to Schedule 10 – Review Procedure with respect to the Second Development Phase Lockdown Submittals or previous TPA Development Phase Lockdown Submittals, as applicable;
 - (v) unless otherwise agreed by Contracting Authority, resolve all comments received from Contracting Authority with respect to the applicable Second Checkpoint Works Deliverables or previous TPA Development Checkpoint Works Deliverables to the satisfaction of Contracting Authority;
 - (vi) submit each applicable TPA Development Phase Lockdown Submittal to Contracting Authority in accordance with Schedule 10 – Review Procedure before the applicable TPA Development Phase Lockdown Date; and
 - (vii) participate in the Working Group process and other relevant meetings set out in Schedule 19 – Governance, Meetings and Progress Reporting.
- (b) From the applicable TPA Development Phase Lockdown Date until the applicable TPA Development Checkpoint Date, Project Co and Contracting Authority shall:

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- (i) receive from the Contracting Authority a comment of “No Comment” or “Reviewed as Noted – Minor Issues” with no additional comments of “Re-submit” pursuant to the Review Procedure for the Enhanced Design drawings and specifications and the Consolidated Change Request Submittals in accordance with Schedule 10 – Review Procedure;
 - (ii) collaborate with Contracting Authority to finalize the applicable TPA Works cost estimate and updated draft Project cost estimate reflecting items that are not TPA Works, prepare and present the cost estimate to Contracting Authority, and following any comments thereon received from Contracting Authority, submit a reconciled Project cost estimate to Contracting Authority which addresses to the satisfaction of Contracting Authority any such comments, no later than the TPA Development Checkpoint;
 - (iii) collaborate with Contracting Authority to finalize applicable TPA Works schedule and updated draft PTUS Project Schedule reflecting items that are not TPA Works, prepare and present the schedule to Contracting Authority, and following any comments thereon received from Contracting Authority, submit a reconciled PTUS Project Schedule to Contracting Authority which addresses to the satisfaction of Contracting Authority any such comments, no later than the TPA Development Checkpoint;
 - (iv) collaborate with Contracting Authority to finalize the applicable TPA Works risk register and updated draft Project risk register, including quantifying the cost and schedule impacts of all listed risks and opportunities;
 - (v) conduct a Monte Carlo simulation and prepare and submit a risk adjusted cost estimate and the risk modeling results, based on the reconciled Project risk register, quantification of the risks and opportunities, and the approved risk modeling approach;
 - (vi) carry out the Draft TPA Negotiations Process for the applicable TPA Scope; and
 - (vii) if applicable, negotiate with Contracting Authority and finalize the form of any Bonding Submission negotiated by the Parties in respect of the applicable TPA Scope in accordance with Schedule 25 – Insurance and Bond Requirements.
- (c) Each TPA Development Phase shall conclude when:
- (i) Project Co has submitted all applicable TPA Development Phase Lockdown Submittals to Contracting Authority for review in accordance with Schedule 10 – Review Procedure;
 - (ii) Project Co has submitted all applicable TPA Development Checkpoint Works Deliverables to Contracting Authority for review;
 - (iii) if applicable, the Parties have finalized the form of any Bonding Submission negotiated by the Parties in respect of the applicable TPA Scope pursuant to Schedule 25 – Insurance and Bond Requirements;
 - (iv) the Contracting Authority has provided a CA Approval in respect of each of the items listed in Sections 2.6(b)(ii), 2.6(b)(iii) and 2.6(b)(iv);

- (v) unless otherwise agreed by Contracting Authority, Project Co shall have resolved all comments received from Contracting Authority pursuant to Schedule 10 – Review Procedure with respect to the applicable TPA Development Phase Lockdown Submittals;
- (vi) the applicable Draft TPA Negotiations Process has been completed; and
- (vii) Project Co has delivered a TPA Proposal with respect to the applicable TPA Scope, (each, the applicable “**TPA Development Checkpoint**”).

2.7 Nominated Subcontractors

- (a) Contracting Authority may, subject to Section 2.7(c) from time to time, provide written notice (each a “**Nominated Subcontractor Notice**”) to Project Co proposing a specific subcontractor that, upon the mutual agreement of the Parties, Project Co shall use to perform Works described in such Nominated Subcontractor Notice.
- (b) A Nominated Subcontractor Notice shall include the following information:
 - (i) the name of the subcontractor;
 - (ii) a description of the scope of Works to be performed by the subcontractor; and
 - (iii) whether Contracting Authority has entered into an agreement with the subcontractor for the performance of the Works described in Section 2.7(b)(ii).
- (c) If the proposed scope of Works to be performed by any subcontractor is in respect of a TPA Scope, Contracting Authority shall provide the Nominated Subcontractor Notice no later than sixty (60) days prior to the applicable TPA Development Checkpoint Date.
- (d) If the Parties mutually agree that Project Co will use the subcontractor to perform the specified Works (such subcontractor, a “**Nominated Subcontractor**”), then,
 - (i) if Contracting Authority has entered into an agreement with a Nominated Subcontractor prior to issuing a Nominated Subcontractor Notice, Contracting Authority shall assign such agreement to Project Co or a Project Co Party, and Project Co shall assume and perform or cause such Project Co Party to assume and perform Contracting Authority’s obligations under such agreement; or
 - (ii) if Contracting Authority has not entered into an agreement with a Nominated Subcontractor prior to issuing a Nominated Subcontractor Notice, Project Co shall, or shall cause a Project Co Party to, enter into a Nominated Subcontract with the Nominated Subcontractor set out in the applicable Nominated Subcontractor Notice.

3. UPDATED DEVELOPMENT WORKS PLANS

3.1 Project Co to update Development Works Plans

- (a) During the progress of any Development Works and unless otherwise required by this Agreement, Project Co shall promptly inform Contracting Authority in writing if any applicable Development Works Submittal or Development Works Deliverable that is a plan should or must be updated to reflect such progress, or update Project Co's approach to performing the applicable Development Works, or Project Co's approach to performing the TPA Works under the applicable Target Price Agreement, or in order for such plan to satisfy the requirements of this Agreement. After Contracting Authority is so informed by Project Co or on Contracting Authority's own volition in the absence of being so informed, Contracting Authority may, in its sole discretion, direct (or if such plan must be updated, shall direct) Project Co in writing to update such plan and submit it *de novo* for Contracting Authority's review as a Development Works Submittal or Development Works Deliverable, as applicable, under this Agreement, which, if and as applicable, shall subsequently be implemented in accordance with this Agreement.

4. DEVELOPMENT WORKS PRIOR TO ENTERING INTO A TARGET PRICE AGREEMENT

4.1 Development Works Performed between submission of a TPA Proposal and Execution of the applicable Target Price Agreement

- (a) Notwithstanding the finalization of the applicable TPA Development Checkpoint Works Deliverables, and the submission of a TPA Proposal to Contracting Authority in accordance with this Schedule 2, following the applicable TPA Development Checkpoint and the submission of a TPA Proposal and, if applicable, until execution of the applicable Target Price Agreement, Project Co shall continue to carry out all of the applicable Development Works activities set out in the Project Execution Plan, in accordance with this Agreement, including for the applicable purpose of maintaining the Project's schedule.
- (b) For greater certainty, none of the Development Works performed as part of any approved Project Execution Plan or any other fact or matter discovered or arising after the submission of a TPA Proposal shall permit Project Co to revise such TPA Proposal (including the applicable Target Price set out therein), which shall be and remain binding and irrevocable subject to and in accordance with this Schedule 2.

5. DRAFT TPA NEGOTIATIONS PROCESS

5.1 General

- (a) Each of the Parties agrees to:
- (i) subject to and accordance with this Section 5, use reasonable commercial efforts to negotiate and finalize with the other Party, in respect of each TPA Scope, the Negotiable Draft TPA Provisions (the "**Draft TPA Negotiations Process**"); and

- (ii) unless otherwise agreed by the Parties in writing, achieve, in respect to each applicable TPA Scope, completion of the applicable Draft TPA Negotiations Process prior to the applicable TPA Development Checkpoint Date.

5.2 Draft TPA Negotiation Process

- (a) At any time prior to the date which is ten (10) Business Days before the applicable TPA Development Checkpoint Date Contracting Authority may deliver one or more drafts of the Target Price Agreement in respect of the applicable TPA Scope.
- (b) Any draft Target Price Agreement delivered by Contracting Authority in accordance with Section 5.2(a) shall:
 - (i) be consistent with Schedule 4 – Form of Target Price Agreement and those elements of the Project Execution Plan in respect of the applicable TPA Scope; and
 - (ii) be updated to reflect Contracting Authority’s proposed terms in respect of the Negotiable Draft TPA Provisions.
- (c) Project Co acknowledges and agrees that during and for the purposes of completing the Draft TPA Negotiations Process:
 - (i) while Project Co is permitted to propose revisions to and drafting for the Negotiable Draft TPA Provisions to Contracting Authority, Contracting Authority shall be responsible for drafting and from time to time reissuing to Project Co revised versions of the applicable draft Target Price Agreement (in whole or in part) that reflect any proposed revisions to the Negotiable Draft TPA Provisions, together with blacklined documents setting out all of the revisions;
 - (ii) Project Co shall, without any unreasonable delay, submit information, documentation and proposed document drafting and revisions requested by Contracting Authority from time to time that will allow Contracting Authority to revise or draft the Negotiable Draft TPA Provisions pursuant to Section 5.2(c)(i); and
 - (iii) Project Co shall, without any unreasonable delay, provide written comments or confirm sign-off on the revised Negotiable Draft TPA Provisions circulated by Contracting Authority pursuant to Section 5.2(c)(i).

6. TPA PROPOSAL PROCESS

6.1 Project Co to Submit TPA Proposals

- (a) Project Co shall submit a formal and binding proposal to Contracting Authority at the applicable TPA Development Checkpoint Date in respect of each TPA Scope that will permit Project Co to have an opportunity to enter into a Target Price Agreement with Contracting Authority in respect of such TPA Scope (each, the applicable “**TPA Proposal**” applicable to such TPA Scope), subject to and in accordance with this Section 6.

- (b) Each TPA Proposal shall be based on the last draft Target Price Agreement delivered by Contracting Authority to Project Co pursuant to Section 5.2.

6.2 TPA Proposal Content and Requirements and Format Requirements

- (a) Project Co shall:
- (i) develop each TPA Proposal in accordance with the requirements set out in Appendix 2 (*TPA Proposal Content and Requirements*) to this Schedule 2 and any format requirements requested by Contracting Authority; and
 - (ii) as part of each TPA Proposal, complete and where required, execute or cause the execution of, any documents reasonably required by Contracting Authority in relation to or to support of the development and submission of such TPA Proposal, such as a binding TPA Proposal submission form, and declarations from certain Project Co Parties identified by Contracting Authority (including in respect of any Conflicts of Interest (as defined in the RFP)).

6.3 Project Co TPA Works Investigations

- (a) For the purposes of any TPA Proposal, and without limiting any other provision of this Agreement:
- (i) Project Co shall be solely responsible for carrying out its own independent research, due diligence and other investigations (including by seeking independent advice) considered necessary by it to satisfy itself as to all existing conditions affecting the TPA Works and the applicable Target Price Agreement. Project Co's obligations in this Section 6.3 apply irrespective of any Background Information or information contained in this Agreement or applicable Target Price Agreement. Project Co's obligation to carry out independent research, due diligence and other investigations, and, if applicable, its ability to rely on information provided by Contracting Authority related to the Project is more particularly set out in this Agreement; and
 - (ii) Project Co and the Project Co Parties shall make such independent assessments as they consider necessary to verify and confirm the accuracy and completeness of all of the Background Information or of any other background or reference information or documents relevant to the Project prepared by Contracting Authority or by any third parties and which may be made available to Project Co or the Project Co Parties by or through Contracting Authority or such third parties, as any use of or reliance by Project Co and the Project Co Parties on any and all such information and documents shall be at the Project Co's and Project Co Parties' sole risk and without recourse against Contracting Authority.
 - (iii) For greater certainty, all Background Information and all other background and reference information or documents relevant to the applicable TPA Scope prepared by Contracting Authority or by any third parties and which may be made available to Project Co or the Project Co Parties by or through Contracting Authority or such third parties shall, on the applicable TPA Effective Date, be "Background Information" under and as defined in this Agreement.

6.4 Submission of TPA Proposals

- (a) Subject to Section 6.4(b), Project Co shall submit each TPA Proposal to Contracting Authority on or before the applicable TPA Development Checkpoint Date.
- (b) Prior to the submission of a TPA Proposal:
 - (i) the applicable TPA Development Phase Lockdown Date shall have occurred; and
 - (ii) unless otherwise agreed by Contracting Authority, Project Co shall have resolved all comments received from Contracting Authority pursuant to Schedule 10 – Review Procedure with respect to the applicable TPA Development Phase Lockdown Submittals.
- (c) Each TPA Proposal shall be irrevocable and shall remain in effect for one-hundred and eighty (180) days after it is submitted to Contracting Authority, or such shorter period of time specified by Contracting Authority no later than ten (10) Business Days prior to the applicable TPA Development Checkpoint Date, (each a “**TPA Proposal Validity Period**”). If requested by Contracting Authority in writing, Project Co shall, acting reasonably, extend a TPA Proposal Validity Period for an additional period of time identified by Contracting Authority, acting reasonably.
- (d) If, during the course of any TPA Proposal Negotiations, pursuant to Section 6.6 below, Project Co resubmits prices to Contracting Authority or agrees to revised terms and conditions of such TPA Proposal as contemplated in Section 6.6 below prior to the expiration of the applicable TPA Proposal Validity Period, Project Co shall be deemed to have agreed to an extension of such TPA Proposal Validity Period for Project Co’s amended TPA Proposal to a date that is the later of the TPA Proposal Validity Period prior to Project Co’s resubmission to Contracting Authority of the revised prices or revised terms and conditions and ninety-five (95) calendar days after the date of such resubmission or such shorter period of time agreed by Contracting Authority by Notice to Project Co.
- (e) Project Co acknowledges that Contracting Authority may, in addition to any rights set out in this Agreement or any Target Price Agreement, disclose any part or parts of a TPA Proposal to any person who could or will have a future ownership interest in, another legal right to, or a payment obligation in respect of the Project.

6.5 [Intentionally Deleted]**6.6 TPA Proposal Negotiations**

- (a) Following Contracting Authority’s receipt of a TPA Proposal submitted by Project Co, Contracting Authority may, in its sole discretion, at any time prior to the expiration of the applicable TPA Proposal Validity Period, enter into negotiations with Project Co in respect of a TPA Proposal (each a “**TPA Proposal Negotiations**”).
- (b) Contracting Authority may use the negotiations process to negotiate any aspect of Project Co’s TPA Proposal included in the TPA Proposal and any amendments to this Agreement that are

reasonably required to revise the scope of the Project in the event that the Target Price and the Estimated Fee have exceeded Contracting Authority' affordability constraints.

- (c) Notwithstanding any negotiations between Contracting Authority and Project Co, each TPA Proposal shall remain valid and irrevocable until the earlier of (i) the expiration of the applicable TPA Proposal Validity Period (as extended in accordance with Section 6.4(c)) and (ii) the date on which the applicable Target Price Agreement is executed.
- (d) The Parties shall use reasonable commercial efforts to complete any TPA Proposal Negotiations initiated by Contracting Authority to their mutual satisfaction prior to the expiry of the applicable TPA Proposal Validity Period, provided that subject to complying with their respective obligations in this Section 6.6 and other obligations in this Agreement and without limiting any obligation or liability of a Party in this Agreement:
 - (i) no Party shall be under any obligation or liability to the other Party under this Agreement if and solely on the basis that the Party fails to complete to its satisfaction any TPA Proposal Negotiations prior to the expiry of the applicable TPA Proposal Validity Period; and
 - (ii) unless otherwise agreed by the Parties in writing, in the event the Parties fail to complete to their satisfaction any such TPA Proposal Negotiations prior to the expiry of the applicable TPA Proposal Validity Period (as extended in accordance with Section 6.4(c)), then at the election of Contracting Authority, in its sole discretion and without limiting any right of Contracting Authority pursuant to Schedule 22 – Estimates, Variations and Proposals:
 - A. Contracting Authority shall, by way of Notice to Project Co, direct Project Co to complete the Development Works and such other Works identified by Contracting Authority in such Notice in accordance with this Agreement, provided that:
 - (1) such Development Works or other Works may include (I) the completion of the full design of the Project Co Infrastructure and New Third Party Infrastructure, (II) the completion of DMCA Construction Works for which a Notice to Proceed has been issued, and/or (III) the completion of any TPA Works subject to a Target Price Agreement, all in accordance with this Agreement; and
 - (2) Project Co shall not perform or be paid for any of its remaining obligations described in this Section 6 or any other portions of the Development Works, DMCA Construction Works and/or TPA Works identified in such Notice that Contracting Authority no longer requires Project Co to perform, which, subject to and in accordance with Schedule 22 – Estimates, Variations and Proposals, shall be removed by the Parties from the Development Works, DMCA Construction Works and/or TPA Works by way of a Variation to be finalized and issued by Contracting Authority as soon as practicable following the delivery of such Notice, provided that Contracting Authority shall not be permitted to remove from the scope of

work hereunder any TPA Works that are the subject of a Target Price Agreement then in effect.

Such Notice and such Variation shall also contain any necessary instructions to Project Co in respect of the completion of the remaining Development Works, DMCA Construction Works and/or TPA Works; or

- B. Contracting Authority may terminate this Agreement pursuant to Section 33.5 (*Termination for Convenience*) of this Agreement.

Without limiting the generality of the foregoing, Contracting Authority acknowledges that any such failure by Project Co to complete to its satisfaction any such TPA Proposal Negotiations shall not be or be deemed to be a Project Co Event of Default under this Agreement, provided that it has otherwise complied with its obligations in respect of such negotiations.

7. TARGET PRICE AGREEMENT CLOSING PROCESS

7.1 Notice to Proceed to Execute a Target Price Agreement

- (a) Project Co acknowledges that in the event that Contracting Authority elects to proceed to enter into a Target Price Agreement with Project Co following the completion of, *inter alia*, the matters described in Section 6.6, it shall inform Project Co by Notice. Contracting Authority shall, acting reasonably and after consultation with Project Co, identify a target date for executing the applicable Target Price Agreement (each, the applicable “**TPA Close Target Date**”).
- (b) In the event that, following the completion of any TPA Proposal Negotiations, Contracting Authority elects not to deliver a Notice to Project Co pursuant to Section 7.1(a) or fails to do so before the expiry of the TPA Proposal Validity Period, then at the election of Contracting Authority, in its sole discretion and without limiting any right of Contracting Authority pursuant to Schedule 22 – Estimates, Variations and Proposals, Contracting Authority may:
- (i) by way of Notice to Project Co, direct Project Co to complete the Development Works and such other Works identified by Contracting Authority in such Notice in accordance with this Agreement, provided that:
- A. such Development Work may include (I) the completion of the full design of the Project Co Infrastructure and New Third Party Infrastructure, (II) the completion of DMCA Construction Works for which a Notice to Proceed has been issued and/or (III) the completion of any TPA Works subject to a Target Price Agreement, all in accordance with this Agreement; and
- B. Project Co shall not perform or be paid for any of its obligations described in this Section 7 or any other portions of Development Work, DMCA Construction Works and/or TPA Works identified in such Notice that Contracting Authority no longer requires Project Co to perform, which, subject to and in accordance with Schedule 22 – Estimates, Variations and Proposals, shall be removed by the Parties from the Development Works, DMCA Construction Works and/or TPA Works by

way of a Variation to be finalized and issued by Contracting Authority as soon as practicable following the delivery of such Notice.

Such Notice and such Variation shall also contain any necessary instructions to Project Co in respect of the completion of the remaining Development Works, DMCA Construction Works and/or TPA Works; or

- (ii) terminate this Agreement pursuant to Section 33.5 (*Termination for Convenience*) of this Agreement.

7.2 Parties' Closing Obligations

- (a) Following the delivery by Contracting Authority of a Notice to Project Co pursuant to Section 7.1(a), Project Co shall:

- (i) execute the applicable Target Price Agreement
 - A. on or prior to the applicable TPA Close Target Date; or
 - B. if the applicable TPA Close Target Date has passed and Contracting Authority has given its consent, prior to the expiration of the TPA Proposal Validity Period (or the extended TPA Proposal Validity Period, if applicable),

based on the applicable draft Target Price Agreement in the same form and content as finalized prior to the date Contracting Authority delivered the Notice in Section 7.1(a) or as revised and agreed to by Project Co and Contracting Authority, subject only to revision in respect of the following:

- C. minor changes, additions and modifications necessary to create a legally complete and binding agreement;
- D. based on the applicable TPA Proposal, changes, additions and modifications required in order to complete any provision of such Target Price Agreement; and
- E. changes, additions and modifications to those parts of the Target Price Agreement which are indicated in the Target Price Agreement as being subject to completion or finalization,

provided, that, in each case, the changes, additions or modifications identified in this Section 7 are consistent with the principles set out in this Agreement, the applicable Target Price Agreement, and are otherwise acceptable to Contracting Authority, acting reasonably;

- (ii) maintain its Target Price;
- (iii) no later than thirty (30) days prior to the applicable TPA Close Target Date, deliver to Contracting Authority drafts of all documents referred to in Section 3.1(a) (*Completion*

Documents) of the applicable draft Target Price Agreement, as may be revised by written agreement of the Parties prior to execution of the applicable Target Price Agreement; and

- (iv) on or before the applicable TPA Close Target Date or if such TPA Close Target Date has passed and Contracting Authority has given its consent, prior to the expiration of the applicable TPA Proposal Validity Period (or the extended TPA Proposal Validity Period, if applicable), deliver to Contracting Authority the documents referred to in Section 3.1(a) (*Completion Documents*) of the applicable draft Target Price Agreement, as may be revised by written agreement of the Parties prior to execution of the applicable Target Price Agreement.
- (b) Contracting Authority shall deliver to Project Co the documents referred to in Section 3.1(b) (*Completion Documents*) of the applicable draft Target Price Agreement (as may be revised by written agreement of the Parties prior to execution of the applicable Target Price Agreement) on or before the applicable TPA Close Target Date or if such TPA Close Target Date has passed and Contracting Authority has given its consent, prior to the expiration of the applicable TPA Proposal Validity Period (or the extended TPA Proposal Validity Period, if applicable).
- (c) Project Co shall provide access and shall promptly make available to Contracting Authority and its advisors, agents and representatives such documentation, financial and technical information as may be reasonably requested by Contracting Authority from time to time in connection with Contracting Authority's due diligence investigations, including copies of any written representation, statements, assurances, commitments or agreements which Project Co, the Project Co Parties or any of their respective advisors have received from any municipality, governmental authority or utility relating to the TPA Works. Project Co shall provide to Contracting Authority, in a timely fashion, final draft versions of all documents required to be delivered by Project Co in accordance with the applicable Target Price Agreement, together with such other documentation as Contracting Authority may reasonably request from time to time.
- (d) Project Co acknowledges and agrees that save and except as expressly provided otherwise in the applicable Target Price Agreement, on execution of the applicable Target Price Agreement, its applicable TPA Proposal will be superseded entirely by such Target Price Agreement and rendered null and void.

7.3 Contracting Authority – Authorization and Approvals

- (a) Notwithstanding anything to the contrary in this Agreement, Project Co acknowledges and agrees that Contracting Authority entering into a Target Price Agreement with Project Co is conditional on and subject to Contracting Authority obtaining any necessary authorizations and approvals required in connection with the TPA Works, including, for certainty, the approval of any relevant Governmental Authority.

8. CHANGE REQUEST PROCESS

8.1 Configuration Control Management Board

- (a) Within twenty (20) Business Days of the DMCA Effective Date, the Parties shall establish a configuration control management board consisting of the following representatives (the “**Configuration Control Management Board**”):
- (i) two representatives appointed by Project Co; and
 - (ii) five representatives appointed by Contracting Authority from time to time, which may include Stakeholders, one of whom shall be the Contracting Authority Representative.
- (b) Three representatives of Contracting Authority and one representative of Project Co shall constitute a quorum at any meeting of the Configuration Control Management Board. A quorum of members may hold meetings of the Configuration Control Management Board. The members shall not transact business at a meeting of the Configuration Control Management Board unless a quorum is present.
- (c) A representative of Project Co shall be the chairperson of the Configuration Control Management Board and such representative shall:
- (i) set the agenda, manage meeting invites and document the decisions of the Configuration Control Management Board with Contracting Authority on a weekly basis during the performance of Development Works, or as agreed by the Parties;
 - (ii) be fully briefed on the reasons for the Change Request brought forward to the Configuration Control Management Board; and
 - (iii) identify and invite additional members of the Project Co team who will present the Change Request to the Configuration Control Management Board.
- (d) The Configuration Control Management Board shall hold weekly meetings unless a different frequency of meetings is reasonably required, either temporarily or permanently, by either Party.
- (e) The role of the Configuration Control Management Board shall be to review and comment on proposed Change Requests put forth by Project Co or Contracting Authority, whereby the approval or rejection of any proposed Change Requests will be made by Contracting Authority.

8.2 Change Request Process

- (a) With respect to submitting each Change Request to the Configuration Control Management Board:
- (i) Project Co shall meet the obligations of Configuration Management as defined in and in accordance with the Output Specifications when it is proposing the Change Request;
 - (ii) the Party proposing the Change Request shall prepare and present the Change Request to the Configuration Control Management Board;

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- (iii) the Change Request shall be submitted in writing and include rough order magnitude cost estimates, risk categorization and schedule impacts of the proposed change;
 - (iv) only Change Requests that have been mutually agreed to by the Parties at any Working Group, with any disagreements resolved through such Working Group or escalated to the applicable Management Team in accordance with Schedule 19 – Governance, Meetings and Progress Reporting, shall be submitted to the Configuration Control Management Board; and
 - (v) the Change Request shall include the proposed changes to this Agreement, including the Output Specifications, as required to implement the change.
- (b) For each Change Request submitted to the Configuration Control Management Board:
- (i) Contracting Authority shall opine, accept, reject or request further information on the Change Request;
 - (ii) based on the foregoing, Contracting Authority shall assign one of the following responses to the Change Request:
 - A. “Concurrence In Principle”;
 - B. “Unapproved”; or
 - C. “Pending – Need Further Action”.
 - (iii) with respect to any Change Request that has received a “Pending – Need Further Action”, Project Co shall not re-submit such Change Request until Project Co has taken the required action;
 - (iv) Project Co shall be responsible for managing, tracking and documenting the Change Request assigned pursuant to Section 8.2(b)(ii) on a ProjectWise database;
 - (v) Project Co shall only progress the design and scope of a Change Request that has been assigned a “Concurrence In Principle”; and
 - (vi) Project Co shall promptly update the Requirements Management Database to reflect any Change Request that has been assigned a “Concurrence In Principle” and provide a revised version of the Requirements Management Database at the Second Development Phase Lockdown Date and each applicable TPA Development Phase Lockdown Date.

8.3 Consolidated Change Request Submittals

- (a) On or before the Second Development Phase Lockdown Date and each TPA Development Phase Lockdown Date, Project Co shall submit a Consolidated Change Request Submittal pursuant to and in accordance with Schedule 10 – Review Procedure.

APPENDIX 1 TO SCHEDULE 2

DEVELOPMENT WORKS SUBMITTALS, DELIVERABLES AND REQUIREMENTS

[REDACTED]

APPENDIX 2 TO SCHEDULE 2

TPA PROPOSAL CONTENT AND REQUIREMENTS

[REDACTED]

APPENDIX 3 TO SCHEDULE 2

PROJECT CO'S PROPOSED MOBILIZATION PLAN

[REDACTED]

APPENDIX 4 TO SCHEDULE 2

PROJECT CO'S PROPOSED DEVELOPMENT WORKS SCHEDULE

[REDACTED]

APPENDIX 5 TO SCHEDULE 2

PROJECT EXECUTION PLAN OUTLINE

[REDACTED]

APPENDIX 6 TO SCHEDULE 2

FORM OF CHANGE REQUEST

Form for Change Request		
Change Details		
Configuration Control Management Board (CCMB) Number		
CCMB Title		
CCMB Description and Reason for Proposed Change		
Date Initiated		
Initiator		
Initiator Details		
Initiator: Contracting Authority or Project Co		
Working Group Name		
Working Group Approval		
Contracts Impacted		
Impact Details		
Impacted Disciplines		
Impact Assessment	Item	Notes/Analysis
	Output Specifications Revisions	
	Other corresponding revisions to other provisions of the Development and Master Construction Agreement	
	Cost Estimate	
	Schedule Estimate	
	Property Impact	
	Risk Impact	
	PLA Impacts	
	EA Impacts	
	Constructability Review Results	
	O&M Impacts	
	Reference Documents	
Approval Details		

PW Link to File (with Blackline version for change to Output Specifications, and any corresponding revisions to other provisions of the Development and Master Construction Agreement)	
Approval Date	
Approving Members	

SCHEDULE 3

FORM OF ASSIGNMENT OF SUBCONTRACT

THIS AGREEMENT (this “Assignment of Subcontract”) made as of the [●] day of [●], 202[●]

BETWEEN:

PAPE NORTH CONNECT, [REDACTED]

(“Project Co”)

- AND -

[●], a [●]

(the “Head DMCA Subcontractor”)

- AND -

[●], a [●]

(the “DMCA Subcontractor”)

- AND -

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

(“Contracting Authority”)

WHEREAS pursuant to a development and master construction agreement dated January 17, 2024 between Project Co and Contracting Authority (such agreement, together with all amendments thereto which may hereafter be made in accordance with the terms thereof, being hereinafter called the “Agreement”), Project Co has, *inter alia*, agreed to perform the Works or cause to be performed the Works, as defined in the Agreement;

AND WHEREAS Project Co and the Head DMCA Subcontractor entered into a subcontract dated [●], 20[●] in respect of a portion of the Works (such subcontract, together with all amendments thereto which may hereafter be made in accordance with the terms thereof, being hereinafter called the “Works Contract”);

AND WHEREAS with respect to a portion of the Works under the Works Contract, the Head DMCA Subcontractor and DMCA Subcontractor entered into a subcontract dated [●], 20[●] (such subcontract together with all amendments thereto which hereafter may be made in accordance with the terms hereof, being hereinafter called the “DMCA Subcontract”);

AND WHEREAS under the Agreement, Project Co has agreed to cause the Head DMCA Subcontractor to cause DMCA Subcontractor to enter into this Assignment of Subcontract;

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. As general and continuing security for the observance and performance of the obligations of the Head DMCA Subcontractor under the Works Contract (the “**Obligations**”), the Head DMCA Subcontractor hereby irrevocably assigns, grants and transfers and creates a security interest in (the “**Assignment**”) all right, title and interest of the Head DMCA Subcontractor in and to the DMCA Subcontract and all benefit, power and advantage to be derived therefrom and otherwise to enforce the rights of the Head DMCA Subcontractor thereunder (collectively, the “**Assigned Rights**”), to Contracting Authority, who takes such assignment, grant and transfer and security interest in the DMCA Subcontract from the Head DMCA Subcontractor on the terms set forth herein, which assignment, grant, transfer and security interest shall continue until terminated in accordance with the terms hereof.
2. In addition to the provisions of Section 1, the Head DMCA Subcontractor hereby grants to Contracting Authority the irrevocable right to all Assigned Rights by way of transfer and assignment which right may be exercised by Contracting Authority by delivery of an Assignment Notice or a Direct Assignment Notice, as the case may be, and the execution and delivery of the form of assumption notice attached hereto as Appendix A (the “**Assumption Agreement**”) if the Agreement is terminated pursuant to Section 31.3 (*Right to Termination*) or Section 33 (*Non Default Termination*) of the Agreement, and the Head DMCA Subcontractor hereby acknowledges that such transfer and assignment shall be deemed to be effective immediately upon the delivery of such Assignment Notice or Direct Assignment Notice, as the case may be, by Contracting Authority without any further act by Contracting Authority, Project Co or the Head DMCA Subcontractor, except as otherwise expressly provided in this Assignment of Subcontract.
3. The rights of Contracting Authority pursuant to Section 1 and Section 2 shall only be effective upon the termination of the Agreement other than as (i) a result of its expiration or (ii) pursuant to Section 32.2(a)(ii) (*Project Co’s Options*) of the Agreement, and notwithstanding if the termination of the Agreement is disputed (such date, the “**Effective Date**”). Such rights may be exercised by Contracting Authority at its option and in its sole and absolute discretion at any time or times after the Effective Date, subject to and in accordance with the provisions of this Assignment of Subcontract.
4. In the event the Agreement is terminated pursuant to Sections 33.6 (*Automatic Expiry on Expiry Date*) or 32.2(a)(ii) (*Project Co’s Options*) of the Agreement, this Assignment of Subcontract shall be terminated and of no further force and effect from and after the date on which the Agreement expires.
5. Unless and until notification is given to the DMCA Subcontractor in accordance with any of the notices referred to in Section 6(v), 6(vi), or 6(vii), the Head DMCA Subcontractor shall be entitled to enforce all of the benefits and powers under the DMCA Subcontract and to deal with, and be

obligated to, the DMCA Subcontractor in respect of the DMCA Subcontract and matters arising therefrom in the same manner and to the same extent as if the Head DMCA Subcontractor had not granted the rights set out in Section 1 and Section 2 hereof.

6. The DMCA Subcontractor hereby:

- (i) acknowledges and consents to any assignment that may occur pursuant to this Assignment of Subcontract and confirms that any such assignment that may occur pursuant to this Assignment of Subcontract is permitted pursuant to the provisions of the DMCA Subcontract;
- (ii) agrees to give Contracting Authority prompt written notice of any default by the Head DMCA Subcontractor under the DMCA Subcontract (“**Notice of Default**”), which Notice of Default shall attach an executed copy of the DMCA Subcontract as well as a copy of the default notice issued by the DMCA Subcontractor to the Head DMCA Subcontractor. The DMCA Subcontractor agrees that, upon issuance of a Notice of Default, it shall not be entitled to exercise any right it has to terminate the DMCA Subcontract for a period of fifteen (15) Business Days from the later of (A) the receipt of the Notice of Default by Contracting Authority, and (B) the date that the Head DMCA Subcontractor has failed to comply with any applicable cure period in the DMCA Subcontract. If Contracting Authority (without any obligation to do so) notifies the DMCA Subcontractor within such fifteen (15) Business Day time period that it requires more time to determine whether it can remedy such default by the Head DMCA Subcontractor, or, exercise the Assignment, the DMCA Subcontractor shall not be entitled to exercise any right to terminate the DMCA Subcontract for a further period of forty-five (45) days from the date of receipt of such notice or such longer period as may be reasonably necessary to cure the default, provided that Contracting Authority (I) agrees in writing to compensate the DMCA Subcontractor for the reasonable costs and expenses the DMCA Subcontractor incurs for its continued performance of the Works under the DMCA Subcontract; and (II) is proceeding diligently to cure such default; however, if Contracting Authority exercises the Assignment within such further forty-five (45) day period, the DMCA Subcontractor shall not be entitled to exercise any right to terminate the DMCA Subcontract provided that Assignee (and if applicable, the DMCA Assignee) agrees to assume the obligations of the Head DMCA Subcontractor under the DMCA Subcontract and, in that regard, executes and delivers the Assumption Agreement;
- (iii) agrees that if Contracting Authority is prevented from exercising its rights and remedies hereunder as a result of the imposition of a stay of proceedings in connection with any insolvency, bankruptcy, receivership or similar proceedings affecting the Head DMCA Subcontractor, then any cure period available to Contracting Authority in accordance with the terms hereof shall be extended for a period of time equal to the duration of any such stay of proceedings;

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- (iv) in the event that the DMCA Subcontract is rejected by a trustee or debtor-in-possession in any bankruptcy or insolvency proceeding of the Head DMCA Subcontractor, or the DMCA Subcontract or any material part of the DMCA Subcontract is terminated for any reason by the DMCA Subcontract, if, Contracting Authority shall so request, the DMCA Subcontractor will execute and deliver to Contracting Authority, a new DMCA Subcontract, which DMCA Subcontract shall be on identical terms and conditions as the original DMCA Subcontract for the remaining term of the DMCA Subcontract before giving effect to such rejection or termination;
- (v) agrees that, immediately upon receipt by the DMCA Subcontractor of written notice (the “**Assignment Notice**”) from Contracting Authority that the DMCA Subcontract is being assigned to Contracting Authority or Contracting Authority’s nominee (in either event, such party identified in such written notice being the “**Assignee**”), and that the assignment is pursuant to Section 1 or Section 2, as applicable, and provided that the Assignee, except as limited herein, agrees to perform its obligations under this Assignment of Subcontract and agrees to assume all of the obligations of the Head DMCA Subcontractor under the DMCA Subcontract and, in that regard, executes and delivers an Assumption Agreement, the Assignee shall have all of the right, title, benefit and interest of the Head DMCA Subcontractor pursuant to the DMCA Subcontract, without the DMCA Subcontractor’s consent and, subject to Section 9, without the payment of any penalty, and the DMCA Subcontractor shall deal with the Assignee as if it had been originally named in place of the Head DMCA Subcontractor in the DMCA Subcontract;
- (vi) agrees that the Assignee may, at any time after the giving of the Assignment Notice in Section 6(v), give written notice (the “**Successive Assignment Notice**”) to the DMCA Subcontractor of a further assignment of the DMCA Subcontract to a new contractor of Contracting Authority (the “**DMCA Assignee**”), and that immediately upon receipt of the Successive Assignment Notice, and provided that the DMCA Assignee, except as limited herein, agrees to assume all of the obligations of the Head DMCA Subcontractor under the DMCA Subcontract and, in that regard, executes and delivers an Assumption Agreement, the DMCA Assignee shall have all of the right, title, benefit and interest of the Head DMCA Subcontractor pursuant to the DMCA Subcontract without the DMCA Subcontractor’s consent and, subject to Section 9, without the payment of any penalty and the DMCA Subcontractor shall deal with the DMCA Assignee as if it had been originally named in place of the Head DMCA Subcontractor in the DMCA Subcontract;
- (vii) agrees that, notwithstanding Sections 6(v) and 6(vi), Contracting Authority may give written notice (the “**Direct Assignment Notice**”) to the DMCA Subcontractor of the assignment of the DMCA Subcontract directly to the DMCA Assignee, and that immediately upon receipt of the Direct Assignment Notice, and provided that the DMCA Assignee, except as limited herein, agrees to assume all of the

obligations of the Head DMCA Subcontractor under the DMCA Subcontract and, in that regard, executes and delivers an Assumption Agreement, the DMCA Assignee shall have all of the right, title, benefit and interest of the Head DMCA Subcontractor pursuant to the DMCA Subcontract without the DMCA Subcontractor's consent and, subject to Section 9, without the payment of any penalty and the DMCA Subcontractor shall deal with the DMCA Assignee as if it had been originally named in place of the Head DMCA Subcontractor in the DMCA Subcontract;

- (viii) agrees, upon the reasonable request of Contracting Authority from time to time, to provide a certificate to Contracting Authority as to the status of the DMCA Subcontract, including a description of any events which, with the passage of time or the giving of notice or both, would constitute a default thereunder; and
 - (ix) agrees to provide, not later than five (5) Business Days after either the date of a Notice of Default or following receipt of written request thereof from Contracting Authority, a written notice (an “**Indebtedness Notice**”) to Contracting Authority, setting out all amounts owed by the Head DMCA Subcontractor and all amounts in dispute, of which the DMCA Subcontractor is aware (having made reasonable enquiry), in each case, as of the date on which the DMCA Subcontractor sent the Notice of Default or received the written request from Contracting Authority.
7. Except with the written consent of Contracting Authority (acting reasonably), the Head DMCA Subcontractor hereby agrees that it shall not terminate, or agree to or permit the termination of, the DMCA Subcontract or any material part of the DMCA Subcontract.
8. Nothing herein contained shall render Contracting Authority liable to any person for the fulfilment or non-fulfilment of the obligations, covenants and agreements, including, but not limited to, the payment of any money thereunder or in respect thereto, of the Head DMCA Subcontractor under the DMCA Subcontract, unless and until Contracting Authority has given the Assignment Notice to the DMCA Subcontractor, the giving of which Assignment Notice the DMCA Subcontractor acknowledges is in the sole and absolute discretion of Contracting Authority, in which event, the Assignee (and if applicable, any DMCA Assignee) shall, subject to the provisions of Sections 9, 10, 11, 12 and 13 hereof, then become liable for all the obligations, covenants and agreements of the Head DMCA Subcontractor under the DMCA Subcontract, provided that from and after the date of the Successive Assignment Notice to the DMCA Subcontractor, the Assignee shall have no liability whatsoever to the DMCA Subcontractor for any default or for any damages arising in respect of a matter or matters occurring under such DMCA Subcontract from and after the date of the Successive Assignment Notice, and provided further, that if Contracting Authority gives the Direct Assignment Notice, Contracting Authority shall have no liability whatsoever to the DMCA Subcontractor for any default or for any damages arising in respect of a matter or matters occurring under the DMCA Subcontract at any time, provided in the event of a Successive Assignment Notice or Direct Assignment Notice, the Assignee thereunder shall, except as limited herein, become liable for all of the obligations, covenants, and agreements of the Head DMCA Subcontractor under the DMCA Subcontract.

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9. Notwithstanding the provisions of Section 8, with respect to the period preceding the Effective Date, as applicable (the “**Pre-Assignment Period**”), the only obligations, covenants and agreements of the Head DMCA Subcontractor that the Assignee (and if applicable, the DMCA Assignee) shall be liable for are those payment obligations of the Head DMCA Subcontractor under the DMCA Subcontract relating to progress payments required to be made by the Assignee pursuant to the Agreement outstanding as of the date of the Assignment, claims for payment for change orders, and any other payment obligations relating to claims for delay and acceleration in respect of the performance of the DMCA Subcontract and any alleged changes to the schedule which may remain unpaid or outstanding on the date of the Assumption Agreement that, in each case, have been disclosed to Contracting Authority by the DMCA Subcontractor and agreed by Contracting Authority prior to the execution and delivery of the Assumption Agreement.
 10. Notwithstanding Section 9, the DMCA Subcontractor acknowledges and agrees that if during the Pre-Assignment Period, Contracting Authority has made a proper payment to Project Co or the Head DMCA Subcontractor on account of Works performed by the DMCA Subcontractor and the Head DMCA Subcontractor has failed to make payment to the DMCA Subcontractor, the Assignee (and if applicable, the DMCA Assignee) shall not be responsible for payment of such amount to the DMCA Subcontractor.
 11. Subject to Section 10, if, at the Effective Date, there are amounts in dispute between the Head DMCA Subcontractor and the DMCA Subcontractor relating to the DMCA Subcontract as provided for in Section 9, the Assignee shall only be liable for such amounts once the DMCA Subcontractor has established entitlement to the amounts claimed under the DMCA Subcontract. The DMCA Subcontractor acknowledges and agrees that in its assessment of the outstanding claims relating to the Pre-Assignment Period, the Assignee (and if applicable, the DMCA Assignee) shall require a reasonable period of time to review and assess the validity and reasonableness of the claims. The DMCA Subcontractor shall provide such further information as is reasonably necessary to allow Assignee (and if applicable, the DMCA Assignee) to make its determination. If the parties cannot agree on the reasonableness of the amounts claimed, then the parties shall seek to establish a mutually agreed dispute resolution process. If such dispute resolution process is not agreed to within twenty-five (25) days of notice from the Assignee (and if applicable, the DMCA Assignee), then either party may resort to litigation to resolve the dispute.
 12. Except for liability in respect of claims set out in Section 9, Contracting Authority shall not be liable for any other claim for injuries, losses, damages, interest, costs, indemnity, fines, penalties, legal and professional fees and assessments or amounts of any kind whatsoever (including any loss or damage not yet ascertained as at the date of the Assignment) that the DMCA Subcontractor has as of the Effective Date, or otherwise shall or hereafter may have for or by reason of or in any way arising out of any cause, matter or thing whatsoever, existing to the Effective Date.
 13. The DMCA Subcontractor shall reimburse the Assignee (and if applicable any DMCA Assignee) for any amounts paid or pre-paid to the DMCA Subcontractor by the Assignee (and if applicable any DMCA Assignee) under Section 10 in respect of which the DMCA Subcontractor at any time during or after the Pre-Assignment Period has been paid, pre-paid, reimbursed or refunded, directly or through set-off, by Contracting Authority, Project Co, any Project Co Party or any other person

on account of work performed or services rendered by the DMCA Subcontractor during the Pre-Assignment Period.

14. Project Co agrees that all costs and expenses incurred by Contracting Authority in curing or attempting to cure any default by the Head DMCA Subcontractor under the DMCA Subcontract, together with interest thereon at the rate described in the definition of Payment Compensation Amount in Schedule 1 – Definitions and Interpretation to the Agreement shall be payable by Project Co to Contracting Authority, as the case may be, on demand. Without limiting the foregoing, if Project Co fails to make any such payment to Contracting Authority as required hereunder, the amount of such payment shall be deemed to be an amount which is due to Contracting Authority by Project Co pursuant to the terms of the Agreement.
15. The assumption of the Assignee's obligations under the DMCA Subcontract by the Assignee (and, if applicable, any DMCA Assignee), shall not relieve the Head DMCA Subcontractor of its obligations or duties thereunder accruing prior to such assumption and the DMCA Subcontractor shall continue to be liable to the Head DMCA Subcontractor with respect to any and all indemnity obligations from the DMCA Subcontractor to the Head DMCA Subcontractor arising prior to such assumption and the Head DMCA Subcontractor shall continue to have the benefit of any guarantee, bond or covenant of security provided by the DMCA Subcontractor pursuant to the DMCA Subcontractor to the extent of any such indemnity obligation.
16. All notices, requests, demands, instructions, certificates, consents and other communications required or permitted hereunder shall be in writing (whether or not "written notice" or "notice in writing" is specifically required by the applicable provision of this Assignment of Subcontract) and served by sending the same by registered mail, by hand (in each case with a copy by electronic submission to Contracting Authority), or by electronic submission as follows:

If to Project Co:

[REDACTED]

If to the Head DMCA Subcontractor:

[REDACTED]

If to the DMCA Subcontractor:

[REDACTED]

If to Contracting Authority:

Metrolinx

[REDACTED]

Where any notice is provided or submitted to a party via electronic submission, an original of the notice sent via electronic submission shall promptly be sent by regular mail or registered mail. For greater certainty, a notice given via electronic submission shall not be invalid by reason only of a party's failure to comply with this Section 15.

Any party to this Assignment of Subcontract may, from time to time, change any of its contact information set forth in this Section 15 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.

Subject to the remainder of this Section 15:

- (i) a notice given by registered mail shall be deemed to have been received on the third Business Day after mailing;
- (ii) a notice given by hand delivery shall be deemed to have been received on the day it is delivered; and
- (iii) a notice given by electronic submission shall be deemed to have been received on the day it is transmitted by electronic submission.

If the party giving the notice knows or ought reasonably to know of difficulties with the postal system which might affect negatively the delivery of mail, any such notice shall not be mailed but shall be made or given by personal delivery or by electronic submission in accordance with this Section 15.

If any notice delivered by hand or transmitted by electronic submission is so delivered or transmitted, as the case may be, either on a day that is not a Business Day or on a Business Day after 4:00 p.m. (recipient's local time), then such notice shall be deemed to have been received by such recipient on the next Business Day.

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

- 17. This Assignment of Subcontract shall enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.
- 18. This Assignment of Subcontract shall be conclusively deemed to be a contract made under and shall for all purposes be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.
- 19. The DMCA Subcontractor shall from time to time and at all times hereafter, upon the reasonable written request of Contracting Authority so to do, make, do, execute and deliver or cause to be made, done, executed and delivered all such further acts, deeds, assurances and things as may be desirable in the opinion of Contracting Authority, acting reasonably, for more effectually implementing and carrying out the true intent and meaning of this Agreement.

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20. In this Assignment of Subcontract, all capitalized terms not otherwise defined in this Assignment of Subcontract shall have the meaning ascribed to them in the Agreement unless the context requires otherwise.
21. At any time and from time to time, the Crown may designate any ministry, branch, agency, division, department or office of the Government of Ontario to carry out administrative responsibility for the rights and obligations of Contracting Authority under this Agreement and the Head DMCA Subcontractor and the DMCA Subcontractor may deal exclusively with the designated person in respect of all such matters and is entitled to rely on the actions, directions, requests, notices, consents, approvals, waivers, comments relating to the review of documentation and other administrative matters and decisions determined by such designated person from time to time, until the Crown has notified the Head DMCA Subcontractor and the DMCA Subcontractor in writing that such designated person is no longer the person designated by the Crown hereunder and such notice shall have effect on the later of the date of delivery of such notice and the date specified in the written notice. The Crown shall advise the Head DMCA Subcontractor and the DMCA Subcontractor in writing of any designation hereunder. The rights and obligations of the parties to this Agreement shall be in no way affected by reason of any such designation. The Head DMCA Subcontractor and the DMCA Subcontractor acknowledge the right of the Crown to delegate administrative responsibilities hereunder as set forth in this Section 21.
22. This Assignment of Subcontract may be executed by the parties in counterparts and may be executed and delivered by facsimile and all such counterparts and facsimiles shall together constitute one and the same agreement.

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IN WITNESS WHEREOF the parties have executed this Assignment of Subcontract as of the date first above written.

PAPE NORTH CONNECT, [REDACTED]

[REDACTED]

By: _____

Name: **[REDACTED]**

Title: **[REDACTED]**

Name: **[REDACTED]**

Title: **[REDACTED]**

We have authority to bind the corporation.

[REDACTED]

By: _____

Name: **[REDACTED]**

Title: **[REDACTED]**

I have authority to bind the corporation.

[HEAD DMCA SUBCONTRACTOR]

Name: [REDACTED]
Title: [REDACTED]

Name: [REDACTED]
Title: [REDACTED]

I/We have authority to bind the corporation.

[DMCA SUBCONTRACTOR]

Name: [REDACTED]
Title: [REDACTED]

Name: [REDACTED]
Title: [REDACTED]

I/We have authority to bind the corporation.

METROLINX

By:

Name: [REDACTED]

Title: [REDACTED]

I have authority to bind the corporation.

APPENDIX A

FORM OF ASSUMPTION AGREEMENT

_____, 20__

[DMCA SUBCONTRACTOR]

RE: Assignment of Subcontract Agreement dated _____, 20__ among [Project Co], [Head DMCA Subcontractor], [DMCA Subcontractor] and Metrolinx (the “Assignment of Subcontract”).

With reference to the [Assignment Notice / Successive Assignment Notice/Direct Assignment Notice] dated _____, 20__, [Name of Assignee or DMCA Assignee] hereby agrees to assume all of the obligations of the Head DMCA Subcontractor to the DMCA Subcontractor under the DMCA Subcontract dated _____, 20__, and perform the obligations under the Assignment of Subcontract, all in accordance with the provisions of the Assignment of Subcontract.

Capitalized terms that are not otherwise defined in this notice shall have those meanings set out in the Assignment of Subcontract.

Yours truly,

[Name of Assignee or DMCA Assignee]

SCHEDULE 4

FORM OF TARGET PRICE AGREEMENT

[REDACTED]

SCHEDULE 5**TOC DEVELOPMENT REQUIREMENTS****1. TOC Developments**

- (a) Project Co shall provide the assistance described in Section 11.14(b) (*Adjacent Developments*) of this Agreement, *mutatis mutandis*, as such applies to the TOC Developments.
- (b) Project Co shall perform the Works so as to coordinate with all TOC Developments, in accordance with Section 11.19 (*Coordination and Minimization of Disruption and Interference*) of this Agreement, the Output Specifications, the Construction Technical Requirements and any other term or provision set out in this Agreement.
- (c) Project Co shall, as required by Contracting Authority, provide all commercially reasonable assistance to facilitate the discussion, agreement and any implementation of proposals with respect to TOC Developments.
- (d) Except as explicitly permitted by Contracting Authority or this Agreement, and subject to Project Co's compliance with all applicable Permits, Licenses, Approvals and Agreements, Project Co shall minimize disturbance and interference with the construction, operation or maintenance activities of any TOC Contractor with respect to the applicable TOC Development, in accordance with Section 11.19 (*Coordination and Minimization of Disruption and Interference*) of this Agreement, the Output Specifications and the Construction Technical Requirements.
- (e) Subject to Project Co's obligation to comply with the other terms and conditions set forth in this Agreement and the other Project Documents, Project Co shall ensure that each Project Co Party shall at all times, when using or accessing the TOC Developments, act in a manner consistent with the obligations of Project Co under this Agreement.

2. TOC Representative

- (a) Project Co shall appoint a TOC representative (the “**TOC Representative**”) who shall be responsible for:
 - (i) managing Project Co's relationships with TOC Contractors and Contracting Authority in respect of the TOC Developments;
 - (ii) coordinating Project Co's participation in meetings with TOC Contractors and Contracting Authority in respect of the TOC Developments, as required by this Agreement; and
 - (iii) ensuring that all obligations of Project Co in respect of interfaces with TOC Contractors and TOC Developments under this Agreement are coordinated and satisfied.

3. Access to TOC Developments on Metrolinx Lands

- (a) Without derogating from any of Contracting Authority's rights under this Agreement, and subject to any restrictions set out in Schedule 35 – Lands, Contracting Authority acknowledges that, in respect of the Works, Project Co and Project Co Parties require, and Contracting Authority shall provide access to the TOC Developments on the Metrolinx Lands without material interference by Contracting Authority or any Province Person for such period of time identified in Section 16.1(a) (*Access to Metrolinx Lands*) of this Agreement.

4. Protection of TOC Developments

- (a) Project Co shall protect any TOC Developments from damage or destruction which may arise as a result of any act or omission by Project Co, and Project Co shall be responsible for such damage or destruction, except for damage or destruction which occurs as a result of acts or omissions by Contracting Authority, any Contracting Authority Party, a TOC Contractor or any TOC Contractor Party.

5. Disclosure of Confidential Information

- (a) Notwithstanding any other provision of this Agreement that restricts the use or disclosure of information, Contracting Authority may disclose any Confidential Information of Project Co (excluding any Sensitive Information) to a TOC Contractor or TOC Contractor Party for the purpose of facilitating TOC Developments, subject to Section 37.1(c) (*Restrictions on Use and Disclosure*) of this Agreement.

6. Contracting Authority Indemnities to Project Co

- (a) Contracting Authority shall indemnify and save harmless Project Co and 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, any act or omission of any TOC Contractor (but only where such act or omission of such TOC Contractor is in connection with carrying out work on a TOC Development), except to the extent caused, or contributed to, 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 any deliberate or negligent act or omission of any TOC Contractor (but only where such act or omission of such TOC Contractor is in connection with carrying out work on a TOC Development), except to the extent caused, or contributed to, by any act or omission of Project Co or any Project Co Party; and
 - (iii) any loss or damage of any third party (other than any TOC Contractor where such loss or damage of such TOC Contractor is in connection with it carrying out work on a TOC Development), arising, directly or indirectly, out of, or in consequence

of, or involving or relating to any act or omission of any TOC Contractor (but only where such act or omission of such TOC Contractor is in connection with it carrying out work on a TOC Development), except to the extent caused, or contributed to, by any act or omission of Project Co or any Project Co Party,

provided that any liability for the occurrence of risks against which Project Co is required to insure under this 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 Agreement shall be excluded from the indemnity given by Contracting Authority.

SCHEDULE 6**DMCA CONSTRUCTION WORKS****1. GENERAL PROVISIONS****1.1 Definitions**

In this Schedule 6, unless the context indicates a contrary intention, terms which are defined in this Agreement (and not otherwise defined in this Schedule 6) shall have the meanings given to them in this Agreement and the following terms shall have the following meanings:

- (a) “**Additional Project Works Agreement**” has the meaning given in Section 6.1(a).
- (b) “**DMCA Initial Proposal**” has the meaning given in Section 2.1(a).
- (c) “**DMCA Construction Works Required Amount**” has the meaning given in Section 3.1(a)(x).
- (d) “**DMCA Construction Works Scheduled Substantial Completion Date**” has the meaning given in Section 3.1(a)(ix).
- (e) “**DMCA Construction Works Submittals**” has the meaning given in Section 3.1(a)(vii).
- (f) “**Draft DMCA Construction Works Work Plan**” has the meaning given in Section 3.1(a).
- (g) “**Final DMCA Construction Works Work Plan**” has the meaning given in Section 4.1(a).
- (h) “**Notice to Proceed**” has the meaning given in Section 5.1(a).

1.2 Project Co DMCA Construction Works Obligations

- (a) Without limiting any other obligation of Project Co in this Agreement:
 - (i) Project Co shall perform and shall cause the performance of the DMCA Construction Works:
 - A. at all times, fully, diligently and in a professional and competent manner;
 - B. to be undertaken by persons qualified and skilled in their occupations and with the care and skill reasonably to be expected of persons providing a scope of works and services similar to each aspect of the DMCA Construction Works, and on a project of similar size, scope, complexity and quality to the Project; and
 - C. in accordance with Good Industry Practice and Applicable Law;
 - (ii) Project Co shall:

- A. communicate, attend meetings and consult regularly with and provide progress reporting to Contracting Authority during the performance of the DMCA Construction Works, including at the request of Contracting Authority or as otherwise required by Project Co to perform and complete the DMCA Construction Works;
 - B. comply with the directions of Contracting Authority relating to the performance of the DMCA Construction Works that are consistent with this Agreement and the applicable Notice to Proceed, and advise Contracting Authority if any such direction would comprise or require a Variation;
 - C. inform itself of Contracting Authority’s requirements for the Project and the DMCA Construction Works, including by familiarising itself and keeping itself familiarised with the Background Information; and
 - D. carefully examine any additional Background Information from time to time provided to or obtained by Project Co to the extent necessary to properly perform the DMCA Construction Works; and
- (iii) if any of the DMCA Construction Works fail to satisfy the requirements of this Agreement or the applicable Notice to Proceed, Project Co shall promptly correct and rectify such failure following the earlier to occur of the date Project Co becomes aware of such failure or of Contracting Authority’s provision of Notice to Project Co outlining such failure.

2. DMCA CONSTRUCTION WORKS INITIAL PROPOSAL

2.1 DMCA Initial Proposal

- (a) Project Co or Contracting Authority may propose that certain Works be performed as DMCA Construction Works by providing the other Party with written Notice which Notice shall include:
- (i) a general description of the scope of Work proposed to be performed as DMCA Construction Works;
 - (ii) reasons for why the proposed Work should be performed as DMCA Construction Works instead of being included as part of the scope of a Target Price Agreement; and
 - (iii) a proposed schedule for:
 - A. delivery of the Draft DMCA Construction Works Work Plan; and
 - B. approval by Contracting Authority for Project Co to proceed to prepare a Final DMCA Construction Works Work Plan,

(each, a “DMCA Initial Proposal”).

3. ANALYSIS AND ACCEPTANCE OF DMCA INITIAL PROPOSALS

3.1 General

- (a) With respect to each DMCA Initial Proposal (1) delivered by Contracting Authority, or (2) delivered by Project Co, unless Contracting Authority notifies Project Co in writing that it does not accept the applicable DMCA Initial Proposal within a reasonable timeline of receipt thereof, Project Co shall, within the timeline set out in the DMCA Initial Proposal or as otherwise agreed to by the Parties, prepare and deliver to Contracting Authority an initial work plan which shall include the following elements:
- (i) a detailed description of the scope of the proposed DMCA Construction Works;
 - (ii) an initial estimate of the cost to perform the proposed DMCA Construction Works;
 - (iii) a proposed schedule to perform the proposed DMCA Construction Works, in accordance with Schedule 12 – Works Schedule Requirements;
 - (iv) a description of the risks in performing the proposed DMCA Construction Works;
 - (v) a draft procurement plan, if applicable, for the proposed DMCA Construction Works which among other things shall identify specific items, decisions or steps, which shall be subject to CA Approval;
 - (vi) a draft construction plan, if applicable, for the proposed DMCA Construction Works which among other things shall identify specific items, decisions or steps, which shall be subject to CA Approval;
 - (vii) an initial description of the submittals for the proposed DMCA Construction Works and proposed timeline for review of such submittals by Contracting Authority (the “**DMCA Construction Works Submittals**”);
 - (viii) a proposed schedule for delivery of the proposed Final DMCA Construction Works Work Plan and, if approved by Contracting Authority, issuance by Contracting Authority of a Notice to Proceed to Project Co with respect to the applicable DMCA Construction Works;
 - (ix) if requested by Contracting Authority, a proposed scheduled substantial completion date with respect to the proposed DMCA Construction Works, which shall be subject to CA Approval, (the “**DMCA Construction Works Scheduled Substantial Completion Date**”);
 - (x) if requested by Contracting Authority, the proposed amount of warranty security with respect to the proposed DMCA Construction Works, which shall be subject to CA Approval, (the “**DMCA Construction Works Required Amount**”), and
 - (xi) such other items as Contracting Authority may request,

(the “**Draft DMCA Construction Works Work Plan**”)

- (b) With respect to each DMCA Initial Proposal, Contracting Authority shall by written Notice to Project Co:
- (i) accept the Draft DMCA Construction Works Work Plan;
 - (ii) require modifications or revisions to the Draft DMCA Construction Works Work Plan following discussion with Project Co; or
 - (iii) reject the Draft DMCA Construction Works Work Plan.

4. FINAL DMCA CONSTRUCTION WORKS WORK PLAN

4.1 General

- (a) Following delivery of Contracting Authority’s Notice to Project Co pursuant to Section 3.1(b)(i) or Section 3.1(b)(ii), Project Co and Contracting Authority shall collaborate to further develop and finalize the elements of the applicable Draft DMCA Construction Works Work Plan and address any comments or questions raised by Contracting Authority to create a final work plan with respect to the applicable DMCA Construction Works (each a “**Final DMCA Construction Works Work Plan**”). Project Co shall deliver to Contracting Authority a proposed Final DMCA Construction Works Work Plan with respect to the subject DMCA Construction Works in accordance with the time period for delivery thereof as set out in the Draft DMCA Construction Works Work Plan approved or as modified by Contracting Authority, or as otherwise agreed by the Parties.
- (b) With respect to each Final DMCA Construction Works Work Plan submitted by Project Co, Contracting Authority may by written Notice to Project Co:
- (i) accept the Final DMCA Construction Works Work Plan;
 - (ii) require modifications or revisions to the Final DMCA Construction Works Work Plan following discussion with Project Co; or
 - (iii) reject the Final DMCA Construction Works Work Plan.

5. NOTICE TO PROCEED AND PERFORMANCE OF DMCA CONSTRUCTION WORKS

5.1 General

- (a) In the event that Contracting Authority accepts the Final DMCA Construction Works Work Plan in accordance with Section 4.1(b)(i) or modifies the Final DMCA Construction Works Work Plan in accordance with Section 4.1(b)(ii), Contracting Authority shall issue a Notice to Project Co to proceed to implement the subject DMCA Construction Works in accordance with the accepted or as modified Final DMCA Construction Works Work Plan (each a “**Notice to Proceed**”) and subject to obtaining any CA Approvals set out in the applicable Final DMCA Construction Works

Work Plan. The applicable Final DMCA Construction Works Work Plan shall be attached to the applicable Notice to Proceed.

- (b) Each DMCA Construction Works Submittal is a Works Submittal that shall be submitted in accordance with Schedule 10 – Review Procedure.

6. ADDITIONAL PROJECT WORKS AGREEMENT

6.1 General

- (a) Without limiting any right of Contracting Authority pursuant to this Agreement (including this Schedule 6), Contracting Authority may propose in writing to Project Co that the Parties enter into a separate agreement, based on a form of agreement provided by Contracting Authority, in respect of the subject matter of a DMCA Initial Proposal where the design therefor has been progressed to [REDACTED]% by Contracting Authority (each an “**Additional Project Works Agreement**”).
- (b) In the event that Contracting Authority proposes to implement a DMCA Initial Proposal by way of an Additional Project Works Agreement, the Parties agree to use commercially reasonable efforts to negotiate and finalize the form of and enter into such agreement within the period of time reasonably required by each Party.
- (c) Project Co acknowledges and agrees that nothing in this Section 6.1 limits or prejudices any right of Contracting Authority under this Agreement (including this Schedule 6) whatsoever, in respect of the applicable DMCA Initial Proposal in the event that the Parties are unable to negotiate, finalize or enter into any Additional Project Works Agreement pursuant to Section 6.1(a).

SCHEDULE 7**MOBILITY MATTERS****1. DEFINITIONS**

In this Schedule 7, terms which are defined in this Agreement (and not otherwise defined in this Schedule 7) shall have the meanings given to them in this Agreement and the following terms shall have the following meanings:

- 1.1 “**Actual Lane Closures**” or “**ALC**” means all actual Municipal Lane Closures that occur in a given calendar month for a Road Section.
- 1.2 “**Alignment**” has the meaning given in the Output Specifications.
- 1.3 “**Arterial**” means Major Arterial or Minor Arterial, as defined in the City of Toronto Road Classification System.
- 1.4 “**Blocks**” are the physical units within a Road Section, including,
 - (a) the physical units delineated as “Blocks” in the table in Appendix B to this Schedule 7 (which include, for clarity, sections of various streets at major ground level construction sites in the vicinity of the Alignment of the Project); and
 - (b) for any streets (other than those specified in Section 1.4(a)) proposed to be occupied by Project Co for the performance of the Construction Works, the physical units between two adjacent intersections, irrespective of whether the intersections are signalized or unsignalized. For the purposes of this Section 1.4(b), a laneway opening shall not constitute an intersection.
- 1.5 “**City of Toronto Road Classification System**” means the City of Toronto Road Classification System, dated April 2018, as amended from time to time.
- 1.6 “**Collector**” has the meaning given in the City of Toronto Road Classification System.
- 1.7 “**HOV/Bus Lane**” means existing travelled lanes reserved for buses, taxies, or vehicles with multiple passengers, at the locations defined by the City of Toronto By-Law No 132-93, and any amendments thereto.
- 1.8 “**Lane Closure Analysis Report**” has the meaning given to it in Section 2.1.
- 1.9 “**Lane Closure Measurement and Verification Plan**” has the meaning given to it in Section 3.4.
- 1.10 “**Lane Closure Monitoring Plan**” means the report attached to Appendix C to this Schedule 7.
- 1.11 “**Left Turn Lane Closure**” means a Municipal Lane Closure of an exclusive left turn lane.
- 1.12 “**Local**” includes City streets not defined by the City of Toronto Road Classification System.

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- 1.13 “**Major Arterial**” has the meaning given in the City of Toronto Road Classification System.
- 1.14 “**Minor Arterial**” has the meaning given in the City of Toronto Road Classification System.
- 1.15 “**Mobility Matters Review Meeting**” has the meaning given in Section 3.5.
- 1.16 “**Municipal Lane Closure**” means any restriction or closure of a lane to bus or vehicular traffic within a Block as a result of or in connection with the Construction Works. For the purposes of this Schedule 7:
- (a) each Municipal Lane Closure will be measured on a per Block, per day basis;
 - (b) any Municipal Lane Closure with duration of less than 24 hours shall be deemed to be a Municipal Lane Closure with duration of one day;
 - (c) any Left Turn Lane Closure, Right Turn Lane Closure, or Through Lane Closure usable for general traffic or transit services will be treated equally as Municipal Lane Closures;
 - (d) any partial Municipal Lane Closure shall be deemed to be a full Municipal Lane Closure;
 - (e) any lane that has a limited opening such as “local traffic only” shall be deemed to be a Municipal Lane Closure;
 - (f) any restriction or closure of a lane within an intersection (as delineated by the curb return for each leg of such intersection) shall not constitute a Municipal Lane Closure, except that, for clarity, any restriction or closure of a travel lane into or out of an intersection related to Construction Works within that intersection shall constitute a Municipal Lane Closure;
 - (g) any restriction or closure of a lane that is the result of a Third Party Contractor, RSSOM Project Co, a RSSOM Project Co Party or a TOC Contractor carrying out activities with respect to any Existing Third Party Infrastructure where such activities are required to be carried out by a Third Party Contractor as part of the Construction Works shall constitute a Municipal Lane Closure. For clarity, this would apply in all instances where a Third Party Contractor is required to perform work on a City of Toronto traffic signal, including but not limited to maintenance activities, on behalf of Project Co;
 - (h) any restriction or closure of a lane that is solely the result of a Third Party Contractor carrying out activities with respect to any Existing Third Party Infrastructure unrelated to the Construction Works shall not constitute a Municipal Lane Closure;
 - (i) any restriction or closure of a lane that is solely the result of Project Co carrying out work in relation to Project Co’s installation of equipment to fulfil geotechnical instrumentation and monitoring obligations shall not constitute a Municipal Lane Closure; and
 - (j) any restriction or closure of a lane that is solely the result of a traffic accident shall not constitute a Municipal Lane Closure.

- 1.17 **“Proposed Lane Closures”** or **“PLC”** means the total proposed Municipal Lane Closures for a Road Section from the DMCA Effective Date to Project Substantial Completion, which,
- (a) are set forth in the Lane Closure Monitoring Plan;
 - (b) satisfy all of the requirements of this Schedule 7 and all of the applicable requirements of the Output Specifications and the Construction Technical Requirements, as applicable;
 - (c) form part of any DMCA Initial Proposal or TPA Proposal; and
 - (d) consistent with the Traffic and Transit Management Plan.
- 1.18 **“Right Turn Lane Closure”** means a Municipal Lane Closure of an exclusive right turn lane.
- 1.19 **“Road Section”** means each of the [REDACTED] road sections including each Road Sub-Section described in Appendix B to this Schedule 7.
- 1.20 **“Road Sub-Section”** means each of the [REDACTED] road sub sections described in Appendix B to this Schedule 7.
- 1.21 **“Streetcar Lane”** means a lane with existing streetcar tracks in service at the time of the DMCA Effective Date.
- 1.22 **“Through Lane Closure”** means a Municipal Lane Closure of a through lane, including a lane which allows both a through and right turn movement, and a lane which allows both a through and left turn movement.

2. CONTENT AND FORMAT OF THE LANE CLOSURE ANALYSIS REPORT

- 2.1 Project Co shall, on a monthly basis starting no later than thirty (30) days prior to the first Municipal Lane Closures, monitor its Municipal Lane Closures on each Road Section and provide a report of such Municipal Lane Closures to Contracting Authority (each, a **“Lane Closure Analysis Report”**) pursuant to and in accordance with this Section 2. Project Co shall classify and quantify all Municipal Lane Closures in each Lane Closure Analysis Report in accordance with this Schedule 7.
- 2.2 Each Lane Closure Analysis Report shall, at a minimum, include the following information:
- (a) using the template provided in Appendix A to this Schedule 7, a summary of Actual Lane Closures for each Road Section, on a Road Section by Road Section basis, for the previous calendar month, indicating for each Municipal Lane Closure:
 - (i) road classification (Arterial, Collector or Local);
 - (ii) location (indicating Road Section, Road Sub-Section and Block); and
 - (iii) date and duration;

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- (b) a projection of anticipated Municipal Lane Closures, in accordance with the Traffic and Transit Management Plan, for each Road Section for each month from the then current calendar month until the anticipated Project Substantial Completion Date, along with trends and potential risks associated with the anticipated Municipal Lane Closures;
 - (c) accurate and precise data in support of the items described in Sections 2.2(a) and 2.2(b);
 - (d) for each Road Section, a calculation of,
 - (i) the sum of all ALC from the DMCA Effective Date up to and including the previous calendar month; and
 - (ii) the variance between the amount described in Section 2.2(d)(i) and the Municipal Lane Closures from the DMCA Effective Date up to and including the previous calendar month (as applicable), as set out in the Lane Closure Monitoring Plan;
 - (e) for each Road Section, a calculation of,
 - (i) the sum of all anticipated ALC from the then current calendar month to the anticipated Project Substantial Completion Date based on the projected Municipal Lane Closures described in Section 2.2(b); and
 - (ii) the variance between the amount described in Section 2.2(e)(i) and the anticipated Municipal Lane Closures from the then current calendar month to the anticipated Project Substantial Completion Date, as set out in the Lane Closure Monitoring Plan;
 - (f) a mitigation plan if there is a forecasted exceedance of Project Co's projected estimate of the ALC from the PLC for any Road Section for any potential traffic impacts as a result;
 - (g) the progress of, and any planned adjustments to, any corrective action plan that was in place from any previous Lane Closure Analysis Reports;
 - (h) the measurement and verification of Municipal Lane Closures in accordance with the Lane Closure Measurement and Verification Plan; and
 - (i) summary tables from all previous Lane Closure Analysis Reports delivered by Project Co to Contracting Authority.
- 2.3 Subject to Section 2.4, Project Co shall prepare and deliver to Contracting Authority a Lane Closure Analysis Report in respect of each calendar month.
- 2.4 Each Lane Closure Analysis Report shall be delivered by Project Co to Contracting Authority in accordance with Schedule 10 – Review Procedure within five (5) Business Days after the end of the calendar month that is the subject of the Lane Closure Analysis Report. Notwithstanding the foregoing, the final Lane Closure Analysis Report shall be (a) prepared and delivered by Project

Co to Contracting Authority twenty (20) Business Days before the anticipated Project Substantial Completion Date.

3. PROCEDURES FOR DETERMINING AND REPORTING MUNICIPAL LANE CLOSURES

- 3.1 If, as of the DMCA Effective Date, a lane width is less than the minimum lane width requirements during construction that are specified in Section 3.2.8 (*Traffic and Transit Management*) of the Output Specifications, and Project Co continuously maintains the lane as open for traffic operations at the lane width existing at the DMCA Effective Date during the Construction Works, then a Municipal Lane Closure in respect of such lane shall not arise for the purposes of this Schedule 7.
- 3.2 Project Co shall use the existing lane configuration at the DMCA Effective Date as the basis for determining the configuration of lanes for the purpose of determining whether or not a Municipal Lane Closure has arisen pursuant to this Schedule 7. For clarity, any existing detours of streetcars or temporary lane closures at the time of the DMCA Effective Date shall not be considered in determining whether a Municipal Lane Closure has occurred in respect of such temporary lane closures or detours.
- 3.3 Contracting Authority shall assess Project Co for the Actual Lane Closure based on the total Municipal Lane Closures that occur during each calendar month for each Road Section.
- 3.4 No later than thirty (30) days prior to the first Municipal Lane Closure, Project Co shall submit to Contracting Authority, in accordance with Schedule 10 – Review Procedure, a plan describing how Project Co will track all of its Municipal Lane Closures on a monthly basis for each Road Section, how Project Co will evaluate its performance on Municipal Lane Closure progress, and the verification process through which Contracting Authority and the City may audit Project Co’s Municipal Lane Closure performance (the “**Lane Closure Measurement and Verification Plan**”). The Lane Closure Measurement and Verification Plan should include the PLC as of the DMCA Effective Date, consistent with the Traffic and Transit Management Plan and any amendments thereafter as per Section 4 of this Schedule 7. Project Co shall ensure that all subsequent Lane Closure Analysis Reports are consistent with the Lane Closure Measurement and Verification Plan.
- 3.5 No later than five (5) Business Days following the submission of each Lane Closure Analysis Report (or as otherwise agreed to between the Parties), Project Co and Contracting Authority shall convene a review meeting (the “**Mobility Matters Review Meeting**”) to be attended by the Project Co Representative and other relevant Project Co representatives (including the Communications and Public Engagement Lead described in Schedule 9 – Key Individuals) and the Contracting Authority Representative. At the Mobility Matters Review Meeting, Project Co shall present the Lane Closure Analysis Report to Contracting Authority, and Contracting Authority and Project Co shall discuss the Lane Closure Analysis Report and the ALC for the preceding period.
- 3.6 Project Co shall assist the Contracting Authority Representative by providing information with respect to Municipal Lane Closures and access to the Municipal Lane Closure records, and by other means as may reasonably be required to confirm the information in the Lane Closure Analysis Report.

4. PROCESS FOR AMENDING THE AGGREGATE PROPOSED LANE CLOSURES

- 4.1 In all cases, adjustments or corrections to the PLC for any Road Section must be consistent with the principles outlined in the Traffic and Transit Management Plan.
- 4.2 Any amendment to the Traffic and Transit Management Plan shall include a detailed analysis of the impacts to traffic and transit services, including an analysis of Municipal Lane Closure requirements of this Schedule 7. The amended Traffic and Transit Management Plan shall include a recommendation regarding amendments to the applicable PLC. Both Contracting Authority and Project Co shall, acting reasonably, agree to the amended PLC no later than twenty (20) Business Days following receipt of the requested amended Traffic and Transit Management Plan.

5. APPLICATION

- 5.1 The Municipal Lane Closure requirements of this Schedule 7 will no longer be in effect once Project Substantial Completion has been achieved.

APPENDIX A TO SCHEDULE 7

MUNICIPAL LANE CLOSURE ANALYSIS REPORT SUBMITTAL REQUIREMENTS

[REDACTED]

APPENDIX B TO SCHEDULE 7

SECTIONS OF VARIOUS STREETS AT MAJOR GROUND LEVEL CONSTRUCTION SITES ALONG THE ALIGNMENT

[REDACTED]

APPENDIX C TO SCHEDULE 7

LANE CLOSURE MONITORING PLAN

[REDACTED]

SCHEDULE 8

SUBCONTRACTS

**PART 1: SECTION 11.38(b) (*SUBCONTRACTING*) OF THIS AGREEMENT – LIST OF
SUBCONTRACTS**

[REDACTED]

SCHEDULE 9

KEY INDIVIDUALS

Project Co may propose multiple Key Individuals if multiple Key Individuals are allowed, as set out in this Schedule 9. If multiple Key Individuals are allowed for a position, Project Co shall identify the lead individual for each position. The lead individual for that position shall be responsible for all functions of each Key Individual listed for that position. The functions listed below for each Key Individual position are not intended to be an exhaustive list of the functions expected to be performed by that Key Individual.

Position	Function	Minimum Years of Required Relevant Experience	Required Licenses/Certifications	Minimum Qualifications	Multiple Key Individuals Allowed	Name and Contact Information
Project Co Representative	<p>Project Co Representative shall have the applicable responsibilities set out in this Agreement, including but not limited to contractual amendment overview, and act as the overall Project director.</p> <p>They shall ensure that all activities with respect to the Works are fully integrated with each other.</p>	20 years’ experience on public transportation project(s) of similar size, complexity, and contractual value.	N.A.	N.A.	No	[REDACTED]
System Safety Officer	<p>The System Safety Officer shall be responsible for the safety of the Project, including:</p> <ul style="list-style-type: none"> all activities to satisfy Project Co’s safety obligations in Schedule 29 – Safety, System Assurance and Security; delivery of all aspects of safety management and system assurance, including construction safety, safety 	15 years’ experience in the field of system safety applied in a passenger rail environment, ideally metro or subway, of which at least 10 years shall be safety assurance experience on rapid rail and	N.A.	Proven experience delivering safety critical systems using standards including EN 50126, EN 50128, EN 50129, EN 50657, EN 50155 and other standards identified in Schedule 29 – Safety, System Assurance and Security.	No.	[REDACTED]

Position	Function	Minimum Years of Required Relevant Experience	Required Licenses/Certifications	Minimum Qualifications	Multiple Key Individuals Allowed	Name and Contact Information
	assessment, RAMS and SIL (each as defined in Schedule 29 – Safety, System Assurance and Security); <ul style="list-style-type: none"> • the development and implementation of the System Safety Plan, Project Co Safety Management System, RAM Plan and Construction Emergency Response Plan (each as defined in Schedule 29 – Safety, System Assurance and Security); • the delivery of all Engineering Safety and Assurance Cases (as defined in Schedule 29 – Safety, System Assurance and Security); • the correct application of and compliance with the Safety and Systems Assurance Standards and the CMREA (each as defined in Schedule 29 – Safety, System Assurance and Security); • coordinating with Contracting Authority, Emergency Service Providers, railway companies, and Independent Safety Assessor (as defined in Schedule 29 – Safety, System Assurance and Security) on all aspects of system safety and assurance; 	transportation projects in a lead role.		Proven experience in the development of a safety management system following all parts of EN 50126, including EN 50126-1 and EN 50126-2. Proven experience with TTC’s operating rules and maintenance procedures. Experience performing safety analysis on passenger rail systems including associated facilities, electrical, electronic and mechanical systems. Experience with safety certification of rail rapid transit systems in a lead role.		

Position	Function	Minimum Years of Required Relevant Experience	Required Licenses/Certifications	Minimum Qualifications	Multiple Key Individuals Allowed	Name and Contact Information
	<ul style="list-style-type: none"> • acting as the point of contact with Contracting Authority in respect of the system safety and assurance activities; • the design, implementation, and certification of the Works; • safety and security performance; and • participation in the System Safety and Security Interface Committee (as defined in Schedule 29 – Safety, System Assurance and Security). 					
System Security Officer	The System Security Officer shall be responsible for the delivery of all aspects of the Project security management function (as applicable to the System Security Officer), including Security Risk Assessment and CPTED (each as defined in Schedule 29 – Safety, System Assurance and Security); and be responsible for supporting the Chief Security Officer (as defined in Schedule 29 – Safety, System Assurance and Security) in the overall security certification of the Ontario Line Subway System as agreed in the System Safety and Security Interface Committee	System Security Officer shall, be a Certified Protection Professional, or an equivalent alternative acceptable to Contracting Authority, who shall have extensive experience in the field of system security applied in a metro type rail transit environment, in an equivalent	Certified Protection Professional	N.A.	No	[REDACTED]

Position	Function	Minimum Years of Required Relevant Experience	Required Licenses/Certifications	Minimum Qualifications	Multiple Key Individuals Allowed	Name and Contact Information
	(as defined in Schedule 29 – Safety, System Assurance and Security).	position in North America.				
Quality Director	The Quality Director shall have the responsibilities set out in Section 3.2 (<i>Quality Director</i>) of Schedule 11 – Quality Management.	15 years’ experience with at least 5 years’ of quality assurance related experience on public transportation project(s) of similar size, complexity, and contractual value quality management role.	ISO 9001:2015 Lead Auditor Course.	N.A.	No.	[REDACTED]
Construction Health and Safety Manager	The Construction Health and Safety Manager shall be responsible for: <ul style="list-style-type: none"> developing safety, security, health and environmental policies, standards and programs for employee and passenger activities; regulatory affairs; and emergency preparedness and ensuring business continuity systems are in place. The Construction Health and Safety Manager will ensure protocols regarding	10 years’ experience with at least 5 years’ of health and safety related experience on major construction projects in a lead role.	Construction Health and Safety Officer: NCSO-IHSA; or Canadian Registered Professional (CRSP); or demonstrated equivalent.	N.A.	No.	[REDACTED]

Position	Function	Minimum Years of Required Relevant Experience	Required Licenses/Certifications	Minimum Qualifications	Multiple Key Individuals Allowed	Name and Contact Information
	health and safety to do with pandemic response and mitigation are in place.					
Design Director	<p>The Design Director shall be responsible for:</p> <ul style="list-style-type: none"> preparation, implementation, maintenance, and enforcement of the Design Management Plan; coordinating all designs produced by the Design Team through all stages of the Project; ensuring the schedule for Works Submittals is reflected in each update of the Project Works Schedules; coordinating with the Contracting Authority Representative, or its designate, to prioritize the review of each of the Works Submittals, if necessary; ensuring the design meets the requirements set out in this Agreement; and ensuring obligations set out in Schedule 10 – Review Procedure are satisfied for each Works Submittal. 	15 years’ experience with at least 10 years’ of multidisciplinary design management experience on rail and transportation projects, including subway experience.	Professional Engineer or equivalent; or Ontario Association of Architects (OAA).	Experience in managing multidisciplinary stations, rail, and systems designs	No.	[REDACTED]
Station Design Manager	The Station Design Manager shall be responsible for design and coordination of all aspects of the facilities, including:	15 years’ experience with at least 10 years’ experience in managing multidisciplinary	Professional Engineer or equivalent, or Ontario	Experience in deep underground station design.	No.	[REDACTED]

Position	Function	Minimum Years of Required Relevant Experience	Required Licenses/Certifications	Minimum Qualifications	Multiple Key Individuals Allowed	Name and Contact Information
	<ul style="list-style-type: none"> managing the design, coordination, and preparation of Works Submittals as it relates to stations; coordinating the interface with Contracting Authority, Governmental Authorities and key stakeholders, including the City of Toronto and TTC; ensuring compliance with the technical and quality requirements set out in the Output Specifications; coordinating the resolution of design interfaces with TTC and existing conditions at Pape Station; coordinating the resolution of architectural and station design interfaces; and coordinating with TOC Contractors through design processes and ensuring compliance to TOC Developments enabling requirements. 	design for significant subway stations of similar type and financial magnitude and at least 5 years of experience as facilities/station design manager in a lead role.	Association of Architects (OAA).	<p>Experience in design of interchange stations with existing subway systems.</p> <p>Experience in design of fire life safety systems.</p>		
System Integration Manager	<p>The System Integration Manager shall be responsible for:</p> <ul style="list-style-type: none"> integration of Project Co’s design to ensure all obligations of the Output Specifications and the applicable responsibilities set out in this Agreement, are satisfied; coordinating and supporting all aspects of the integration of Project 	15 years’ experience with at least 10 years’ of system integration experience on rail and transportation projects including subway experience.	N.A.	<p>Experience managing the interface between the Project and third parties throughout the Project lifecycle.</p> <p>Experience coordinating the development of the operations and management control</p>	No.	[REDACTED]

Position	Function	Minimum Years of Required Relevant Experience	Required Licenses/Certifications	Minimum Qualifications	Multiple Key Individuals Allowed	Name and Contact Information
	<p>Co’s design and construction requirements with the design and construction works developed by the RSSOM Project, Pape SOE designs (including temp works), legacy TTC Line 2, and all preparatory works and other existing conditions;</p> <ul style="list-style-type: none"> • ensuring all obligations in accordance with this Agreement in respect of interfaces with third parties, including the TOC Contractors, are coordinated and satisfied; • leading the definition of the systems interfaces with the TTC; • integration of Early Works Infrastructure, including Pape Station SOE, with existing TTC infrastructure; • managing and control all internal and external technical interfaces; • coordinating technical interfaces with stakeholder systems and infrastructure; • supporting and developing all interface management submittals; and • implementing robust system design and integration through a verification & validation process to follow all project phases. 			<p>systems, and the interface with third party systems and operations.</p> <p>Experience contributing to the development of an interface management plan, monitoring and coordinating implementation.</p> <p>Experience in leading systems integration in conformance to the requirements of EN 50126.</p> <p>Experience leading the integration of greenfield scope with existing TTC rail systems.</p>		

Position	Function	Minimum Years of Required Relevant Experience	Required Licenses/Certifications	Minimum Qualifications	Multiple Key Individuals Allowed	Name and Contact Information
Construction Director	<p>The Construction Director shall be responsible for:</p> <ul style="list-style-type: none"> preparation, implementation, maintenance, and enforcement of the construction component of the Project Execution Plan; directing and managing all Construction Activities for the Project; overseeing the work of the construction team and ensuring all construction activities are coordinated in accordance with this Agreement; and overall compliance of construction and ensuring Construction Activities are coordinated with Contracting Authority. 	15 years’ experience with at least 8 years’ of construction management experience on rail and transportation projects in a lead role.	Professional Engineer (or equivalent), or Education/certification related to construction management.	Experience in construction of deep excavation stations, systems fit-out including rail, and traffic management in intensive urban construction areas.	No.	[REDACTED]
Station Construction Manager	The Station Construction Manager shall be responsible for all Construction Activities related to the stations and for ensuring Project Co’s compliance with respect to all Construction Activities applicable to the stations under this Agreement, inclusive of any Early Works Infrastructure.	10 years’ experience with at least 5 years’ of construction management experience on rail station projects including subway experience.	N.A.	Experience in construction of deep excavation stations.	Yes.	[REDACTED]
Tunnel Construction	The Tunnel Construction Manager shall be responsible for all Tunnel, Sequential Excavation Method construction, and	10 years’ experience with at least 8 years’ of tunnel	N.A.	Experience with bored tunnel construction.	Yes.	[REDACTED]

Position	Function	Minimum Years of Required Relevant Experience	Required Licenses/Certifications	Minimum Qualifications	Multiple Key Individuals Allowed	Name and Contact Information
on Manager	underpinning works and for ensuring Project Co’s compliance with respect to all Construction Activities applicable to the Tunnel, Sequential Excavation Method construction and underpinning works under this Agreement.	construction management in a lead role.		Experience with construction of micro-tunnels. Experience with SEM construction. Experience with subway project construction, delivery, and handover of tunnel assets.		
Traffic and Transit Manager	The Traffic and Transit Manager shall be responsible for: <ul style="list-style-type: none"> developing, implementing and managing the Traffic and Transit Management Plan and associated sub-plans; coordinating internal and external regulatory approval processes; and managing relationships and leading the coordination and scheduling of meetings with Stakeholders, including Governmental Authorities, in collaboration with the Stakeholder Engagement Lead. 	10 years’ experience with at least 5 years’ of traffic management experience in a lead role.	Professional Engineer or equivalent.	Experience in projects where rapid transit services or roadways were constructed within a complex urban area. Relevant experience working within the City of Toronto and associated Stakeholders.	No.	[REDACTED]
Utility Manager	The Utility Manager shall be responsible for:	15 years’ experience with at least 5 years’ of utility management	Professional Engineer	Experience with leading the coordination with Governmental Authorities and Utility	No.	[REDACTED]

Position	Function	Minimum Years of Required Relevant Experience	Required Licenses/Certifications	Minimum Qualifications	Multiple Key Individuals Allowed	Name and Contact Information
	<ul style="list-style-type: none"> all activities related to Utility Infrastructure design, coordination, approvals and construction required to satisfy Project Co’s obligations in the Output Specifications; development of Utility Infrastructure Relocation Plan (as defined in the Output Specifications); execution of required legal agreements with Utility Companies; coordinating with the Tunnel Construction Manager and Station Construction Manager, Schedule Manager and Traffic and Transit Manager to integrate construction phasing of the Works; and managing relationships and leading the coordination with Utility Companies and Governmental Authorities, as applicable. 	experience in a lead role.	or equivalent.	<p>Companies in the City of Toronto.</p> <p>Experience in projects with complex utility scope of work in urban areas.</p>		
Permits, Licences, Approvals and Agreements Manager	<p>Permits, Licences, Approvals and Agreements Manager shall be responsible for all activities required to satisfy Project Co’s obligations set out in Schedule 34 – Permits, Licences, Approvals and Agreements, including:</p> <ul style="list-style-type: none"> managing the updates and maintenance of the Project PLAA Tracker and Project Co PLAA Tracking System (each as defined in 	15 years of work-related experience for projects of similar size, scope, and complexity.	A bachelor or advanced degree from a recognized post-secondary institution in Urban Planning,	<p>Detailed knowledge of and extensive experience acquiring permits, licenses and approval requirements for major infrastructure and transit infrastructure projects.</p> <p>Extensive knowledge of relevant legislation, procedures, and permit</p>	No.	[REDACTED]

Position	Function	Minimum Years of Required Relevant Experience	Required Licenses/Certifications	Minimum Qualifications	Multiple Key Individuals Allowed	Name and Contact Information
	<p>Schedule 34 – Permits, Licences, Approvals and Agreements), including the permanent repository forming part thereof;</p> <ul style="list-style-type: none"> managing the processes required to obtain and maintain the Project Co Permits, Licences, Approvals and Agreements associated with the Project; managing working relationships with Governmental Authorities and Stakeholders, ensuring that external Stakeholder agencies (including but not limited to the City of Toronto, TTC, MECP, TRCA, MTO and GO Transit) are engaged when appropriate to obtain feedback as necessary regarding applicable Permits, Licences, Approvals and Agreements; managing plans and records related to Project Co Permits, Licences, Approvals and Agreements, including ensuring that required documents are uploaded to registries or otherwise transmitted as required by Contracting Authority and Governmental Authorities; and fulfilling Project Co responsibilities regarding the PLAA Advisory Committee (as defined in Schedule 		<p>Engineering, Environmental Studies, Architecture or a combination of education, training and experience deemed equivalent.</p>	<p>requirements, including the <i>Ontario Water Resources Act, Building Code, Planning Act (Ontario), Metrolinx Act, 2006 (Ontario), Municipal Act (Ontario)</i>, railway corridor infrastructure and related construction projects.</p> <p>Experience liaising with other specialty consultants, contractors, Governmental Authorities.</p> <p>Extensive experience with large scale infrastructure projects, preferably in the Province of Ontario.</p>		

Position	Function	Minimum Years of Required Relevant Experience	Required Licenses/Certifications	Minimum Qualifications	Multiple Key Individuals Allowed	Name and Contact Information
	34 – Permits, Licences, Approvals and Agreements).					
Stakeholder Engagement Lead	<p>The Stakeholder Engagement Lead shall be responsible for:</p> <ul style="list-style-type: none"> providing strategic direction for engaging with Stakeholders, including developing any applicable stakeholder engagement processes; providing recommendations on timing, approaches, and tactics for engagement; providing strategic direction on the development of meeting materials; ensuring all stakeholder engagement processes are being followed and adhered to; and facilitating discussions at stakeholder meetings where necessary to ensure consistency of key messages and meeting objectives are met. 	10 years’ experience with at least 5 years’ of direct stakeholder engagement related experience on public transportation projects in a lead role.	N.A.	<p>Experience in delivering large projects with multiple stakeholder involvement.</p> <p>Experience with engagement with City of Toronto and TTC.</p>	No.	[REDACTED]
Project Controls Lead	<p>The Project Controls Lead shall be responsible for:</p> <ul style="list-style-type: none"> developing and maintaining the project controls function of the Project Execution Plan; leading and directing the project controls team in accordance with the Project Execution Plan; 	15 years’ experience with at least 5 years’ of project controls experience in a lead role on complex design-build or P3 major public transportation projects, ideally	Education or certification related to project controls/project	Collaborative contracting experience, including development of a target price, gainshare/painshare mechanics, efficient allocation of risk between parties.	No.	[REDACTED]

Position	Function	Minimum Years of Required Relevant Experience	Required Licenses/Certifications	Minimum Qualifications	Multiple Key Individuals Allowed	Name and Contact Information
	<ul style="list-style-type: none"> managing estimates, schedules and risks; managing change control, cost control, and budgeting; and managing information systems and processes. 	subways, throughout the project lifecycles.	management.			
Estimating Lead	<p>The Estimating Lead shall be responsible for coordinating Project Co’s estimate for the Target Price. The Estimating Lead duties include:</p> <ul style="list-style-type: none"> coordinating with Contracting Authority to establish estimating formats, understand risks, evaluation alternative phasing, means and methods and develop coordinated framework for estimating; participating in negotiations with Contracting Authority for task orders, Early Works Infrastructure packages and/or guaranteed maximum price/lump sum total contract pricing; and participating during the Project Term in the estimation of changes to the target price as may be required. 	10 years’ experience with at least 5 years’ experience in leading the complete estimate for a major capital construction project. Rapid rail and transit estimating experience including developing the estimate for the Project is required.	Certificate in PQS or equivalent.	Experience with developing a class 2 estimate according to AACE guideline.	No.	[REDACTED]
Procurement Lead	The Procurement Lead shall be responsible for coordinating Project Co’s procurement	15 years’ experience with at least 8 years’ experience in leading the	PMAC or equivalent.	Experience with the procurement required for	No.	[REDACTED]

Position	Function	Minimum Years of Required Relevant Experience	Required Licenses/Certifications	Minimum Qualifications	Multiple Key Individuals Allowed	Name and Contact Information
	<p>strategy. The Procurement Lead duties include:</p> <ul style="list-style-type: none"> • developing, maintaining and updating as required the procurement strategy for equipment, material and construction planning required for the execution of the Works during the Project Term; • setting a procurement schedule that includes a sequence of activities required to be performed and which outlines priorities; • initiate, develop, comprehend, interpret, bid, evaluate, negotiated and issue contracts; • negotiating contracts for supplying commodities, capital equipment, services and supplies; • ensuring that equipment, material and supplies procured are providing value for money and will enable the achievement of the Project schedule; • establishing procedures and standards for project procurement, including the incorporation of existing company practices and methods; • auditing compliance to established procedures and standards for project procurement; • issuing required documentations to pre-qualified bidders of tender; 	<p>procurement process for major capital construction projects including rapid rail transit.</p>		<p>large scale infrastructure projects.</p> <p>Experience with preparing, negotiating, and awarding major project contracts.</p>		

Position	Function	Minimum Years of Required Relevant Experience	Required Licenses/Certifications	Minimum Qualifications	Multiple Key Individuals Allowed	Name and Contact Information
	<ul style="list-style-type: none"> providing a standard tender document for use on the Project; analyzing and administering contractual documents for completeness and accuracy to achieve value for money; and participating in Working Groups and other project meetings and reporting on all procurement activities. 					
Chief Engineer	<p>The Chief Engineer shall be responsible for:</p> <ul style="list-style-type: none"> the responsibilities of the “Designer” as set out in EN 50126-2; the overall design and integration of the Project, and the coordination of those aspects with the rest of the Works; ensuring the Project meets the requirements of the Safety and Systems Assurance Standards (as defined in Schedule 29 – Safety, System Assurance and Security); and ensuring that appropriate risk management analysis, status reporting and issues management processes are in place for all elements of the design of the Project. 	15 years’ experience with 10 years’ experience in progressively senior project leadership roles, with experience leading large complex construction projects.	Professional Engineer.	<p>The Chief Engineer shall have the following minimum qualifications:</p> <ul style="list-style-type: none"> experience in the transportation industry and public sector; in-depth knowledge of Applicable Law, regulations, guidelines and standards in order to provide leadership to all engineering activities related to the integration and delivery of the Project; experience in a senior leadership 	No.	[REDACTED]

Position	Function	Minimum Years of Required Relevant Experience	Required Licenses/Certifications	Minimum Qualifications	Multiple Key Individuals Allowed	Name and Contact Information
				role leading and directing multiple cross-functional design teams; and <ul style="list-style-type: none"> experience managing the design of projects in a sensitive, politically visible environment that demands responsiveness, and expert leadership. 		
Schedule Manager	The Scheduler Manager shall be required to satisfy Project Co’s obligations set out in Schedule 12 – Works Schedule Requirements and shall ensure that Project Co’s schedule is fully integrated with the RSSOM Project and Early Works Infrastructure.	10 years’ experience with at least 5 years’ experience in leading the integrated schedule development for a major capital construction project. Rapid rail and transit scheduling experience including developing the schedule for tunneling activities and station construction is required.	N.A.	Significant Primavera P6 experience. Experience developing P6 schedules for large transit rail systems. Experience developing QSRA assessments in combination with the risk register.	No.	[REDACTED]

Position	Function	Minimum Years of Required Relevant Experience	Required Licenses/Certifications	Minimum Qualifications	Multiple Key Individuals Allowed	Name and Contact Information
Risk Manager	<p>The Risk Manager shall be responsible for:</p> <ul style="list-style-type: none"> own and manage the Project risk register; work with project team to promote joint risk evaluation and provide appropriate mitigation actions; and provide input to QCRA/QSRA process to inform target price and schedule. 	<p>10 years’ experience with at least 5 years’ experience in leading the risk management programme for a major capital construction project. Rapid rail and transit risk experience including developing the risk register for tunneling activities and station construction is required.</p>	<p>Certified Risk Management Lead (CRM) or similar.</p>	<p>Experience developing QCRA/QSRA assessments to inform Target Price development.</p>	No.	[REDACTED]
Tunnel Design Manager	<p>The Tunnel Design Manager shall be responsible for design and coordination of all aspects of the tunnels, including:</p> <ul style="list-style-type: none"> managing the design, coordination, and preparation of Works Submittals as it relates to tunnels (bored tunnels, SEM structures and underpinning at Pape Station); coordinating the interface with Contracting Authority, Governmental Authorities and key stakeholders, including the City of Toronto and TTC; 	<p>15 years’ experience with at least 10 years’ experience in managing multidisciplinary design for significant subway tunnels of similar type and financial magnitude.</p>	<p>Professional Engineer or equivalent.</p>	<p>Experience with tunnel segmental lining design.</p> <p>Experience with SEM design.</p> <p>Experience with design of underpinning, pipe canopies, micro tunnelling or other works related to the underpinning at Pape Station.</p>	No.	[REDACTED]

Position	Function	Minimum Years of Required Relevant Experience	Required Licenses/Certifications	Minimum Qualifications	Multiple Key Individuals Allowed	Name and Contact Information
	<ul style="list-style-type: none"> ensuring compliance with the technical and quality requirements set out in the Output Specifications; and coordinating the resolution of design interfaces with Elevated Guideway and Stations Project at Gerrard Portal, with Early Works Infrastructure at Pape, Sammon and Minton Portal. 					
Environmental Director	The Environmental Director shall have the responsibilities and qualifications as set out in Schedule 17 – Environmental Obligations.				No.	[REDACTED]
Environmental Manager(s)	The Environmental Manager(s) shall have the responsibilities and qualifications as set out in Schedule 17 – Environmental Obligations.				Yes.	[REDACTED]
Communications and Public Engagement Lead	The Communications and Public Engagement Lead shall have the responsibilities and qualifications as set out in Schedule 18 – Communication and Public Engagement Protocol.				No.	[REDACTED]

SCHEDULE 10

REVIEW PROCEDURE

PART A – WORKS

1. WORKS SUBMITTALS

1.1 The provisions of Part A of this Schedule 10 shall apply to:

- (a) the Development Works Submittals (including Consolidated Change Request Submittals, except Section 4 of this Part A);
- (b) the Design Development Submittals;
- (c) the Construction Document Submittals;
- (d) the applicable Design Data; and
- (e) any and all items, documents and anything else required or specified by this Agreement, including all Works Submittals listed in Appendices A, B and C to this Schedule 10 and any Development Works Deliverables that are identified in Schedule 2 – Development Works Submissions and Project Development Process as being subject to review in accordance with this Schedule 10,

in respect of the Works to be submitted to, reviewed or otherwise processed by Contracting Authority in accordance with the Review Procedure prior to the applicable TPA Substantial Completion or DMCA Construction Works Substantial Completion, or after the applicable TPA Substantial Completion or DMCA Construction Works Substantial Completion in respect of the completion of Section Minor Deficiencies or Minor Deficiencies, or Project Substantial Completion in respect of all other Works, and in respect of the rectification of any Works, the Project Co Infrastructure, and the New Third Party Infrastructure, including any and all subsequent revisions, amendments and changes thereto (individually, “**Works Submittal**” or collectively “**Works Submittals**” as applicable in this Schedule 10).

1.2 For clarity, the provisions of Part A of this Schedule 10, including any deadlines for submission or review set out herein, shall not apply to any processing or review of any Permit, Licence, Approval, or Agreement.

1.3 Subject to Section 1.2, if the City of Toronto, CN Rail or the TTC fails to meet the timelines set out in this Schedule 10 with respect to its review of any Works Submittals, such failure shall be deemed to be a failure by Contracting Authority to comply with the timelines set out in this Schedule 10.

1.4 Project Co may submit DMCA Construction Works Submittals, subject to and in accordance with Schedule 6 – DMCA Construction Works. A DMCA Construction Works Submittal shall be used for a discrete element of Project Co Infrastructure or New Third Party Infrastructure that must be

constructed or procured in advance of the remaining Project Co Infrastructure or New Third Party Infrastructure.

- 1.5 Where a DMCA Construction Works Submittal is used, Project Co shall still complete a Design Development Submittal and a Construction Document Submittal for the remaining associated Project Co Infrastructure or New Third Party Infrastructure prior to commencing the remaining Works.
- 1.6 Each DMCA Construction Works Submittal shall follow the relevant provision for Works Submittals of this Schedule 10 unless stated otherwise.

2. SCHEDULE FOR WORKS SUBMITTALS

2.1 The Baseline Works Schedule, shall allow:

- (a) for each Works Submittal relating to Project Co Infrastructure, a period of twenty (20) Business Days (or such longer period to review input from the City of Toronto or the TTC for such Works Submittal, acting reasonably) from the date of receipt, for Contracting Authority's review of and response to such Works Submittal;
- (b) for each Works Submittal relating to New City Infrastructure, a period of twenty (20) Business Days (beginning five (5) Business Days after receipt of such Works Submittal, provided that Contracting Authority has determined, with assistance from the City of Toronto, and notified Project Co that such Works Submittal is complete within such five (5) Business Days), plus an additional five (5) Business Days (or such longer period as may be agreed between Contracting Authority and Project Co) for Contracting Authority's review of and response (in concert with the City of Toronto) to each Works Submittal for New City Infrastructure;
- (c) for each Works Submittal relating to New TTC Infrastructure, a period of twenty (20) Business Days (beginning five (5) Business Days after receipt of such Works Submittal, provided that Contracting Authority has determined, with assistance from the TTC, and notified Project Co that such Works Submittal is complete within such five (5) Business Days), plus an additional five (5) Business Days (or such longer period as may be agreed between Contracting Authority and Project Co) for Contracting Authority's review of and response (in concert with the TTC) to each Works Submittal for New TTC Infrastructure;
- (d) for each Works Submittal for New Third Party Infrastructure that is not New City Infrastructure or New TTC Infrastructure, a period of twenty (20) Business Days (or such longer period as may be agreed between Contracting Authority and Project Co) following receipt of the applicable Works Submittal for Contracting Authority's review of and response to the applicable Works Submittal;
- (e) for each Works Submittals related to Works impacting CN Rail infrastructure, a period of thirty (30) Business Days (beginning five (5) Business Days after receipt of such Works Submittal, provided that Contracting Authority has determined, with assistance from CN Rail, and notified Project Co that such Works Submittal is complete within such five (5) Business Days), plus an additional five (5) Business Days (or such longer period as may

be agreed between Contracting Authority and Project Co) for Contracting Authority’s review of and response (in concert with CN Rail) to each Works Submittals impacting CN Rail infrastructure;

- (f) for all other Works Submittals that are not captured in Sections 2.1(a), 2.1(b), 2.1(c), 2.1(d) and 2.1(e), twenty (20) Business Days (or such longer period as the Parties may agree) following receipt thereof for each other Works Submittal; and
- (g) for each DMCA Construction Works Submittal, the period as identified in Schedule 6 – DMCA Construction Works.

2.2 Without limiting any right or discretion of Contracting Authority or obligation of Project Co, in each case, under this Agreement (including under Schedule 2 – Development Works Submissions and Project Development Process), for any Works Submittals identified in Sections 2.1, Contracting Authority may, in its sole discretion, provide its preliminary and draft feedback on any such Works Submittal to Project Co prior to providing Contracting Authority’s final and formal response, in concert with the applicable third party stakeholder, to such Works Submittal in accordance with Section 4 within the applicable timelines set out in this Schedule 10. For clarity, any such feedback provided by Contracting Authority on any such Works Submittal is non-binding, does not replace any final comment assigned to any such Works Submittal by Contracting Authority, and will not limit Contracting Authority’s right to delete such feedback or assign a different or alternative comment pursuant to Section 4. Such preliminary and draft feedback shall be clearly identified as “Preliminary and Draft”.

2.3 If, at any time,

- (a) Project Co submits an unusually large number or volume of Works Submittals not contemplated by the Baseline Works Schedule; or
- (b) a Works Submittal was, or Works Submittals were, received for review later than indicated in the Baseline Works Schedule, such that the Contracting Authority Representative cannot review the Works Submittal or Works Submittals within the time permitted in the Baseline Works Schedule,

then the Contracting Authority Representative shall, within five (5) Business Days following receipt of such Works Submittal or Works Submittals, provide Project Co with a reasonable estimate of the time necessary for processing such Works Submittal or Works Submittals.

2.4 If, pursuant to Sections 2.1(b), 2.1(c) or 2.1(e), Contracting Authority fails to notify Project Co that a Works Submittal is complete, or notifies Project Co that a Works Submittal is incomplete, within five (5) Business Days of receipt, such Works Submittal shall be deemed to have been assigned a “REVIEWED AS NOTED – MAJOR ISSUES” comment, and the provisions of this Schedule 10 relating to any Works Submittal that has been assigned a “REVIEWED AS NOTED – MAJOR ISSUES” comment shall apply.

2.5 Unless Contracting Authority advises otherwise and without prejudice to or limiting any right or obligation of a Party under this Agreement, the Parties shall schedule and Project Co shall provide to Contracting Authority a pre-submission of any particular Works Submittal for

Contracting Authority’s informal review and feedback prior to Project Co formally submitting such submittal for Contracting Authority’s approval or its review and comment pursuant to this Schedule 10, as required pursuant to this Agreement.

- 2.6 Without limiting any right or discretion of Contracting Authority or obligation of Project Co, in each case, under this Agreement (including under Schedule 2 – Development Works Submissions and Project Development Process and this Schedule 10), Contracting Authority shall provide collaborative and cooperative feedback on any pre-submissions of Works Submittals Contracting Authority receives pursuant to Section 2.5.

3. GENERAL REQUIREMENTS FOR WORKS SUBMITTALS

- 3.1 Unless otherwise specified by the Contracting Authority Representative,
- (a) Project Co shall issue an electronic copy in the format set out in Appendix A to this Schedule 10, or as prescribed by Contracting Authority acting reasonably, including an electronic copy in native file format if requested by the Contracting Authority Representative and one printed copy of each Works Submittal to the Independent Commissioning Agent; and
 - (b) Project Co shall issue three (3) printed copies of all COT Works Submittals, SPR Submittals and Works Submittals for the TTC to Contracting Authority together with an electronic copy in the format set out in Appendix B and Appendix C to this Schedule 10.
- 3.2 All Works Submittals shall be in English.
- 3.3 All Works Submittals required by this Agreement or by Applicable Law to be signed or sealed by persons with professional designations (including, where applicable, by Professional Engineers, professional geo-scientists or architects) shall be so signed and sealed.
- 3.4 All Works Submittals shall:
- (a) be in a form acceptable to Contracting Authority, acting reasonably;
 - (b) include copies of all documents to be reviewed; and
 - (c) clearly identify the purpose of the Works Submittal, Project Co’s proposed course of action relating to the Works Submittal and the Works that are the subject of the Works Submittal.
- 3.5 All Works Submittals shall, where applicable, refer to and be in accordance with:
- (a) the relevant provisions of the Output Specifications, the Construction Technical Requirements, any other applicable Schedule to this Agreement and to any Design Data that has previously been subject to review;
 - (b) the relevant provisions of Appendix A to this Schedule 10 for Design Development Submittals and Construction Document Submittals; and

- (c) the relevant issued for construction documents, copies of which shall be provided, promptly after issuance, to Contracting Authority.
- 3.6 Each Works Submittal shall be clearly identified as a Works Submittal and shall be delivered with appropriate covering documentation, submitted in both soft copy and hard copy which shall include a list of all attached Works Submittals and, for each Works Submittal:
- (a) identification of whether the Works Submittal is a Development Works Submittal;
 - (b) identification of the applicable design submission milestone;
 - (c) identification of whether the Works Submittal contains Project Co Infrastructure or New Third Party Infrastructure;
 - (d) identification of whether the COT Works Submittal or SPR Submittal has been submitted pursuant to Appendix B to this Schedule 10;
 - (e) identification of whether the Works Submittal for the TTC has been submitted pursuant to Appendix C to this Schedule 10;
 - (f) identification of whether the Works Submittal has been submitted pursuant to Appendix A to this Schedule 10;
 - (g) the document number(s) or drawing number(s);
 - (h) revision numbers;
 - (i) document or drawing title(s);
 - (j) name of entity that prepared the Works Submittal;
 - (k) name and signature of the Key Individual(s) responsible for content of the Works Submittal;
 - (l) the Works Submittal history, including reviewer and checker initials, date and delivery information, log number of all previous submissions of that Works Submittal, this Agreement’s provisions, comments from reviewers from the previous Works Submittal, all outstanding comments, and responses to addressing those comments, all submitted in a format determined by Contracting Authority; and
 - (m) identification of any previous Works Submittal superseded by the current Works Submittal.
- 3.7 To facilitate Contracting Authority’s distribution of Works Submittals to the City of Toronto and the TTC, all Works Submittals that are to be reviewed by the City of Toronto or the TTC, in accordance with Appendix B or Appendix C, as applicable, shall be separated accordingly and submitted individually, to the extent possible.

- 3.8 Each Works Submittal shall be organized and shall have indexes and sectional dividers. Each Works Submittal shall contain pertinent correspondence, shall be arranged by subject matter in chronological order, and shall include the final calculations, reports and backup information. All Works Submittals shall include copies of all final approvals by the applicable third party, design reports, correspondence and calculations, in both electronic and hard copy.
- 3.9 All Works Submittals shall include sufficient information to demonstrate that Project Co has met its obligations with respect to the Output Specifications and the Construction Technical Requirements, as applicable.

4. COMMENTS

- 4.1 The Contracting Authority Representative shall respond to each Works Submittal within the time periods set out in Section 2.1 by assigning one of the following comments and returning each Works Submittal to Project Co with a copy to the Independent Commissioning Agent:
- (a) “NO COMMENT”;
 - (b) “REVIEWED AS NOTED – MINOR ISSUES”; or
 - (c) “REVIEWED AS NOTED – MAJOR ISSUES”.
- 4.2 The Contracting Authority Representative shall assign a comment to each Works Submittal in accordance with the following rules:
- (a) The Contracting Authority Representative shall assign a “NO COMMENT” to each Works Submittal in which Contracting Authority has not identified any deficiencies or non-conformances during the course of its review of the Works Submittal.
 - (b) The Contracting Authority Representative shall assign a “REVIEWED AS NOTED – MINOR ISSUES” to each Works Submittal that, in the opinion of Contracting Authority, considering the totality of the Works Submittal, generally conforms to the requirements of this Agreement and any applicable Target Price Agreement, but contains one or more insignificant deficiencies or insignificant non-conformances. Contracting Authority shall provide reasons for the comment, with reference to the applicable Section(s) of this Agreement.
 - (c) The Contracting Authority Representative shall assign a “REVIEWED AS NOTED – MAJOR ISSUES” to each Works Submittal that, in the opinion of Contracting Authority, considering the totality of the Works Submittal, either or both does not generally conform to the requirements of this Agreement and any applicable Target Price Agreement, and/or contains one or more significant deficiencies or significant non-conformances. Contracting Authority shall provide reasons for the comment, with reference to the applicable Section(s) of this Agreement.

For the purposes of Contracting Authority’s review of the Development Works Submittals, any Change Request which have received “Concurrence In Principle” under Schedule 2 – Development Works Submissions and Project Development Process and any Consolidated Change Request

Submittal to which a “NO COMMENT” has been assigned shall be considered to be incorporated into the requirements of this Agreement and any applicable Target Price Agreement. Notwithstanding the foregoing, Contracting Authority reserves the right to direct changes to the requirements of this Agreement, any applicable Target Price Agreement, any Change Requests or the Design Data as part of the review by Contracting Authority of such Development Works Submittals.

- 4.3 Following receipt of a “REVIEWED AS NOTED – MINOR ISSUES” for a Works Submittal, Project Co shall correct the Works Submittal to ensure that the Works Submittal conforms to the requirements of this Agreement and any applicable Target Price Agreement prior to implementing the Works Submittal. If the Contracting Authority Representative assigns to a Works Submittal the additional comment “RE-SUBMIT”, Project Co shall correct and re-submit such Works Submittal to the Contracting Authority Representative,
- (a) no later than ten (10) Business Days after the comment has been provided to Project Co;
 - (b) within the time period set out in Schedule 12 – Works Schedule Requirements in the case of a resubmission of a Progress Works Schedule; or
 - (c) within such longer time period as the Contracting Authority Representative may agree in writing, acting reasonably, upon written request for additional time from the Project Co Representative.
- 4.4 If, a Works Submittal that has been assigned a “REVIEWED AS NOTED – MAJOR ISSUES” comment,
- (a) Project Co shall carry out the correction and re-submittal process set out in Section 4.3 until the Works Submittal has been assigned a “NO COMMENT” or a “REVIEWED AS NOTED – MINOR ISSUES”; and
 - (b) Project Co shall not implement any Works Submittal that has been assigned a “REVIEWED AS NOTED – MAJOR ISSUES” comment until Project Co has corrected such Works Submittal in accordance with this Section 4.
- 4.5 If, at any time, it is discovered that Project Co is advancing or has implemented a Works Submittal that has been assigned a “REVIEWED AS NOTED – MAJOR ISSUES” comment and that has not been corrected by Project Co in accordance with this Section 4, then Project Co shall be solely responsible for modifying and correcting the associated Works, including any Project Co Infrastructure or New Third Party Infrastructure, to ensure that the Works comply with this Agreement.
- 4.6 If, at any time after assigning a comment to a Works Submittal, Contracting Authority or Project Co discovers any deficiencies or any failure to conform to the requirements of this Agreement and any applicable Target Price Agreement, the Contracting Authority Representative may revise the comment assigned to any Works Submittal. If the Parties agree or if it is determined in accordance with Section 5 that the revised comment is correct, Project Co shall make all such corrections to the Works Submittals and the Works in accordance with this Section 4.

- 4.7 For the purpose of facilitating and expediting the review and correction of Works Submittals, the Contracting Authority Representative and the Project Co Representative shall meet as may be mutually agreed to discuss and review any outstanding Works Submittals and any comments thereon.
- 4.8 If a Works Submittal is voluminous, the Contracting Authority Representative at his or her discretion may elect to issue the appropriate comment only to the cover page or first sheet of the Works Submittal, if any, and return to Project Co the cover page or first page together with individual pages or sheets on which comments are made, together with an explanation of the status of all pages not returned to Project Co. Any pages returned without such an explanation as to their status shall be deemed to be “NO COMMENT” by Contracting Authority.
- 4.9 In lieu of returning a Works Submittal, the Contracting Authority Representative may, by letter, notify Project Co of the comment assigned to the Works Submittal and if such comment is a “REVIEWED AS NOTED – MINOR ISSUES” or a “REVIEWED AS NOTED – MAJOR ISSUES”, the letter shall contain comments in sufficient detail for Project Co to identify the correction sought.
- 4.10 Project Co shall perform the Works in accordance with Works Submittals that have been reviewed by Contracting Authority in accordance with this Schedule 10, provided that Project Co has corrected all deficiencies and non-conformances contained in such Works Submittals prior to implementation.
- 4.11 Prior to the commencement of any Works pursuant to a Works Submittal, issued for construction documents shall be provided, promptly after issuance, to Contracting Authority.
- 4.12 For clarity, no extension of time will be given or additional compensation paid with respect to any of the processes set out in this Section 4.

5. DISPUTES

- 5.1 If Project Co disputes any act of Contracting Authority or the Contracting Authority Representative in respect of a Works Submittal under Part A of this Schedule 10, Project Co shall promptly notify the Contracting Authority Representative, the CDB and the Independent Commissioning Agent of the details of such Dispute and shall submit the reasons why Project Co believes a different comment should be assigned, together with appropriate supporting documentation. The Contracting Authority Representative shall review the Works Submittal, the reasons and supporting documentation and within five (5) Business Days after receipt thereof shall either confirm the original comment or notify Project Co of a revised comment. If the Contracting Authority Representative confirms the original comment, Project Co may refer the matter for determination in accordance with Schedule 27 – Dispute Resolution Procedure.
- 5.2 Notwithstanding the provisions of Section 5.1, the Contracting Authority Representative may direct that Project Co revise the Works Submittals in accordance with the comments of the Contracting Authority Representative and proceed to perform and complete the Works on the basis of such revised Works Submittals. For clarity, Project Co may refer such direction for resolution as a Dispute in accordance with Schedule 27 – Dispute Resolution Procedure.

6. EFFECT OF REVIEW

6.1 Any review and comment by Contracting Authority or the Contracting Authority Representative of any Works Submittals are for general conformity (subject to and in accordance with Section 4.2) to the obligations and requirements of this Agreement and any such review and comment shall not relieve Project Co of the risk and responsibility for the Works and for meeting all of Project Co's obligations under and requirements of this Agreement, and shall not create any new or additional obligations or liabilities for Contracting Authority. Without limiting the generality of the foregoing any and all errors or omissions in Works Submittals or of any review and comment shall not exclude or limit Project Co's obligations or liabilities in respect of the Works under this Agreement or exclude or limit Contracting Authority's rights in respect of the Works under this Agreement.

7. WORKS SUBMITTAL EXPLANATION

7.1 At any time, the Contracting Authority Representative may, acting reasonably, require Project Co or any Project Co Parties, including Project Co's consultants and any other relevant personnel, to explain to the Contracting Authority Representative and Contracting Authority's advisors the intent of Project Co's Works Submittals, including in relation to any design and any associated documentation and as to its satisfaction of the Output Specifications, the Construction Technical Requirements or any other Schedule to this Agreement, as applicable. Project Co shall provide the explanation to the Contracting Authority Representative within five (5) Business Days (or such longer period as the Parties may agree) from the date of receipt of the request from the Contracting Authority Representative.

8. REVISIONS

8.1 Project Co shall ensure that Works Submittals keep the same, unique reference number throughout the review process, and that subsequent revisions of the same Works Submittal are identified by a sequential revision number. Correspondence related to such Works Submittal shall reference the reference number and revision number.

8.2 Re-submittals shall clearly show all revisions from the previous Works Submittal. For printed copies, bound documents, including reports and manuals, shall contain a preface that clearly states how revisions are marked and the previous revision number against which the revisions have been marked. Project Co shall use a consistent format for mark-ups of documents (for example, deletions struck out and additions underscored). Project Co shall clearly mark revised portions of drawings (with appropriate means to visually distinguish between the parts of the drawing that are revised and the parts that are not revised) and shall include the revision number and description of the revision on the drawing.

8.3 Re-submittals shall include all required revised documents, all documents submitted in the previous Works Submittal that do not require revisions and all responses to comments provided by Contracting Authority associated with the Works Submittal.

8.4 Project Co shall ensure that all revisions on print media be initialled by hand by the individual designer, design checker and, where applicable, by the drafter and the drafting checker and identify the persons who initialled the Works Submittal. Electronic versions of the Works Submittal shall

identify the persons who initialled the revisions to the printed version of the Works Submittal. All such revisions must be able to be integrated into the Record Drawings.

8.5 Project Co shall keep all Design Data current, including a current set of the most recently issued submittal documents available on Site in the construction trailer for use by Contracting Authority and the Contracting Authority Representative. Except as set out in Part B of this Schedule 10, if any Design Data is revised as part of a Works Submittal, all other Design Data relying on or based on that Design Data shall also be revised accordingly. All such revised Design Data shall also be submitted with the Works Submittal to which it relates.

8.6 Works Submittals that are replacements in kind shall keep the original submittal number with the next sequential revision number.

9. AUDIT OF WORKS SUBMITTAL IMPLEMENTATION

9.1 Without limiting any other right under this Agreement, the Contracting Authority Representative shall have the right to audit all Works Submittals, including comparing all Works Submittals to previous Works Submittals.

9.2 If during an audit or at any other time it is discovered by Contracting Authority or Project Co (or resolved pursuant to Section 9.3) that any Works Submittals were not correctly implemented, Project Co shall immediately take all necessary steps to correct and modify the applicable Works Submittals and the Works to which they relate and shall advise the Contracting Authority Representative of all such corrections and modifications.

9.3 Any Dispute concerning the implementation of a Works Submittal, subject to Section 5.1, shall be referred for resolution in accordance with Schedule 27 – Dispute Resolution Procedure.

10. VARIATIONS

10.1 No alteration or modification to the design, quality and quantity of the Works arising from the development of detailed design or from the co-ordination of the design in connection with any Works Submittal shall be construed or regarded as a Variation.

10.2 If, having received comments from the Contracting Authority Representative on any Works Submittal (other than a Consolidated Change Request Submittal), Project Co considers that compliance with those comments would amount to a Variation, Project Co shall, within fifteen (15) Business Days following receipt of and before complying with the comments, provide written Notice to Contracting Authority of the same and, if it is agreed by the Parties that a Variation would arise if the comments were complied with, Contracting Authority may, at their election,

(a) issue a Variation Enquiry (and it shall be dealt with in accordance with Schedule 22 – Estimates, Variations and Proposals); or

(b) amend their comment on the Works Submittal.

If the Parties do not agree that a Variation would arise if the comments were complied with, either Party may proceed to resolve the matter in accordance with Section 5.2, including for clarity, the

exercise by Contracting Authority of its rights under Section 5.2. Subject to the foregoing sentence, any failure by Project Co to notify Contracting Authority in accordance with this Section 10.2 that Project Co considers that compliance with any comments of the Contracting Authority Representative would amount to a Variation shall constitute an irrevocable acceptance by Project Co that any compliance with the Contracting Authority Representative’s comments shall be without cost to Contracting Authority and without any extension of time.

11. INTEGRATION WORKS SUBMITTAL REVIEW PROCEDURE

- 11.1 The following additional provisions shall apply to the Works Submittals of Project Co designated in Appendix A to this Schedule 10, which Contracting Authority intends to provide to RSSOM Project Co to be reviewed for integration purposes (“**Integration Works Submittals**”, and each an “**Integration Works Submittal**”), including any further Works Submittals referred to in or arising from, all items and documents set out in, and any subsequent revisions, amendments and changes to such Integration Works Submittals.
- 11.2 Each Integration Works Submittal shall:
- (a) reference any provisions set out in Schedule 45 – Integration with RSSOM Project, which Project Co considers relevant to Contracting Authority’s review of such Integration Works Submittal; and
 - (b) set out any amendments to be made to the Output Specifications and the Construction Technical Requirements, as applicable, pursuant to Section 11.8 if such Integration Works Submittal is finalized as submitted and assigned a “NO COMMENT” by Contracting Authority in accordance with Section 11.8, without limiting the amendments that will be deemed to be made pursuant to Section 11.8; and
 - (c) specify the requirements which Project Co will incorporate into RSSOM Project Co’s Requirements Management database, pursuant to Section 11.14 if such Integration Works Submittal is finalized as submitted and assigned a “NO COMMENT” by Contracting Authority.
- 11.3 Each Integration Works Submittal shall be clearly identified as an Integration Works Submittal and shall be delivered with appropriate covering documentation, submitted in both soft copy and hard copy. All Integration Works Submittals shall be separated accordingly and submitted individually, to the extent possible.
- 11.4 Project Co acknowledges and agrees that Contracting Authority may provide Integration Works Submittals in confidence to RSSOM Project Co for review and take any comments made by RSSOM Project Co into account in determining Contracting Authority’s response to such Integration Works Submittals.
- 11.5 Each Integration Works Submittal shall be submitted no later than the date specified for such Integration Works Submittal in the Baseline Works Schedule or deemed to be included in the Baseline Works Schedule, pursuant to the Interface Control Documents and other Integration Works Submittals, after a “NO COMMENT” has been assigned by Contracting Authority.

- 11.6 Nothing in this Section 11 limits the obligations of Project Co to participate in Design Review Meetings under Schedule 19 – Governance, Meetings and Progress Reporting or to participate in the Design Integration Working Group and the Construction Integration Working Group, prior to the commencement and until the completion of the review of each Integration Works Submittal, for the purpose of facilitating and expediting the review of such Integration Works Submittal by Contracting Authority and by RSSOM Project Co.
- 11.7 Project Co shall continue to submit each Integration Works Submittal for review by Contracting Authority until a “NO COMMENT” has been assigned to such Integration Works Submittal by Contracting Authority or it is determined, pursuant to the Dispute Resolution Procedure, that a “NO COMMENT” should have been assigned to the applicable Integration Works Submittal.
- 11.8 The then current requirements of Schedule 12 – Works Schedule Requirements, the Output Specifications and the Construction Technical Requirements, as applicable, and any other applicable requirements of this Agreement (as they may have been previously amended or changed pursuant to this Agreement, including the provisions of this Section 11 or Schedule 22 – Estimates, Variations and Proposals) shall be deemed to be amended consistent with each Integration Works Submittal to which a “NO COMMENT” has been assigned, without cost to Contracting Authority and without any extension of time. Each such Integration Works Submittal shall be deemed to form part of the Output Specifications and the Construction Technical Requirements, as applicable, and, in the event of any ambiguity, conflict or inconsistency between the provisions of any such Integration Works Submittal and the Output Specifications and the Construction Technical Requirements, as applicable, the provisions of such Integration Works Submittal shall govern to the extent of such ambiguity, conflict or inconsistency.
- 11.9 Section 11.8 shall not apply (and Contracting Authority shall not be bound by its provisions) to the extent that any Integration Works Submittal to which a “NO COMMENT” has been assigned was not in conformity with, or was outside the scope of, the requirements of Schedule 12 – Works Schedule Requirements, the Output Specifications, the Construction Technical Requirements or any other applicable requirements of this Agreement as of the date the applicable Integration Works Submittal was submitted.
- 11.10 Project Co may dispute any failure of Contracting Authority to assign a “NO COMMENT” to an Integration Works Submittal pursuant to Section 5.1 of this Part A of this Schedule 10 on the basis that such Integration Works Submittal satisfies the applicable requirements of Schedule 45 – Integration with RSSOM Project.
- 11.11 If Project Co disputes any failure of Contracting Authority to assign a “NO COMMENT” to an Integration Works Submittal pursuant to Section 5.1 of this Part A of this Schedule 10, the Contracting Authority Representative shall have five (5) Business Days in addition to the period set out in Section 5.1 to review the Integration Works Submittal, the reasons and supporting documentation provided by Project Co, and Contracting Authority may, in its sole discretion, request RSSOM Project Co to participate in any such review. Within a total of ten (10) Business Days after receipt of such Project Co dispute, Contracting Authority shall either assign a “NO COMMENT” or continue to withhold the assignment of a “NO COMMENT”. If the Contracting Authority Representative continues to withhold the assignment of a “NO COMMENT”, Project Co may refer the failure of Contracting Authority to assign a “NO COMMENT” to such Integration

Works Submittal for determination pursuant to Section 5.1, provided that any such Dispute may be designated as an Integration Dispute and decided in accordance with the Integration Dispute Resolution Procedure pursuant to the RSSOM Interface Agreement, including where such Dispute arises from a comment made by RSSOM Project Co.

- 11.12 Any Dispute pursuant to Section 5.2 of this Part A of this Schedule 10 with respect to an Integration Works Submittal may be designated as an Integration Dispute and decided in accordance with the Integration Dispute Resolution Procedure pursuant to the RSSOM Interface Agreement, including where such Dispute arises from a comment made by RSSOM Project Co.
- 11.13 Without limiting any other rights of Contracting Authority under Schedule 22 – Estimates, Variations and Proposals, Contracting Authority may at any time, in its sole discretion, initiate a Variation and require Project Co to execute a Variation Confirmation or issue or a Variation Directive confirming the manner in which the requirements of the applicable RSSOM Infrastructure Technical Specifications and Critical RSSOM Infrastructure Data are deemed to have been amended pursuant to Section 11.8, without cost to Contracting Authority and without any extension of time.
- 11.14 For any Integration Works Submittal to which a “NO COMMENT” has been assigned which has been deemed to amend the then current requirements of Schedule 12 – Works Schedule Requirements, the Output Specifications, the Construction Technical Requirements or any other applicable requirements of this Agreement (as they may have been previously amended or changed pursuant to this Agreement) pursuant to Section 11.8, Project Co shall promptly cause to be incorporated into RSSOM Project Co’s Requirements Management database any requirements specified in such Integration Works Submittal in accordance with Section 11.2(c), including details with respect to the manner in which the requirements of this Agreement have been deemed to be amended.
- 11.15 In addition to Integration Works Submittals, Contracting Authority may provide other Works Submittals to RSSOM Project Co to be reviewed for integration purposes, including the following Items in Appendix A to this Schedule 10:
- (a) **[REDACTED]**
- 11.16 Contracting Authority may take into account any comments received from RSSOM Project Co in determining Contracting Authority’s response to any Works Submittals.
- 11.17 Without limitation, Contracting Authority may assign a “REVIEWED AS NOTED – MAJOR ISSUES” to any Works Submittal which will have a material adverse impact on RSSOM Project Infrastructure or the successful integration of the Ontario Line Subway System.

12. GENERAL

- 12.1 Any capitalized terms used in the appendices to this Schedule 10, that are not defined in this Schedule 10 or in Schedule 1 – Definitions and Interpretation, shall have the meanings given to them in the Output Specifications, the Construction Technical Requirements or Schedule 17 – Environmental Obligations.

PART B – CONSOLIDATED CHANGE REQUEST SUBMITTAL REVIEW PROCEDURE

1. CONSOLIDATED CHANGE REQUEST SUBMITTAL REVIEW PROCEDURE

- 1.1 The following additional provisions shall apply in respect of those Works Submittals relating to TPA Works requirements that are identified in Appendix A of this Schedule 10 (the “**Consolidated Change Request Submittals**”, and each a “**Consolidated Change Request Submittal**”).
- 1.2 On or before the Second Development Phase Lockdown Date and each TPA Development Phase Lockdown Date identified under Schedule 2 – Development Works Submissions and Project Development Process, Project Co shall submit a Consolidated Change Request Submittal that:
- (a) consolidates all Change Requests that have received “Concurrence In Principle” under Schedule 2 – Development Works Submissions and Project Development Process since:
 - (i) the DMCA Effective Date, in the case of the Second Development Phase Lockdown Date;
 - (ii) the Second Development Phase Lockdown Date, in the case of the first TPA Development Phase Lockdown Date; and
 - (iii) the prior TPA Development Phase Lockdown Date, in the case of each subsequent TPA Development Phase Lockdown Date;
 - (b) is consistent with the then current Requirements Management database;
 - (c) includes any revisions to the requirements of this Agreement that would be necessary to incorporate the deviations identified in such Change Requests; and
 - (d) includes any additional information reasonably required by Contracting Authority to verify alignment between the Design Data and the requirements of this Agreement.
- 1.3 The Contracting Authority Representative shall respond to each Consolidated Change Request Submittals set out in Sections 4.1 and 4.2 of Part A of this Schedule 10, provided that the Change Requests which have received “Concurrence In Principle” under Schedule 2 – Development Works Submissions and Project Development Process shall be considered to be incorporated into the requirements of this Agreement for the purposes of this review. Notwithstanding the foregoing, Contracting Authority reserves the right to direct changes to the requirements of this Agreement, any Change Requests or the Design Data as part of the review by Contracting Authority of Consolidated Change Request Submittals. The other provisions of Section 4 of Part A of this Schedule 10 shall not apply to this review.
- 1.4 Following a Consolidated Change Request Submittal to which a “NO COMMENT” has been assigned, Contracting Authority shall be entitled to issue, and Project Co shall execute and deliver, a no-cost Development Variation Confirmation or DMCA Variation Confirmation, as applicable, to amend the then current requirements of this Agreement (as they may have been previously amended or changed pursuant to this Agreement, including the provisions of this Part B of this Schedule 10) consistent with such Consolidated Change Request Submittal, and the relevant

provisions of Schedule 22 – Estimates, Variations and Proposals shall apply except that Project Co shall not be entitled to any payment or other compensation or relief from the performance of its obligations under this Agreement as a result of any such Development Variation Confirmation or DMCA Variation Confirmation.

- 1.5 Section 1.4 of this Part B of this Schedule 10 shall not apply (and Contracting Authority shall not be bound by its provisions) except in respect and to the extent of the deviations identified in any Consolidated Change Request Submittal to which a “NO COMMENT” has been assigned.
- 1.6 Project Co shall ensure that any requirements specified in a Consolidated Change Request Submittal to which a “NO COMMENT” has been assigned are incorporated into the Requirements Management database.
- 1.7 Project Co shall not submit any Consolidated Change Request Submittal that contains a deviation which has not received “Concurrence In Principle” under Schedule 2 – Development Works Submissions and Project Development Process.
- 1.8 If, at any time after assigning a “NO COMMENT” to a Consolidated Change Request Submittal, Contracting Authority or Project Co discovers any failure to identify relevant deviations, the Contracting Authority Representative may revise the comment assigned to such Consolidated Change Request Submittal.
- 1.9 Following receipt of a “REVIEWED AS NOTED – MINOR ISSUES” or a “REVIEWED AS NOTED – MAJOR ISSUES” for a Consolidated Change Request Submittal, Project Co shall correct all issues noted prior to the Second Development Phase Lockdown Date or the applicable TPA Development Phase Lockdown Date and shall include such corrections in Project Co’s next Consolidated Change Request Submittal.
- 1.10 Each Consolidated Change Request Submittal shall be clearly identified as a Consolidated Change Request Submittal and shall be delivered with appropriate covering documentation, submitted in both soft copy and hard copy.
- 1.11 If a Consolidated Change Request Submittal is voluminous, the Contracting Authority Representative at his or her discretion may elect to issue the appropriate comment only to the cover page or first sheet of the Consolidated Change Request Submittal, if any, and return to Project Co the cover page or first page together with individual pages or sheets on which comments are made, together with an explanation of the status of all pages not returned to Project Co. Any pages returned without such an explanation as to their status shall be deemed to be “NO COMMENT” by Contracting Authority.
- 1.12 Project Co acknowledges and agrees that Contracting Authority may provide any Consolidated Change Request Submittal, or any component thereof, in confidence to RSSOM Project Co, the City of Toronto and the TTC, as applicable, for review and take their respective comments into account in determining Contracting Authority’s response to any Consolidated Change Request Submittal.
- 1.13 Without limitation, Contracting Authority may assign a “REVIEWED AS NOTED – MAJOR ISSUES” to any component of a Consolidated Change Request Submittal which will have a

material adverse impact on RSSOM Project Infrastructure or the successful integration of the Ontario Line Subway System.

- 1.14 For the purpose of facilitating and expediting the review and correction of Consolidated Change Request Submittals, the Contracting Authority Representative and the Project Co Representative shall meet as may be mutually agreed to discuss and review any such Consolidated Change Request Submittals and any comments thereon.
- 1.15 Nothing in this Part B of this Schedule 10 limits the obligations of Project Co to follow the procedures and processes contemplated under Schedule 2 – Development Works Submissions and Project Development Process.

PART C – REVIEW OF RSSOM INFRASTRUCTURE DESIGN AND CONSTRUCTION DATA

1. RSSOM INFRASTRUCTURE WORKS SUBMITTALS

1.1 The review procedure set out in this Part C of this Schedule 10 (“**RSSOM Infrastructure Works Submittal Review Procedure**”) shall apply to the review by Project Co of the items and documents set out in Appendix D to this Schedule 10 to be prepared by RSSOM Project Co and provided to Project Co by Contracting Authority and includes any and all subsequent revisions, amendments and changes thereto (“**RSSOM Infrastructure Works Submittals**”) for the purpose of providing comments to Contracting Authority on the conformity between such RSSOM Infrastructure Works Submittals and the requirements for the applicable Critical RSSOM Infrastructure Works to be Built to Specification and Design in accordance with Schedule 45 – Integration with RSSOM Project.

2. SCHEDULE FOR RSSOM INFRASTRUCTURE WORKS SUBMITTALS

2.1 Contracting Authority shall provide each RSSOM Infrastructure Works Submittal not later than the applicable date set out in Appendix D of this Schedule 10, and Project Co shall include all such dates in the Baseline Works Schedule.

2.2 The Baseline Works Schedule shall allow a period of twenty (20) Business Days from the date of receipt by Project Co for Project Co’s review of and response to each RSSOM Infrastructure Works Submittal.

2.3 Contracting Authority may, at any time and in its sole discretion, extend the time for Project Co to review any RSSOM Infrastructure Works Submittal, and Project Co shall complete its review within such time. For clarity, Project Co shall not be entitled to any claims for additional costs or delay in respect of an extension of time for review of any RSSOM Infrastructure Works Submittals pursuant to this Section 2.3 of this Part C of this Schedule 10.

3. GENERAL REQUIREMENTS FOR RSSOM INFRASTRUCTURE WORKS SUBMITTALS

3.1 Unless otherwise specified by the Contracting Authority Representative, Contracting Authority shall provide the following to Project Co in respect of each RSSOM Infrastructure Works Submittal.

3.2 All RSSOM Infrastructure Works Submittals shall be in English.

3.3 All RSSOM Infrastructure Works Submittals shall:

- (a) include copies of all documents to be reviewed by Project Co that are received by Contracting Authority from RSSOM Project Co; and
- (b) clearly identify the RSSOM Infrastructure Works Submittal that is the subject of the review.

4. COMMENTS

- 4.1 The Project Co Representative shall respond to each RSSOM Infrastructure Works Submittal within the time period set out in Section 2 of this Part C of this Schedule 10 by assigning one of the following comments and returning such RSSOM Infrastructure Works Submittal to Contracting Authority:
- (a) “NO COMMENT”; or
 - (b) “REVIEWED AS NOTED”.
- 4.2 The Project Co Representative shall assign a comment to each RSSOM Infrastructure Works Submittal in accordance with the following rules:
- (a) The Project Co Representative shall assign a “NO COMMENT” to each RSSOM Infrastructure Works Submittal in which Project Co has not identified any deficiency or non-conformance which, in the opinion of Project Co, would result in the applicable Critical RSSOM Infrastructure Works not being Built to Specification and Design if such Critical RSSOM Infrastructure Works are built in accordance with such RSSOM Infrastructure Works Submittal (“**BSD Non-Conformance**”).
 - (b) The Project Co Representative shall assign a “REVIEWED AS NOTED” to each RSSOM Infrastructure Works Submittal that, in the opinion of Project Co, contains one or more BSD Non-Conformances. Project Co shall:
 - (i) provide reasons for the comment, including the changes that would be required in such RSSOM Infrastructure Works Submittal to remove such BSD Non-Conformances, with specific reference to the applicable requirements of Schedule 45 – Integration with RSSOM Project of this Agreement, including the applicable RSSOM Infrastructure Technical Specifications and Critical RSSOM Infrastructure Data; and
 - (ii) set out any changes which Project Co considers necessary to the applicable RSSOM Infrastructure Technical Specifications and Critical RSSOM Infrastructure Data, in the event that changes are not made to such RSSOM Infrastructure Works Submittal.
- 4.3 Project Co acknowledges and agrees that Contracting Authority may provide any comments received from Project Co to RSSOM Project Co for review and take any comments made by RSSOM Project Co into account in determining Contracting Authority’s response to Project Co.
- 4.4 Following receipt of a “REVIEWED AS NOTED” for a RSSOM Infrastructure Works Submittal, Contracting Authority may re-submit such RSSOM Infrastructure Works Submittal to the Project Co Representative with revisions, amendments or changes thereto,
- (a) no later than thirty (30) Business Days after the comment was provided to Contracting Authority; or

- (b) within such longer time period as the Contracting Authority Representative may determine, acting reasonably, and set out by Notice in writing.
- 4.5 Contracting Authority may continue the re-submittal process set out in Section 4.4 of this Part C of this Schedule 10 for any RSSOM Infrastructure Works Submittal, in Contracting Authority’s sole discretion, and Project Co shall continue to respond to each such re-submittal in accordance with Sections 4.1 and 4.2 of this Part C of this Schedule 10.
- 4.6 Nothing in this RSSOM Infrastructure Works Submittal Review Procedure limits the obligations of Project Co to participate in the Construction Integration Working Group and the Design Integration Working Group, as required by the RSSOM Interface Agreement, prior to the commencement and until the completion of the RSSOM Infrastructure Works Submittal Review Procedure for each RSSOM Infrastructure Works Submittal, for the purpose of facilitating and expediting the review of RSSOM Infrastructure Works Submittals. The Contracting Authority Representative and the Project Co Representative shall also meet, as may be mutually agreed, to discuss and review any outstanding RSSOM Infrastructure Works Submittals and any comments thereon.
- 4.7 If a RSSOM Infrastructure Works Submittal is voluminous, the Project Co Representative may, with the consent of the Contracting Authority Representative, issue the appropriate comment only to the cover page or first sheet of the RSSOM Infrastructure Works Submittal, if any, and return to Contracting Authority the cover page or first page together with individual pages or sheets on which comments are made. Any pages returned without comments shall be deemed to be a “NO COMMENT” by Project Co.
- 4.8 In lieu of returning a RSSOM Infrastructure Works Submittal, the Project Co Representative may, by letter, notify Contracting Authority of the comment assigned to the RSSOM Infrastructure Works Submittal and if such comment is a “REVIEWED AS NOTED”, the letter shall contain comments in sufficient detail for Contracting Authority to identify the information required pursuant to Section 4.2 of this Part C of this Schedule 10.
- 4.9 For clarity, no extension of time will be given or additional compensation paid with respect to any of the processes set out in this Section 4 of this Part C of this Schedule 10.
- 4.10 If the Project Co Representative fails to respond to a RSSOM Infrastructure Works Submittal in accordance with this RSSOM Infrastructure Works Submittal Review Procedure within the time period set out in Section 2 of this Part C of this Schedule 10, such RSSOM Infrastructure Works Submittal shall be deemed to be assigned a “NO COMMENT”. Such deemed assignment of a “NO COMMENT” to a RSSOM Infrastructure Works Submittal shall be final and not subject to the Dispute Resolution Procedure.
- 5. DISPUTES**
- 5.1 Contracting Authority, in its sole discretion, may refuse to accept any “REVIEWED AS NOTED” comment assigned by the Project Co Representative in respect of any RSSOM Infrastructure Works Submittal and give written Notice to Project Co that such RSSOM Infrastructure Works Submittal is deemed to be assigned a “NO COMMENT”.

- 5.2 Within ten (10) Business Days after receipt of such Notice from Contracting Authority, Project Co may refer the matter for determination in accordance with Schedule 27 – Dispute Resolution Procedure, provided that any such Dispute may be designated as an Integration Dispute and decided in accordance with the Integration Dispute Resolution Procedure pursuant to the RSSOM Interface Agreement.
- 5.3 Any failure by Project Co to Dispute deemed assignment of a “NO COMMENT” to a RSSOM Infrastructure Works Submittal shall constitute an irrevocable acceptance by Project Co that such RSSOM Infrastructure Works Submittal contains no BSD Non-Conformances and that compliance with such RSSOM Infrastructure Works Submittal shall be without cost to Contracting Authority and without any extension of time.
- 6. EFFECT OF REVIEW OF RSSOM INFRASTRUCTURE WORKS SUBMITTALS**
- 6.1 For RSSOM Infrastructure Works Submittal Items set out in Table D-1 of Appendix D to this Schedule 10, upon completion of this RSSOM Infrastructure Works Submittal Review Procedure for a RSSOM Infrastructure Works Submittal, the assignment or deemed assignment of a “NO COMMENT” for such RSSOM Infrastructure Works Submittal by the Project Co Representative or pursuant to a Dispute under Section 5 of this Part C of this Schedule 10 shall constitute an irrevocable acceptance by Project Co that:
- (a) the applicable RSSOM Infrastructure Technical Specifications and Critical RSSOM Infrastructure Data shall be deemed to be amended consistent with such RSSOM Infrastructure Works Submittal, without cost to Contracting Authority and without any extension of time;
 - (b) such RSSOM Infrastructure Works Submittal shall be deemed to form part of the RSSOM Infrastructure Technical Specifications and Critical RSSOM Infrastructure Data and, in the event of any ambiguity, conflict or inconsistency between the provisions of any such RSSOM Infrastructure Works Submittal and the RSSOM Infrastructure Technical Specifications and Critical RSSOM Infrastructure Data, the provisions of such RSSOM Infrastructure Works Submittal shall govern to the extent of such ambiguity, conflict or inconsistency;
 - (c) such amended RSSOM Infrastructure Technical Specifications and Critical RSSOM Infrastructure Data shall apply for the purposes of any Dispute by Project Co under Schedule 45 – Integration with RSSOM Project, including any Dispute as to whether the applicable Critical RSSOM Infrastructure Works, is Built to Specification and Design, and Project Co shall not be entitled to claim in any such Dispute that such RSSOM Infrastructure Works Submittal contained BSD Non-Conformances; and
 - (d) Project Co shall be required to perform the Works on the basis that the definition of Built to Specification and Design has been amended, and the RSSOM Infrastructure Technical Specifications and Critical RSSOM Infrastructure Data have been modified, in accordance with such RSSOM Infrastructure Works Submittal.
- 6.2 Section 6.1 of this Part C of this Schedule 10 shall not apply (and the Parties shall not be bound by its provisions) to the extent that any RSSOM Infrastructure Works Submittal was not in conformity

with or was outside the scope of the requirements of the RSSOM Infrastructure Technical Specifications and Critical RSSOM Infrastructure Data, as of date the applicable RSSOM Infrastructure Works Submittal was submitted.

6.3 For RSSOM Infrastructure Works Submittal Items set out in Table D-2 of Appendix D to this Schedule 10 only:

(a) Sections 4.2, 5.3, 6.1 and 8.2 of this RSSOM Infrastructure Works Submittal Review Procedure shall not apply.

(b) Without limiting any other rights or obligations of Project Co under this Agreement, including Schedule 45 – Integration with RSSOM Project, Project Co shall review such RSSOM Infrastructure Works Submittals for the purposes of identifying the following for Contracting Authority’s consideration:

(i) any conflicts or inconsistencies between such RSSOM Infrastructure Works Submittal and,

(A) any RSSOM Infrastructure Works Submittal Item set out in Table D-1 of Appendix D to this Schedule 10; or

(B) any other RSSOM Infrastructure Works Submittal Item set out in Table D-2 of Appendix D to this Schedule 10,

to which a “NO COMMENT” has been assigned or deemed to be assigned; and

(ii) any material adverse impacts which the implementation of such RSSOM Infrastructure Works Submittal could have on:

(A) Project Co Infrastructure or New Third Party Infrastructure;

(B) the successful integration of the Ontario Line Subway System; or

(C) the ability of Project Co to perform the Works.

(c) The Project Co Representative shall assign a comment to such RSSOM Infrastructure Works Submittals in accordance with the following rules:

(i) the Project Co Representative shall assign a “NO COMMENT” to each RSSOM Infrastructure Works Submittal in which Project Co has not identified any concerns pursuant to Section 6.3(b) of this RSSOM Infrastructure Works Submittal Review Procedure; and

(ii) the Project Co Representative shall assign a “REVIEWED AS NOTED” to each RSSOM Infrastructure Works Submittal in which Project Co has identified any concerns pursuant to Section 6.3(b) of this RSSOM Infrastructure Works Submittal Review Procedure and shall:

- (A) provide reasons for the comment;
- (B) include any changes that would be required in such RSSOM Infrastructure Works Submittal to address the concerns that Project Co has identified pursuant to Section 6.3(b) of this RSSOM Infrastructure Works Submittal Review Procedure, with specific reference to any applicable requirements of Schedule 45 – Integration with RSSOM Project, including the applicable RSSOM Infrastructure Technical Specifications and Critical RSSOM Infrastructure Data; and
- (C) set out any changes which Project Co considers necessary to the applicable RSSOM Infrastructure Technical Specifications or Critical RSSOM Infrastructure Data in the event that changes are not made to such RSSOM Infrastructure Works Submittal.

7. ADDITIONAL INFORMATION

- 7.1 At any time, the Project Co Representative may request Contracting Authority to provide further information as to the intent of a RSSOM Infrastructure Works Submittal, including in relation to any requirements of Schedule 45 – Integration with RSSOM Project, as applicable. Contracting Authority may provide such explanation to the Project Co’s Representative (directly or in concert with RSSOM Project Co) in Contracting Authority’s sole discretion.
- 7.2 At any time, the Contracting Authority Representative may, acting reasonably, require Project Co or any Project Co Parties, including Project Co’s consultants and any other relevant personnel, at no additional cost to Contracting Authority, to explain to the Contracting Authority Representative and Contracting Authority’s advisors the intent of Project Co’s comments on RSSOM Infrastructure Works Submittals, including in relation to any requirements of Schedule 45 – Integration with RSSOM Project, as applicable. Within five (5) Business Days (or such longer period as the Parties may agree) from the date of receipt of such request from the Contracting Authority Representative, Project Co shall provide such explanation to the Contracting Authority Representative (which may be shared with RSSOM Project Co, in Contracting Authority’s sole discretion).

8. VARIATIONS

- 8.1 Project Co shall not be entitled to any Variation in connection with RSSOM Infrastructure Works Submittals to which Project Co or the Project Co Representative has assigned or is deemed to have assigned a “NO COMMENT” and no alteration or modification to the design, quality and quantity of the Works arising from the development of detailed design or from the co-ordination of the design in connection with any such RSSOM Infrastructure Works Submittal shall be construed or regarded as a Variation.
- 8.2 To the extent that it is determined pursuant to a Dispute under Section 5 of this Part C of this Schedule 10 that any RSSOM Infrastructure Works Submittal contains a BSD Non-Conformance, Project Co shall be entitled to a Variation subject to and in accordance with Schedule 22 – Estimates, Variations and Proposals unless Contracting Authority withdraws such RSSOM Infrastructure Works Submittal, in its sole discretion.

9. GENERAL

9.1 Except as expressly set out herein, nothing in this Part C of this Schedule 10 shall modify any of the obligations or rights of the Parties under this Agreement.

APPENDIX A TO SCHEDULE 10

MINIMUM WORKS SUBMITTALS

1. FORMAT FOR WORKS SUBMITTALS

1.1 The following is a breakdown of the contents of each Works Submittal as well as the format for each. Project Co shall submit each Works Submittal in accordance with the following:

- (a) all Works Submittals shall be submitted in an electronic copy;
- (b) large format drawings (ANSI D size) shall be provided separately (bound) in reduced format (11” x 17”), and included in a 3-hole ring binders. Unless otherwise noted below under the heading “Format”, all drawings shall be provided in half size format. All other Works Submittals that are not drawings shall be submitted in 8.5” x 11” black and white format, unless otherwise specifically noted below;
- (c) all Works Submittals shall be uploaded to Contracting Authority’s Common Data Environment (CDE);
- (d) all Works Submittals shall be forwarded to Contracting Authority at the same time that the Works Submittals are uploaded to Contracting Authority’s Common Data Environment (CDE); and
- (e) All Works Submittals shall be provided in accordance with Appendix W – Exchange Information Requirements (EIR) to the Output Specifications.

1.2 All Works Submittals shall also be provided in the format and Works Submittals breakdown set out in Section 2 of this Appendix A.

2. SUBMITTALS

2.1 The following is a detailed list of the minimum Works Submittals that Project Co is required to provide to Contracting Authority for review and comment in accordance with this Schedule 10. Each Works Submittals shall be delivered with appropriate covering documentation in the format set out in Section 3.6 of Part A of this Schedule 10.

Prefix:

I/S – Works Submittal

2.2 Additional Works Submittals may be requested by the Contracting Authority Representative at any time in order to understand the Works, and Project Co shall be required to provide same to Contracting Authority for review in accordance with this Schedule 10. A description of the minimum content of each Works Submittal provided is set out in this Section 2 of this Appendix A.

2.3 Works Submittal deliverables that are applicable to satisfying the requirements of multiple Works Submittal items are permitted to be re-used in other Works Submittals, provided that such re-used deliverables meet all the requirements of each Works Submittal item they are applied to.

[REDACTED]

ATTACHMENT 1 TO APPENDIX A
SAMPLE DESIGN CERTIFICATES

Certificate Ref No. []

DESIGN CERTIFICATE (GENERAL)

In respect of: **[Provide submittal details]**

Development and Master Construction Agreement between Contracting Authority and Project Co dated XX, XXXX (“the Development and Master Construction Agreement”) relating to the Project. Defined terms and expressions used in the Development and Master Construction Agreement have the same meanings in this Certificate.

Form of Certificate to be used by the Design Team for certifying the design of the Works in accordance with the Output Specifications.

1. We certify that we have the requisite professional qualifications, skill and experience to prepare the Design Data referred to herein in accordance with the requirements of the Development and Master Construction Agreement and all relevant Output Specifications.
2. We certify that we have prepared the Design Data for [.....] listed in the Schedule hereto in accordance with all applicable requirements contained in the **[Design Quality Management Plan]** and utilizing the standards of care, skill and diligence that, in accordance with the standards of our profession, are required of experienced professionals undertaking the preparation of such Design Data, and that in our professional opinion such Design Data:
 - (a) complies with all applicable Output Specifications, as amended by the following:
 - (i) **[List, if any, the changes made by the issue of Variation(s)]**;
 - (b) complies with all applicable design requirements of the Development and Master Construction Agreement;
 - (c) complies with all applicable standards, codes and current Good Industry Practice; and
 - (d) accurately describes and depicts the Works to be undertaken.

SCHEDULE

[Include here drawing numbers and titles, reports, calculations, etc.]

Certified by:

Design Team (Principal)

Name:

Title:

Date:

Professional Registration Number:

Affix Professional Seal

Signed:

Project Co Representative

Name:

Date:

This Certificate is:

- i. No Comment*
- ii. Reviewed as Noted – Minor Issues*
- iii. Reviewed as Noted – Major Issues*

* delete as appropriate

Signed:

Contracting Authority Representative

Name:

Date:

Certificate Ref No. []

DESIGN CERTIFICATE (ENVIRONMENTAL)

Development and Master Construction Agreement between Contracting Authority and Project Co dated XX XX, XXXX (“the Development and Master Construction Agreement”) relating to the Project. Defined terms and expressions used in the Development and Master Construction Agreement have the same meanings in this Certificate.

Form of certificate to be used by the Design Team and the Environmental Director for certifying the design of environmental works incorporated in the Works in accordance with the Development and Master Construction Agreement.

1. We certify that we have the requisite professional qualifications, skill and experience to prepare the Design Data referred to herein in accordance with the requirements of the Development and Master Construction Agreement and all relevant Output Specifications.
2. We certify that we have prepared the Design Data for [.....] **[Name and list of all elements of the environmental works]** in the Schedule hereto in accordance with all applicable requirements contained in the **[Design Quality Management Plan]** and utilizing the standards of care, skill and diligence that, in accordance with the standards of our profession, are required of experienced professionals undertaking the preparation of such Design Data, and that in our professional opinion:
 - (a) the said Design Data complies with all applicable Output Specifications, as amended by the following:
 - (i) **[List, if any, the changes made by the issue of Variation(s)]**;
 - (b) the said Design Data complies with all applicable design requirements of the Development and Master Construction Agreement;
 - (c) the said Design Data complies with all applicable standards, codes and current Good Industry Practice; and

the said Design Data accurately describes and depicts the Works to be undertaken.

SCHEDULE

[Include here drawing numbers and titles and reports, calculations, etc.]

Certified by:

Design Team (Principal)

Name:

Title:

Date:

Professional Registration Number:

Affix Professional Seal

Signed:

Environmental Director

Name:

Title:

Date:

Professional Registration Number:

Affix Professional Seal

This Certificate is:

- i. No Comment*
- ii. Reviewed as Noted – Minor Issues*
- iii. Reviewed as Noted – Major Issues*

* delete as appropriate

Signed:

Contracting Authority Representative

Name:

Date:

ATTACHMENT 2 TO APPENDIX A
SAMPLE CONSTRUCTION CERTIFICATE

Certificate Ref No. []

CONSTRUCTION CERTIFICATE

Development and Master Construction Agreement between Contracting Authority and Project Co dated XX XX, XXXX (“the Development and Master Construction Agreement”) relating to the Project. Defined terms and expressions used in the Development and Master Construction Agreement have the same meanings in this Certificate.

Form of Certificate to be used by the Design Team for certifying, as applicable:

- (a) the TPA Substantial Completion or DMCA Construction Works Substantial Completion of Construction Activities in respect of those components of the Works set out in paragraph 1 of this Construction Certificate;
- (b) the total completion of Construction Activities in respect of the Works, including Minor Deficiencies, or
- (c) the total completion of Construction Activities in respect of any Reinstatement Work carried out by Project Co pursuant to Section 11.9 (*Protection of Works and Property and Reinstatement Work*) of the Development and Master Construction Agreement, in accordance with a Reinstatement Plan.

in accordance with **[the Output Specifications]**.

Project Co’s Statement

We certify that **[name and element of the Works in respect of the TPA Substantial Completion Certificate or DMCA Construction Works Substantial Completion Certificate][the Works in respect of the TPA Final Completion Certificate or DMCA Construction Works Final Completion Certificate][the Works in respect of the TPA Final Completion Certificate or DMCA Construction Works Final Completion Certificate (Reinstatement Work)]** has been designed, constructed, **[substantially completed]**, **[totally completed]**, commissioned and tested in all respects in accordance with: *[Note: Inapplicable language to be deleted.]*

- (a) the relevant Design Data and Design Certificates in each case to which there has been no objection under the Review Procedure; and
- (b) the provisions of the Development and Master Construction Agreement, including all applicable Output Specifications, as amended by the following Variation(s):
 - (i) **[List, if any, the changes made by the issue of Variation(s)];**

Signed.....

Project Co Representative

Name.....

Date.....

Design Team’s Statement

We certify that we have examined the **[name and element of the Works in respect of the TPA Substantial Completion Certificate or DMCA Construction Works Substantial Completion Certificate][the Works in respect of the TPA Final Completion Certificate or DMCA Construction Works Final Completion Certificate][the Works in respect of the TPA Final Completion Certificate or DMCA Construction Works Final Completion Certificate (Reinstatement Work)]** in accordance with the requirements for examination of the Works contained in the **[Design Quality Management Plan]** and the **[Construction Quality Management Plan]** and utilizing the standards of care, skill and diligence that, in accordance with the standards of our profession, are required of experienced professionals undertaking such examinations, and that in our professional opinion

- (a) **[the said element of the Works][the Works]** has been designed, constructed, **[substantially completed][totally completed]**, commissioned and tested in all respects in accordance with: *[Note: Inapplicable language to be deleted.]*
 - (i) the relevant Design Data and Design Certificates in each case to which there has been no objection under the Review Procedure; and
 - (ii) the provisions of the Development and Master Construction Agreement, including all applicable Output Specifications, as amended by the following Variation(s):

[List, if any, the changes made by the issue of Variation(s)]; and

- (b) **[the said element of the Works][the Works]** is safe to carry the design loads.

Signed.....

Design Team (Principal)

Name.....

Title.....

Date.....

Professional Registration Number:

Affix Professional Seal

Receipt of this Certificate is acknowledged.

Signed.....

Independent Commissioning Agent

Name.....

Date.....

Professional Registration Number:

Affix Professional Seal

This Certificate is:

- i. No Comment*
- ii. Reviewed as Noted – Minor Issues*
- iii. Reviewed as Noted – Major Issues*

* delete as appropriate

Signed:

Contracting Authority Representative

Name:

Date:

APPENDIX B TO SCHEDULE 10

CITY OF TORONTO WORKS SUBMITTALS

1. DEFINITIONS

1.1 Unless the context indicates a contrary intention, terms which are defined in this Agreement (and not otherwise defined in this Schedule 10) shall have the meanings given to them in this Agreement and the following terms shall have the following meanings:

- (a) “**City of Toronto Design Management Plan**” has the meaning given in Section 3.2 of this Appendix B; and
- (b) “**City of Toronto Technical Meetings**” has the meaning given in Section 8.1 of this Appendix B.

2. OVERVIEW

2.1 The purpose of Appendix B is to facilitate the City of Toronto review of technical submittals related to the Works listed in Section 3.1 of this Appendix B, or as defined by this Appendix B. Appendix B captures design review submittal requirements for the Works in regards to Site Plan Review, Works that impact City of Toronto infrastructure, or New City Infrastructure. The focus of this technical review is to ensure submittal compliance.

2.2 Where there is a conflict between this Appendix B and Appendix A with respect to City of Toronto review of Project Co submittals related to items listed in Section 3.1 of this Appendix B, this Appendix B shall take precedence.

3. COT DESIGN MANAGEMENT PLAN

3.1 The requirements of this Appendix B shall apply to all:

- (a) Draft Submittals and Final Submittals related to Works that are subject to Site Plan Review as set out in Attachment 1 of this Appendix B; or
- (b) Design Development Submittals and Construction Document Submittals related to Works that impact City of Toronto infrastructure or that are New City Infrastructure, which includes but are not limited to, Works identified in Attachment 2 of this Appendix B.

3.2 Project Co shall prepare and submit an appendix to the Design Management Plan for all areas listed in Section 3.1 of this Appendix B (the “**City of Toronto Design Management Plan**”) to Contracting Authority and the City of Toronto for review (concurrent with the review of the Design Management Plan), in accordance with the Review Procedure.

3.3 The City of Toronto Design Management Plan shall supplement the information provided in the Design Management Plan with the following:

- (a) identification of all components of the Works to which the requirements of the City of Toronto Design Management Plan will extend, in accordance with Section 3.1 of this Appendix B;
 - (b) identification of the draft submittals (“**Draft Submittals**”) and final draft submittals (“**Final Draft Submittals**”) in accordance with Attachment 1 to this Appendix B and the Design Development Submittals and Construction Document Submittals in accordance with Attachment 2 to this Appendix B to which City of Toronto Design Management Plan will extend, specific to Works in accordance with Section 3.1 of this Appendix B and the City of Toronto design submittal requirements presented in this Appendix B;
 - (c) a design review and audit schedule, consistent with the Design Quality Management Plan and the Project Works Schedule, indicating dates that Project Co plans to undertake technical review meetings with City of Toronto and Contracting Authority, in accordance with Sections 7 and 8 of this Appendix B; and
 - (d) a drawing tree indicating the organization and hierarchy of all drawings to which City of Toronto Design Management Plan applies.
- 3.4 Project Co shall submit any subsequent amendments or updates to the City of Toronto Design Management Plan to Contracting Authority and City of Toronto in accordance with the Review Procedure and this Appendix B.
- 3.5 Project Co shall implement and comply with the City of Toronto Design Management Plan and any subsequent amendments or updates to the initial City of Toronto Design Management Plan made following review by Contracting Authority and City of Toronto in accordance with the Review Procedure, including but not limited to requirements of the Output Specifications and the Construction Technical Requirements, as applicable, and any other requirements within the items listed in Section 3.1 of this Appendix B.
- 4. DRAFT SUBMITTALS AND DESIGN DEVELOPMENT SUBMITTALS**
- 4.1 Project Co shall ensure that the Draft Submittals in accordance with Attachment 1 of this Appendix B and the Design Development Submittals in accordance with Attachment 2 of this Appendix B for items listed in Section 3.1 of this Appendix B are submitted in accordance with the City of Toronto Design Management Plan and the requirements of the Review Procedure, and are:
- (a) corrected as required in response to the comments provided by Contracting Authority and City of Toronto for any previous submittals, as required in order to comply with the time periods for such corrections described in Schedule 10 – Review Procedure.
- 4.2 Project Co shall ensure that all Draft Submittals in accordance with Attachment 1 of this Appendix B and Design Development Submittals in accordance with Attachment 2 of this Appendix B for the items listed in Section 3.1 of this Appendix B are submitted in accordance with the City of Toronto design submittal requirements presented in this Appendix B, as appropriate.

5. FINAL DRAFT SUBMITTALS AND CONSTRUCTION DOCUMENT SUBMITTALS

5.1 Project Co shall ensure that the Final Draft Submittals in accordance with Attachment 1 of this Appendix B and the Construction Document Submittals in accordance with Attachment 2 of this Appendix B for items listed in Section 3.1 of this Appendix B are submitted in accordance with the City of Toronto Design Management Plan and the requirements of the Review Procedure, and are:

- (a) corrected as required in response to the comments provided by Contracting Authority and City of Toronto for any previous submittals, as required in order to comply with the time periods for such corrections described in Schedule 10 – Review Procedure.

5.2 Project Co shall ensure that all Final Draft Submittals in accordance with Attachment 1 of this Appendix B and Construction Document Submittals in accordance with Attachment 2 of this Appendix B for the items listed in Section 3.1 of this Appendix B are submitted in accordance with the City of Toronto design submittal requirements presented in this Appendix B, as appropriate.

6. FORMAT FOR CITY OF TORONTO WORKS SUBMITTALS

6.1 The following is a breakdown of the contents of each COT Works Submittal (as defined in Attachment 2 to this Appendix B) as well as the format for each.

6.2 All COT Works Submittals are to be submitted to Contracting Authority in hard copy and electronic format in accordance with the following requirements:

- (a) submit three (3) sets of all COT Works Submittals in hard copy;
- (b) all hard copy COT Works Submittals in reduced format drawings (11” x 17”, foldouts folded to 8.5” x 11”) and included in a 3-hole ring binder;
- (c) all hard copy COT Works Submittals in large format drawings (A0 or A1 size) shall be bound for Record Drawings and shall be provided separately;
- (d) all hard copy COT Works Submittals which are not drawings shall be submitted in 8.5” x 11” black and white format, unless otherwise specifically noted in this Appendix B (or as requested by Contracting Authority, acting reasonably);
- (e) submit COT Works Submittals in electronic format as text searchable portable document format (PDF) and in their native format;
- (f) all COT Works Submittals provided in CAD format shall be in accordance with Metrolinx CADD/BIM Standards Manual; and
- (g) all COT Works Submittals shall be uploaded to Contracting Authority’s Web Based Project Management System in portable document format (PDF) and in their native format at the same time the Works Submittals are forwarded to Contracting Authority.

7. CITY OF TORONTO REVIEW PROCESS

- 7.1 Project Co shall include all engineering disciplines in one package, as applicable, for submissions of documents listed in Section 3.1 of this Appendix B for City of Toronto technical review. For clarity, this means that in accordance with Attachment 1 of this Appendix B, all Draft Submittal items and all Final Draft Submittal items for each specific location in the case of SPR Submittals should be submitted simultaneously as an SPR Submittals package. Further, this means that in accordance with Attachment 2 of this Appendix B, all Design Development Submittal items and all Construction Document Submittal items related to works that impact City of Toronto infrastructure or that are New City Infrastructure for each specific location, should be submitted simultaneously in one package. Submission requirements are indicated at their earliest submittal and may also be required at subsequent submittals.
- 7.2 For SPR Submittals in accordance with Attachment 1 to this Appendix B, such submittals would be made following Project Co submitting a ‘place holder’ site plan review application to begin the site plan review process for Project Co Infrastructure in accordance with Appendix B to Schedule 34 – Permits, Licences, Approvals and Agreements.
- 7.3 For COT Works Submittals in accordance with Attachment 2 to this Appendix B, COT Works Submittals would be made such that the City of Toronto technical review can be completed in advance of the scheduled timing of any associated applications for Permits, Licences, Approvals and Agreements.
- 7.4 Upon completion of the City of Toronto technical review, comments will be provided to Contracting Authority for response by Project Co. Project Co shall carry out the correction and re-submit process set out in Section 4.3 of Part A of this Schedule 10 until the Works Submittal has been assigned a “NO COMMENT” or a “REVIEWED AS NOTED – MINOR ISSUES”.
- 7.5 Following assignment of a “NO COMMENT” or a “REVIEWED AS NOTED – MINOR ISSUES” by Contracting Authority on items related to Attachment 1 to this Appendix B, Project Co shall proceed through the subsequent steps of the Site Plan Review process as identified in Item No. 1 in Appendix B to Schedule 34 – Permits, Licences, Approvals and Agreements.
- 7.6 Following assignment of a “NO COMMENT” or a “REVIEWED AS NOTED – MINOR ISSUES” by Contracting Authority on items related to Works that impact City of Toronto infrastructure, for items identified in Attachment 2 to this Appendix B, Project Co shall proceed with the relevant Permits, Licences, Approvals and Agreements requirements as identified in Schedule 34 – Permits, Licences, Approvals and Agreements.
- 7.7 Assignment of “NO COMMENT” for a submittal by the City of Toronto does not exempt Project Co from compliance with applicable codes and standards, local by-laws, and other governing regulations. City of Toronto will not accept any responsibility for the accuracy and adequacy of the design, which will remain the sole responsibility of Project Co.
- 7.8 The content or result of any City of Toronto technical review does not absolve Project Co of its responsibility to obtain all related Permits, Licences, Approvals and Agreements required to implement the Works.

8. CITY OF TORONTO TECHNICAL MEETINGS

- 8.1 Project Co shall prepare for and present at City of Toronto technical meetings with Contracting Authority and City of Toronto during the development of the Design Development Submittals and Construction Document Submittals, for the purposes of observing compliance with applicable requirements (“**City of Toronto Technical Meetings**”). For clarity, City of Toronto Technical Meetings may fulfill the requirements of Pre-Submission Consultation in accordance with Section 9.1 (*Pre-Submission Consultation*) of Schedule 34 – Permits, Licences, Approvals and Agreements.
- 8.2 The City of Toronto Technical Meetings shall, at a minimum, occur at the following:
- (a) one City of Toronto Technical Meeting prior to submission of the Design Development Submittals applicable to the Works listed in Section 3.1(a) of this Appendix B and for Works listed in Section 3.1(b) of this Appendix B related to drinking water works, sewage works and works involving discharge of groundwater in sewer during construction in accordance with Appendix B of Schedule 34 – Permits, Licences, Approvals and Agreements;
 - (b) one City of Toronto Technical Meeting, prior to submission of all Construction Document Submittals, and after submission of all Design Development Submittals, applicable to the Works listed in Section 3.1(a) of this Appendix B and for Works listed in Section 3.1(b) of this Appendix B related to drinking water works, sewage works and works involving discharge of groundwater in sewer during construction in accordance with Appendix B of Schedule 34 – Permits, Licences, Approvals and Agreements.
- 8.3 Contracting Authority, City of Toronto, or Project Co may request additional City of Toronto Technical Meetings, as required. For any additional City of Toronto Technical Meetings requested by Contracting Authority or City of Toronto, Contracting Authority will notify Project Co of any such request.
- 8.4 Contracting Authority and City of Toronto may, at their sole discretion, waive the requirement for some or all City of Toronto Technical Meetings.
- 8.5 Contracting Authority and City of Toronto may, at their sole discretion, waive the requirement for separate City of Toronto Technical Meetings, and may accept in lieu that the requirements for the City of Toronto Technical Meeting(s) would be addressed through standing meetings with City of Toronto departments.
- 8.6 For each City of Toronto Technical Meeting, Project Co shall:
- (a) advise Contracting Authority and City of Toronto of the intention to hold each City of Toronto Technical Meeting, or respond to a request from Contracting Authority for an additional City of Toronto Technical Meeting, a minimum of fifteen (15) Business Days prior to the proposed City of Toronto Technical Meeting date;

- (b) submit an agenda for each City of Toronto Technical Meeting to Contracting Authority a minimum of five (5) Business Days prior to the proposed City of Toronto Technical Meeting date; and
 - (c) submit interim Design Development Submittals or interim Construction Document Submittals, as applicable and as required to facilitate the discussion at each City of Toronto Technical Meeting, to Contracting Authority a minimum of ten (10) Business Days prior to the proposed City of Toronto Technical Meeting date.
- 8.7 Project Co shall ensure that the content of the Design Development Submittals and the Construction Document Submittals, presented at any City of Toronto Technical Meetings, are appropriate to the subject and discipline, that the information provided is adequate to show that the design is proceeding in compliance with this Agreement for all disciplines, and that the content has been developed in consideration of the relevant Construction Activities.

ATTACHMENT 1 TO APPENDIX B

SITE PLAN REVIEW CHECKLIST

- 1.1 As identified in Item No. 1 in Appendix B to Schedule 34 – Permits, Licences, Approvals and Agreements, Project Co shall prepare and submit all documentation and materials that the City of Toronto will require to complete site plan review of Project Co Infrastructure for which site plan review is applicable.
- 1.2 The following is a list of Site Plan Review Submittals (individually, “**SPR Submittal**” or collectively “**SPR Submittals**”) as well as the format for each, that Project Co is required to provide to Contracting Authority for review and comment in accordance with this Schedule 10. A description of the minimum content of each SPR Submittal provided is set forth in this Attachment 1.
- 1.3 The Works Submittals delivered pursuant to Appendix A of this Schedule 10 which have equivalent content to satisfy the requirements of SPR Submittals are permitted to be reused (but are not required to be reused) in accordance with the table below, provided that they meet all the requirements of each SPR Submittal section they are applied to.
- 1.4 Project Co shall modify as appropriate the Works Submittals delivered pursuant to Appendix A of this Schedule 10 to address the relevant sections of the Application Support Material: Terms of Reference (Application Support Material: Terms of Reference – City of Toronto).
- 1.5 For each of the SPR Submittals that Project Co is required to provide to Contracting Authority for review and comment in accordance with this Schedule 10 for a specific location (e.g. station), the site plan areas indicated in those submittals shall be consistent across all SPR Submittals for that location. This would include those Works Submittal deliverables pursuant to Appendix A to this Schedule 10 which have equivalent content to satisfy the requirements of SPR Submittals that are permitted to be re-used.
- 1.6 Should an SPR Submittal that Project Co is required to provide to Contracting Authority for review and comment in accordance with this Schedule 10 for a specific location (e.g. Station), consist of a COT Works Submittal for which review in accordance with Attachment 2 of this Appendix B has been completed in advance of making the SPR Submittals for that specific location, then that SPR Submittal does not need to proceed again through the site plan review process. Project Co may indicate in the SPR Submittals package that such SPR Submittal has been previously reviewed, and provide evidence of same, and the final document may be provided within the final site plan review package in accordance with Item No. 1 in Appendix B to Schedule 34 – Permits, Licences, Approvals and Agreements.

[REDACTED]

ATTACHMENT 2 TO APPENDIX B

CITY OF TORONTO WORKS CHECKLIST

- 1.1 The following is a detailed, non-exhaustive list of City of Toronto Works Submittals (individually, “**COT Works Submittal**” or collectively “**COT Works Submittals**”) as well as the format for each, that Project Co is required to provide to Contracting Authority for review and comment in accordance with this Schedule 10. A description of the minimum content of each COT Works Submittal provided is set forth in this Attachment 2.
- 1.2 The Works Submittals delivered pursuant to Appendix A to this Schedule 10 which have equivalent content to satisfy the requirements of COT Works Submittals are permitted to be reused (but are not required to be reused) in accordance with the table below, provided that they meet all the requirements of each COT Works Submittal section they are applied to.
- 1.3 For each of the COT Works Submittals that Project Co is required to provide to Contracting Authority for review and comment in accordance with this Schedule 10 for a specific location, the areas indicated in those submittals shall be consistent across all COT Works Submittals for that location. This would include those Works Submittal deliverables pursuant to Appendix A to this Schedule 10 which have equivalent content to satisfy the requirements of COT Works Submittals that are permitted to be re-used.

[REDACTED]

APPENDIX C TO SCHEDULE 10

TTC SUBMITTALS REQUIREMENTS

1. DEFINITIONS

- 1.1 Unless the context indicates a contrary intention, terms which are defined in this Agreement (and not otherwise defined in this Schedule 10) shall have the meanings given to them in this Agreement and the following terms shall have the following meanings:
- (a) “**TTC Design Management Plan**” has the meaning given in Section 3.2 of this Appendix C; and
 - (b) “**TTC Technical Meetings**” has the meaning given in Section 7.1 of this Appendix C.

2. OVERVIEW

- 2.1 The purpose of this Appendix C is to facilitate the TTC’s review of technical submittals related to the Works listed in Section 3.1 of this Appendix C, or as defined by this Appendix C. Whereas Appendix A of this Schedule 10 includes submittals of interest to multiple parties (including the TTC), this Appendix C captures additional submittal requirements for the Works in regards to New TTC Infrastructure. The focus of this technical review is to ensure conformance to the Output Specifications and the Construction Technical Requirements, as applicable, and this Schedule 10.
- 2.2 Where there is a conflict between this Appendix C and Appendix A of this Schedule 10 with respect to the TTC’s review of Project Co submittals related to items listed in Section 3.1 of this Appendix C, this Appendix C shall take precedence.

3. TTC DESIGN MANAGEMENT PLAN

- 3.1 The requirements of this Appendix C shall apply to all Design Development Submittals and Construction Document Submittals related to Works impacting the TTC Zone of Influence.
- 3.2 Project Co shall prepare and submit an appendix to the Design Management Plan for all areas listed in Section 3.1 of this Appendix C (the “**TTC Design Management Plan**”) to Contracting Authority and the TTC for review (concurrent with the review of the Design Management Plan), in accordance with the Review Procedure.
- 3.3 The TTC Design Management Plan shall supplement the information provided in the Design Management Plan with the following:
- (a) identification of all components of the Works to which the requirements of the TTC Design Management Plan will extend, in accordance with Section 3.1 of this Appendix C;
 - (b) identification of all Design Development Submittals and Construction Document Submittals to which the TTC Design Management Plan will extend;

- (c) a design review and audit schedule, consistent with the Design Quality Management Plan and the Project Works Schedule, indicating dates that Project Co plans to undertake Technical Review Meetings with the TTC and Contracting Authority, in accordance with Sections 6 and 7 of this Appendix C; and
 - (d) a drawing tree indicating the organization and hierarchy of all drawings to which TTC Design Management Plan applies.
- 3.4 Project Co shall submit any subsequent amendments or updates to the TTC Design Management Plan to Contracting Authority and the TTC in accordance with the Review Procedure and this Appendix C.
- 3.5 Project Co shall implement and comply with the TTC Design Management Plan and any subsequent amendments or updates to the initial TTC Design Management Plan made following review by Contracting Authority and TTC in accordance with the Review Procedure, including but not limited to requirements of the Output Specifications and the Construction Technical Requirements, as applicable, and any other requirements within the items listed in Section 3.1 of this Appendix C.
- 3.6 In addition to the applicable items listed in Section 3.6 of Part A of this Schedule 10, Project Co shall submit to the TTC, for each New TTC Infrastructure:
- (a) log of all previous submissions with dates, reference numbers, TTC review submission numbers and list of documents in each submission;
 - (b) spreadsheet summarizing responses to and status of comments of all previous submissions; and
 - (c) all relevant references, meeting minutes, record of discussions, calculations, drawings and documents (including extracts of related documents in previous submissions) quoted or referred to in the current submission for reviewer’s reference.
- 4. DESIGN DEVELOPMENT SUBMITTALS**
- 4.1 Project Co shall ensure that Design Development Submittals for items listed in Section 3.1 of this Appendix C are submitted in accordance with the TTC Design Management Plan and the requirements of the Review Procedure, and are:
- (a) submitted commensurate with the design submission for such submittals described in Appendix A to this Schedule 10; and
 - (b) corrected as required in response to the comments provided by Contracting Authority and the TTC for any previous submittals, as required in order to comply with the time periods for such corrections described in this Schedule 10.
- 4.2 Project Co shall ensure that all Design Development Submittals for the items listed in Section 3.1 of this Appendix C are submitted in accordance with the TTC design checklist presented in this Appendix C.

5. CONSTRUCTION DOCUMENT SUBMITTALS

- 5.1 Project Co shall ensure that Construction Document Submittals for items listed in Section 3.1 of this Appendix C are submitted in accordance with the TTC Design Management Plan and the requirements of the Review Procedure, and are:
- (a) submitted commensurate with the design submission for such submittals described in Appendix A to this Schedule 10; and
 - (b) corrected as required in response to the comments provided by Contracting Authority and the TTC for any previous submittals, as required in order to comply with the time periods for such corrections described in this Schedule 10.
- 5.2 Project Co shall submit quality control/quality assurance plan for Construction Activities within the vicinity of the TTC Zone of Influence, detailing the inspection and test program to be implemented.
- 5.3 Project Co shall ensure that all Construction Document Submittals for the items listed in Section 3.1 of this Appendix C are submitted in accordance with the TTC design checklist presented in this Appendix C.

6. TTC REVIEW PROCESS

- 6.1 Project Co shall include all engineering disciplines in one package, as applicable, for submissions of documents listed in Section 3.1 of this Appendix C for TTC technical review. Submission requirements are indicated at their earliest submittal and may also be required at subsequent submittals, including construction and post-construction stages of work. For clarity, submission requirements and submittal are captured in the table below in this Appendix C.
- 6.2 Upon completion of the TTC technical review, comments will be provided to Contracting Authority for response by Project Co and the provisions of Section 4 of Part A of this Schedule 10 shall apply.
- 6.3 Upon review of conformance that TTC’s requirements as set out within this Agreement and the Works Submittal has been assigned a “NO COMMENT” or a “REVIEWED AS NOTED – MINOR ISSUES” as it pertains to the TTC requirements as set out within this Agreement, a consent to proceed letter shall be issued by the TTC.
- 6.4 Assignment of “NO COMMENT” for a submittal by the TTC does not exempt Project Co from compliance with applicable codes and standards, local by-laws, and other governing regulations. The TTC will not accept any responsibility for the accuracy and adequacy of the design, which will remain the sole responsibility of Project Co.
- 6.5 The content or result of any TTC technical review does not absolve Project Co of its responsibility to obtain all related Permits, Licences, Approvals and Agreements required to implement the Works.

6.6 The technical submissions shall include:

- (a) calculations,
- (b) a complete set of drawings,
- (c) specifications and technical documentation with an emphasis on the review of:
 - (i) construction staging;
 - (ii) geotechnical and structural components of the Works associated with the TTC Zone of Influence;
 - (iii) shoring/excavation, as required.

6.7 Project Co shall submit the following number of documents at each submission:

- (a) Plans & Surveys (Control / Topographic / Utility / Property):
 - (i) two (2) complete sets of full size plans and surveys; and
 - (ii) seven (7) complete sets of half size plans and surveys.
- (b) Drawings (geotechnical/structural):
 - (i) seven (7) complete sets of half size drawings.
- (c) Specifications:
 - (i) seven (7) complete sets (hard copies).
- (d) Reports:
 - (i) nine (9) copies of all required reports.
- (e) Hard Copies:

(i) three (3) sets of all Works Submittals for the TTC shall be submitted in hard copy, and included in 3-hole ring binders.

(f) Electronic Format:

(i) one (1) CD or USB containing all plans, property surveys, drawings, specifications and reports in PDF format; and

(ii) one (1) CD or USB containing digital files of the property surveys in Microstation (.dgn) format.

7. TTC TECHNICAL MEETINGS

7.1 Project Co shall prepare for and present at TTC technical meetings with Contracting Authority and the TTC during the development of the Design Development Submittals and Construction Document Submittals, for the purposes of observing compliance with applicable requirements in the Output Specifications and the Construction Technical Requirements, as applicable, and this Schedule 10 (the “**TTC Technical Meetings**”).

7.2 The TTC Technical Meetings shall occur at the following:

(a) one TTC Technical Meeting prior to submission of the Design Development Submittals applicable to the Works listed in Section 3.1 of this Appendix C;

(b) one TTC Technical Meeting, prior to submission of all Construction Document Submittals, and after submission of all Design Developmental Submittals, applicable to the Works listed in Section 3.1 of this Appendix C.

7.3 Contracting Authority, the TTC, or Project Co may request additional TTC Technical Meetings, as required. For any additional TTC technical reviews requested by Contracting Authority or TTC, Contracting Authority will notify Project Co of any such request.

7.4 Contracting Authority and TTC may, at their sole discretion, waive the requirement for some or all TTC Technical Meetings.

7.5 For each TTC Technical Meeting, Project Co shall:

(a) advise Contracting Authority of the intention to hold each TTC Technical Meeting, or respond to a request from Contracting Authority for an additional TTC Technical Meeting, a minimum of fifteen (15) Business Days prior to the proposed TTC Technical Meeting date;

(b) submit an agenda for each TTC Technical Meeting to Contracting Authority a minimum of five (5) Business Days prior to the proposed TTC Technical Meeting date; and

(c) submit interim Design Development Submittals or interim Construction Document Submittals, as applicable and as required to facilitate the discussion at each TTC Technical Meeting, to Contracting Authority a minimum of ten (10) Business Days prior to the proposed TTC Technical Meeting date.

7.6 Project Co shall ensure that the content of the Design Development Submittals and the Construction Document Submittals, presented at any TTC Technical Meetings, are appropriate to the subject and discipline, that the information provided is adequate to show that the design is proceeding in compliance with this Agreement for all disciplines, and that the content has been developed in consideration of the relevant Construction Activities.

[REDACTED]

APPENDIX D TO SCHEDULE 10

RSSOM INFRASTRUCTURE WORKS SUBMITTALS

[REDACTED]

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APPENDICES

Appendix A – Quality Manual

Appendix B – Design Quality Management Plan

Appendix C – Construction Quality Management Plan

SCHEDULE 11

QUALITY MANAGEMENT

1. DEFINITIONS

1.1 DEFINITIONS

In this Schedule 11, unless the context indicates a contrary intention, terms which are defined in this Agreement (and not otherwise defined in this Schedule 11) shall have meanings given to them in this Agreement and the following terms shall have the following meanings:

- (a) “**Appropriate Persons**” has the meaning given in Section 2.3(c).
- (b) “**CAIT Manual Requirements**” or “**Construction Administration and Inspection Task Manual Requirements**” means, at the applicable time, the Construction Administration and Inspection Task Manual Requirements developed by the MTO.
- (c) “**Closing Meeting**” has the meaning given in Section 5.8(a).
- (d) “**Construction Quality Control Manager**” means an individual construction quality control manager responsible for each of the quality control requirements as set out in the CQMP as described in Section 3.4.
- (e) “**Construction Quality Management Plan**” or “**CQMP**” means the plan for the quality management of the Works prepared by Project Co in accordance with Appendix C to this Schedule 11.
- (f) “**Construction Quality Manager**” shall mean the Quality Manager described in Section 3.3(f).
- (g) “**Corrective Action**” means an action to eliminate the cause of an existing Non-Conformance, defect or other undesirable situation and to prevent its recurrence.
- (h) “**Corrective Action Date**” means the date by which Project Co shall complete the implementation of a Corrective Action in accordance with this Schedule 11.
- (i) “**Corrective Action Plan**” has the meaning given in Section 5.3(a)(iv).
- (j) “**Design and Construction Certification Procedure**” means the procedure set out in Section 2.3.
- (k) “**Design Quality Management Plan**” or “**DQMP**” means the plan for the quality management of the design of the project prepared by Project Co in accordance with Appendix B to this Schedule 11.
- (l) “**Design Quality Manager**” shall mean the Quality Manager described in Section 3.3(e).
- (m) “**Disposition**” means the applicable decision made from the outcome of a review process in response to a Non-Conformance Report described in Table 7.1 of Section 7.1 provided by the Quality Director pursuant to Section 7.1(a)(iv).

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- (n) “**Environmental Quality Manager**” shall mean the Quality Manager described in Section 3.3(j).
- (o) “**External Quality Audit**” means either or both:
- (i) a second party Quality Audit conducted by parties having an interest in Project Co or the relevant Project Co Party, such as parties with commercial contracts with Project Co or a relevant Project Co Party or customers/clients of Project Co or a relevant Project Co Party; and
 - (ii) a third-party Quality Audit conducted by an external independent organization such as a certification or registration body.
- (p) “**Independent Quality Audit**” means a third party audit of the Quality Management System conducted by an independent quality auditor certified by an accredited auditors’ registration body such as International Register for Certified Auditors, Registrar Accreditation Board, National Quality Institute, or other equivalent body.
- (q) “**Inspection and Test Plan**” or “**ITP**” means the plan prepared in accordance with Section C.1(f)(i) of Appendix C to this Schedule 11.
- (r) “**Internal Quality Audit**” means a first-party Quality Audit of Project Co’s or a Project Co Party’s own processes conducted by or on behalf of the relevant organization.
- (s) “**ISO 9001 Lead Auditor**” means a quality auditor who has successfully completed the most recent ISO 19011 accredited course for lead auditors.
- (t) “**ISO 9001 Lead Auditor Training Course**” means the most recent accredited ISO 19001 training course for lead auditors who meet the training portion of the requirements for current certification of individual quality system auditors with the International Register of Certified Auditors or similar certifying bodies such as Chartered Quality Institute, Exemplar Global or other equivalent body.
- (u) “**ISO 9001 Standard**” means the most recent ISO 9001 standard, as amended, updated or replaced from time to time.
- (v) “**ISO/IEC**” International Organization for Standardization / International Electrotechnical Commission.
- (w) “**ISO/IEC 17025 Standard**” means the ISO/IEC 17025 standard, as amended, updated or replaced from time to time.
- (x) “**ITP Two-Week Look-Ahead**” has the meaning given in Section C.1(f)(v) of Appendix C to this Schedule 11.
- (y) “**Monthly Non-Conformance Report**” has the meaning given in Section 7.2(c).
- (z) “**Non-Conformance**” means any failure by Project Co to perform any of its obligations under this Agreement in respect of any of the Works and which failure is not rectified by Project Co within the applicable time period, if any, stipulated in this Agreement.

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- (aa) “**Non-Conformance Report**” or “**NCR**” means a document issued by either Contracting Authority or Project Co pursuant to Section 7.1 detailing the description of an identified Non-Conformance, the remedial action taken or proposed to be taken to eliminate the Non-Conformance, and the date by which the remedial action was completed or proposed to be completed.
- (bb) “**Non-Conformance Tracking System**” means a system to track Non-Conformance Reports issued by Contracting Authority or Project Co as set out in Section 7.2.
- (cc) “**Ontario Provincial Standards Specifications**” or “**OPSS**” means the Ontario Provincial Standards for roads and public works, as amended from time to time.
- (dd) “**Project Co Quality Audit Report**” has the meaning given in Section 5.2(a)(v).
- (ee) “**Project Schedules Quality Manager**” shall mean the Quality Manager described in Section 3.3(h).
- (ff) “**Quality Audit**” means a systematic, independent and documented process for obtaining audit evidence and evaluating it objectively to determine the extent to which audit criteria are fulfilled.
- (gg) “**Quality Audit Program Plan**” means Project Co’s audit program plan defining the Internal Quality Audits, External Quality Audits and Independent Quality Audits that Project Co shall perform or cause to be performed on its own processes and the processes of Project Co Parties.
- (hh) “**Quality Director**” has the meaning given in Section 3.2.
- (ii) “**Quality Documentation**” has the meaning given in Section 6.3.
- (jj) “**Quality Key Performance Indicators**” has the meaning given in Section 6.9(b)(ii)(J)(VI) .
- (kk) “**Quality Management Plans**” or “**QMPs**” includes the DQMP and CQMP, and any other quality management plan required for the purposes of undertaking any material and substantial aspect of the Works. All such plans are subject to the Quality Management System.
- (ll) “**Quality Management System**” has the meaning given in Section 2.1(a).
- (mm) “**Quality Managers**” means individual quality managers responsible for each of the Quality Management Plans.
- (nn) “**Quality Manual**” means Project Co’s quality manual meeting the requirements set out in Appendix A to this Schedule 11.
- (oo) “**Quality Objectives**” means the objectives related to quality that are measurable and consistent with the Quality Policy and which are to be formally expressed and recorded in the Quality Manual in accordance with this Schedule 11, provided that, alternatively, each Quality Management Plan may have its own Quality Objectives which are directly related to the applicable Quality Policy expressed or recorded in the Quality Manual.
- (pp) “**Quality Policy**” means the overall intentions and direction of Project Co related to quality applicable to Project Co and all Project Co Parties involved in performing the Works which are to be formally expressed and recorded in the Quality Manual in accordance with this Schedule 11,

provided that, alternatively, each Quality Manual may have its own Quality Policy which is directly related to applicable Quality Objectives expressed or recorded in the Quality Manual.

- (qq) “**Quality Records**” has the meaning given in Section 6.8(a).
- (rr) “**Surveillance Quality Audits**” means Quality Audits conducted by or on behalf of Contracting Authority as contemplated in Section 5.3(c)(i)(A).
- (ss) “**Systems Quality Manager**” shall mean the Quality Manager described in Section 3.3(i).
- (tt) “**Traffic Quality Manager**” shall mean the Quality Manager described in Section 3.3(g).
- (uu) “**Witness and Hold Point**” means (A) a point of time in the construction process when it would be unreasonably onerous or impossible, to confirm conformance to or compliance with the Output Specifications with respect to either materials or workmanship once work proceeds past this point, and (B) any other witness and hold point that is required by Project Co.

2. QUALITY MANAGEMENT SYSTEM

2.1 Quality Management System

- (a) Project Co shall develop and implement a quality management system in accordance with the requirements of this Schedule 11 (the “**Quality Management System**”) for the Works. The Quality Management System shall include, at a minimum, processes for quality assurance and quality control, testing, auditing, equipment commissioning and performance measurement for all Works, including design, construction, materials, warranties on systems, workmanship and services. Project Co acknowledges and agrees that Project Co is solely responsible for the quality of the Works and that a comprehensive Quality Management System is critical for the proper and timely completion of the Works.

2.2 Project Co Responsibilities

- (a) Project Co is responsible for all quality assurance and quality control activities set out in this Schedule 11 that are required to manage its own processes and those of Project Co Parties throughout the Project Term. Project Co shall ensure that all aspects of the Project are the subject of a Quality Management System that complies with the provisions of this Schedule 11, and shall comply with and cause all Project Co Parties to comply with the requirements of such Quality Management System. For greater certainty and without limiting Project Co’s ability to contractually assign responsibilities and obligations to Project Co Parties in accordance with this Agreement, Project Co shall not be relieved of any of Project Co’s responsibilities or obligations set out in this Schedule 11 by the assignment of such responsibilities or obligations to Project Co Parties.

2.3 Design and Construction Certification Procedure

- (a) Project Co shall implement and enforce the procedures set out in this Section 2.3 throughout the Project Term.
- (b) The procedures set out in this Section 2.3 shall apply to all Design Data prepared or adopted in connection with the Works.

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- (c) Project Co shall ensure that all certification procedures referred to in this Section 2.3 complied with by the appropriate persons referred to therein, including the Design Team, and any independent team or engineer within the Design Team, as the case may be (together, the “**Appropriate Persons**”), and that all Appropriate Persons are at all relevant times duly authorized and qualified to carry out such procedures and to sign the relevant certificates. Any failure by any Appropriate Person to fulfil the obligations required of them under this Section 2.3 shall be a breach of Project Co’s obligations under this Agreement.
- (d) Project Co shall submit all Design Certificates and Construction Certificates, Permits, Licences, Approvals and Agreements and other regulatory process documents from Governmental Authorities, together with the supporting documentation, to the Contracting Authority Representative for review, acting reasonably, in accordance with Schedule 10 – Review Procedure and Schedule 34 – Permits, Licences, Approvals and Agreements. The submitted Design Certificates and Construction Certificates shall have original signatures, seals and registration numbers, and shall be in such form as to allow the Contracting Authority Representative to perform its review function in respect of such Design Certificate or Construction Certificate without delay.
- (e) Project Co shall submit Construction Certificates to the Contracting Authority Representative for review, acting reasonably, in accordance with Schedule 10 – Review Procedure, for each:
- (i) substantially completed components; and
 - (ii) entirely completed components.

2.4 Quality Management System Requirements

- (a) The Quality Management System shall be applicable to all Project Co Parties, including each Subcontractor.
- (b) The Quality Management System shall, at a minimum, include the Quality Documentation described in Section 6, including:
- (i) Inspection and Test Plans for all components of the Works;
 - (ii) processes for:
 - (A) assessing and tracking training requirements;
 - (B) providing all staff with Quality Management System requirements of this Agreement (for clarity, including on and off-Site facilities producing materials for the Project);
 - (C) updating training; and
 - (D) maintaining all training records,applicable to all Project Co Parties, including each Subcontractor;
 - (iii) methods to ensure compliance with the Quality Management System by each Project Co Party;

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- (iv) techniques for integration between all of the Works, including materials, workmanship, warranties and deficient work;
 - (v) documentation and verification procedures;
 - (vi) defined roles and responsibilities for all members of the Quality Management System team;
 - (vii) testing and commissioning; and
 - (viii) determining and applying the criteria and methods (including monitoring, measurements and related performance indicators) needed to ensure the effective operation and control of these processes.
- (c) The Quality Management System shall comply with:
- (i) the requirements and principles of the ISO 9001 Standard and any other applicable standards specified in this Schedule 11; and
 - (ii) all other requirements set out in this Schedule 11 and this Agreement.

2.5 Compliance of Quality Management System

(a) Specific Requirements

- (i) The Quality Management System must be fully compliant with ISO 9001 Standard no later than 180 days following the DMCA Effective Date. For clarity, the submission deadlines for the Quality Manual and all Quality Management Plans are set out in Table 2.6.
- (ii) Compliance shall be subject to review and must be accepted by Contracting Authority, which compliance shall be maintained by Project Co throughout the Project Term.
- (iii) The scope of compliance for the Quality Management System should be clearly defined to address the Works, including traffic management and environmental considerations in respect of the Project.
- (iv) Project Co shall update its Quality Management System and all Quality Documentation as required to ensure that the Quality Management System and all Quality Documentation are and at all times remain in full compliance with the ISO 9001 Standard and the requirements of this Schedule 11. All Quality Documentation shall be made available to Contracting Authority.

(b) Compliance with Quality Management System

- (i) Project Co shall ensure that any Project Co Party who performs any portion of the Works shall comply with the Quality Management System as it relates to that portion of the Works in connection with the activities covered by that party's contract with Project Co.

2.6 Documentation Deliverables

(a) Deliverables

- (i) Without limiting the generality of Section 2.4, Project Co shall provide to Contracting Authority, by the dates shown in Table 2.6, each of the following:

Table 2.6 – Schedule of Plans and Reports

Deliverable Name	Schedule 11 Specification Reference	Submission Deadline	Submitted under the Review Procedure
Quality Manual	Appendix A	Submitted in accordance with Schedule 10 Review Procedure	Yes
Design Quality Management Plan	Appendix B	Submitted in accordance with Schedule 10 Review Procedure	Yes
Construction Quality Management Plan	Appendix C	Submitted in accordance with Schedule 10 Review Procedure	Yes
List of ITPs and production timelines for submittal	Appendix C	Initial list submitted within 60 days following the DMCA Effective Date, and updated monthly throughout the contract.	Yes
Inspection and Test Plans	Appendix C	Submitted at least 45 Business Days prior to scheduled start of the applicable element of the Works.	Yes
Quality Audit Program Plan	Section 5.1	Submitted in accordance with Schedule 10 Review Procedure	Yes
Quality Audit Program Plan updates	Section 5.1	At quarterly intervals following Quality Audit Program Plan submittal	Yes
Monthly Quality Management System reports	Section 6.9	Submitted in accordance with Schedule 10 Review Procedure	Yes

Project Co Quality Audit Reports	Section 5.2	Submitted in accordance with Schedule 10 Review Procedure	Yes
Corrective Action Plans	Section 5.3	Each submitted as per Table 7.1	Yes

- (ii) Where specified in Table 2.6, Project Co shall submit all deliverables of the Quality Management System to Contracting Authority for review in accordance with Schedule 10 – Review Procedure.
- (b) Specific Requirements
- (i) Project Co shall prepare and submit Quality Management Plans in respect of the activities covered by Subcontracts with Project Co and meeting the requirements of the Quality Manual, and Project Co shall cause all Subcontractors engaged by Project Co for the purposes of undertaking any material or substantial aspect of the Works to comply with the Quality Manual.
- (c) Timing of Implementation
- (i) The Quality Management System must be fully compliant with ISO 9001 Standard no later than 180 days following the DMCA Effective Date. Project Co shall not commence or permit the commencement of any aspect of the Works before those parts of the Quality Documentation that concern such aspect of the Works have been submitted to and reviewed by Contracting Authority in accordance with this Schedule 11, unless otherwise agreed in advance between Project Co and Contracting Authority.

2.7 Continuous Improvement in Quality Management System

- (a) Project Co shall implement a program and shall have mechanisms in place, such as management reviews and Quality Audit Program Plans, to allow all identified opportunities for improvement of the effectiveness of the Quality Management System to be recorded, tracked and implemented or closed out.
- (b) Project Co shall ensure that all Project Co Parties are aware of the importance of continuous improvement and are actively engaged in the implementation of the Quality Management System in connection with the performance of the Works.

3. QUALITY PERSONNEL

3.1 General

- (a) Project Co shall provide separate personnel with the required qualifications in a full time role in support of the Quality Management System as set out in this Section 3.

3.2 Quality Director

(a) Appointment and General Responsibilities

- (i) At all times during the Project Term, Project Co shall employ, or otherwise engage by sub-contract, a director (the “**Quality Director**”) who shall,
 - (A) irrespective of such person’s other responsibilities, have defined authority for ensuring the establishment and maintenance of the Quality Management System and auditing and reporting on the status of, and compliance with the Quality Management System, including the requirements set forth in this Section 3.2(a);
 - (B) have experience in a similar quality management representative role on a project of similar size, complexity and contractual value, and be a certified ISO 9001 Lead Auditor or have successfully completed a certified ISO 9001 Lead Auditor Training Course from a recognized certification body;
 - (C) be independent of the Design Team; and
 - (D) have full access to all Quality Documentation described in the Quality Management System held with Project Co Parties.
- (ii) The identity of the Quality Director (and any replacement thereof) and his/her job specification and responsibilities shall be subject to the approval of Contracting Authority (such approval not to be unreasonably withheld or delayed), and the Quality Director shall be a Key Individual.

(b) Specific Responsibilities

- (i) Without limiting the generality of the foregoing, the job specification and responsibilities of the Quality Director shall include the following:
 - (A) developing, implementing and maintaining, and ensuring the effective operation of, the Quality Management System;
 - (B) initiating management reviews, not less frequently than annually, and taking other actions necessary to ensure the effective operation and continuous improvement of the Quality Management System across all Project Co Parties;
 - (C) preparing the annual Quality Audit Program Plan and quarterly updating, scheduling and coordinating Internal Quality Audits and External Quality Audits of key processes with the relevant Project Co Parties;
 - (D) scheduling and coordinating Independent Quality Audits with the independent quality auditor;
 - (E) ensuring that all Quality Audits required under Section 5.2 and under the Quality Documentation are conducted, and reporting the findings of such audits to Contracting Authority;

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- (F) having the authority to immediately stop any work or activity which is not being performed or carried out in accordance with the Quality Documentation applicable thereto;
 - (G) liaising with Contracting Authority and acting as the primary representative for Project Co on all matters relating to quality management;
 - (H) coordinating all activities that demonstrate to Project Co and Contracting Authority that the Quality Management System meets the requirements of this Schedule 11;
 - (I) preparing and submitting to Contracting Authority monthly Quality Management System reports;
 - (J) ensuring that relevant Quality Records are retained in accordance with the Quality Management System and the requirements of Schedule 26 – Record Provisions;
 - (K) developing and implementing a program for Corrective Actions for Non-Conformances irrespective of the cause of the Non-Conformance;
 - (L) approve and sign off on the action taken in close out of Non-Conformance Reports; and
 - (M) carrying out any other matters which, in accordance with this Agreement, are the responsibility of the Quality Director.
- (c) Project Co shall not assign the responsibilities and obligations of the Quality Director to any other Project Co Party.

3.3 Quality Managers

- (a) Project Co shall appoint Quality Managers, who shall report directly to the Quality Director, all of whom shall be independent of the Design Team who perform the Works.
- (b) The Quality Managers shall be responsible for following the Quality Management Plans and management plans developed by Project Co (including the DQMP, CQMP and various other management plans as outlined in this Schedule 11), and shall be responsible for supporting quality control and quality assurance awareness and implementation within the management plans identified in Schedule 10 – Review Procedure as well as the close-out of Non-Conformance Reports for their respective areas of responsibility.
- (c) The Quality Managers shall be certified as quality professionals from certifying bodies, as a minimum successful completion of an ISO 9001 Lead Auditor Training Course.
- (d) Project Co shall ensure that distinct, qualified individual(s) are appointed to each of the following roles:
 - (i) Design Quality Manager;
 - (ii) Construction Quality Manager;

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- (iii) Traffic Quality Manager;
 - (iv) Project Schedules Quality Manager;
 - (v) Systems Quality Manager; and
 - (vi) Environmental Quality Manager.
- (e) The Design Quality Manager shall be responsible to ensure that reviews, checking and verification are undertaken for all designs as described in the DQMP. The Design Quality Manager shall be a Professional Engineer with experience overseeing the quality of the design of projects within the field of rail and transit, transportation and infrastructure of similar size, complexity and contractual value to this Project.
- (f) The Construction Quality Manager shall have experience overseeing the construction quality of a project as described in the CQMP within the field of rail and transit, transportation and infrastructure projects of similar size, complexity and contractual value to this Project.
- (g) The Traffic Quality Manager shall be a traffic management professional with experience in traffic management for roads and transit of projects of similar size, complexity and contractual value to this Project. The Traffic Quality Manager shall also be responsible for auditing the traffic and transit related aspects of the Output Specifications.
- (h) The Project Schedules Quality Manager shall be a scheduling professional with experience in scheduling and project planning on projects within the field of rail and transit, transportation and infrastructure of similar size, complexity and contractual value to this Project. The Project Schedules Quality Manager shall be responsible for auditing the requirements of Schedule 12 – Works Schedule Requirements.
- (i) The Systems Quality Manager shall be a systems professional with experience in projects within the field of rail and transit, transportation and infrastructure of similar size, complexity and contractual value to this Project. The Systems Quality Manager shall be responsible for auditing the requirements related to systems assurance in the Output Specifications.
- (j) The Environmental Quality Manager shall be an environmental professional with experience in the field of environmental management and/ or planning and infrastructure projects of similar size, complexity and contractual value to this Project. The Environmental Quality Manager shall be responsible to audit the requirements of Schedule 17 – Environmental Obligations.
- (k) All Quality Managers shall be independent of the design, construction production and supervision staff, and shall report directly to the Quality Director.
- (l) Project Co shall ensure that no single individual occupies more than one of these roles, unless Project Co has obtained the prior written consent of Contracting Authority.
- (m) Project Co shall not assign the responsibilities and obligations of the Quality Managers to any other Project Co Party.

3.4 Construction Quality Control Manager

- (a) Project Co shall appoint a Construction Quality Control Manager who shall be responsible for quality control requirements as set out in the CQMP for the Works.
- (b) The Construction Quality Control Manager shall be certified as a quality professional from a certifying body, as a minimum successful completion of an ISO 9001 Lead Auditor Training Course.
- (c) The Construction Quality Control Manager shall be responsible for the preparation, review and implementation of the Inspection and Test Plans.
- (d) The responsibilities of the Construction Quality Control Manager shall include supervision of quality inspection staff and ensuring that individuals have the required qualifications and experience to undertake the quality control requirements as set out in the CQMP.
- (e) The Construction Quality Control Manager shall have experience as a quality manager or quality control manager for the construction within the field of rail and transit, transportation and infrastructure projects of similar size, complexity and contractual value to this Project.
- (f) The Construction Quality Control Manager shall have prior experience with or knowledge of the CAIT Manual Requirements, Ontario Provincial Standards Specifications and MTO standards.
- (g) The Construction Quality Control Manager shall report directly to the Construction Quality Manager.

3.5 Construction Quality Control Staff

- (a) Project Co's construction quality control staff shall be responsible for the inspection and testing requirements as set out in the CQMP, and shall be trained to fully understand the CQMP, have access to quality documents, Quality Records, and issued for construction drawings. Failure of construction quality control staff to show knowledge of the requirements and work shall be considered a Non-Conformance.
- (b) Project Co's construction quality control staff responsible for quality control inspection and testing for the Works shall have the qualifications demonstrated by certificates of training and experience on transit construction projects.
- (c) The construction quality control staff shall report directly to the Construction Quality Control Manager.

4. TESTING

4.1 Testing Requirements

- (a) Where Project Co is required by this Agreement or any Quality Documentation to carry out any calibration, sample, test or trial, such calibration, sample, test or trial shall be carried out in accordance with the provisions of this Section 4 and the provisions of the relevant Quality Documentation, which shall reference applicable standards and Good Industry Practice.

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- (b) Project Co shall ensure that all materials meet and comply with the Province of Ontario's occupational health and safety regulations.
 - (c) Prior to the commencement of Works and during full Project Term, Project Co shall maintain a list of Safety Data Sheets (SDS) of all hazardous materials proposed for use and shall be addressed and constantly updated and referenced in accordance with Project Co's Construction Quality Management Plan.

4.2 Accreditation Standards

- (a) All on and off Site calibrations, samples, tests and trials shall be carried out by laboratories that are duly accredited for the carrying out of such calibrations, samples, tests and trials.
- (b) Laboratory accreditation for the Works shall be in accordance with the ISO/IEC 17025 Standard, as amended, updated or replaced from time to time, provided that, for specific activities, Contracting Authority may accept other industry recognized accreditation in lieu of the ISO/IEC 17025 Standard.
- (c) Project Co may request the approval of Contracting Authority to use other industry recognized accreditations, if such other accreditation is applicable to the Works for which it is proposed and meets the intent of the ISO/IEC 17025 Standard.
- (d) Project Co shall ensure that valid calibration certificates for measuring and testing equipment are available and present during all relevant inspections and tests.
- (e) Project Co shall establish and maintain a log of all measuring and testing equipment, which shall include, at a minimum, equipment identification numbers, equipment descriptions, dates of last calibration, and dates of next scheduled calibration.
- (f) Project Co shall ensure that clear and unambiguous traceability exists between each inspection and test record and the measuring and test equipment log for traceability and audit purposes.
- (g) Where a material, component or assembly is required to be fire rated, the fire rating shall be in accordance with Good Industry Practice and acceptable to governing authorities.

4.3 Remedial Work

- (a) Project Co shall be responsible for any remedial work required as a result of any failure to pass any calibration, test, trial, mock-up review, sample or material or Site inspection in accordance with this Agreement or any Quality Documentation or as a result of any laboratory not being duly accredited as required by Section 4.2.

4.4 Inspection and Testing by Third Parties

- (a) Within the Quality Management Plan, Project Co Parties shall include as a minimum, testing and inspection of the following elements of the Works by qualified third party inspection and testing companies:
 - (i) structural inspection and testing.

- (ii) civil testing.
- (iii) electrical testing.

5. QUALITY AUDITS AND MONITORING

5.1 Quality Audit Program Plans

(a) Specific Requirements

- (i) Project Co shall provide a Quality Audit Program Plan to Contracting Authority in accordance with the timing set out in Table 2.6.
- (ii) The Quality Audit Program Plan shall:
 - (A) detail the Internal Quality Audits and the External Quality Audits that will be conducted by Project Co on its own processes and those of Project Co Parties, and the planned dates of such Quality Audits;
 - (B) describe the audit procedure and process that will be followed from start to finish to conduct effective Internal Quality Audits and External Quality Audits; and
 - (C) detail the Independent Quality Audits that will be conducted by the independent quality auditor on Project Co and Project Co Parties, and the planned dates of such Independent Quality Audits.
- (b) Project Co shall provide an updated Quality Audit Program Plan in accordance with the timing set out in Table 2.6 following submission of the initial Quality Audit Program Plan.
- (c) The Quality Director shall update the schedule of the Internal Quality Audits and External Quality Audits at least quarterly or as agreed upon with Contracting Authority.
- (d) The Quality Director shall schedule external Independent Quality Audits at least annually or as agreed upon with Contracting Authority.

5.2 Project Co's Quality Audits

(a) General

- (i) Project Co shall conduct Internal Quality Audits and External Quality Audits of its own processes and those of Project Co Parties in accordance with the requirements of this Schedule 11, and the Quality Documentation, including the Quality Audit Program Plan.
- (ii) The purpose of Project Co's quality auditing process shall be to confirm that all activities comprising the Works, including workmanship, material and warranties, are in compliance with the Quality Manual and Quality Management Plans, to identify all Non-Conformances and necessary Corrective Actions and to facilitate continuous improvement.

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- (iii) Project Co shall notify Contracting Authority of all audits described in Section 5.2(a)(i) and the Independent Quality Audits and Contracting Authority may choose to be present during such audits as a witness.
 - (iv) The audit cycle shall be planned annually with audits being executed at least quarterly or as agreed upon with Contracting Authority. The quarterly audit scope shall cover the processes applicable to the Works of the preceding quarter as well as processes identified in the Non-Conformance Reports.
 - (v) Within 10 Business Days of the completion of each Internal Quality Audit, External Quality Audit and Independent Quality Audit (or such longer period of time agreed to by the Parties), Project Co shall document, or cause to be documented, the results of such Quality Audit in an audit report (each, a “**Project Co Quality Audit Report**”), and deliver a copy of such Project Co Quality Audit Report to Contracting Authority. With respect to each Independent Quality Audit, Project Co shall cause the independent quality auditor to deliver Project Co Quality Audit Report to Contracting Authority at the same time such Project Co Quality Audit Report is submitted to Project Co.
 - (vi) The audits shall be conducted by individuals independent from the planning, execution, or warranty of all elements of the Works.
 - (vii) Each Project Co Quality Audit Report shall, without limitation, set out:
 - (A) all of the Non-Conformances identified during the underlying Quality Audit;
 - (B) all of the Corrective Actions to be implemented as a result of such Quality Audit;
 - (C) subject to Section 5.2(a)(viii), all of the associated Corrective Action Dates; and
 - (D) Project Co’s plan for implementing and completing all of the Corrective Actions by such Corrective Action Dates.
 - (viii) Each Corrective Action Date set out in a Project Co Quality Audit Report shall be a date that is set out in Table 7.1 following the date Project Co Quality Audit Report is delivered to Contracting Authority in accordance with Section 5.2(a)(v).
 - (ix) Project Co shall implement and complete the implementation of each Corrective Action set out in a Project Co Quality Audit Report by the associated Corrective Action Date set out in such Project Co Quality Audit Report.
- (b) Specific Requirements
- (i) The Quality Director shall schedule Internal Quality Audits, External Quality Audits and Independent Quality Audits to ensure that all key processes are reviewed at least annually or as agreed upon with Contracting Authority.
 - (ii) Where necessary, follow up audits shall be scheduled to ensure that identified Corrective Actions have been carried out by the applicable Corrective Action Dates.

- (iii) Internal Quality Audits, External Quality Audits and Independent Quality Audits shall be scheduled taking into account the status and importance of the processes being audited as well as the results of previous audits.
- (iv) Contracting Authority reserves the right to conduct follow up reviews, acting reasonably, but with Notice of not less than three Business Days to Project Co to determine if the Corrective Actions set out in Project Co's Project Co Quality Audit Report have been implemented and completed.
- (v) For the purpose of facilitating the conduct of Internal Quality Audits and External Quality Audits relating to the Works, Project Co shall develop and implement checklists acceptable to Contracting Authority, for use by each of Project Co and Contracting Authority that itemizes requirements as specified in the respective Quality Management Plans.

5.3 Contracting Authority's Quality Audits

- (a) General
 - (i) Contracting Authority shall, following the submission of the Quality Documentation in accordance with this Schedule 11, review the Quality Documentation to identify the critical activities and processes described in the Quality Manual and Quality Management Plans on which Contracting Authority's auditing efforts and resources should be directed. Contracting Authority shall determine the frequency of auditing through regular and ongoing review of Project Co's performance and management systems. Procedures and activities relating to the Works that show good audit performance may have the frequency of auditing decreased, while those that show poor performance or increased risk of Non-Conformances may have the frequency of auditing increased. Without limiting Project Co's obligations under this Agreement, Project Co shall provide and shall ensure Project Co Parties provide Contracting Authority's auditors with all documentation, records, access, facilities and assistance requested in connection with Contracting Authority's Quality Audit activities.
 - (ii) Project Co shall provide Contracting Authority electronic access to all Inspection and Test Plans, including supporting quality documentation, on a real time basis in order for Contracting Authority to undertake Quality Audits.
 - (iii) Contracting Authority shall schedule a Closing Meeting in respect of each Quality Audit carried out by Contracting Authority pursuant to this Section 5 in accordance with Section 5.8.
 - (iv) Following the Closing Meeting in respect of any Quality Audit carried out by Contracting Authority pursuant to this Section 5, Project Co shall:
 - (A) document, or cause to be documented, all of the Corrective Actions to be implemented as a result of such Quality Audit, all of the associated Corrective Action Dates, and Project Co's plan for implementing and completing all of the Corrective Actions by such Corrective Action Dates (each, a "**Corrective Action Plan**"), and

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- (B) deliver a copy of such Corrective Action Plan to Contracting Authority in accordance with the requirements provided in Section 7 and in addition, responding accordingly to findings related to opportunities for improvement.
- (b) Specific Requirements
- (i) Where necessary, follow-up audits shall be scheduled to ensure that identified Corrective Actions are implemented and completed by the applicable Corrective Action Dates.
- (ii) Contracting Authority reserves the right to conduct follow up reviews, acting reasonably, but with notice of not less than three Business Days to Project Co to determine if Project Co's Corrective Action Plan has been implemented and completed in accordance with the Corrective Action Plan.
- (c) Types of Quality Audits
- (i) The following two types of Quality Audits may be conducted by, or on behalf of, Contracting Authority in its discretion:
- (A) Surveillance Quality Audits – scheduled or unscheduled field audits conducted on a random basis or on specific areas of interest throughout the Project Term. The objective of these surveillance audits is to monitor Project Co's activities involving the Works, including but not limited to workmanship, performance measures, issued for construction documents, Inspection and Test Plans and general quality of materials. Contracting Authority shall, during the performance of Surveillance Quality Audits, record any observations and inform Project Co of any deficiencies that require further evaluation. Any noted deficiencies shall be resolved to the satisfaction of Contracting Authority through evidence of Project Co's deficiency evaluation findings, the Corrective Actions process set forth in this Section 5.3, or the Non-Conformance process set forth in Section 7; and
- (B) Quality Management System Audits – scheduled audits conducted at specific times to assess the performance of and compliance with the Quality Management System. Contracting Authority's lead auditor shall contact the Quality Director and confirm the scope and schedule of the audit, and schedule for associated audit meetings. At the audit opening meeting with Project Co, Contracting Authority's lead auditor shall review the audit scope and objectives. Contracting Authority's auditors shall conduct audit interviews and document any observations on prepared checklists. At the end of the audit interviews, Contracting Authority's lead auditor shall evaluate the observations and observed procedural or performance Non-Conformances that require Corrective Action.
- (ii) Contracting Authority's Quality Audits may include scheduled and unscheduled External Quality Audits.
- (iii) Additional information relating to Contracting Authority's Quality Audits with respect to particular Quality Management Plans is identified in the appendices to this Schedule 11.

5.4 Contracting Authority's Monitoring

- (a) In addition to carrying out any scheduled and unscheduled External Quality Audits of the Quality Management System (including audits relating to compliance with all Quality Documentation) as provided in Section 5.3, Contracting Authority may, at its discretion, carry out Quality Audits to monitor and verify the operation of the Quality Management System by, inter alia, carrying out spot checks and making independent inspections and tests of any Works, or material including any Works, or material which fails any test or is suspected by Contracting Authority of not complying with the requirements of this Agreement.

5.5 Deficient Quality Audits

- (a) If either:
- (i) Contracting Authority reasonably believes that Project Co is failing to conduct Quality Audits of its Quality Management System as required by this Agreement in any material respect or if such Quality Audits are not conducted in compliance with the ISO 9001 Standard by personnel competent to conduct such Quality Audits; or
 - (ii) any auditing, monitoring or spot checks of the Quality Management Systems reveals material deficiencies in the Quality Management System or the implementation thereof,

Contracting Authority may carry out increased levels of External Quality Audits (whether in number, duration or detail) of all or any aspect of the Quality Management System until such time as Contracting Authority is reasonably satisfied that none of the circumstances described in this Section 5.5(a) continue to exist.

5.6 Costs of Audits

- (a) If Contracting Authority carries out any audit pursuant to Section 5.3, Section 5.4 or Section 5.5, and the results of such audit shows any Non-Conformance that materially interferes with the delivery of the Works in accordance with the Output Specifications, Quality Manual and Quality Management Plans, then without limiting any other rights and remedies of Contracting Authority, Project Co shall compensate Contracting Authority for all costs incurred in carrying out such audit (including the relevant administrative expenses of Contracting Authority, including an appropriate sum in respect of general staff costs and overheads). All other audits carried out by Contracting Authority pursuant to Section 5.3, Section 5.4 or Section 5.5 shall be at Contracting Authority's cost.

5.7 Independent Quality Audits

- (a) In addition to the Internal Audits and External Audits, Project Co shall cause the Independent Quality Audits to be undertaken during the Works. These independent audits shall be conducted by a certified auditor who is qualified to audit the full scope of the Quality Management System, as acceptable to Contracting Authority and Project Co. The independent audit shall, at a minimum, ensure that all input requirements, as required by this Agreement, are included in the Quality Management System and adhered to in the performance of the Works.

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- (b) A minimum of one full Independent Quality Audit on each of the individual Quality Plans and key processes described within the Quality Management System shall be completed within one year after the DMCA Effective Date and thereafter at least once per year during the Project Term.
 - (c) Project Co shall cause the Independent Quality Audit report to be submitted to Contracting Authority concurrent to when such report is submitted to Project Co.

5.8 Quality Audit Closing Meetings

- (a) Within five Business Days of the completion of any Quality Audit (or such longer period of time agreed to by the Parties), Project Co and Contracting Authority shall carry out a closing meeting in respect of such Quality Audit (each, a “Closing Meeting”) in accordance with Good Industry Practice.
- (b) The purpose of each Closing Meeting shall, without limitation, be for the auditor to present and for the Parties to discuss the Quality Audit and the findings and conclusions of the Quality Audit, including any Non-Conformances identified during the Quality Audit, proposed Corrective Actions, and their respective Corrective Action Dates. Without prejudicing any Party’s ability to initiate a Non-Conformance discovery at an earlier time, for the purposes of addressing Non-Conformances, the Closing Meeting shall be determined to be the date of discovery of a Non-Conformance arising from the Quality Audit.
- (c) Following the conclusion of the Closing Meeting, any Non-Conformances discovered shall be initiated and addressed pursuant to Section 7.

6. QUALITY DOCUMENTATION

6.1 Principles

- (a) The minimum requirements and principles which apply to the Quality Documentation are set out in appendices A to D inclusive to this Schedule 11. Project Co’s Quality Management System shall also comply with the requirements and principles of the ISO 9001 Standard and this Schedule 11.

6.2 ISO Reference Documents

- (a) Without limiting the requirement of the Quality Management System to comply with the ISO 9001 Standard, Project Co’s Quality Management System shall also incorporate the requirements of the following reference documents:
 - (i) ISO 9001 Quality Management Systems – Requirements;
 - (ii) ISO 9000 Quality Management Systems – Fundamentals and Vocabulary; and
 - (iii) ISO 19011 Guidelines for Auditing Management Systems.

6.3 Quality Documentation Requirements

- (a) The minimum documentation requirements for the Quality Management System are:
 - (i) the Quality Manual as required pursuant to Section 2.6;

- (ii) the Quality Management Plans for all aspects of the Works as required pursuant to Section 2.6;
 - (iii) that each Quality Management Plan includes quality system procedures and process flow diagrams documenting who performs the Works, what they do, and what evidence shall be generated that they have performed quality related aspects of the Works correctly; and
 - (iv) the Quality Audit Program Plan required pursuant to Section 5.1, including,
 - (A) the planned Quality Audits;
 - (B) the Quality Audit Program Plan required pursuant to Section 5.2; and
 - (C) the Quality Records required pursuant to Section 6.8,
- (together, the “Quality Documentation”).

6.4 Submission of Quality Documentation

- (a) If any Quality Documentation relies on or incorporates any supporting Quality Documentation then such supporting Quality Documentation or the relevant parts thereof shall (unless Contracting Authority otherwise agrees) be submitted to Contracting Authority at the time that the relevant Quality Documentation or part thereof or change, addition or revision to the Quality Documentation is submitted in accordance with the Schedule 10 – Review Procedure and the contents of such supporting Quality Documentation shall be taken into account in the consideration of the relevant Quality Documentation or part thereof or change, addition or revision to the Quality Documentation in accordance with Schedule 10 – Review Procedure. Contracting Authority may require the amendment of any such supporting Quality Documentation to the extent necessary to enable the relevant Quality Documentation to satisfy the requirements of this Schedule 11.

6.5 Project Co Obligation to Update

- (a) Project Co shall be responsible for proactively updating its Quality Management System and all Quality Documentation from time to time, in accordance with the procedures set forth in this Agreement, to ensure that the Quality Management System and all Quality Documentation are, and at all times remain, in full compliance with the ISO 9001 Standard and the requirements of this Agreement. All testing, inspections, pass and fail conditions must be highlighted, and maintained for records.

6.6 Changes to Quality Documentation

- (a) Project Co shall submit to Contracting Authority in accordance with Schedule 10 – Review Procedure any proposed changes or additions to or revisions of any of the Quality Documentation.
- (b) If Project Co does not propose any change, pursuant to Section 6.6(a), which Contracting Authority determines to be required then Contracting Authority may propose such change and it shall be dealt with as though it had been proposed by Project Co pursuant to Section 6.6(a) and shall not be treated as a Variation. Any dispute between the Parties in respect of any such change shall be resolved in accordance with the Dispute Resolution Procedure.

6.7 Amendment of Quality Documentation

- (a) If there is no unresolved objection by Contracting Authority under Schedule 10 – Review Procedure to a part of the Quality Documentation pursuant to Section 6.4 or to a change, addition or revision proposed pursuant to Section 6.6(a), then the Quality Documentation shall be amended to incorporate such part, change, addition or revision.

6.8 Quality Records

- (a) Project Co shall establish and maintain complete and accurate quality management records (the “Quality Records”).
- (b) The Quality Records shall provide objective evidence of conformance with all requirements of this Agreement, compliance with the ISO 9001 Standard and the effective operation of the Quality Management System.
- (c) Project Co shall provide Contracting Authority electronic access to all Inspection and Test Plans, including supporting quality documentation, on a real time basis.

6.9 Quality Management System Reports

- (a) For each month of the Project Term, Project Co shall prepare and submit to Contracting Authority a comprehensive Quality Management System report as indicated in Table 2.6.
- (b) Specific Requirements
- (i) Each monthly Quality Management System report shall address all quality management activities under each of the Quality Management Plans for that month and any outstanding quality issues from prior months.
- (ii) Each monthly Quality Management System report shall, at a minimum, include the following information separately identified for the Quality Manual and for each Quality Management Plan:
- (A) a Non-Conformance Report log summarizing all Non-Conformance Reports opened, closed or still open from the previous report, in the relevant month and providing the following: “date open”, “date closed”, “status” (open, pending, closed), “classification” (Minor Non-Conformance, Major Non-Conformance, Critical Non-Conformance), “Disposition” (use as is, repair, rework, reject) and “description of status” which describes the current status of the Non-Conformance Report and if closed, when and how it was closed;
- (B) monthly and project to date totals for:
- (I) NCR actions that met key target dates;
- (II) total NCR actions due;
- (III) number of NCRs closed on time;

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- (IV) total NCRs due for closure;
 - (V) balance of NCRs identified by Contracting Authority vs Project Co;
 - (VI) total NCRs issued;
 - (VII) number of complaint ITPs; and
 - (VIII) total number of planned inspections;
 - (C) Corrective Action logs providing details of the Corrective Actions performed during the month and their closeout status;
 - (D) a summary of any inspection and testing activities conducted during the month and a summary of planned inspection and testing activities for the next month;
 - (E) Internal Quality Audits and External Quality Audits performed during the month and a four month look-ahead schedule for planned future Quality Audits;
 - (F) any continual improvement initiatives taken during the month;
 - (G) any other information required to be included in the monthly Quality Management System reports pursuant to any of the appendices to this Schedule 11 or the terms of the relevant Quality Management Plan;
 - (H) any changes made to the Quality Management System such as process change, procedure update, ISO 9001 registration information or the Quality Documentation in compliance with the provisions of this Agreement;
 - (I) status of Quality Management System documentation; and
 - (J) graphical presentation of performance data analysis (current and forecasted), including:
 - (I) percentage and number of Non-Conformance Reports closed on or before Corrective Action Date and Non-Conformance Reports due for closure to the end of reporting month;
 - (II) percentage and cumulative number of Non-Conformance Reports in “open” status and cumulative total of all Non-Conformance Reports issued to the end of reporting month;
 - (III) percentage and number of audits performed versus planned;
 - (IV) percentage and number of audit reports issued within 10 Business Days and completed audits in total and for that period;
 - (V) percentage and number of documents submitted for review requiring more than five revision cycles prior to approval versus total number of documents accepted; and

- (VI) percentage and number of documents submitted and accepted within target date versus total number of documents submitted (together, the “Quality Key Performance Indicators”).

6.10 Additional Information

- (a) Notwithstanding any other provision of this Schedule 11, Project Co shall provide Contracting Authority with such information as Contracting Authority may request from time to time to demonstrate compliance with this Schedule 11.

7. NON-CONFORMANCES

7.1 Non-Conformance Reporting Process

- (a) The Non-Conformance reporting process, from initial discovery through to closeout of a Non-Conformance, shall follow the process outlined below:
- (i) Project Co shall develop a comprehensive procedure for the management of Non-Conformance, from initial discovery through to closeout of a Non-Conformance. This procedure shall address Non-Conformance Reports initiated by both Project Co and Contracting Authority and shall follow the process outlined below. If Project Co or Contracting Authority discover a Non-Conformance, they shall initiate a Non-Conformance Report in compliance with the ISO 9001 Standard as follows:
- (A) Project Co initiated Non-Conformance Reports – Project Co shall provide a Non-Conformance Report identifying the Non-Conformance to Contracting Authority within three Business Days of discovery of the Non-Conformance; or
- (B) Contracting Authority initiated Non-Conformance Reports – If at any time Contracting Authority is notified, or otherwise become aware, that there is any Non-Conformance relating to the Works, Contracting Authority may issue a Non-Conformance Report, without prejudice to any other right or remedy available to Contracting Authority.
- (ii) A Non-Conformance Report initiated by either Party is issued to the Quality Director, thereby activating the Non-Conformance Report. The date of issue shall be recorded denoting the commencement of the time period for which the Non-Conformance Report has an ‘open’ status.
- (iii) The Non-Conformance Report shall indicate a classification for each Non-Conformance, which classification shall be Minor Non-Conformance, Major Non-Conformance or Critical Non-Conformance.
- (iv) For any Non-Conformance Report initiated, the Quality Director shall, in response to the Non-Conformance Report, describe a Disposition of the Non-Conformance and a Corrective Action (to prevent recurrence of the Non-Conformance) in compliance with the ISO 9001 Standard. Project Co shall respond to a Non-Conformance described in a Non-Conformance Report using one of the two responses set out in Table 7.1

Table 7.1 – Non-Conformance Disposition and Corrective Action Requirements

Status of Non-Conformance	Disposition	Corrective Action
Remedial action proposed	<p>Project Co shall provide a plan to remedy the Non-Conformance, no later than 15 Business Days following NCR notification (or other such time as agreed by the parties) which shall include, at a minimum:</p> <ul style="list-style-type: none"> (a) a description of the remedy to be completed; (b) the actions that will need to be implemented to complete the remedy; (c) the applicable qualified individual that is responsible for verifying and confirming the completion of the remedy; and (d) the date by which the Non-Conformance shall be remedied. 	<p>Project Co shall describe the root cause of and the planned improvements to the delivery process to prevent the recurrence of the Non-Conformance, which shall include a Corrective Action plan and Corrective Action Date by which the Corrective Action will be completed. This Corrective Action Date, unless otherwise agreed by the Parties, shall not be a date that is later than 15 Business Days following the date of the Disposition.</p>
Remedial action completed	<p>Project Co shall provide:</p> <ul style="list-style-type: none"> (a) evidence that the Non-Conformance has been remedied; (b) the date by which it was remedied; and (c) the acceptance by the responsible professional who confirmed the Non-Conformance has been remedied. 	<p>Project Co shall provide:</p> <ul style="list-style-type: none"> (a) evidence that the Corrective Action has been completed; (b) the date by which it was completed; and (c) the acceptance by the responsible professional who confirmed the Corrective Action has been completed.

(v) Project Co shall investigate and respond to all Non-Conformance Reports.

(vi) The Quality Director shall change the status of the Non-Conformance Report to ‘in progress’ once a Disposition has been submitted.

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- (vii) The Quality Director shall change the status of the Non-Conformance Report to ‘closed’ once:
 - (A) the Non-Conformance has been remedied and verified;
 - (B) the Corrective Action has been implemented and verified; and
 - (C) the Non-Conformance Report has been reviewed and accepted for closure by Contracting Authority.
 - (viii) The Quality Director shall confirm in writing to Contracting Authority the date that a Non-Conformance Report has entered the status of ‘closed’, within three Business Days of it entering that status.

7.2 Non-Conformance Report Tracking System

- (a) Project Co shall implement and maintain a Non-Conformance Tracking System to monitor the status of all Non-Conformance Reports initiated by Contracting Authority and Project Co.
- (b) The Non-Conformance Tracking System shall be fully operational within 90 days from the DMCA Effective Date, with the following minimum requirements, so as to:
 - (i) comprise a single, secure, searchable and auditable database repository containing both Project Co and Contracting Authority initiated Non-Conformance Reports;
 - (ii) maintain a full history of all opened Non-Conformance Reports, irrespective of status ensuring no record is lost;
 - (iii) have the ability to attach supporting material such as photos and documents; and
 - (iv) provide live access to the current Non-Conformance Report status to both Project Co and Contracting Authority.
- (c) Project Co shall prepare and submit to Contracting Authority a summary report each month (the “**Monthly Non-Conformance Report**”) containing the following:
 - (i) the number of Non-Conformance Reports entering the following status within the last month; ‘open’, ‘in progress’, and ‘closed’. The numbers must be provided for all Non-Conformance Reports collectively, and separately for Non-Conformance Reports classified as Minor Non-Conformances, Major Non-Conformances and Critical Non-Conformances; and
 - (ii) summary statistics and historic trends since the DMCA Effective Date for the number of Non-Conformance Reports with the following status each month since the DMCA Effective Date: ‘open’, ‘in progress’ and ‘closed’.
- (d) The Monthly Non-Conformance Report shall be included in the monthly Quality Management System report.

7.3 Non-Conformance Measures

- (a) Project Co shall rectify each Non-Conformance before the date set out in the Non-Conformance Report for that Non-Conformance.

7.4 Non-Conformance Records

- (a) In addition to the maintenance of the Non-Conformance Tracking System under Section 7.2, Project Co shall maintain and make available to Contracting Authority upon request, records of:
- (i) each Non-Conformance;
 - (ii) the reference numbers of all Non-Conformance Reports;
 - (iii) a classification of each Non-Conformance, which shall be “Minor Non-Conformance”, “Major Non-Conformance” or “Critical Non-Conformance”;
 - (iv) a description of all Non-Conformance Reports;
 - (v) the proposed actions by Project Co to rectify each Non-Conformance;
 - (vi) the date at which each Non-Conformance was identified;
 - (vii) the date and time at which a Non-Conformance specified in a Non-Conformance Report was rectified;
 - (viii) the date at which Contracting Authority was notified of Non-Conformance identification;
 - (ix) the date at which the Disposition of the Non-Conformance was issued to Contracting Authority;
 - (x) the date at which the Disposition of the Non-Conformance was agreed by the parties;
 - (xi) the mutually agreed Corrective Action Date for the Non-Conformance;
 - (xii) the date of Non-Conformance achieving ‘closed’ status; and
 - (xiii) the date of Non-Conformance ‘closed’ status notifications to Contracting Authority.

APPENDIX A**QUALITY MANUAL****A.1 Quality Manual**

- (a) Project Co shall provide a comprehensive Quality Manual that describes the Quality Management System for all aspects of the Works. The Quality Manual shall establish the Quality Policy and Quality Objectives for all aspects of the Works and, in compliance with the requirements of the ISO 9001 Standard, shall describe the processes that shall be established, implemented, controlled, and continually improved to achieve the established Quality Objectives.
- (b) The Quality Objectives shall be measurable, consistent with the Quality Policy and linked to meeting the needs and performance expectations of Contracting Authority in respect of the Project. The Quality Management System described in the Quality Manual shall include all the activities required to achieve these Quality Objectives, including project controls such as scope, cost, schedule and general document control management activities. All of these activities shall be subject to Internal Quality Audits and External Quality Audits.
- (c) The Quality Manual shall describe Project Co Parties involved in performing the Works and how key management activities (such as project controls, traffic management, design management, Construction Activities, and environmental matters) shall interface with each other. The Quality Manual shall also provide the organization chart identifying the authority and responsibilities of all Key Individuals and other key personnel involved with the aforementioned aspects of the Project. The Quality Manual shall also show how the various levels of Quality Management System documentation are linked together.
- (d) The Quality Manual shall clearly define the reporting function and authority of Project Co's Quality Director who shall liaise with Contracting Authority and act as the single point representative of Project Co for all matters relating to quality management.
- (e) The Quality Manual shall be supported by Quality Management Plans that describes a specific Quality Management System for the respective scope of work. Refer to Appendices B to D to this Schedule 11 for requirements of the Quality Management Plans.
- (f) The Quality Manual shall include a matrix showing traceability (with references to respective sections of the Quality Manual or other documents) of compliance to each section of the ISO 9001 Standard and this Schedule 11.

APPENDIX B**DESIGN QUALITY MANAGEMENT PLAN****B.1 Design Quality Management Plan**

- (a) Project Co shall implement and comply with a comprehensive Design Quality Management Plan (“DQMP”) that describes how it intends to manage the design processes for the Project in compliance with the ISO 9001 Standard, its Quality Manual and the provisions of this Agreement. The DQMP is to apply throughout the Works throughout the Project Term.
- (b) The DQMP shall contain an organizational chart identifying Key Individuals and other key personnel responsible for design management and their relationship with the Quality Director for Project Co’s overall Quality Management System as documented in Project Co’s Quality Manual. It shall also contain a description of the responsibilities, qualifications, and authority of the above personnel and the organizational interfaces between those responsible for design management and other engineering and construction management disciplines.
- (c) The DQMP shall, at a minimum, include or reference detailed Quality Management System procedures and process flow diagrams for the following processes:
- (d) design development and planning;
- (e) design input and output review;
- (f) design verification to ensure that design input requirements have been met;
- (g) design validation to ensure that the completed project is capable of meeting its intended use;
- (h) design changes, including the review, acceptance, and documented confirmation by the professional responsible for the applicable Project element or component;
- (i) design risk identifications and mitigation processes;
- (j) design coordination;
- (k) design interface management;
- (l) design communications and protocol during design phase;
- (m) control of outsource processes and products;
- (n) quality assessment and procurement of Project Co Parties responsible for design; including competence, awareness and training needs, identification, assessment and provision;
- (o) scheduling and preparation of construction stage quality control activities inspection, testing, third party testing, and scheduling of inspection and testing of long lead equipment, systems and components;

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- (p) Design Certification and Construction Certification in accordance with the requirements of Section 2.3;
 - (q) certification of Works in accordance with the requirements of Section 2.3;
 - (r) External Quality Audits of Project Co Parties responsible for design;
 - (s) Internal Quality Audits;
 - (t) Corrective Actions, and opportunities for improvement;
 - (u) document management;
 - (v) Works Submittal scheduling and Project Works Schedule audits;
 - (w) control of revisions to issued for construction documentation during construction; and
 - (x) control of Quality Records.
 - (y) The above procedures and flow diagrams shall document who does the work, what they do, and what evidence is generated that they have done the work correctly.
 - (z) The above processes are already covered as part of the Quality Manual or in other Quality Documentation. The process heading is still required to be identified as part of the DQMP. However, the details can be minimized by providing a reference to the other applicable Quality Documentation. Notwithstanding the above, processes that fall within the specific requirements of the DQMP must have detailed quality system procedures and process flow diagrams covered in the DQMP.

APPENDIX C**CONSTRUCTION QUALITY MANAGEMENT PLAN****C.1 Construction Quality Management Plan (CQMP)**

- (a) Project Co shall provide a comprehensive Construction Quality Management Plan that describes how it intends to manage the Construction Activities in compliance with the ISO 9001 Standard, its Quality Manual and the provisions of this Agreement. The CQMP is to apply throughout the Project Term.
- (b) The CQMP shall contain an organizational chart identifying Key Individuals and other key personnel responsible for construction management and their relationship with the Quality Director for Project Co's overall Quality Management System as documented in Project Co's Quality Manual. It shall also contain a description of the responsibilities, qualifications, and authority of the above personnel and the organizational interfaces between those responsible for construction management and other disciplines.
- (c) The CQMP shall address the manner in which the construction instrumentation and monitoring requirements described in the Output Specifications relate to design and construction of the Works, including pre-construction activities, construction staging, existing road service disruption avoidance measures, and post-construction activities.
- (d) The CQMP shall, at a minimum, include or reference detailed procedures and process flow diagrams for the following processes:
 - (i) Project Works Schedule management and audits;
 - (ii) inspection, testing and monitoring, including:
 - (A) a description of the process of how Project Co will conduct and document its quality control and sign off for each Witness and Hold Point and close out of each Inspection and Test Plan; and
 - (B) a description of the process by which Project Co will notify Contracting Authority in advance of any inspection, testing, monitoring, quality assurance review, Witness and Hold Points, and reports that allows Contracting Authority to carry out the auditing or monitoring contemplated in Sections 5.3 and 5.4;
 - (iii) design support and involvement during construction, assessment of constructed works, and acceptance by the design professionals responsible for all Project elements and components;
 - (iv) materials identification and traceability;
 - (v) quality assessment and procurement of Project Co Parties responsible for construction;
 - (vi) External Quality Audits of Project Co Parties responsible for construction;
 - (vii) Internal Quality Audits;

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- (viii) control of non-conforming product and how they will be tracked in relation to Non-Conformances;
 - (ix) Corrective Actions, and opportunities for improvement;
 - (x) document management;
 - (xi) control of “issued for construction” drawing mark ups to reflect the as-built condition including capture of the reasons for any changes from the issued for construction documents and any necessary authorizations;
 - (xii) construction interface management;
 - (xiii) change management during construction;
 - (xiv) certification of Works in accordance with the requirements of Section 2.3;
 - (xv) control of records; and,

if the above processes are already covered as part of another Quality Management Plan or procedure, the process heading is still required to be identified as part of the CQMP. However, reference may be made to the other applicable plan to satisfy this requirement. Notwithstanding the above, processes that fall within the specific requirements of the construction must have detailed procedures and process flow diagrams covered in the CQMP.

- (e) The above procedures and flow diagrams shall document which role is responsible for performing the work, what requirements they must follow, and what evidence is generated that they have performed the work correctly.
- (f) Inspection and Test Plan
 - (i) Project Co shall provide the list of Inspection and Test Plans and production timeline for submittal in accordance to the timeline specified under Table 2.6.
 - (ii) Project Co shall submit specific Inspection and Test Plans for all on-Site and off-Site inspection and test activities for the Works performed by Project Co and Project Co Parties, each addressing a particular element of the Works as described in the Output Specifications and which may require reference to completed design requirements and drawings, separately from the CQMP,
 - (A) in accordance to the time specified under Table 2.6 and prior to the scheduled start of each applicable element of the Works, as described in the Output Specifications is to be undertaken; and
 - (B) Project Co shall not commence or permit the commencement of any aspect of the Works before the corresponding Inspection and Test Plan has been submitted to and reviewed by Contracting Authority in accordance with Schedule 10 – Review Procedure.

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- (iii) The scope of the Inspection and Test Plan shall be at the level of the particular element of the Works, as described in the Output Specifications that is:
 - (A) discrete;
 - (B) in its final position, or can be placed in its final position without modification; and
 - (C) ready for its intended use.
 - (iv) The Inspection and Test Plan shall include a progressive and step-wise series of inspection and testing activities for each discrete element of the Works, including a progressive and step-wise series of Witness and Hold Points leading to scheduled close out of Project Co's inspection and testing activity. For clarity, Contracting Authority may attend these Witness and Hold Points in its oversight function, but the Witness and Hold Points are for the sole purpose of Project Co meeting its obligations under this Agreement.
 - (v) At the commencement of each week, Project Co shall issue a two-week look-ahead schedule (the "**ITP Two-Week Look-Ahead**") of all planned Witness and Hold Points for the following:
 - (A) scheduled timing of Witness and Hold Points for fabrication or manufacture of elements of the Works at a location that is not on the Lands;
 - (B) scheduled timing of Witness and Hold Points for Works activities that will occur at, and between, the hours of 8:00 a.m. and 5:00 p.m., Monday to Friday; and
 - (C) scheduled timing of Witness and Hold Points for Works activities that will occur outside of hours 8:00 a.m. and 5:00 p.m. Monday to Friday and any activities occurring on Saturday, Sundays or statutory holidays.
 - (vi) Project Co shall alert Contracting Authority to any alterations to the scheduled timings in the ITP Two-Week Look-Ahead in a timely manner. For changes to timings that occur with less than 24 hours of Notice, Project Co shall ensure the local Site monitoring staff of Contracting Authority are aware of the change as soon as possible and are provided an opportunity to be present for the Witness and Hold Points.
 - (vii) No later than close of business five Business Days prior to the scheduled timing of any Witness and Hold Point, Project Co shall provide the Contracting Authority Representative with advance written Notice stating the time and date of the Witness and Hold Point. For changes to scheduled timings that occur with less than two Business Days of Notice Project Co shall ensure the local Site monitoring staff of Contracting Authority is made aware of the change as soon as possible and are provided an opportunity to be present for the Witness and Hold Points.
 - (viii) The Inspection and Test Plan shall, at a minimum, include:
 - (A) a description of the inspection, testing and monitoring activity;
 - (B) the type and frequency of inspections, tests and monitoring;

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- (C) a description of the sample size;
 - (D) a description of the quality record(s) that will be created at the completion of each activity;
 - (E) reference to standards, codes, specifications, issued for construction drawings, the approved Inspection and Test Plan, and acceptance criteria;
 - (F) reports and checklists required;
 - (G) identification of personnel responsible for inspection, testing and monitoring activity;
 - (H) Witness and Hold Points for inspection activities where the responsible Design Team member is to be present to assess the conformance of the work with the applicable design, and to identify any Non-Conformances or potential Non-Conformances that must be remedied;
 - (I) a description and frequency of geotechnical instrumentation monitoring and adherence to acceptance criteria (when applicable);
 - (J) a description of the process of how Project Co will conduct and document its quality control and sign off for each Witness and Hold Point and close out of each Inspection and Test Plan; and
 - (K) a description of the process by which Project Co will notify Contracting Authority in advance of any inspection, testing, monitoring, quality assurance review, Witness and Hold Points, and reports that allows Contracting Authority to carry out the auditing or monitoring contemplated in Sections 5.3 and 5.4 of this Schedule 11.
- (g) Without limiting the requirements in the Output Specifications, the Inspection and Test Plan(s) shall incorporate the CAIT Manual Requirements.
 - (h) The personnel identified in the Inspection and Test Plan for implementing the inspection, testing and monitoring activities, as well as the quality assurance review, Witness and Hold Points against any inspection or test activities, shall be demonstrated to be qualified in such inspection or review.
 - (i) Each ITP shall be signed off by the Quality Managers and Design Team, and/ or any independent team or engineer within the Design Team.
 - (j) In addition to the Witness and Hold Points specified in the Inspection and Test Plan, Contracting Authority retains the right to specify additional Witness and Hold Points against any inspection or test activity that Contracting Authority requires the opportunity to observe.
 - (k) Project Co shall report on the status of the ITPs on a monthly basis and include the following:
 - (i) list of the ITPs completed and signed off;

- (ii) list of measuring devices with their serial numbers utilized during the reporting month and their associated calibration status with applicable dates;
- (iii) lab test results completed during reporting month; and
- (iv) mill test certificates of base materials received during reporting month.

SCHEDULE 12**WORKS SCHEDULE REQUIREMENTS****1. DEFINITIONS AND INTERPRETATION****1.1 Definitions**

- (a) “**AACE International**” means the Association for the Advancement of Cost Engineering.
- (b) “**Activity ID**” has the meaning given in Section 1.5(a)(i) of Appendix A.
- (c) “**Baseline DMCA Works Schedule**” has the meaning given in Section 6.2(c).
- (d) “**Baseline TPA Works Schedule**” has the meaning given in Section 6.1(c).
- (e) “**Baseline Works Schedules**” has the meaning given in Section 3.1(a)(iii).
- (f) “**Basis of Works Schedule Report**” has the meaning given in Section 14.1(a).
- (g) “**CA Project Schedule**” has the meaning given in Section 5.1(a).
- (h) “**Change Log**” has the meaning given in Section 15.1(b)(vi).
- (i) “**Close-out Activity**” means any activity of the Construction Works and any associated Milestone Event that immediately precedes a Section Substantial Completion, a DMCA Construction Works Substantial Completion (as applicable), a DMCA Construction Works Final Completion (as applicable), TPA Substantial Completion, TPA Final Completion, Project Substantial Completion and Project Final Completion including:
 - (i) all inspections of the Construction Works by Contracting Authority, third parties, and the Independent Commissioning Agent required by this Agreement;
 - (ii) identification and rectification of Section Minor Deficiencies, Seasonal Minor Deficiencies and Minor Deficiencies;
 - (iii) finalization and issuance of Record Drawings;
 - (iv) Commissioning activities; and
 - (v) Handover Activities,and “**Close-out Activities**” means all such activities and associated Milestone Events.
- (j) “**Control Account**” has the meaning set out in the AACE International Recommended Practice 10S-90 entitled “Cost Engineering Terminology”.
- (k) “**Corrected Works Schedule**” has the meaning given in Section 7(d).

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- (l) “**Cost Performance Index**” has the meaning set out in the AACE International Recommended Practice 10S-90 entitled “*Cost Engineering Terminology*”.
- (m) “**Critical Path**” means the sequence of activities that represents the shortest possible duration to each applicable No Later Than Date, each applicable DMCA Construction Works Scheduled Substantial Completion Date (as applicable) and the TPA Scheduled Substantial Completion Date.
- (n) “**Critical Path Activity**” means any Works Activity with a total float equal or less than zero (0) Working Days, including all Works Activities on the Critical Path included in the Critical Path to achieve each applicable No Later Than Date, each applicable DMCA Construction Works Scheduled Substantial Completion Date (as applicable) and the TPA Scheduled Substantial Completion Date, and “**Critical Path Activities**” means all such Works Activities.
- (o) “**Critical Path Method**” or “**CPM**” means a method used to:
- (i) predict Project duration by analyzing which sequence of activities has least amount of scheduling flexibility. Early dates are figured by a forward pass using a specific start date and late dates are figured by using a backward pass starting from a completion date; and
 - (ii) execute network scheduling using activity durations and logic ties between activities to model the plan to execute the Construction Works.
- (p) “**Data Date**” means a calendar date in the life of the Project upon and through which the progress status for the Construction Works is being determined. For the Baseline Works Schedules, the Data Date shall equal the DMCA Effective Date. For the Progress Works Schedule, the Data Date is the cut-off date for the reporting period, which shall be identified by Contracting Authority.
- (q) “**Design Activity**” means any activity associated with the design of the Project (including, design development, review and approval by Contracting Authority and other Stakeholders), and “**Design Activities**” shall mean all such activities.
- (r) “**Earned Value**” or “**EV**” has the meaning set out in the AACE International Recommended Practice 10S-90 entitled “*Cost Engineering Terminology*”.
- (s) “**Earned Value Management Plan**” has the meaning given in Section 19(a) of this Schedule 12.
- (t) “**Earned Value Metrics**” has the meaning given in Section 15.1(b)(viii)(A).
- (u) “**Fragnet**” means a portion of fragment of a CPM schedule network as set out in the AACE International Recommended Practice 10S-90 entitled “*Cost Engineering Terminology*”.

- (v) “**Handover Activity**” means any activity and associated Milestone Events required to achieve Handover of any New Third Party Infrastructure to the applicable third party, including:
- (i) all inspections of the New Third Party Infrastructure required by this Agreement including inspections by Contracting Authority and the relevant third party;
 - (ii) identification and resolution of Construction Defects;
 - (iii) finalization and issuance of the applicable Record Drawings; and
 - (iv) provision of training to the applicable third party staff,
- and “**Handover Activities**” means all such activities and associated Milestone Events.
- (w) “**Key Commodities**” means essential goods and services which play a major role in performing Works Activities and completing the Project on time. For clarity, Key Commodities include any of the following:
- (i) commodities that span [REDACTED]% of the Project;
 - (ii) each commodity that is involved with multiple Works Activities;
 - (iii) commodities that are associated with the Critical Path; or
 - (iv) commodities that are associated with high-visibility or high-risk activities.
- (x) “**Labour Resources**” means planned person-hours employed to achieve each of the Works Activities.
- (y) “**Longest Path**” means longest continuous path of activities through the Project, which controls each applicable No Later Than Date, each applicable DMCA Construction Works Scheduled Substantial Completion (as applicable) and the TPA Scheduled Substantial Completion Date.
- (z) “**Milestone Event**” means, for each of the Works Activities,
- (i) the start and completion of each deliverable and the identification of any external constraints which are associated with the applicable activity;
 - (ii) interfaces with Stakeholders associated with the applicable activity;
 - (iii) road or transit closures associated with the applicable activity; and
 - (iv) Witness and Hold Points.
- (aa) “**Near Critical Path Activity**” means any Works Activity with a total float equal or less than twenty (20) Working Days, including all Works Activities on the Critical Path to achieve each applicable No Later Than Date, each applicable DMCA Construction Works

Scheduled Substantial Completion Date (as applicable) and the TPA Scheduled Substantial Completion Date, and “**Near Critical Path Activities**” means all such Works Activities.

- (bb) “**No Comment or Reviewed as Noted – Minor Issues Designation**” means a designation, determined by Contracting Authority after review of a Project Works Schedule in accordance with Schedule 10 – Review Procedure, of either,
- (i) “NO COMMENT” on the applicable Project Works Schedule; or
 - (ii) “REVIEWED AS NOTED – MINOR ISSUES” on the applicable Project Works Schedule, with no “RE-SUBMIT” requirement, and provided that all non-conformances noted in the review have been corrected.
- (cc) “**Non-Conformance**” has the meaning given in Schedule 11 – Quality Management.
- (dd) “**Non-Conformance Report**” has the meaning given in Schedule 11 – Quality Management.
- (ee) “**PLAA Activity**” means for any Permits, Licences, Approvals and Agreements, any of the activities or Milestone Events associated with such Permits, Licences, Approvals and Agreements, including:
- (i) consultation and/or coordination activities with the applicable Governmental Authority and, if applicable, property owners;
 - (ii) preparation of documentation for requests in respect of such Permits, Licences, Approvals and Agreements, including pre-submission co-ordination and consultation; and
 - (iii) review and approval of such Permits, Licences, Approvals and Agreements, including all activities and Milestone Events commencing on the date of the initial submission for such Permits, Licences, Approvals and Agreements and ending on the anticipated date of decision of the third party with respect to such Permits, Licences, Approvals and Agreements,
- and “**PLAA Activities**” means all such activities and Milestone Events.
- (ff) “**Planned Value**” or “**PV**” has the meaning as set out in the AACE International Recommended Practice 10S-90 entitled “Cost Engineering Terminology”.
- (gg) “**PMI**” means the Project Management Institute.
- (hh) “**Primavera**” has the meaning given in Section 1.1(b) of Appendix A.
- (ii) “**Procurement Activity**” means any activity or Milestone Event required for the timely purchase, set-up, manufacture, installation and use of long-lead items (for example, prefabricated or preassembled structures or structural elements, elevator and fibre-optic cabling, and other similar long-lead items) as required by this Agreement including:

- (i) issuance of purchase order or contract finalization including,
 - (A) coordination of the procurement with the Construction Works;
 - (B) establishment of procurement processes and bundling strategies; and
 - (C) validation of technical requirements of long-lead items;
- (ii) setup and certification associated with long-lead items;
- (iii) manufacturing or assembly of long-lead items;
- (iv) approval of shop drawings;
- (v) factory acceptance testing;
- (vi) receipt of first and last deliveries;
- (vii) installation of long-lead items; and
- (viii) commencement and completion of inspection, integration, testing, commissioning, certification, and training,

and “**Procurement Activities**” means all such activities and Milestone Events.

- (jj) “**Project Management Plan**” have the meaning given in the Output Specifications, and “**PMP**” means the Project Management Plan.
- (kk) “**Progress Works Schedule**” means Project Co’s working schedule that is,
 - (i) Traceable to and progressed from the PTUS Project Schedule and each applicable component of the PTUS Project Schedule;
 - (ii) Traceable to and progressed from the Progress Works Schedule of the immediately preceding month; and
 - (iii) prepared, maintained, updated, and submitted by Project Co, on a monthly basis, in accordance with this Schedule 12.
- (ll) “**Project Schedule**” has the meaning given in Section 3.1(a)(i).
- (mm) “**Project Schedules Quality Manager**” has the meaning given in Schedule 11 – Quality Management.
- (nn) “**Project Works Schedule**” means any of the schedules required pursuant to this Schedule 12, including the Corrected Works Schedule, Proposed Works Schedules, Baseline Works Schedules, Progress Works Schedules, Revised Baseline Works Schedule(s), Works Micro-Schedules or Recovery Works Schedules, but excluding the PTUS Works Schedule, and “**Project Works Schedules**” means all such Construction Works schedules.

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- (oo) “**Project Works Schedule Submission Register**” has the meaning given in Section 1.1(e) of Appendix A.
- (pp) “**Proposed DMCA Works Schedule**” has the meaning given in Section 6.2.
- (qq) “**Proposed TPA Works Schedule**” has the meaning given in Section 6.1.
- (rr) “**Proposed Works Schedules**” has the meaning given in Section 3.1(a)(ii).
- (ss) “**PTUS Project Schedule**” has the meaning given in Section 3.1(a)(i).
- (tt) “**Quality Director**” has the meaning given in Schedule 11 – Quality Management.
- (uu) “**Quality Management System**” has the meaning given in Schedule 11 – Quality Management.
- (vv) “**Quality Manual**” has the meaning given in Schedule 11 – Quality Management.
- (ww) “**Quantity**” means material resources with agreed unit of measure.
- (xx) “**Recovery Works Schedule**” has the meaning given in Section 16.1(a).
- (yy) “**Recovery Works Schedule Report**” has the meaning given in Section 16.1(a).
- (zz) “**Retired Works Activity**” has the meaning given in Section 1.7(a) of Appendix A.
- (aaa) “**Review Procedure Activities**” means activities associated with the implementation of Schedule 10 – Review Procedure.
- (bbb) “**Review Procedure Activities Register**” means a register that contains all key information about a review of a Works Submittal including submission date, Contracting Authority response due date, Contracting Authority response date, resubmission date, revision number, status of review, and conformance comment from Contracting Authority.
- (ccc) “**Revised Baseline Works Schedule**” has the meaning given in Section 11.1(a).
- (ddd) “**S-Curve**” has the meaning as set out in the AACE International Recommended Practice 10S-90 entitled “Cost Engineering Terminology”.
- (eee) “**Schedule Performance Index**” has the meaning as set out in the AACE International Recommended Practice 10S-90 entitled “Cost Engineering Terminology”.
- (fff) “**Scheduler**” means the Project Co employee responsible for creating and maintaining the Project Works Schedules.
- (ggg) “**Stakeholder Consultation Activity**” means any of the following activities or Milestone Events:
- (i) Stakeholder partnering sessions;

- (ii) Works Submittals development and finalization;
- (iii) consultation, submission, review and approval process of any municipal, provincial, federal, or any other Governmental Authority;
- (iv) milestones noting decisions that support final design integration between Contracting Authority’s systems and Project Co’s systems;
- (v) design review meetings;
- (vi) presentations or workshops on design topics expected to involve multiple Stakeholders, or any other activities required to satisfy and demonstrate design conformance; and
- (vii) any additional activities as required by Project Co to fulfill the requirements of this Agreement with respect to Stakeholder consultation,

and “**Stakeholder Consultation Activities**” means all such activities and Milestone Events.

(hhh) “**Three Week Look-Ahead Schedule**” has the meaning given in Section 17(a).

(iii) “**Tilos**” has the meaning given in Section 1.1(b) of Appendix A.

(jjj) “**Traceable**” means prepared in such a way that Contracting Authority has the ability to maintain, track and trace all activities and milestones including Activity ID’s, descriptions, activity codes, logical sequences, interdependencies and data consistency between and/or within all Project Works Schedules.

(kkk) “**Tracking Milestone**” is a schedule milestone that is linked to the applicable Works Activities, Works Milestones, and Milestone Events and “**Tracking Milestones**” means all such scheduled milestones.

(lll) “**Utility Relocation or Protection Activity**” means, for each system per phase or section of the Construction Works, any of the following activities:

- (i) approvals by Utility Companies;
- (ii) relocation for each specific occurrence of a Utility Infrastructure; and
- (iii) inspection, acceptance and hand-back of the Utility Infrastructure to the owner of that applicable Utility Infrastructure,

and “**Utility Relocation or Protection Activities**” means all such activities and associated Milestone Events.

(mmm) “**Witness and Hold Point**” has the meaning given in Schedule 11 – Quality Management.

- (nnn) “**Work Breakdown Structure**” or “**WBS**” is a hierarchical framework for organizing and ordering the activities that make up the entire project scope as set out in AACE International Recommended Practice 33R-15 entitled, “*Developing the Project Work Breakdown Structure.*”
- (ooo) “**Working Day**” means, for the purposes of this Schedule 12, a day on which Project Co has scheduled specific Works Activities to be carried out, as set out in the “Planned Working Calendar” required by Section 14.1(c)(v).
- (ppp) “**Working Hour**” means, for the purposes of this Schedule 12, an hour on which Project Co has scheduled specific Works Activities to be carried out in a Working Day.
- (qqq) “**Works Activity**” means any of the following:
- (i) Access Management Activities;
 - (ii) Close-out Activities;
 - (iii) Commissioning activities;
 - (iv) Construction Activities;
 - (v) Design Activities;
 - (vi) PLAA Activities;
 - (vii) Procurement Activities;
 - (viii) Stakeholder Consultation Activities;
 - (ix) Utility Relocation or Protection Activities;
 - (x) Review Procedure Activities; or
 - (xi) activities to be performed:
 - (A) that cannot be started or finished without the involvement of Contracting Authority or one or more Stakeholders; or
 - (B) that must be started or finished before a Contracting Authority activity or Stakeholder activity can be started or finished,
- and “**Works Activities**” means all such activities.
- (rrr) “**Works Micro-Schedule**” has the meaning given in Section 13(a).
- (sss) “**Works Micro-Schedule Activity**” means,

- (i) any Project Co activity that Contracting Authority determines, acting reasonably, is required to be included within a Works Micro-Schedule;
- (ii) any activity required pursuant to Schedule 11 – Quality Management; and
- (iii) any activity required pursuant to Schedule 14 – Commissioning,

and “**Works Micro-Schedule Activities**” means all such activities.

(ttt) “**Works Micro-Schedule Milestone**” means any of the following Milestone Events:

- (i) any milestone signifying a handover of work between,
 - (A) Project Co and Contracting Authority; or
 - (B) Project Co and any owner of New Third Party Infrastructure; and
- (ii) any additional milestone as requested by Contracting Authority, acting reasonably,

and “**Works Micro-Schedule Milestones**” means all such Milestone Events.

(uuu) “**Works Milestone**” means any of the following Milestone Events:

- (i) DMCA Effective Date;
- (ii) TPA Effective Date;
- (iii) submission by Project Co of all Works Submittals related to Construction Works;
- (iv) each Development Works Milestone Date;
- (v) completion of the Utility Work;
- (vi) completion of the New Third Party Infrastructure;
- (vii) completion of interface milestones;
- (viii) submission by Project Co of all Commissioning Submittals, pursuant to Schedule 14 – Commissioning;
- (ix) DMCA Construction Works Scheduled Substantial Completion Date (as applicable);
- (x) DMCA Construction Works Scheduled Final Completion Date (as applicable);
- (xi) TPA Scheduled Substantial Completion Date; and
- (xii) TPA Scheduled Final Completion Date;

and “**Works Milestones**” means all such Milestone Events.

(vvv) “**Works Schedule Progress Report**” has the meaning given in Section 15.1(a).

2. **DOCUMENTS COMPRISING THE WORKS SCHEDULE REQUIREMENTS SCHEDULE**

- (a) This Schedule 12 is comprised of the following documents:
- (i) these general provisions of this Schedule 12;
 - (ii) Appendix A – Project Works Schedule Technical Requirements;
 - (iii) Appendix B – EVM Reporting Requirements; and
 - (iv) Appendix C – Activity Code And User Defined Field (UDF) Requirements.

3. **DEVELOPMENT OF PROJECT WORKS SCHEDULES**

3.1 **Types and Purposes of Project Works Schedules**

- (a) Project Co acknowledges and agrees that it will develop and maintain the following Project Works Schedules in accordance with the requirements of this Schedule 12:
- (i) a schedule which shall be compiled, maintained and managed by Project Co in accordance with the requirements of Section 5 (the “**PTUS Project Schedule**”), which shall:
 - (A) at all times, consist of all proposed and approved Works Activities to be performed on the Project, including for clarity those captured within the then current Proposed Works Schedules, and the then current Baseline Works Schedule(s); and
 - (B) be used for monthly reporting in accordance with the requirements of Section 12, for the period that commences on the First Checkpoint Date and ends at the Expiry Date;
 - (ii) schedules under development but not yet approved by Contracting Authority in accordance with Section 6 (the “**Proposed Works Schedules**”), which shall include:
 - (A) any Proposed TPA Works Schedule, which shall capture all associated Works Activities to be carried out pursuant to a Target Price Agreement; and
 - (B) any Proposed DMCA Works Schedule(s), which shall capture all associated Works Activities to be carried out pursuant to a Notice to Proceed;

- (iii) baseline works schedules approved by Contracting Authority in accordance with Section 6 (the “**Baseline Works Schedules**”), which shall include:
 - (A) any Baseline TPA Works Schedule which shall consist of all Construction Works associated with any Works performed pursuant to a Target Price Agreement; and
 - (B) any Baseline DMCA Works Schedule(s) which shall consist of all Construction Works associated with any DMCA Construction Works performed pursuant to a Notice to Proceed;
 - (C) and, if required, any Revised Baseline Works Schedule(s), each of which is required to demonstrate Project Co’s intended schedule to complete the Construction Works and from which progress will be measured;
- (iv) monthly Progress Works Schedule(s) in accordance with the requirements set out in Section 12 and, if applicable, Works Micro-Schedules in accordance with the requirements set out in Section 13, each of which is required to demonstrate Project Co’s actual progress of the Construction Works up to and including the applicable Data Date;
- (v) if requested by Contracting Authority, a Recovery Works Schedule(s) which meets the requirements set out in Section 16, and demonstrates Project Co’s plan and schedule to mitigate delay and accelerate the Construction Works; and
- (vi) if requested by Contracting Authority, any other Project Works Schedule.

4. SEQUENCE OF PROJECT WORKS SCHEDULE DEVELOPMENT

4.1 Project Co acknowledges and agrees that it shall, with regards to the creation, development, and refinement of the Project Works Schedule(s):

- (a) create and develop the Project Works Schedule(s) on a progressive basis as the Development Works are carried out, and in accordance with the following sequence:
 - (i) compile and maintain the PTUS Project Schedule in accordance with the requirements of Section 5;
 - (ii) establish the Proposed Works Schedules in accordance with the requirements of Section 6 (which, in each case, advance in further detail a portion of the PTUS Project Schedule); and
 - (iii) once a Proposed Works Schedule has been finalized in accordance with Section 6.1(c) or 6.2(c), as applicable, it shall become the Baseline Works Schedule that is applicable to the Works that are the subject thereof, unless it is replaced by a Revised Baseline Works Schedule in accordance with Section 11.1;
- (b) update and refine Project Works Schedules:

- (i) to ensure that, at all times, the PTUS Project Schedule reflects, bounds, and incorporates, and is an accurate and current compilation of, the then current versions of each Project Works Schedule (including all Proposed Works Schedule(s) under development, and any Baseline Works Schedule(s) which have been approved);
- (ii) to ensure updates made to any Proposed Works Schedule, or the PTUS Project Schedule, are:
 - (A) assessed against all other Project Works Schedules, and to the extent necessary (as determined in consultation with Contracting Authority), refined to limit impacts to the Critical Path of all other Project Works Schedules;
 - (B) reconciled with, and at all times integrated with, other Proposed Works Schedules; and
 - (C) analyzed against any Baseline Works Schedule(s) for potential impacts (whether positive or negative), and upon determination of any such impacts, reported to Contracting Authority in accordance with Section 12.
- (c) ensure, for the period of time following the approval of any Baseline Works Schedule, and while other Proposed Works Schedule(s) remain under development, the PTUS Project Schedule shall also remain under development, and in which case:
 - (i) delays from any Baseline Works Schedule shall be accounted for within the PTUS Project Schedule and reconciled with any necessary updates required to account for any such delays in any Proposed Works Schedule(s);
 - (ii) updates associated with a Revised Baseline Works Schedule or Recovery Works Schedule shall be integrated with any necessary modifications to the Proposed Works Schedules to account for any such updates; and
 - (iii) the monthly reporting obligations set out in Section 12 shall apply for all Project Works Schedules.

5. PTUS PROJECT SCHEDULE REQUIREMENTS

5.1 Project Co shall develop the PTUS Project Schedule in accordance with the Project Execution Plan and the following:

- (a) Prior to the DMCA Effective Date, Contracting Authority will provide a project schedule (the “**CA Project Schedule**”) to Project Co, in native P6 format (.xer), as Background Information, for reference and use by Project Co as Project Co may deem necessary, to create, refine, and advance the PTUS Project Schedule, and all subsequent Project Works Schedules for the Project. For avoidance of doubt, Contracting Authority bears no risk or

liability to Project Co, for any matter related to Project Co's use, reference, or adoption of any such schedule shared with Project Co for the Project.

- (b) Following receipt of the CA Project Schedule, Project Co shall compile the PTUS Project Schedule, which shall form the singular consolidated Project Works Schedule that encompasses all Works Activities to be carried out on the Project, and which:
 - (i) integrates and bounds all Project Works Schedule(s); and
 - (ii) shall be continuously progressed by Project Co to reflect the development of Proposed Works Schedules and the documented progress of the Baseline Works Schedules.

5.2 Following the compilation of the PTUS Project Schedule in accordance with Sections 5.1 and 5.3 of this Section 5, Project Co shall maintain and refine the PTUS Project Schedule for the duration of the Project, or, until such time set out in Section 3.1(a)(i)(B).

5.3 **PTUS Project Schedule General Requirements – First Checkpoint**

- (a) By the First Checkpoint Date, Project Co shall develop and submit to Contracting Authority for its review the PTUS Project Schedule.
- (b) The PTUS Project Schedule submitted in accordance with Section 5.3(a) shall:
 - (i) satisfy a Level 3 schedule as defined by AACE and PMI;
 - (ii) include a Work Breakdown Structure to match the proposed packaging strategy in the Project Execution Plan as defined in Schedule 2 – Development Works Submissions and Project Development Process, Appendix 5 – Project Execution Plan Outline;
 - (iii) include the No Later Than Dates as defined in Schedule 45 – Integration with RSSOM Project;
 - (iv) include the No Later Than Dates as defined in Schedule 41 – Early Works Handover;
 - (v) include dates for the Development Works Milestones and associated activities;
 - (vi) include a Basis of Works Schedule Report; and
 - (vii) include Level 4 Works Activities as defined by AACE and PMI and defined in Schedule 6 – DMCA Construction Works.

5.4 **PTUS Project Schedule General Requirements – Second Checkpoint**

- (a) By the Second Checkpoint Date, Project Co shall submit an updated PTUS Project Schedule to Contracting Authority for its review.

- (b) The PTUS Project Schedule submitted in accordance with Section 5.4(a) shall:
- (i) be integrated with the Ontario Line Integrated Master Schedule (IMS);
 - (ii) satisfy a Level 4 schedule as defined by AACE and PMI;
 - (iii) include a Work Breakdown Structure to match the proposed packaging strategy in the Project Execution Plan as defined in Schedule 2 – Development Works Submissions and Project Development Process, Appendix 5 – Project Execution Plan Outline;
 - (iv) include the No Later Than Dates as defined in Schedule 45 – Integration with RSSOM Project;
 - (v) include the No Later Than Dates as defined in Schedule 41 – Early Works Handover;
 - (vi) include Development Works Milestones Dates and associated activities;
 - (vii) include a Basis of Works Schedule Report; and
 - (viii) include Level 4 Works Activities as defined by AACE and PMI and defined in Schedule 6 – DMCA Construction Works.

5.5 **PTUS Project Schedule General Requirements – Subsequent TPA Checkpoints and DMCA Construction Works**

- (a) Project Co shall:
- (i) prior to the issuance of a Notice to Proceed in any respect of any DMCA Construction Works, update the PTUS Project Schedule to incorporate a Level 4 schedule for the proposed DMCA Construction Works as reflected within the final DMCA Construction Works Work Plan;
 - (ii) prior to each Project Checkpoint preceding a TPA Proposal submission, update the PTUS Project Schedule to incorporate a Level 4 schedule of the respective TPA Works captured within the TPA Proposal;
 - (iii) by the final Project Checkpoint Date, and preceding the final TPA Proposal submission, ensure that the PTUS Project Schedule is a Level 4 schedule as defined by AACE and PMI; and
 - (iv) in each instance where Project Co is required to submit a PTUS Project Schedule to Contracting Authority, include a Basis of Works Schedule Report.

5.6 **PTUS Project Schedule Metrics, Measurements, and Analytics**

- (a) Project Co shall ensure that the PTUS Project Schedule at all times meets the following requirements:

- (i) includes dashboards, in a format agreed to by Contracting Authority, that will be established to report Key Performance Indicators, and will be included in each Works Schedule Progress Report in accordance with Section 15 of this Schedule 12;
- (ii) includes a standard earned value measurement system implemented to include both cost and schedule variances and indices against planned and actual values;
- (iii) design and construction progress and performance are measured as:
 - (A) level of effort for supervisory type activities with variances related to changes to milestones or the overall project duration;
 - (B) apportioned effort for activities that are driven by or associated with discrete effort (inspections, quality assurance, verification, validations, etc.); and
 - (C) discrete effort for work that can be quantified and measured (e.g., percent complete for 30/60/90/100 design deliverables, cubic meters of concrete placed). Rules of credit with a weighted breakdown can be used for other deliverables (e.g. reports, specifications, etc.);
- (iv) procurement progress and performance for Construction Works are measured in terms of the number of requests for information and addendum response rates and actual durations against planned durations; and
- (v) changes in Critical Path will be measured in terms of the RSSOM handover milestones and associated float. Project Co shall report on Project Co's then current schedule analysis in accordance with Section 15.1(b)(iv).

6. PROPOSED TPA AND DMCA WORKS SCHEDULE REQUIREMENTS

6.1 Each proposed schedule for the TPA Works (the “**Proposed TPA Works Schedule**”) shall be prepared by Project Co in accordance with the requirements of this Section 6.1 and the Project Execution Plan. In respect of each Proposed TPA Works Schedule, Project Co shall:

- (a) develop and submit to Contracting Authority an initial Proposed TPA Works Schedule no later than the First Checkpoint Date and an updated and further progressed version no later than the Second Checkpoint Date which, in each case:
 - (i) forms an extraction of, and details a portion of, the PTUS Project Schedule;
 - (ii) satisfies the requirements of a Level 3 schedule as defined by AACE and PMI, updated monthly;
 - (iii) is logically tied within the PTUS Project Schedule;
 - (iv) clearly identifies and represents key Milestone Events and Handover Activities;

- (v) is logically tied to the No Later Than Dates referenced in Schedule 45 – Integration with RSSOM Project, to illustrate the critical path of the overall project; and
- (vi) includes a Basis of Works Schedule Report;
- (b) develop and submit to Contracting Authority a final Proposed TPA Works Schedule at the TPA Development Checkpoint Date, which:
 - (i) forms an extraction of, and details a portion of, the PTUS Project Schedule;
 - (ii) satisfies the requirements of a Level 3 schedule as defined by AACE and PMI;
 - (iii) is logically tied within the Project Schedule;
 - (iv) clearly identifies and represents key Milestone Events and Handover Activities;
 - (v) is logically tied to the No Later Than Dates referenced in Schedule 45 – Integration with RSSOM Project, to illustrate the critical path of the overall project;
 - (vi) is cost and resource loaded;
 - (vii) is advanced to satisfy the requirements of a Level 4 schedule for execution as defined by AACE and PMI; and
 - (viii) includes a Basis of Works Schedule Report; and
- (c) provide the Proposed TPA Works Schedule to Contracting Authority for CA Approval and, following receipt of CA Approval, promptly submit the approved Proposed TPA Works Schedule to Contracting Authority for its review in accordance with Schedule 10 – Review Procedure. Once the Proposed TPA Works Schedule has received a No Comment or Reviewed as Noted – Minor Issues Designation, Project Co shall replace the Proposed TPA Works Schedule with an approved version of such schedule in accordance with the No Comment or Reviewed as Noted – Minor Issues Designation (the “**Baseline TPA Works Schedule**”), which shall be used following commencement of the TPA Works in accordance with Schedule 4 – Form of Target Price Agreement), and thereafter meet the requirements of Section 11 and Appendix A of this Schedule 12. For certainty, without limitation, Contracting Authority may have regard to the PTUS Project Schedule in determining whether to provide CA Approval or a No Comment or Reviewed as Noted – Minor Issues Designation in respect of any Proposed TPA Works Schedule, and once the Proposed TPA Works Schedule has been replaced by a Baseline TPA Works Schedule, it will remain a Baseline Works Schedule for the remainder of the Project Term, subject to the requirements set out in this Schedule 12.

6.2 Each proposed schedule for the DMCA Construction Works (the “**Proposed DMCA Works Schedule**”) shall be prepared by Project Co in accordance with the requirements of this Section

6.2 and the Project Execution Plan. In respect of each Proposed DMCA Works Schedule, Project Co shall:

- (a) develop an initial Proposed DMCA Works Schedule in accordance with DMCA Schedule 6 – DMCA Construction Works and the Final DMCA Construction Works Work Plan, which:
 - (i) forms an extraction of, and details a portion of, the PTUS Project Schedule;
 - (ii) satisfies the requirements of a Level 3 schedule as defined by AACE and PMO for the specific DMCA Construction Works;
 - (iii) is logically tied within the PTUS Project Schedule;
 - (iv) clearly identifies and represents key Milestone Events and Handovers;
 - (v) demonstrates within a Level 3 Project Schedule how the specific DMCA Construction Works tie to key Milestone Event and is logically tied to the No Later Than Dates referenced in Schedule 45 – Integration with RSSOM Project, to illustrate the critical path of the overall project; and
 - (vi) includes a Basis of Works Schedule Report;
- (b) develop a final Proposed DMCA Works Schedule in accordance with DMCA Schedule 6 – DMCA Construction Works and the Final DMCA Construction Works Work Plan, which:
 - (i) forms an extraction of, and details a portion of, the PTUS Project Schedule;
 - (ii) is cost and resource loaded;
 - (iii) satisfies the requirements of a Level 4 schedule as defined by AACE and PMO for the specific DMCA Construction Works;
 - (iv) is logically tied within the PTUS Project Schedule;
 - (v) clearly identifies and represents key milestones and handovers;
 - (vi) demonstrates within a Level 4 Project Schedule how the specific DMCA Construction Works tie to major milestones and is logically tied to the No Later Than Dates referenced in Schedule 45 – Integration with RSSOM Project, to illustrate the critical path of the overall project; and
 - (vii) includes a Basis of Works Schedule Report; and
- (c) provide the Proposed DMCA Works Schedule to Contracting Authority, and following receipt of Notice to Proceed, promptly submit the approved Proposed DMCA Works Schedule to Contracting Authority for its review in accordance with Schedule 10 – Review Procedure. Once the Proposed DMCA Works Schedule has received a No

Comment or Reviewed as Noted – Minor Issues Designation, Project Co shall replace the Proposed DMCA Works Schedule with an approved version of such schedule in accordance with the No Comment or Reviewed as Noted – Minor Issues Designation (the “**Baseline DMCA Works Schedule**”), which shall be used following a Notice to Proceed of the DMCA Construction Works as defined in DMCA Schedule 6 – DMCA Construction Works), and thereafter meet the requirements of Section 11 and Appendix A of this Schedule 12. For certainty, without limitation, Contracting Authority may have regard to the PTUS Project Schedule in determining whether to provide CA Approval or a No Comment or Reviewed as Noted – Minor Issues Designation in respect of any Proposed DMCA Works Schedule, and once the Proposed DMCA Works Schedule has been replaced by a Baseline DMCA Works Schedule, it will remain a Baseline Works Schedule for the remainder of the Project Term, subject to the requirements set out in this Schedule 12.

7. SUBMISSION AND REVIEW OF PROJECT WORKS SCHEDULES

- (a) Project Co shall submit each Project Works Schedule to Contracting Authority, in draft, which shall be reviewed by Contracting Authority and, if applicable, the Independent Commissioning Agent and third parties, in accordance with Schedule 10 – Review Procedure.
- (b) No Project Works Schedule shall be finalized or considered an acceptable Project Works Schedule by Contracting Authority until it has received a No Comment or Reviewed as Noted – Minor Issues Designation. For clarity, Project Co shall correct all Non-Conformances in any Project Works Schedule and detail to Contracting Authority how each Non-Conformance has been addressed before the Project Works Schedule is used for any purpose under this Agreement.
- (c) Contracting Authority may at any time, acting reasonably, convene a meeting or meetings with Project Co to review any matter relating to a Project Works Schedule, including the non-conformances and deficiencies in a Project Works Schedule, and identify those Project Co Parties that are required to attend the meeting.
- (d) If a Project Works Schedule submitted by Project Co receives a “RE-SUBMIT” or a “REVIEWED AS NOTED – MAJOR ISSUES” comment from Contracting Authority the following shall apply:
 - (i) Contracting Authority may, in its sole discretion and at any time, require Project Co to promptly submit,
 - (A) additional information (including draft versions of an updated Project Works Schedule) to supplement the information originally provided in the Project Works Schedule or the Works Schedule Progress Report; and
 - (B) one or more corrected versions of the applicable Project Works Schedule (each a “**Corrected Works Schedule**”);
 - (ii) For clarity,

- (A) any information provided pursuant to Section 7(d)(i)(A) is not a Works Submittal;
 - (B) a Corrected Works Schedule is a Works Submittal, and the requirements of Schedule 10 – Review Procedure apply to each Corrected Works Schedule; and
 - (C) all Non-Conformance Reports associated with the submission and review of Project Works Schedules do not apply to the submission and review of Corrected Works Schedules.
- (iii) In addition to complying with the Corrected Works Schedule requirements set out in Section 7(d)(iv), and notwithstanding the time period for resubmission of Works Submittals set out in Schedule 10 – Review Procedure, Project Co shall correct all non-conformances and deficiencies in a Progress Works Schedule in the next monthly submission of the Progress Works Schedule and shall provide detail in the Works Schedule Progress Report setting out how the non-conformances and deficiencies have been corrected; and
 - (iv) For the purpose of ensuring that a Progress Works Schedule is finalized for each month of the Project from DMCA Effective Date to Project Final Completion, Contracting Authority may, in its sole discretion, require Project Co to continue to submit one or more Corrected Works Schedules for a particular month (even after the deadline for the next monthly submission of the Progress Works Schedule) until the Corrected Works Schedule for that particular month receives a No Comment or Reviewed as Noted – Minor Issues Designation.

8. PROJECT WORKS SCHEDULE REQUIREMENTS

8.1 General Requirements for Project Works Schedules and Works Schedule Progress Reports

- (a) Project Co shall ensure that all Project Works Schedules and Works Schedule Progress Reports,
 - (i) are developed in accordance with Good Industry Practice, are compliant with the requirements of this Agreement, and include appropriate schedule activities, logic, and sequencing with achievable production rates and realistic assumptions;
 - (ii) demonstrate, in a clear and detailed way, Project Co’s planned execution of the Construction Works and, in the case of Works Schedule Progress Reports, the actual progress of the Works from DMCA Effective Date until Project Final Completion;
 - (iii) include all Works Activities as defined in this Schedule 12;
 - (iv) include all Tracking Milestones;

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- (v) include cost values, Quantities and Labour Resources for all Works Activities to enable the calculation of the required Earned Value Metrics;
 - (vi) contain sufficient detail to enable Contracting Authority to,
 - (A) monitor the planned schedule for the Construction Works and the progress to complete the Construction Works and determine whether Project Co is likely to achieve:
 - (1) Section Substantial Completion for each Project Co Infrastructure Section by the applicable No Later Than Date pursuant to Schedule 45 – Integration with RSSOM Project;
 - (2) Handover of New City Infrastructure and New TTC Infrastructure in accordance with the applicable requirements, including Section 23 (*Commissioning and Completion*), of this Agreement;
 - (3) TPA Substantial Completion by the TPA Scheduled Substantial Completion Date; and
 - (4) DMCA Construction Works Substantial Completion by the applicable DMCA Construction Works Scheduled Substantial Completion Date (as applicable);
 - (B) manage Contracting Authority interfaces and analyze the schedule impacts of any Early Warning Event, potential delay, Adjustment Event or Variation;
 - (vii) take into account, and, subject to any Adjustment pursuant to Schedule 21 – Risk Allocations, are consistent with, all dates and timelines that are pre-established in this Agreement;
 - (viii) in the case of Progress Works Schedules, are progressed from and are Traceable to the PTUS Project Schedule, and that each successive monthly Progress Works Schedule is updated from and Traceable to the immediately preceding Progress Works Schedule; and
 - (ix) activities within the Progress Works Schedules and Earned Value Metrics shall be organized according to a Work Breakdown Structure which will also relate to the updates of budget, financial status and risks as described in Schedule 33 – Works Report Requirements.
- (b) At the request of Contracting Authority, acting reasonably, Project Co shall provide applicable industry benchmarks or benchmarking data or detailed back-up calculations and assumptions for the Works Activities durations.

- (c) Project Co shall immediately give Notice to Contracting Authority of a change to a Works Activity if such change may impact the activities of Contracting Authority or Additional Contractors. Project Co shall include in its report an update on the status of all Works Activities or milestones for all Handover events or interface activities, indicating the baseline date, remaining float, forecast date and changes to float or changes to forecast date from the last report.
- (d) Project Co shall immediately give Notice to the Contracting Authority Representative upon becoming aware that the total amount of float on a Works Activity that is within twenty (20) Working Days of the Critical Path changes by five (5) Working Days or more from the amount of float shown in the then current Baseline Works Schedules or Revised Baseline Works Schedule, as appropriate. Thereafter, Project Co shall also immediately give an additional Notice to Contracting Authority Representative each time this remaining total float on the applicable Works Activity is reduced by five (5) Working Days or more from the amount of total float previously reported to Contracting Authority via such Notice(s).
- (e) If Project Co is obliged to provide any kind of notification (or Notice) to Contracting Authority or the Contracting Authority Representative pursuant to this Agreement, the submission of that notification (or Notice) by way of information included in a Project Works Schedule, Works Report and Works Schedule Progress Report shall not constitute the provision of such Notice or notification by Project Co.
- (f) With each Project Works Schedule, Project Co shall submit one or more time-location charts, developed in Tilos, at an appropriate level of detail to show the phasing strategy to complete the Construction Works and any potential conflicting work in the same time and space, including site works activities at a level of detail to at least differentiate between:
 - (i) Other Works at a level of detail to indicate any potential conflicting work in the same time and space, and
 - (ii) all corresponding to the data provided in the applicable Project Works Schedule.

9. RESTRICTIONS ON PROJECT WORKS SCHEDULES

- (a) Project Co shall only be permitted to show the commencement of any Construction Activities for which Project Co has submitted all Works Submittals related to such Construction Activities in any of the Project Works Schedules. For clarity, enabling Construction Activities (e.g., foundations or footings of a structure) that are subcomponents of larger Construction Activities (e.g., a station building) may be shown to commence so long as Project Co has submitted all Works Submittals for that enabling subcomponent and sufficient Works Submittals of the larger Construction Activities. The division of the Construction Activities into subcomponents, and the required extent and sufficiency of the Works Submittals of the larger Construction Activities, shall both be subject to agreement by Contracting Authority, acting reasonably.
- (b) Notwithstanding Section 9(a), Project Co shall not be permitted to show the commencement of any Construction Activity in the Progress Works Schedule, other than,

- (i) Construction Activities related to topographical surveys, subsurface investigations or vegetation removal required to complete the Construction Works, provided that Contracting Authority has accepted Project Co's Site Specific Safety Manual in accordance with Schedule 10 – Review Procedure; and
- (ii) Construction Activities other than those listed in Section 9(b)(i) for which Project Co has submitted all Works Submittals, including all Design Development Submittals and all Construction Document Submittals related to such Construction Activities, provided that Project Co has,
 - (A) obtained acceptance from Contracting Authority for Project Co's Site Specific Safety Manual in accordance with Schedule 10 – Review Procedure;
 - (B) obtained all Permits, Licences, Approvals and Agreements;
 - (C) developed and implemented its Quality Management System in accordance with Schedule 11 – Quality Management; and
 - (D) submitted each Quality Management Plan in accordance with Schedule 11 – Quality Management and Schedule 10 – Review Procedure.
- (c) Review Procedure Activities shall not commence unless complete packages for each Works Submittal are submitted in accordance with Schedule 10 – Review Procedure requirements.

10. INTENTIONALLY DELETED

11. BASELINE WORKS SCHEDULE

11.1 Baseline Works Schedule

- (a) In accordance with the requirements set out in Sections 6.1(c) and 6.2(c) and following any Enhanced Design deliverables, but no later than the applicable TPA Effective Date or the date of the applicable Notice to Proceed of the DMCA Construction Works, Project Co shall submit each Baseline Works Schedule to Contracting Authority for its review in accordance with Schedule 10 – Review Procedure.
- (b) If Contracting Authority is of the opinion, acting reasonably, that, as a result of an amendment to this Agreement, an Adjustment Event, a Variation Confirmation, or a Variation Directive, the scope and/or schedule of the Construction Works has changed significantly since the finalization of a Baseline Works Schedule, then Contracting Authority may require Project Co to replace the Baseline Works Schedule with a revised and updated Baseline Works Schedule (a “**Revised Baseline Works Schedule**”). If Contracting Authority gives Notice to Project Co that it requires a Revised Baseline Works Schedule, then Project Co shall prepare and submit a Revised Baseline Works Schedule

(as a Works Submittal), no later than 20 Business Days after Project Co receives such Notice, for review pursuant to Schedule 10 – Review Procedure.

- (c) If Project Co is of the opinion, acting reasonably, that, as a result of an amendment to this Agreement, an Adjustment Event, a Variation Confirmation, or a Variation Directive, the scope and/or the schedule of the Construction Works has changed significantly since the finalization of the Baseline Works Schedule, then Project Co may prepare a Revised Baseline Works Schedule for review in accordance with Schedule 10 – Review Procedure. As part of its review of Project Co’s Revised Baseline Works Schedule, Contracting Authority may, acting reasonably, determine whether a Revised Baseline Works Schedule is necessary or appropriate.
- (d) The Revised Baseline Works Schedule submitted by Project Co,
- (i) shall have activities, including all Works Activities, which are Traceable to those that appeared in the Baseline Works Schedule;
 - (ii) shall have cost values, Quantities, Labour Resources, machinery and equipment for all Works Activities and to comply with this Schedule 12;
 - (iii) shall include cost values that are assigned to Works Activities within the Baseline Works Schedule and shall add up to and incorporate all costs included in the then applicable Target Price;
 - (iv) shall conform to the requirements of this Schedule 12, for clarity, including Appendix A to this Schedule 12;
 - (v) shall commence from the earlier of (i) the day upon which the Early Contractor Activities commenced and (ii) the DMCA Effective Date, and shall show no progress;
 - (vi) shall include a Data Date that is equal to the date set out in Section 11.1(d)(v);
 - (vii) shall address any comments on the latest Progress Works Schedule provided by Contracting Authority;
 - (viii) shall identify all differences between the Revised Baseline Works Schedule and the Baseline Works Schedule;
 - (ix) shall not change any Activity ID numbers from Activity ID numbers set out in the Baseline Works Schedule;
 - (x) shall organize activities associated with traffic staging in a distinct and separate section of the Baseline Works Schedule under the heading “Traffic management and temporary diversions” in accordance with the following:
 - (A) Project Co shall use level-of-effort type activities without an associated cost indicating on which section of the existing, new or temporary City

- Road Allowance traffic will be traveling, and indicating the direction of the traffic;
- (B) Project Co shall ensure that the first day of each traffic staging activity represents the day on which the traffic is switched onto the applicable section of the City Road Allowance;
 - (C) Project Co shall include a level-of-effort activity representing each closed existing roadway or ramp. (i.e. “travel NB, from Street A to Street B, on Diversion Road X”, “travel SB, from Street B to Street A, on existing lane 2 and 3 of Highway 3”);
 - (D) Project Co shall include a level-of-effort activity representing each closed existing roadway or ramp within or outside the City Road Allowance where each of these activities representing multi-modal traffic closures that are linked to the associated activities to be completed during the construction traffic closure (for example, “Closed Interchange A Ramp N-EW”);
 - (E) Project Co shall identify full or partial closure of the City Road Allowance, and associated impacts on multi-modal traffic operations, including any closure of the eastbound right turn lane, or closure of the northern sidewalk; and
 - (F) the information set out in this Section 11.1(d)(x) shall be used in combination with the Traffic and Transit Management Plan to illustrate the intended traffic staging;
- (xi) shall organize above and below grade activities within the City Road Allowance in a distinct and separate section in the Baseline Works Schedule under the heading “ROW Works for TOInview”, using level-of-effort type activities without an associated cost, and in support of the City capital works program and coordination process set out in the Output Specifications, and Project Co shall indicate:
- (A) the street name on which such activities are performed (i.e. the name of the road right-of-way planned to be occupied);
 - (B) the “from street” on which such activities are performed (i.e. the first street that intersects the planned occupied street before the road occupation begins); and
 - (C) the “to street” on which such activities are performed (i.e. the first street that intersects the occupied street after the road occupation ends);
- (xii) shall include a Data Date which corresponds to the date of the Revised Baseline Works Schedule as requested by Contracting Authority or a date that is otherwise required by Contracting Authority; and

- (xiii) shall document the progress of the Construction Works for all Works Activities, Works Milestones and Tracking Milestones that have occurred up to the Data Date.
- (e) In its review of the Revised Baseline Works Schedule pursuant to Schedule 10 – Review Procedure, Contracting Authority may, acting reasonably, request that additional milestones or activities be incorporated into the Progress Works Schedule included in the Baseline Works Schedule. Upon such request, Project Co shall promptly revise the Baseline Works Schedule to include the additional milestones and activities.
- (f) If the Revised Baseline Works Schedule is finalized pursuant to Section 7(b), the Revised Baseline Works Schedule shall replace the Baseline Works Schedule.

12. PROGRESS WORKS SCHEDULE

- (a) Starting on the first month after DMCA Effective Date until Project Final Completion, no later than five Business Days after the last day of each month, Project Co shall submit to Contracting Authority an updated Progress Works Schedule for review by Contracting Authority in accordance with Schedule 10 – Review Procedure. For clarity, the submission of any Progress Works Schedule shall not amend any Baseline Works Schedule(s) or Revised Baseline Works Schedule(s) that may be active at the time of submission. All Progress Works Schedules submitted by Project Co shall,
 - (i) include:
 - (A) all updates made to the PTUS Project Schedule and any Proposed Works Schedules from the previous Progress Works Schedule, which, for clarity, includes a summary of all new, modified, or deleted activities;
 - (B) for elements of the Development Works within the PTUS Project Schedule which are not captured within a Baseline Works Schedule, any activities that are progressed from and Traceable to those that appeared in the immediately prior version of the PTUS Project Schedule;
 - (ii) have activities that are progressed from and Traceable to those that appeared in any Baseline Works Schedule or Revised Baseline Works Schedule, as applicable, and the immediately preceding Progress Works Schedule;
 - (iii) conform to the requirements of this Schedule 12, including Appendices A, B and C to this Schedule 12;
 - (iv) include cost values, Quantities, Labour Resources, machinery and equipment for key resourced activities in accordance with the requirements of this Schedule 12;
 - (v) have a Data Date which is the first calendar day of the month at 00:00 am of the successive month to which the Progress Works Schedule applies unless otherwise agreed to between Contracting Authority and Project Co;

- (vi) document the progress of the Construction Works for all Works Activities and Works Milestones (via three distinct sets of activity bars) and progressed up to the end of the relevant month, measured relative to the Baseline Works Schedule and the Progress Works Schedule of the previously reported month. For clarity, the activity bars shall include:
 - (A) current bar (updated to month-end);
 - (B) Progress Works Schedule of the previously reported month; and
 - (C) Baseline Works Schedule;
 - (vii) include all Tracking Milestones clearly indicating the variance between each baseline date and the current date of the corresponding Tracking Milestone;
 - (viii) include updated forecast dates required to complete the Construction Works for all previously-noted Works Activities and Works Milestones;
 - (ix) include additional milestones or activities that are requested by Contracting Authority, acting reasonably;
 - (x) include any additional Works Activities and Works Milestones, and/or updates to sequencing, activity durations, calendars and logic, permitted under Appendix A to this Schedule 12, which are required to complete the Construction Works (with such additional Works Activities and/or Works Milestones, and/or updates to sequencing, activity durations, calendars and logic reported within the corresponding monthly Works Schedule Progress Report in accordance with the requirements of this Schedule 12); and
 - (xi) Project Co shall ensure that all Project Works Schedules and Works Schedule Progress Reports align and integrate with all other Project Co reporting deliverables and documents including the Work Breakdown Structure, Estimates, Variations, cost reports, Earned Value analysis, and CPI and SPI calculations.
- (b) Where a Progress Works Schedule update includes:
- (i) a change to the Critical Path;
 - (ii) a change to the dates of Works Milestones; or
 - (iii) a change to the Planned Value Curve by more than \$[REDACTED] for any given month,

then Project Co shall provide an update to such Progress Works Schedule which shall be carried out in accordance with the method implementation protocol 3.4 as defined within AACE Forensic Schedule Analysis in production of a bi-furcation update that has a separate schedule submission (.xer and .pdf) for progress achieved. Prior to inclusion of

mitigations associated with a delay, such changes shall then be incorporated into a subsequent Progress Works Schedule submission in accordance with Section 12(a).

13. WORKS MICRO-SCHEDULE

- (a) If, in the opinion of Contracting Authority acting reasonably, a Project Co activity is a Works Micro- Schedule Activity, then Contracting Authority may request that Project Co provide a sub-schedule of a Progress Works Schedule that focuses on such Works Micro-Schedule Activity (each, a “**Works Micro-Schedule**”). Each Works Micro-Schedule shall include the elements set out in Sections 13(c)(i) to 13(c)(v). For an indicative listing of Works Micro-Schedules, refer to Appendix C to this Schedule 12.
- (b) Contracting Authority will require that Project Co provides a Works Micro-Schedule for any activity in the Progress Works Schedule that Project Co determines must be completed without disruption.
- (c) No later than 10 Business Days following a request by Contracting Authority (or such longer period as is determined by the Contracting Authority Representative, acting reasonably), Project Co shall submit to Contracting Authority, for review in accordance with Schedule 10 – Review Procedure, a Works Micro-Schedule that includes:
 - (i) a title which includes the name “Works Micro-Schedule”, a descriptor of the portion of the Construction Works for which the Works Micro-Schedule is applicable, and the data range for the Works Micro-Schedule;
 - (ii) all elements required to be included in the Progress Works Schedule;
 - (iii) all Works Micro-Schedule Milestones;
 - (iv) all Works Micro-Schedule Activities;
 - (v) Contracting Authority Activities that have been identified by Contracting Authority to support day-by-day or hour-by-hour coordination or any other required high level of involvement by Contracting Authority or any other third party or Governmental Authority as contemplated in this Agreement; and
 - (vi) a Data Date that is determined by Contracting Authority.
- (d) Every two weeks, or on a more frequent basis requested by Contracting Authority, acting reasonably, following the initial Works Micro-Schedule submission, Project Co shall submit an updated Works Micro-Schedule until the Construction Works contemplated in the Works Micro-Schedule are complete. Project Co shall clearly illustrate in each updated Works Micro-Schedule the actual progress of each Works Micro-Schedule Activity in comparison to the planned progress of such Works Micro-Schedule Activity.
- (e) Project Co shall ensure that the Works Micro-Schedule Milestone dates and the Works Micro-Schedule Activity dates and durations indicated in the Works Micro-Schedule

correspond to the Works Milestone dates and Works Activity dates and durations in the then current Progress Works Schedule.

- (f) Upon Contracting Authority’s request, Project Co shall provide a drawing of the affected Construction Works, which shall clearly illustrate the sequence and timing of the Construction Activities depicted in any Works Micro-Schedule.
- (g) Project Co may request, for consideration by Contracting Authority, acting reasonably, that Project Co be permitted to provide a Works Micro-Schedule in Excel or MS Project format.
- (h) The Works Micro-Schedule Activities shall be an amplification of and compatible with the Progress Works Schedule. For clarity, each activity in the Works Micro-Schedule shall include the Activity ID of its corresponding activity in the Progress Works Schedule. Each Works Activity in the Progress Works Schedule may be represented in detail by more than one activity in the Works Micro-Schedule.

14. BASIS OF WORKS SCHEDULE REPORT

14.1 Contents of the Report

- (a) With the PTUS Project Schedule and each Proposed Works Schedule, Revised Baseline Works Schedule (if applicable) and Recovery Works Schedule (if applicable), Project Co shall submit a report on the basic principles underlying the applicable Project Works Schedule (each a “**Basis of Works Schedule Report**”).
- (b) Project Co shall ensure that each Basis of Works Schedule Report submitted by Project Co includes a black-lined document comparing the then current version to the immediately preceding version of the Basis of Works Schedule Report clearly indicating the changes made by Project Co to the Basis of Works Schedule Report from the immediately preceding version.
- (c) Project Co shall ensure that each Basis of Works Schedule Report includes, at a minimum, the following content and sections:
 - (i) a cover page including the title “Report on the Basis of Works Schedule”, the Project title, date of the report, issuance date, version date, and the version number of the associated Project Works Schedule, and the signature of the Project Co Representative who has approved the report;
 - (ii) “Section 1 – Project Description, Schedule Integration Process”, including a written narrative providing a high-level description of the Project. Project Co shall describe the Project phases and the inclusion of schedule inputs from Subcontractors, vendors, third parties (such as Governmental Authorities and Utility Companies), and Contracting Authority. Project Co shall also provide a written narrative of the Project scope, in addition to the basis for defining the Work Breakdown Structure. This section may also cover total Quantities for key Project commodities, so Project progress can be better tracked;

- (iii) “Section 2 – Implementation Strategy”, including a written narrative with details to describe the overall approach, proposed sequencing and work plan to complete the Construction Works to achieve each Section Substantial Completion, each DMCA Construction Works Substantial Completion (as applicable), TPA Substantial Completion and Project Substantial Completion. For clarity, the first Basis of Works Schedule Report shall explain the basis of development of the schedule, including the means and methods that Project Co plans to deploy in order to meet the Project milestones and completion date requirements. This section shall include diagrams to clarify intent and shall identify the strategy or approach to:
- (A) complete any additional site investigations and other due diligence;
 - (B) complete the design developments and review process;
 - (C) obtain any required major Permits, Licences, Approvals, and Agreements;
 - (D) procure critical components of the Construction Works from Suppliers;
 - (E) test and commission the Construction Works, Project Final Completion and Close-out Activities, including asset handover and development of final As Built Drawings and manuals;
 - (F) key assumptions and exclusions;
 - (G) comply with access requirements, restrictions or Construction Works limits as described in Permits, Licences, Approvals and Agreements or otherwise and any corresponding calendars which have been applied in the schedule submitted by Project Co; and
 - (H) complete any activities required pursuant to Schedule 14 – Commissioning;
- (iv) “Section 3 – Critical Path Analysis” including the following:
- (A) Critical Path Risk, describing in tabular form the risks to completing the Critical Path Activities (including each applicable Activity ID) required to achieve each Section Substantial Completion, TPA Substantial Completion, DMCA Construction Works Substantial Completion (as applicable), and Project Substantial Completion, affected areas, and Project Co’s strategy to mitigate or avoid these risks;
 - (B) overall Critical Path Activities and Near Critical Path Activities which includes a Gantt Chart schedule that shows the Critical Path of the Project, and respective Project Works Schedule, as well as Near Critical Path Activities; and

- (C) Longest Path, providing programme layouts for the Longest Path and first ten float paths;
- (v) “Section 4 – Works Schedule Structure and Logic”, including the following:
 - (A) a narrative to explain how a Control Account is organized within the WBS; and
 - (B) a narrative and table to explain the Activity ID and naming convention;
- (vi) “Section 5 – Planned Working Calendar” including a table defining each of the schedule calendars. For each calendar, Project Co shall include the Working Days (naming the days of the week), normal Working Hours, number and hours of any shifts, and a list of all assumed non-Working Days for any part of the Construction Works (such as statutory holidays, in the Province of Ontario environment restricted work windows, and other similar concepts) and the type of Works Activities that are assigned to each calendar;
- (vii) “Section 6 – Means and Methods”, including an executive summary of the intended means and methods for all Works Activities and, for each Work Activity, a short narrative on the type of work, any constructability issues and whether the work will be self-performed by Project Co or performed by a Subcontractor;
- (viii) “Section 7 – Procurement”, including a table listing major items to subcontracted or procured and detailing lead times for fabrication and delivery to the Site;
- (ix) “Section 8 – Resource Plan”, including for all Works Activities:
 - (A) a written narrative of no less than 250 words describing how Project Co intends to meet the resource requirements with details to demonstrate how Project Co intends to meet the resource requirements, including equipment, material and labour resources;
 - (B) number of teams and team composition (that is, staffing requirements) including subcontractor work;
 - (C) number and type of heavy machinery or equipment;
 - (D) anticipated resource constraints (such as pandemic related constraints, union related constraints and limits to the number of any specific heavy machinery available in the region); and
 - (E) resource limits that will be allocated for all automatic resource leveling functionality used by Project Co, in accordance with Section 1.6 of Appendix A to this Schedule 12;

- (x) “Section 9 – Planned Production Rates”, including a table listing each Works Activity and indicating for each:
- (A) the Quantity and unit of measure for each Works Activity in accordance with Section 1.5 of Appendix A to this Schedule 12;
 - (B) the assumed production rate for each activity expressed as a Quantity per Working Hours (i.e. units/hours, ton/hours, m/hours, m²/hours, or m³/hours) based on past experience and historical data; and
 - (C) the intended schedule calendar or any variance to the normal Working Hours, such as “restricted to night work” or “Monday to Saturday, 3 x 8 hour shifts”.

For clarity, each Works Activity shall only be listed once in the table, even though more than one instance of such type of Construction Works is indicated in the applicable Project Works Schedule unless more than one team or calendar configuration is intended;

- (xi) “Section 10 – General Assumptions”, including any other assumptions used by Project Co to generate the schedule including any known or foreseeable constraints or restrictions such as weather, traffic, environmental, utilities, and other similar concepts;
- (xii) “Section 11 – Planned Value Curve”, including a graphical and tabular representation of the cost loaded schedule showing the cost per month and the cumulative curve;
- (xiii) “Section 12 – Planned Labour Resource Curve”, including a graphical and tabular representation of the resource loaded schedule showing the hours per month per trade and the cumulative curve;
- (xiv) “Section 13 – Planned Equipment Resource Curve”, including a graphical and tabular representation of the resource loaded schedule showing the hours per month per trade and the cumulative curve;
- (xv) “Section 14 – Key Commodities Curves”, including Key Commodities curves which, for clarity, shall show months on the horizontal axis and agreed units of measure on the vertical axis. Details, numbers and method for measurement shall be agreed by the Parties based on Good Industry Practice.
- (xvi) “Section 15 – Pandemic and Epidemic Response”, including a written narrative with sufficient details:
- (A) describing Project Co’s plans and processes for addressing and implementing the COVID-19 Emergency Public Health Physical Distancing Requirements;

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- (B) describing the detailed steps Project Co intends to take to prepare for and respond to the effects of the COVID-19 Emergency Public Health Physical Distancing Requirements;
- (C) demonstrating the effects of the COVID-19 Emergency Public Health Physical Distancing Requirements on the Project Works Schedule generally, and specifically with reference to the following areas of the Basis of Works Schedule Report:
- (1) Section 5 - Planned Working Calendar;
 - (2) Section 8 - Resource Plan,
 - (3) Section 9 - Planned Production Rates; and
 - (4) Section 15 - Constraints;
- (D) outlining Project Co's strategy to mitigate the effects described in Section 14.1(c)(xvi)(C); and
- (E) outlining how the processes described in Section 14.1(c)(xvi)(A) and Section 14.1(c)(xvi)(B) will affect the Project Works Schedules;
- (xvii) “Section 16 – Constraints”, including a table of any imposed date constraints used or specific constraints relevant for the review of each Works Submittal. For each constraint, the following shall be included: Activity ID, constraint description, constraint type, hard coded date used, reason for the constraint, and the date and reference to any approval by Contracting Authority permitting the constraint;
- (xviii) “Section 17 – Rules of Credit and Progress Measurement Methods” describing the details of the rules of credit assigned for the engineering and design, procurement, construction, testing and commissioning of the Construction Works as well as level of effort and management activities in the Works Schedule; and
- (xix) “Section 18 – Quantitative Schedule Risk Analysis” to be included as part of the activities to provide assurance that the key milestones/objectives can be met, and to determine in advance required contingency or measures to minimize the impacts for the Project by providing sensitivity information to assess potential impact of uncertainty on the duration of the schedule activities.

15. WORKS SCHEDULE PROGRESS REPORT

15.1 Content of the Works Schedule Progress Reports

- (a) Project Co shall submit a report with each Progress Works Schedule (except for the Works Micro-Schedule) for review by Contracting Authority in accordance with Schedule 10 – Review Procedure (each a “**Works Schedule Progress Report**”).
- (b) Project Co shall ensure that each Works Schedule Progress Report includes, at a minimum, the following content and sections (which shall include reporting and analyses of the PTUS Project Schedule overall, as well as each Proposed Works Schedule in development or Baseline Works Schedule in progress):
 - (i) a cover page including the title “Works Schedule Progress Report”, the Project title, date of the report, issuance date, version date, the version number of the relevant Progress Works Schedule, and the signature of the Project Co Representative approving the report;
 - (ii) “Section 1 – Executive Summary” including an executive summary of the progress of the Construction Works, noteworthy milestones achieved, schedule variances, and issues and risks that have impacted or may impact the schedule;
 - (iii) “Section 2 – Update to Project Description, Schedule Integration Process” including a written narrative that provides a high-level description of changes to the Project scope, packing strategy, work sequences and schedule integration, identifies changes to Project phases and the inclusion of schedule input from Subcontractors, vendors, third parties (such as Governmental Authorities and Utility Companies), and Contracting Authority, and identifies any changes to the Work Breakdown Structure;
 - (iv) “Section 3 – Schedule Analysis” including a schedule analysis, as it exists for the Progress Works Schedule to which the Works Schedule Progress Report is applicable, that includes:
 - (A) the forecasted Handover dates and key Milestone Event analysis;
 - (B) each projected Section Substantial Completion Date compared to the then current and applicable No Later Than Date;
 - (C) the forecasted TPA Substantial Completion Date compared to the then current TPA Scheduled Substantial Completion Date;
 - (D) if applicable, each forecasted DMCA Construction Works Substantial Completion Date compared to the then current and applicable DMCA Construction Works Scheduled Substantial Completion Date;
 - (E) the schedule contingency and float variance on key Milestone Events, calculated as the difference between the dates within a Baseline Works

- Schedule and the relevant dates in the current Progress Works Schedule, expressed in calendar days;
- (F) a float trend graph related to Section 15.1(b)(iv)(D) showing the historically calculated float values for each month from DMCA Effective Date up to the applicable reporting period, including the float for the applicable Progress Works Schedule;
 - (G) historical events that have impacted the floats and contingencies for each reporting period;
 - (H) an assessment and analysis of the risk of delay to any Baseline Works Schedule and the mitigation of such risks in a tabular form;
 - (I) the ratio of remaining Critical Path Activities and Near Critical Path Activities to the total number of remaining activities (for clarity, including only task dependent activities in the calculation);
 - (J) the list of activities and Milestone Events with the start and/or finish date equal to the Data Date, to clarify activities positioned on the Data Date, for the two subsequent months with a discrete explanation for circumstances and reasons for any failure to start;
 - (K) the list of activities that started for which the remaining duration has not decreased within the two subsequent months with a discrete explanation for circumstances and reasons for any failure to finish and/or progress;
 - (L) the list of all Works Activities that are occurring within 20 Business Days according to the Critical Path;
 - (M) a summary schedule indicating the then current Critical Path calculated using the applicable Progress Works Schedule; and
 - (N) a description of the calendars and their applicability in the Progress Works Schedule, including a narrative on shifts and shift hours in each Basis of Works Schedule Report;
- (v) “Section 4 – Critical Path Analysis” that includes the following information:
- (A) Critical Path risk describing in tabular form the risks to complete the Critical Path Activities (including each applicable Activity ID) to achieve each Section Substantial Completion, each DMCA Construction Works Substantial Completion (as applicable), TPA Substantial Completion and Project Substantial Completion, any affected area, and Project Co’s strategy to mitigate or avoid such risks;

- (B) overall Critical Path Activities and Near Critical Path Activities which includes a Gantt Chart schedule that shows the Critical Path of the Project as well as Near Critical Path Activities;
- (C) actual progress against baseline target dates for each Critical Path Activity or Near Critical Path Activity;
- (D) any Critical Path Activities or Near Critical Path Activities in the previous submission of a Baseline Works Schedule or Progress Works Schedule, as applicable, that have consumed a minimum of five (5) Working Days total float since then;
- (E) any Critical Path Activities or Near Critical Path Activities and/or Milestone Events that are more than twenty (20) Working Days behind schedule, relative to the then current Baseline Works Schedules;
- (F) any Critical Path Activities or Near Critical Path Activities and/or milestones that are more than five (5) Working Days behind schedule relative to the immediately preceding Progress Works Schedule;
- (G) a narrative that describes the changes in the Critical Path Activities or Near Critical Path Activities from the previous month;
- (H) a list of all Works Activities that have become Near Critical Path Activities during the last reporting period;
- (I) a list of all Works Activities that are Near Critical Path Activities that were forecasted in the immediately preceding Progress Works Schedule to start or finish in the current reporting period, together with the reason that any of those activities have not started or finished;
- (J) provisions for addressing the behind-schedule Critical Path Activities or Near Critical Path Activities such that each Section Substantial Completion will occur on the applicable No Later Than Date;
- (K) provisions for addressing the behind-schedule Critical Path Activities or Near Critical Path Activities such that TPA Substantial Completion will occur on the TPA Scheduled Substantial Completion Date;
- (L) if applicable, provisions for addressing the behind-schedule Critical Path Activities or Near Critical Path Activities such that each DMCA Construction Works Substantial Completion will occur on the applicable DMCA Construction Works Scheduled Substantial Completion Date;
- (M) a table entitled “Milestone and Critical Path Variances” listing all Works Milestones and all Critical Path Activities and, for each Works Milestone and Critical Path Activity where the variance exceeds five (5) Working

Days from the immediately preceding Progress Works Schedule, the following information:

- (1) the Activity ID or milestone identification number and name;
 - (2) the “Baseline Start and Finish Dates” in accordance with Baseline Works Schedules, the Revised Baseline Works Schedules or each Recovery Works Schedule, as applicable;
 - (3) the “Planned Start and Finish Dates” set out in the immediately preceding Progress Works Schedule;
 - (4) the “Forecast Start and Finish Dates”, or, if applicable, the “Actual Start and Finish Dates”, as set out in the associated Progress Works Schedule and a clear identification of any Works Milestones to be achieved by Project Co in the next twelve (12) week period;
 - (5) the physical percentage completion or status;
 - (6) “Total Variance” expressed in Working Days, calculated as the difference between the forecast finish date in the current Progress Works Schedule and the finish date in the Baseline Works Schedules or the Revised Baseline Works Schedules, as applicable; and
 - (7) the “Reporting Period Variance” calculated as the forecast finish date in the current Progress Works Schedule minus the finish date in the immediately preceding Progress Works Schedule, expressed in Working Days;
- (N) a brief narrative on any actual or forecasted delays, Early Warning Events or issues that might have an impact on the scheduled completion dates of the Construction Works in the Progress Works Schedule and a discussion of the measures being (or to be) adopted by Project Co to overcome them; and
- (O) Longest Path, providing programme layouts for the Longest Path and first ten float paths, extracted from the current Progress Works Schedule;
- (vi) “Section 5 – Change Log” that includes the following information, as it exists for the Progress Works Schedule to which the Works Schedule Progress Report is applicable:

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- (A) Details of all changes made between an immediately preceding Progress Works Schedule and the then current Baseline Works Schedules or the Revised Baseline Works Schedules from the change log register which Project Co shall create and maintain (the “**Change Log**”), including any of the following changes;
- (I) addition, deletion or changes to activity relationships;
 - (II) Labour Resources changes to the activity calendar;
 - (III) additions to or retiring of Works Activities or Works Milestones or changing the description of activities;
 - (IV) changes to Works Activity durations;
 - (V) changes to Works Activity assigned cost value;
 - (VI) changes to Works Activity assigned Labour Resources (person-hour);
 - (VII) changes to Works Activity assigned Quantity;
 - (VIII) changes to the assigned calendar determining the Working Days for the Works Activity; and
 - (IX) any other change that impacts the logic of the schedule.
- (B) For each change from the Change Log, Project Co shall provide:
- (I) the unique document identifier number, as shown in the Project Works Schedule Submission Register, for both the updated Project Works Schedule in which the change has been made, and the previous version of the Progress Works Schedule that has changed;
 - (II) the activity or milestone identification number and name;
 - (III) any changes to Primavera scheduling options and settings;
 - (IV) the type of change;
 - (V) a discrete explanation for the circumstances and reasons leading to the change. For clarity, Project Co shall not provide a general blanket explanation, for example similar to “change in strategy” or “according to recent market conditions,” but shall diligently explain in detail the strategy change or the specific conditions that led to that change and a description of the change including the

previous configuration or value, and the updated configuration or value; and

- (C) Each Project Works Schedule submission shall include the updated Change Log, which shall not be finalized or considered acceptable to Contracting Authority until such Progress Works Schedule submission has received a No Comment or Reviewed as Noted – Minor Issues Designation;

(vii) “Section 6 – Labour Resources”, including,

- (A) a graphical and tabular presentation by Labour Resource of the utilization of Labour Resources in the Construction Works clearly showing the baseline planned resource hours, earned hours based on baseline planned work completed, actual hours for mobilized resources and estimate to complete hours; and
- (B) a report on the availability of Labour Resources for the Construction Works noting the percentage of resources secured versus the peak requirement from the baseline and current forecast to complete for each resource,

both reported for Works Activities at the lowest level of the Baseline Works Schedules.

- (C) a report on the baseline planned and current productivities, and a plan on how Project Co will address or mitigate deficiencies;

(viii) “Section 7 – Progress Performance Management”, including,

- (A) EVM reports in support of tabular and graphical formats (collectively, the **“Earned Value Metrics”**) in accordance with the AACE International Recommended Practice entitled, *“Earned Value Management (EVM) Overview and Recommended Practices Consistent With EIA-748-C”*:
 - (I) for each Construction Works location, by phase or by segment; and
 - (II) for each major type of Works Activity, including:
 - (1) Utilities;
 - (2) Third Party Infrastructure;
 - (3) civil and roadwork;
 - (4) structural;

- (5) electrical;
 - (6) mechanical;
 - (7) architectural;
 - (8) track work;
 - (9) signals; and
 - (10) testing and commissioning.
- (B) the overall progress expressed as a percentage of the physical work completed and Earned Value Metrics in a tabular form with the minimum subsections showing percentage (%) complete of the following:
- (I) overall progress;
 - (II) engineering, including project management, design, Permits, Licences, Approvals and Agreements, general items;
 - (III) procurement (long lead items, fabrication, delivery); and
 - (IV) construction (i.e. mobilization, construction, installation, testing and commissioning)

For clarity, Contracting Authority may request further detail if needed, acting reasonably (including, for example, construction progress at a certain location or engineering for specific discipline);

- (ix) “Section 8 – Potential Adjustment Events”, including a register of all potential Adjustment Events pursuant to Schedule 21 – Risk Allocations and including for each potential Adjustment Event a description of the circumstances and nature of the claim, the date on which the Notice required pursuant to Section 3.2(a) (*Process*) of Schedule 21 – Risk Allocations was given by Project Co, the date on which the details required by Sections 3.2(b) (*Process*) of Schedule 21 – Risk Allocations were given by Project Co, the mitigation strategy implemented by Project Co, and the current status of mitigation measures;
- (x) “Section 9 – Contracting Authority Submittal Review”, including an updated Review Procedure Activities Register, pursuant to Schedule 10 – Review Procedure;
- (xi) “Section 10 – Progressed Key Commodities Curves” which demonstrate actual progress against Key Commodities curves submitted as per Section 14.1(c)(xv). Updated Key Commodities curves shall be based on each activity progressed and Quantities calculated with agreed measurement method and common

industry practices. This section shall include rationales and/or shortcomings of deviations from the original plan;

- (xii) “Section 11 – Actual Production Rates” including a table listing each type of Construction Works and indicating for each:
 - (A) the actual Quantity and unit of measure;
 - (B) the actual production rate for each activity work type expressed as a Quantity per Working Hour (i.e. units/hr, ton/hr, m/hr, m²/hr, or m³/hr);
 - (C) in the case of multiple instances of the same work type that reflect different production rates, an explanation and assumption for each instance; and
 - (D) a projection of the future work progress based on the actual production rates and required production rates to achieve each applicable No Later Than Date, each applicable DMCA Construction Works Scheduled Substantial Completion Date (as applicable) and the TPA Scheduled Substantial Completion Date.

For clarity, this section shall reflect the progressed metrics of production rates provided in the Basis of Works Schedule Report;

- (xiii) “Section 12 – Update General Assumptions” including any other assumptions used by Project Co to generate the Progress Works Schedule, including any known or foreseeable constraints or restrictions such as weather, traffic, environmental, utilities, working space, and other similar concepts;
- (xiv) “Section 13 – Other” including any other information specifically requested by Contracting Authority, acting reasonably, on the progress of the Construction Works.

16. RECOVERY WORKS SCHEDULES

16.1 Failure to Maintain Schedule for the Works

- (a) Without limiting any other provision of this Agreement but subject to an Adjustment pursuant to Schedule 21 – Risk Allocations, if, at any time, Contracting Authority is of the opinion that:
 - (i) the actual progress of the Construction Works has fallen significantly behind progress of the Construction Works set out in any Baseline Works Schedule;
 - (ii) the revised implementation strategy, forecast dates for future activities or staging has changed to the extent that it is no longer practical to compare the current Progress Works Schedule to the then current Baseline Works Schedules or the current Recovery Works Schedules;

- (iii) Project Co will not achieve Works Milestones by the dates provided in the then current Baseline Works Schedules;
- (iv) Project Co will not achieve each Section Substantial Completion by the applicable No Later Than Date;
- (v) if applicable, Project Co will not achieve each DMCA Construction Works Substantial Completion by the applicable DMCA Construction Works Scheduled Substantial Completion Date;
- (vi) Project Co will not achieve TPA Substantial Completion by the TPA Scheduled Substantial Completion Date; or
- (vii) Project Co will not achieve TPA Substantial Completion by the TPA Longstop Date;

then Contracting Authority may give Notice to Project Co that Contracting Authority requires Project Co to submit a schedule to recover the delay (each a “**Recovery Works Schedule**”) and a report supporting the Recovery Works Schedule (a “**Recovery Works Schedule Report**”) in accordance with the requirements of this Section 16.

- (b) No later than 15 Business Days after the last day of the month (or longer as determined by the Contracting Authority Representative, acting reasonably) in which Project Co receives a Notice from Contracting Authority pursuant to Section 16.1(a), Project Co shall, in lieu of submitting a Progress Works Schedule for the applicable month or a Works Schedule Progress Report for that month, prepare and submit to the Contracting Authority Representative:
 - (i) a Recovery Works Schedule in accordance with the requirements of Section 16.1(d); and
 - (ii) a Recovery Works Schedule Report, in accordance with the requirements of Section 16.1(e).
- (c) Project Co shall ensure that the Recovery Works Schedule and the Recovery Works Schedule Report, taken together, explain the causes of the delay in the progress of the Construction Works (irrespective of whether such delays are Adjustment Events) and set out a strategy that is compliant with this Agreement and will be implemented by Project Co to eliminate or reduce the delay and,
 - (i) achieve each Section Substantial Completion by the applicable No Later Than Date;
 - (ii) if applicable, achieve each DMCA Construction Works Substantial Completion by the applicable DMCA Construction Works Scheduled Substantial Completion Date;

- (iii) achieve TPA Substantial Completion by the TPA Scheduled Substantial Completion Date; or
- (iv) if TPA Substantial Completion cannot be achieved by the TPA Scheduled Substantial Completion Date, achieve TPA Substantial Completion by the TPA Longstop Date;
- (d) Project Co's Recovery Works Schedule shall,
 - (i) be based on the terms and conditions of this Agreement;
 - (ii) comply with the Progress Works Schedule requirements set out in Section 12(a);
 - (iii) be entitled "Recovery Works Schedule";
 - (iv) have activities which are Traceable to those that appeared in the Baseline Works Schedules or the Revised Baseline Works Schedules, as applicable, and in the immediately preceding Progress Works Schedule;
 - (v) indicate the variance between the Recovery Works Schedule and,
 - (A) the immediately preceding Progress Works Schedule; and
 - (B) the Baseline Works Schedules; and
 - (vi) include a Data Date that is determined by Contracting Authority.
- (e) Project Co's Recovery Works Schedule Report shall,
 - (i) comply with the requirements of a Works Schedule Progress Report as set out in Section 15.1;
 - (ii) be entitled "Recovery Works Schedule Report";
 - (iii) set out, in detail and in narrative form, the delays experienced by Project Co in carrying out the Construction Works, including both delays which are and are not Adjustment Events;
 - (iv) set out, in detail and in narrative form, the commercially reasonable mitigation measures being taken by Project Co to mitigate the delay and Project Co's plan to continue the mitigation measures until each applicable No Later Than Date, each applicable DMCA Construction Works Scheduled Substantial Completion Date (as applicable) and the TPA Scheduled Substantial Completion Date;
 - (v) provide, in narrative form, an explanation of the variances between the Recovery Works Schedule and,
 - (A) the immediately preceding Progress Works Schedule; and

- (B) the Baseline Works Schedules or the Revised Baseline Works Schedules, as applicable; and
- (vi) provide a revised Basis of Works Schedule Report detailing the assumptions used to generate the Recovery Works Schedule.
- (f) For clarity, Contracting Authority may require Project Co to meet the requirements of Sections 16.1(b), 16.1(c), 16.1(d) and 16.1(e) each time Contracting Authority reaches the opinion set out in Section 16.1(a).
- (g) In accordance with Section 13.5 (*Early Warnings*) of this Agreement, Project Co shall notify the Contracting Authority Representative if, at any time Project Co is aware of any development relating to the Project that may reasonably affect,
 - (i) Project Co's ability to achieve each Section Substantial Completion by the applicable No Later Than Date; or
 - (ii) if applicable, Project Co's ability to achieve each DMCA Construction Works Substantial Completion by the applicable DMCA Construction Works Scheduled Substantial Completion Date;
 - (iii) Project Co's ability to achieve TPA Substantial Completion by the TPA Scheduled Substantial Completion Date; or
 - (iv) the functionality or the cost of the Project.
- (h) For greater certainty, provided that Project Co has complied with this Section 16 and is not in default under Section 31.1(a)(v) (*Project Co Default*) of this Agreement, the failure to meet the requirements to achieve each Section Substantial Completion by the applicable No Later Than Date, the failure to meet the requirements to achieve each DMCA Construction Works Substantial Completion by the DMCA Construction Works Scheduled Substantial Completion Date (as applicable), or the failure to meet the requirements to achieve TPA Substantial Completion by the TPA Scheduled Substantial Completion Date, in each case, on its own, shall not be a Project Co Event of Default for the purposes of Sections 31.1(a)(iii) (*Project Co Default*) and 31.1(a)(viii) (*Project Co Default*) of this Agreement.
- (i) Once the Recovery Works Schedule has been accepted by Contracting Authority in accordance with this Schedule 12, it shall be considered the Progress Works Schedule for the month for which it replaced the Progress Works Schedule.

17. THREE WEEK LOOK-AHEAD SCHEDULE

- (a) Project Co shall prepare and provide a three week look-ahead schedule to Contracting Authority on a weekly basis that includes the applicable elements of the Progress Works Schedule, developed to a greater level of detail, for the upcoming three week period, to support the planning and coordination of Contracting Authority's activities including Contracting Authority's activities to monitor Project Co's completion of the Construction

Works, all Works Milestones, all Works Activities and any other applicable milestones and activities in progress, starting, or ending during the applicable three week period. Such three week look-ahead schedule shall be in a form acceptable to Contracting Authority, acting reasonably, such as a Gantt chart or spreadsheet (the “**Three Week Look-Ahead Schedule**”).

- (b) The Three Week Look-Ahead Schedule activities shall be an amplification of and compatible with the Progress Works Schedule. Each activity in the Three Week Look-Ahead Schedule shall include the Activity ID of its corresponding activity in the Progress Works Schedule, and each activity in the Progress Works Schedule may be represented in detail by more than one activity in the Three Week Look-Ahead Schedule.

18. PROJECT SCHEDULES QUALITY MANAGEMENT

- (a) Project Co shall provide, within the Project Management Plan, a comprehensive description of how it manages the Project Works Schedules in connection with the Project in compliance with the ISO 9001 Standard, its Quality Manual and the provisions of this Agreement. The PMP shall apply throughout the Project Term.
- (b) The PMP shall contain an organizational chart identifying Key Individuals and other key personnel responsible for Project Works Schedule management and their relationship with the Quality Director for Project Co’s overall Quality Management System as documented in Project Co’s Quality Manual. The PMP shall also contain a description of the responsibilities, qualifications, and authority of the above personnel and the organizational interfaces between those responsible for project schedule management and other engineering and construction management disciplines.
- (c) The PMP shall include completeness and correctness criteria, quality policies and procedures relevant to the Project Works Schedules for both scheduling deliverables and the scheduling processes, proposed standards, schedule health and reliability checklists and reporting structures.
- (d) The PMP shall, at a minimum, include or reference detailed descriptions, quality system procedures and process flow charts for the following processes:
 - (i) Project Co’s Works planning procedure;
 - (ii) integration of Project Co Parties’ Works planning;
 - (iii) implementation and monitoring of the requirements set out in this Schedule 12; and
 - (iv) audit processes to:
 - (A) audit the Baseline Works Schedules or Revised Baseline Works Schedules, as applicable, and every updated Project Works Schedule thereafter to confirm conformance with the requirements of this Agreement, with the results of such audit to be set out in an audit report

submitted with the draft of the Baseline Works Schedules or Revised Baseline Works Schedules, as applicable, and every updated Project Works Schedule thereafter;

- (B) audit the Project Works Schedules on a quarterly basis (in accordance with Schedule 11 – Quality Management) to confirm conformance to the requirements of this Agreement, and the accuracy of the progress and as-built information, with the results of such audit to be set out in an audit report submitted to Contracting Authority no later than 10 Business Days after such audit has been completed; and
- (C) ensure that each audit report described in Sections 18(d)(iv)(B) and 18(d)(iv)(C) are reviewed and signed by the Scheduler, the Quality Director and Project Co Representative.

19. EARNED VALUE MANAGEMENT PLAN

- (a) With each of the Baseline Works Schedule, the Revised Baseline Works Schedule (if applicable) and each Recovery Works Schedule (if applicable), Project Co shall submit a report on the earned value management plan in accordance with AACE International Recommended Practice 10S-90 entitled “*Cost Engineering Terminology*” for review in accordance with Schedule 10 – Review Procedure; (each an “**Earned Value Management Plan**”).
- (b) Project Co shall ensure that each Earned Value Management Plan submitted by Project Co includes a black-lined document comparing the then current version to the immediately preceding version of the Earned Value Management Plan clearly indicating the changes made by Project Co to the Earned Value Management Plan from the immediately preceding version.
- (c) The Earned Value Management Plan shall describe the progress measurement method, technique, or criteria to be used for progress evaluation of the Works Activities. For clarity, principal methods for Earned Value measurement rules are listed in below. Details of these methods and how they will be implemented for Works Activities shall be explained in the Earned Value Management Plan.
 - (i) The following methods can be used for progress measurement rules of credit:
 - (A) units complete;
 - (B) incremental milestone;
 - (C) start/finish;
 - (D) cost or labour resource ratio; and
 - (E) weighted units;

For clarity, supervisor opinion option shall not be used.

- (ii) Quantity data shall be tangible and be able to physically measured on site for construction Earned Value measurement.
- (iii) Lump sump Quantity assignments shall be agreed by the Parties.
- (iv) At no time shall any Construction Activity surpass [REDACTED]% of the total construction cost or \$[REDACTED] whichever holds the lesser value. However, if activities with more than \$[REDACTED] need to be in schedule, a written narrative shall be submitted by the Project Co for substantiation.
- (d) The primary criteria in choosing a performance measurement method shall be the one that has the most objective, accurate, and timely assessment that is appropriate for the Construction Works, schedule, and cost status.
- (e) The Works Schedule will include Earned Value Metrics in accordance with the rules of credit as determined by the Parties.

APPENDIX A**PROJECT WORKS SCHEDULE TECHNICAL REQUIREMENTS****1.0 PROJECT WORKS SCHEDULE TECHNICAL REQUIREMENTS****1.1 Software Requirements**

- (a) Project Co shall identify all Works Activities in:
 - (i) a graphical, time-scaled, horizontal bar chart format; and
 - (ii) a geographic, time-location schedule.
- (b) For the Development Works, Project Co shall generate a conceptual Project Works Schedule using Primavera P6 Professional Release: 20.12 or newer (“**Primavera**”) to the satisfaction of Contracting Authority to support the completion of the Design Works and Construction Works in accordance with Section 13.1 (*Completion of the Works*) of this Agreement. If Project Co recommends, and Contracting Authority approves, the use of scheduling software other than Primavera, Project Co shall provide for licences and all software updates for the duration of the Project Term for use by Contracting Authority. If software-specific terminology is used in this Schedule 12 to define specific requirements, Project Co shall implement measures to achieve a similar or higher level of scheduling control, quality, content and output regardless of the software used to generate the schedules.
- (c) Project Co shall ensure that each Project Works Schedule submitted to Contracting Authority shall be submitted in the following file formats:
 - (i) the native file format of the software used to generate and manage the Project Works Schedules, which shall be the exported .XER file and .XML file for Primavera fully compliant with all requirements of this Agreement. The native file shall be fully calculated and in a stable state; and
 - (ii) three, word searchable high-resolution colour Portable Document Format (.PDF) versions of each Project Works Schedule with the first PDF showing all content, the second PDF showing only the Critical Path Activities and the Near Critical Path Activities and the third PDF showing only the Longest Path and first 10 float paths.
- (d) Project Co shall submit all graphs and tabular information including any registers, logs, curves, numerical data or calculations in two electronic soft copy file formats. The first format shall be in the native form such as the Microsoft Excel file format that would allow Contracting Authority to review the data and formulas for the purpose of evaluation and the second format shall be a high resolution PDF version.
- (e) Project Co shall create and maintain a register detailing the submission of each of the Project Works Schedule document sets (the “**Project Works Schedule Submission**”

Register”). The register shall include the Project Works Schedule document title, submission date, publish date, Data Date, revision and version number. The updated register shall be included with each Project Works Schedule submission.

- (f) Upon Contracting Authority’s request, Project Co shall provide the details of the software and any additional software plug-ins used by Project Co, a copy of any templates, and the details for any software settings it has used in its scheduling software, such as calendar settings, user and administrative preferences, schedule settings, and any other information required to enable Contracting Authority to replicate the Project Works Schedules submitted by Project Co using the native file formats provided by Project Co.

1.2 Title Block Requirements

- (a) Project Co shall include in the title-block of each of the Project Works Schedules:
 - (i) Project title;
 - (ii) unique project identifier number;
 - (iii) unique document identifier number;
 - (iv) title of the document (i.e. “the type of Project Works Schedule being submitted”);
 - (v) Project Works Schedule (baseline) version number, and the date on which the Project Works Schedule was agreed; if the Project Works Schedule has not been agreed, state “not-agreed”;
 - (vi) Data Date (with the format YYYYMMDD);
 - (vii) version and revision number;
 - (viii) author name;
 - (ix) date on which the document was published for distribution (PDF date); and
 - (x) any other information as required pursuant to this Agreement.

1.3 Guides and Standards

- (a) In addition to complying with the provisions of this Agreement and this Schedule 12, Project Co shall provide all Project Works Schedules to be aligned with the following recommended practices and guidelines:
 - (i) PMI, “A Guide to the Project Management Body of Knowledge (PMBOK® Guide)- Sixth Edition” for use in the definition of “Critical Path”;
 - (ii) PMI, “Construction Extension to the PMBOK Guide -Third Edition”;

- (iii) AACE International Recommended Practice, “Schedule Levels of Detail – As Applied in Engineering, Procurement and Construction”;
- (iv) AACE International Recommended Practice, No. 29R-03, “Forensic Schedule Analysis”;
- (v) PMI, “The Practice Standard for Work Breakdown Structures - Second Edition”;
- (vi) PMI, “The Practice Standard for Scheduling - Second Edition”;
- (vii) AACE International, “Skills & Knowledge of Cost Engineering, Sixth Edition”;
and
- (viii) AACE International Recommended Practice, No. 38R-06 “Documenting the Schedule Basis”.

1.4 Dates

- (a) Project Co shall include the following dates in each of the Project Works Schedules:
 - (i) if access to any part of the Lands is projected to be needed for longer/later than provided in Schedule 35 – Lands, the date that Project Co will cease to need access to the Lands (for clarity, this will not entitle Project Co to such access);
 - (ii) the dates any actions or acceptances are required by Contracting Authority;
 - (iii) the dates Project Co will provide equipment or assets to Contracting Authority;
 - (iv) the dates that Project Co requires specific information is needed from third parties;
and
 - (v) the commencement dates for the Lands as specified in Schedule 35 – Lands.

1.5 General Requirements for Project Works Schedules

- (a) For each Works Activity, Works Milestones or any other activity or Milestone Event included in the Project Works Schedules, the Project Works Schedule shall, at a minimum, provide:
 - (i) a unique activity identification number (“**Activity ID**”) and name or description using consistent and intuitive terminology that would be understandable to Contracting Authority and only using activity descriptions that begin with a verb or work function followed by an object, where the description shall not include percentages and shall, where applicable, contain a location and physical dimension;
 - (ii) early and late start dates, each with a starting time set as the intended work start time for each Working Day, but in any event before noon of the specific day;

- (iii) early and late finish dates, each with a finish time set as the intended work finish time for each Working Day, but in any event after noon of the specific day;
- (iv) original planned duration as defined by the Baseline Works Schedules, indicated as Working Days and not days, which duration shall be the most-likely duration and used for the Critical Path calculation and shall be, at a minimum one Working Day long. Zero duration activities shall be coded as milestones and not activities;
- (v) shortest expected activity duration, to be used for schedule probability and sensitivity analysis for every Works Activity on the Critical Path or any Works Activity with a float less than twenty (20) Working Days;
- (vi) longest expected duration, to be used for schedule probability and sensitivity analysis for every Works Activity on the Critical Path or any Works Activity with a float less than twenty (20) Working Days;
- (vii) physical per cent completion with all activities using the same percentage completion type representing the physical completion of the activity (activities shall not use any other completion type such as duration completion or payment percentage);
- (viii) remaining duration, manually entered or calculated when entering the physical per cent completion and the forecasted finish date;
- (ix) actual duration for all completed activities;
- (x) calendar assigned;
- (xi) total float or slack (i.e. the amount of time that the activity can be delayed without delaying the Section Substantial Completion Dates, DMCA Construction Works Substantial Completion Dates (as applicable), TPA Substantial Completion Date or Project Substantial Completion Date);
- (xii) free float (that is, the amount of time that the activity can be delayed without delaying the early start of its successor activity);
- (xiii) relationship with other activities and milestones;
- (xiv) activity or milestone lag;
- (xv) Quantity representing the primary physical dimension of the Construction Works element resulting from the activity as agreed with Contracting Authority (for example, linear meter of wall, square meter of tiles or concrete paving, number of doors) in accordance with the following:
 - (A) each activity with a cost value shall have an associated quantity, where no definable dimension exists, the unit type shall be “sum” and the quantity shall be set to “100”; and

- (B) the quantity shall be purely used as an indicator of level of efforts and production rate estimated and is not to be used for Earned Value calculations;
- (xvi) Quantity unit, which shall include: “units”, “m”, “m²”, “m³”, “ton” or “sum”;
- (xvii) Labour Resources to achieve the activity;
- (xviii) user-defined field “Responsible” to indicate the related activity code defining the entity responsible to complete the Works Activity or Works Milestone, including Contracting Authority, third party, Project Co self-performance, or Subcontractor;
- (xix) user-defined fields, in a format and referencing system agreed to with Contracting Authority, including the required geographic location data for each Construction Activity to allow Project Co and/or Contracting Authority to link the Construction Activity information to a geographic information system or building information system as may be applicable, to enable geographic based analysis and/or to present the schedule information in a time-location format;
- (xx) any other user-defined fields, as needed to comply with the requirements of this Agreement; and
- (xxi) Earned Value data of the Works Activities to satisfy the Earned Value Metrics by location and work type in accordance with this Schedule 12.
- (b) Project Co shall not input or assign any progress data for any activity after the Data Date in any Progress Works Schedule or Recovery Works Schedule.
- (c) Project Co shall only assign cost value, Labour Resources, and Quantity to task dependent activity types in any Project Works Schedule; no cost value, Labour Resource, or Quantity shall be assigned to level-of-effort A.
- (d) Project Co shall not use, assign or apply user defined fields for cost, Labour Resources or Quantity in any Project Works Schedule.
- (e) All Project Works Schedule activities shall use task dependent, start milestone, finish milestone or level of effort; no schedule activity shall be resource dependent or WBS summary-type activity.
- (f) Project Co shall minimize the use of level-of-effort type activities in any Project Works Schedule; level-of-effort type activities shall only be used to demonstrate the overall duration for a group of activities.
- (g) Project Co shall not incorporate any changes to WBS in any Progress Works Schedule without the prior written consent of Contracting Authority.
- (h) Prior to incorporating or including any additional activities in any Progress Works Schedule, Project Co shall submit to Contracting Authority for acceptance, a Fragnet

containing Activity ID, activity names, original duration, relationships between Fragnet activities, relationships between proposed Fragnet and Progress Works Schedule activities; Project Co shall not incorporate any additional activities to any Project Works Schedule without the prior written consent of Contracting Authority.

- (i) Any out-of-sequence relationships in a Progress Works Schedule or a Recovery Works Schedule, where an activity has started and the predecessor activity has not finished, shall not be modified or removed by Project Co for schedule activities related to or logically linked to the Lands or the Works Submittals.
- (j) Any out-of-sequence relationships in a Progress Works Schedule or a Recovery Works Schedule that are not logically linked to the Lands or Works Submittals shall be modified or removed by Project Co to clear any such out-of-sequence relationships.
- (k) Project Co shall not reverse the reported physical progress percentage for any of the schedule activities without the prior written consent of Contracting Authority.
- (l) Project Co shall not change any actual data reported in a Progress Works Schedule without the prior written consent of Contracting Authority, in its sole discretion, including, without limitation, the actual start date, actual finish date, actual quantity (material resource with agreed unit of measure), actual labour resources(person-hours) and actual cost.
- (m) Project Co shall not change the activity name for any Project Works Schedule activity unless required by this Schedule 12 or agreed to by Contracting Authority.
- (n) Project Co shall not change the Activity ID in any Project Works Schedule without the prior written consent of Contracting Authority.
- (o) Project Co shall add activities to show all the current revision cycles in any Progress Works Schedule, as of the Data Date, for any Works Submittals set out in Schedule 10 – Review Procedure.
- (p) In each Project Works Schedule, Project Co shall assign all required logic relationships between the Works Activities and the relevant Works Submittals activities revision as set out in this Schedule 12, Schedule 10 - Review Procedure and this Agreement.
- (q) Project Co shall not amend or change the original duration for an activity in any Progress Works Schedule without the prior written consent of Contracting Authority.
- (r) Project Co shall use the activity codes set out in the ‘FTA Dictionary’, CKH-CM-RFD-002 (and successor documents), as supplemented by ‘Ontario Line Code of Accounts 3-Mar-21’ (and successor documents), ‘02 Update and Maintain Integrated Master Schedule Process’, CKH-SCHD-PFD-003 Rev.02, and ‘P6 Data Dictionary for Contractors – Subways’, CKH-SCHD-RFD-003 Rev. 03b (and successor documents).
- (s) All Works Activities shall be placed under following WBS elements:

- (i) engineering
 - (ii) project management
 - (iii) Permits, Licences, Approvals and Agreements
 - (iv) procurement (long lead items, fabrication, delivery),
 - (v) construction (mobilization, construction, installation, testing and commissioning),
 - (vi) close-out (minor deficiencies, Project Final Completion), and
 - (vii) operational and maintenance (if applicable and agreed by both parties).
- (t) The combination of these WBS elements shall not be permitted; for example engineering and procurement shall not be combined similarly all other combinations shall be avoided.

1.6 Primavera Scheduling Settings

- (a) Project Co shall use the following Primavera settings for all calculations in each Project Works Schedule:
- (i) if using multiple projects, all projects should be opened together and the “Ignore relationships to and from other projects” option shall not be selected;
 - (ii) “Use expected finish dates” option shall not be selected;
 - (iii) “Level resources during scheduling” option shall not be used;
 - (iv) when scheduling progressed activities, the “retained-logic” scheduling methodology must be applied;
 - (v) start-to-start lag shall be calculated by early start;
 - (vi) critical activities shall have a total float less than or equal to zero;
 - (vii) total float shall be calculated based on the finish date of all opened projects;
 - (viii) total float shall be calculated as follows: finish float = late finish – early finish; and
 - (ix) the calendar for scheduling relationship lag shall be a predecessor activity calendar.

1.7 Retired Works Activity

- (a) A retired Works Activity is an activity or group of activities that are no longer required, represented by those Works Activities that have been removed from this Agreement (each a “**Retired Works Activity**”).

- (b) No Works Activity or Works Milestone shall be retired from any Project Works Schedule for any reason unless accepted by Contracting Authority.
- (c) If Project Co intends to delete a Works Activity or Works Milestone within any Progress Works Schedule for any reason, a “retired activities” node shall be created at WBS level 2 and to enable a Retired Works Activity to be moved to “retired activities” WBS band.
- (d) For any Retired Works Activities, all logic dependencies shall be removed for that activity.
- (e) The Progress Works Schedule logic shall be adjusted to ensure that the removal of any Retired Works Activity does not leave any open ends and that the integrity of the schedule logic is not compromised, for clarity, the changes shall be reported in the Change Log.
- (f) All Retired Works Activities and Works Milestones shall have an actual start date and finish date applied applicable to the month and year of deletion (the day prior to the Data Date of that month) and the activity description shall be modified to include “Retired” as a prefix.
- (g) All activity codes, cost , Quantity and Labour Resource values assigned to that Retired Works Activity shall be removed, and cost, Quantity and Labour Resource values associated with that activity shall be reassigned to a “not-completed” activity in the schedule and provide the explanation for the values movement in the Change Log.

1.8 Sequencing Logic

- (a) Project Co shall use unconstrained sequencing logic and shall not use imposed date constraints to replace or limit sequencing logic for any Works Activity or Works Milestone, except for the first starting milestone defining the DMCA Effective Date unless it is impossible to sequence the Construction Works otherwise, Project Co shall sequence the Construction Works in accordance with the following:
 - (i) When a constraint is used it shall only be of the “start on or after” or “finish on or before” constraint types, and total constrained activities shall be less than [REDACTED]% of total activities and subject to Contracting Authority’s approval;
 - (ii) For every imposed date constraint used Project Co shall provide a narrative in the Basis of Works Schedule Report detailing the reason for using the imposed date constraint and the scheduling methodology used to prevent inaccuracy when calculating the Critical Path and available total float; and
 - (iii) Project Co shall refrain from the “Expected Finish”, “Start On”, “Finish On”, “Mandatory Start”, “Mandatory Finish”, or any other similar constraint type, nor any other constraint type that would impact on the total float calculations to determine the Critical Path;

- (b) Project Co shall include inter-relationships and logic dependencies between all Works Activities, Works Milestones or any other activities or milestones included in the Project Works Schedules, and Project Co shall:
- (i) use closed-sequence logic, each Works Activity shall have, at a minimum, one predecessor and one successor, and each Works Activity shall have a start and a finish relationship;
 - (ii) use closed-sequence logic for each Works Milestone shall have, at a minimum, one predecessor except for the first Works Milestone denoting the DMCA Effective Date, and have, at a minimum, one successor except for the last Works Milestone denoting the Project Final Completion Date, and each Works Milestone except for the first and last shall have a start and a finish relationship;
 - (iii) not use the start-to-finish (SF) activity relationship type between activities unless otherwise agreed to by Contracting Authority;
 - (iv) for each start milestone only define a finish-to-start (FS) or start-to-start (SS) relationship with its predecessor, a start-to-start (SS) or start-to-finish (SF) relationship with its successor, a start-to-start (SS) relationship with any other start milestone, or a start-to-finish (SF) relationship to a finish milestone;
 - (v) the Project Works Schedule shall not contain any open start or open finish Works Activities, for clarity, all Works Activities shall have a relationship that defines the requirements for the finishing of that activity; each Works Activity shall have a finish-to-start (FS) or finish-to-finish (FF) relationship with another successor activity;
 - (vi) for each finish milestone only define a finish-to-finish (FF) or start-to-finish (SF) relationship with its predecessor, a finish-to-start (FS) or finish-to-finish (FF) relationship with its successor, a finish-to-start (FS) relationship to any other start milestone, or a finish-to-finish (FF) with any other finish milestone;
 - (vii) not use a negative lag between any Works Activities and/or Works Milestones unless substantiated by Project Co and accepted by Contracting Authority;
 - (viii) only use positive lag between Works Activities and/or Works Milestones, to model a specific waiting duration for a process directly related to the preceding Works Activity (e.g. concrete curing time) and provide the explanation for lags in the narrative of relevant reports such as Basis of Works Schedule Report, Works Schedule Progress Report;
 - (ix) not use reverse logic, a Works Activity shall not have a finish-to-finish relationship with a predecessor, and a Works Activity shall not have only a start-to-start (SS) relationship with a successor; and

- (x) only define one relationship per activity or milestone pair, except for the finish-to-finish (FF) and start-to-start (SS) relationship pair that may be used together for an activity or milestone pair.
- (c) Project Co shall ensure that Project Works Schedule shall reflect the constraints related to allowable hours of work on the Site, inclement weather, environmental work windows, or any other schedule related restrictions in establishing the calendars, logical relationships and durations for the activities.

1.9 Calendars

- (a) Project Co shall define and use appropriate non-global project level activity based calendars, and for each calendar define:
 - (i) a descriptive calendar name using intuitive terminology that would be understandable to Contracting Authority; all calendar titles shall start with the word “Project name” (e.g., “PNC – PTUS – Winter Calendar”);
 - (ii) the intended Working Days and Working Hours conforming to the requirements of this Agreement and any other governing approvals and permits that are used as the basis for Critical Path calculations, and all non-Working Days;
 - (iii) all non-Working Days including all statutory holidays, winter shut-down, any environmental restricted time periods for the full project timeframe; and
 - (iv) the first day of each work week as a Monday.
- (b) Project Co shall not use global calendars.
- (c) For each calendar, Project Co shall include all statutory holidays in the Province of Ontario and shall use days as the planning unit for each activity.
- (d) Project Co shall specify activity durations using only full Working Days and shall not use fractional durations (for example, Project Co shall not use 5.5 days).
- (e) Project Co shall assign a calendar to each activity, based on when such activity is planned to occur, and in accordance with the requirements of this Agreement.
- (f) Subject to Contracting Authority’s approval, Project Co may define and use additional calendars that are necessary for the completion of the Construction Works, in accordance with the requirements of this Agreement.
- (g) For each calendar, Project Co shall use only shifts and shift hours which have been previously agreed with Contracting Authority. Project Co shall include a narrative on shifts and shift hours in each Basis of Works Schedule Report.

1.10 Works Activity Level of Detail

- (a) Project Co shall ensure that the Project Works Schedules define the Works Activities to a level of detail that would limit any Works Activity value to a value no greater than [REDACTED]% of the total Target Price value or \$[REDACTED] whichever holds the lesser value.
- (b) Subject to the Parties otherwise agreeing Project Co shall ensure that durations for any Works Activity, except for single process-step activities (such as manufacturing time, and delivery periods), and “hammock” activities are as follows:
 - (i) any Works Activity shall not be less than one Working Day and no more than twenty (20) Working Days; and
 - (ii) Works Micro-Schedule Activities duration shall be no more than five (5) Working Days.
- (c) Project Co shall ensure that the Project Works Schedules provide the crewing or equipment resource levels for the activities and the dependency logic that is governed by or represents crewing or equipment availability.

1.11 Critical Path

- (a) Project Co shall determine and indicate the Critical Path applicable to achieve each Section Substantial Completion, each DMCA Construction Works Substantial Completion (as applicable), TPA Substantial Completion and Project Substantial Completion in each Project Works Schedule. The Critical Path shall:
 - (i) be calculated using the “retained-logic” scheduling methodology and shall not use a progress override option;
 - (ii) not include any “level of effort” type activities, all activities on the Critical Path shall be either task-dependent activities or milestones;
 - (iii) not have constraints or out-of-sequence activities (unless otherwise agreed by Contracting Authority, in its sole discretion);
 - (iv) be the result of an unmodified software calculation of the Critical Path using the Critical Path Method. Project Co shall not employ any additional filters or any other manual manipulation whatsoever to calculate the Critical Path;
 - (v) be continuous, logic driven, and determined based on unmodified software calculation with no use of additional filters; and
 - (vi) consist only of activities with a float of less than or equal to zero.

- (b) The total number of Critical Path Activities shall fall within a range of [REDACTED]% of the total number of activities. Any Critical Path Activities greater than [REDACTED]% shall be justified accordingly.
- (c) If required to do so by Contracting Authority, Project Co shall indicate all activities with a total float of up to twenty (20) Working Days.

APPENDIX B**EARNED VALUE MANAGEMENT REPORTING REQUIREMENTS**

1. Project Co shall include cost data to allow for Earned Value calculations on both an overall and year-to-date basis, cash flow forecasting up to completion of the Construction Works including a year-end Earned Value forecast for each financial year.
2. All Works Activities included in the draft of the Baseline Works Schedules, any update of the Baseline Works Schedules, a Recovery Works Schedule, and all subsequent Progress Works Schedules shall be cost loaded including all costs. For clarity, all Works Activities representing a Works Activity for which Project Co would require payment, shall have a cost value greater than zero representing the actual prorated Project Co cost to perform each Works Activity, and the sum of all the Works Activity cost allocations shall be equal to the overall value to complete the Construction Works.
3. The scheduling information and cost data shall be sufficiently detailed to allow for cost data with an appropriate distribution to generate cash flow data on a monthly frequency. Project Co shall use the data to develop, and provide to Contracting Authority in an acceptable format, the tabulated data and a cumulative S-Curve graph plotting against each month from the DMCA Effective Date until the Project Final Completion Date including:
 - (a) the baseline forecast cash flow in accordance with the Baseline Works Schedules;
 - (b) if applicable, the revised forecast cash flow in accordance with a Recovery Works Schedule;
 - (c) the actual Earned Value in accordance with the as-built data from the Progress Works Schedule; and
 - (d) the revised forecast cash flow to complete the Construction Works in accordance with the Progress Works Schedule.
4. Every month, from the DMCA Effective Date until the Project Final Completion Date, Project Co shall report the progress measurement for each in progress and actualized Works Activities along with the following Earned Value Metrics for the Project:
 - (a) Cost Performance Index (CPI) = $\text{Earned Value (EV)} / \text{Actual Cost (AC)}$, expressed as a percentage;
 - (b) Schedule Performance Index (SPI); the ratio of Earned Value to Planned Value $\text{SPI} = \text{EV} / \text{PV}$;
 - (c) Cost Variance (CV) = the difference between the Construction Works completed and the actual costs to be completed by the Data Date $\text{CV} = \text{EV} - \text{AC}$;

- (d) Schedule Variance (SV); the difference between the Construction Works completed and the Construction Works planned to be completed by the Data Date $SV = EV - PV$;
 - (e) CV%; the ratio of Cost Variance to Actual Cost in percentage $CV\% = CV/AC$;
 - (f) SV%; the ratio of Schedule Variance to Planned Value in percentage $SV\% = SV/PV$;
 - (g) activities started this period vs forecast (%); the proportion of activities which were actually commenced in the reporting period, as a proportion of the activities which were forecasted to commence in the period, as reported in the immediately preceding period;
 - (h) activities started this period vs baseline (%); the proportion of activities which were actually commenced in the reporting period, as a proportion of the activities which were forecasted to commence in the period, as reported in the baseline;
 - (i) activities completed this period vs forecast (%); the proportion of activities which were actually completed in the reporting period, as a proportion of the activities which were forecasted to be completed in the period, as reported in the immediately preceding period; and
 - (j) activities completed this period vs baseline (%); the proportion of activities which were actually completed in the reporting period, as a proportion of the activities which were forecasted to be completed in the period, as reported in the baseline.
5. Project Co shall analyse the result of the above Earned Value indicators and provide the recommended mitigation action if necessary.
 6. The scheduling information and cost data shall be sufficiently detailed to determine the year-to-date actual Earned Value on an accrual basis, and to forecast what the Earned Value would be at the end of Contracting Authority’s financial year.
 7. Each activity representing the Construction Works pursuant to a Variation Confirmation shall be cost loaded with the agreed value, the value of these Variation Confirmations shall however not be included in any calculation pursuant to Section 4 of this Appendix B, unless the Variation Confirmation resulted in the adjustment of any of the Baseline Works Schedules.
 8. Project Co shall populate and present Earned Value Management reporting requirements with the monthly Works Report, in a format set out in the table below:\

Work Area/Type	E.g. Station A
Area Weighting:	E.g. \$[REDACTED]

	Progress Chart: S-Curve of Cumulative Plan %, Earned Value % and Forecast % Histogram of Period Plan %, Earned Value % and Forecast %				
Data Table	Month 1	Month 2	Month 3	...	Every month through to Project Final Completion
Plan Cumulative (%)					
Plan Period (%)					
EV Cumulative (%)					
EV Period (%)					
Forecast Period (%)					
Forecast Cumulative (%)					
CPI to Date					
CPI Period					
SPI to Date					
SPI Cum					
Activities Started vs Forecast (%)					
Activities Completed vs Forecast (%)					

Activities Started vs Baseline (%)					
Activities Completed vs Baseline (%)					

*date format to be used (MMYY) example: JAN2021

APPENDIX C

ACTIVITY CODE AND USER DEFINED FIELDS (UDF) REQUIREMENTS

For each Works Activity, Works Milestones or any other activity or Milestone Event included in the Project Works Schedules, Project Co shall use the activity codes defined in P6 Data Dictionary for Contractors – Subways (CKH-SCHD-RFD-003_P6_Data_Dictionary_Rev.03b) found in the Project data room.

**SCHEDULE 13
INTEGRATION RELATED AMENDMENTS**

[REDACTED]

SCHEDULE 14

COMMISSIONING

1. DEFINITIONS

1.1 In this Schedule 14, unless the context indicates a contrary intention, terms which are defined in this Agreement (and not otherwise defined in this Schedule 14) shall have meanings given to them in this Agreement and the following terms shall have the following meanings:

- (a) “**Backup Operations Control Centre (BOCC)**” has the meaning given in the Construction Technical Requirements.
- (b) “**Commissioning**” means all activities and requirements of Project Co to prove compliance to the requirements in this Agreement, including commissioning obligations as set out in this Schedule 14 and in the Construction Technical Requirements, which, according to the Verification and Validation process of Project Co, must be proven through the act of testing.
- (c) “**Commissioning Brief**” has the meaning given in Section 7.2(a).
- (d) “**Commissioning Flow Chart**” has the meaning given in Section 4.4(a).
- (e) “**Commissioning Requirement Traceability Matrix**” is defined as the matrix containing the requirements that are part of the Commissioning activities. In the Verification and Validation process the requirements that need to prove compliance through the act of testing and commissioning are identified from the requirements of the Construction Technical Requirements and all derived requirements.
- (f) “**Commissioning Steering Group**” has the meaning given in Section 8.2.
- (g) “**Commissioning Submittals**” has the meaning given in Section 7.1(a).
- (h) “**Factory Acceptance Test (FAT)**” has the meaning given in Section 5.2.
- (i) “**Factory Integration Test (FIT)**” has the meaning given in Section 5.3.
- (j) “**Factory Performance Test (FPT)**” has the meaning given in Section 5.4.
- (k) “**Guideway**” has the meaning given in the Construction Technical Requirements.
- (l) “**Independent Safety Assessor**” has the meaning given in Schedule 29 – Safety, System Assurance and Security.
- (m) “**integrated Process Acceptance Test (iPAT)**” is defined as the tests to prove that the standard operating procedures comply with operation and maintenance requirements of the Construction Technical Requirements.
- (n) “**Operational Readiness**” has the meaning given in Section 2.2(b)(i).

- (o) **“Operations Control Centre (OCC)”** means the RSSOM Project location where the Ontario Line Subway System is controlled from.
- (p) **“Operations, Maintenance and Storage Facility (OMSF)”** means the RSSOM Project facility that houses the OCC, stores and maintains trains and all maintenance equipment.
- (q) **“Organizational Readiness”** has the meaning given in Section 2.2(b)(ii).
- (r) **“Performance Readiness”** has the meaning given in Section 2.2(a)(i).
- (s) **“Post-Installation Check-Out Test (PICO)”** has the meaning given in Section 5.5.
- (t) **“Pre-Site Acceptance Testing (Pre-SAT)”** is defined as the tests performed for systems and subsystems before testing the complete system in the Site Acceptance Test.
- (u) **“Professional Engineer”** means a professional engineer licensed by Professional Engineers Ontario to practice in the Province of Ontario.
- (v) **“Project Co Commissioning Manager”** has the meaning given in Section 9.1.
- (w) **“Project Co Commissioning Plan”** has the meaning given in Section 7.3.
- (x) **“Project Co Commissioning Report”** has the meaning given in Section 7.4.
- (y) **“Project Co Commissioning Team”** has the meaning given in Section 8.3.
- (z) **“Release”** is defined as a group of one or more commissioning tests which are grouped together because of a shared location, functionality and timeframe, and managed like a project within the larger Project Co framework, having one or more phases to group the testing activities within the Release.
- (aa) **“Release Management Plan”** has the meaning given in Section 7.5.
- (bb) **“Release Management Team”** has the meaning given in Section 8.4(b).
- (cc) **“Release Manager”** has the meaning given in Section 10.1.
- (dd) **“Release Report”** has the meaning given in Section 7.6.
- (ee) **“Release Strategy”** has the meaning given in Section 3.1.
- (ff) **“Revenue Service”** has the meaning given in the Construction Technical Requirements.
- (gg) **“Revenue Service Demonstration”** has the meaning given in Section 5.12.
- (hh) **“System Safety Case”** has the meaning given in Schedule 29 – Safety, System Assurance and Security.
- (ii) **“Site Acceptance Test”** or **“SAT”** has the meaning given in Section 5.7(a).

- (jj) “**Site Integration Test – dynamic (SIT2)**” is the integration testing of Ontario Line Subway on site with moving Trains.
- (kk) “**Site Integration Test – static (SIT1)**” is the integration testing of the Project Co Infrastructure and Ontario Line Subway on site in the static and dynamic state without moving Trains.
- (ll) “**Support Team**” has the meaning given in Section 5.9(b).
- (mm) “**System of Interest**” is defined as that part of the system or subsystem that is the focus of a specific test or series of tests, including not only the technical aspects of the system or subsystem, but also the people (and their knowledge, skills and training) involved in its operation and maintenance, as well as the organization necessary to enable such people to operate and maintain it.
- (nn) “**Test Plan**” has the meaning given in Section 7.7.
- (oo) “**Test Report**” has the meaning given in Section 7.8.
- (pp) “**Test Tier**” is defined as a specific phase in the testing sequence as part of the Commissioning hierarchy.
- (qq) “**Tree of Tests**” has the meaning given in Section 4.3(a).
- (rr) “**Trial Running**” means Test Tier 9 and 10, as described in Section 5.10 and Section 5.11.
- (ss) “**Trial Running Resilience Tests**” or “**(Trial-RT)**” has the meaning given in Section 5.11.
- (tt) “**Trial Running Scenario Tests**” or “**(Trial-ST)**” has the meaning given in Section 5.10.
- (uu) “**Tunnel Ventilation System**” has the meaning given in the Construction Technical Requirements.
- (vv) “**Verification and Validation**” has the meaning given in the Construction Technical Requirements.

PART 1: PRINCIPLES OF COMMISSIONING

2. GOAL OF COMMISSIONING ACTIVITIES

2.1 Goal of commissioning activities

- (a) Project Co shall use the commissioning process to prove compliance to all requirements in the Construction Technical Requirements which need to be provided through the act of testing and commissioning, and shall identify such requirements from other requirements in its Verification and Validation process using the Commissioning Requirements Traceability Matrix.
- (b) Project Co shall set up its commissioning process using the release management approach to clearly distinguish amongst evidence of readiness as defined in Section 2.2(a).

2.2 Readiness and compliance

- (a) Project Co shall provide evidence of readiness and verification and/or validation with the Commissioning Requirements Traceability Matrix set up through Project Co’s Verification and Validation process, by successfully carrying out commissioning tests and reporting on these using the following definitions:
 - (i) performance readiness by providing evidence as per the Commissioning Requirements Traceability Matrix, meaning that there is sufficient evidence that the system or subsystem undergoing the test is ready to fully function and perform according to all its allocated requirements, in its intended operating environment, and will be able to do so throughout its intended life cycle and the intended operating environment shall include all expected normal, degraded, maintenance and emergency modes of operation (“**Performance Readiness**”); and
 - (ii) readiness to support the required principles of safety and security by providing evidence of compliance with the safety and security requirements as per the Commissioning Requirements Traceability Matrix.
- (b) Project Co shall support RSSOM Project Co to provide evidence of readiness and Verification and Validation until the Project Final Completion Date for the following definitions:
 - (i) operational readiness, meaning that sufficient evidence exists that the intended processes which support the operation and maintenance of the system or subsystem, are implemented and compliant with its operational and maintenance requirements, complete and ready to accompany the system or subsystem in operational and maintenance states (“**Operational Readiness**”); and
 - (ii) organizational readiness, meaning that sufficient evidence exists that the organization that should support the operation and maintenance of the system or subsystem under test, is ready to do so, under all expected normal, degraded, maintenance and emergency modes of operation, according to relevant requirements as per the Commissioning Requirements Traceability Matrix (“**Organizational Readiness**”).

2.3 Sufficient evidence

- (a) Project Co shall be responsible for determining whether the evidence gathered by successful commissioning tests is sufficient or not, making appropriate use of Engineers of Record. Project Co's Verification and Validation activities shall contribute to the decision of sufficiency of evidence.
- (b) Project Co shall gather sufficient evidence of commissioning success throughout the Project, through the process of successfully scoping, planning, executing and reporting on the commissioning tests as described in this Schedule 14.
- (c) Decisions about sufficiency of evidence which were generated by Commissioning Managers of RSSOM Project Co, South Civil Project Co and EGS Project Co, shall be included in this traceability where the Commissioning activities cuts across the boundaries of Project Co and RSSOM Project Co, South Civil Project Co and EGS Project Co. For clarity, this includes, among others, decisions about interfaces, safety certification and handovers.

3. **RELEASE MANAGEMENT**

3.1 **The Release Strategy**

- (a) Project Co shall use Release management to structure, organize and execute its Commissioning.
- (b) Project Co shall identify all Releases required to deliver the commissioning tests.
- (c) Project Co shall develop a release strategy which shall contain the intended sequence of Releases, the grouping of commissioning tests, the rationale for this grouping and its sequence (the “**Release Strategy**”).
- (d) The Release Strategy shall act as a framework for the Release Management Plan.
- (e) Project Co shall integrate the Release Strategy with RSSOM Project Co release strategy, using the Commissioning Steering Group as a forum
- (f) Releases may run concurrently.
- (g) Project Co shall distinguish between Releases for learning and Releases for proving readiness:
 - (i) Releases for learning focus on proving concepts, process, subsystems or other stated learning goals. Project Co shall treat these Releases with a stage-gate method focussed on the learning goals and not on the elements of functional performance or other results of the commissioning tests which might not yet be ready.
 - (ii) Releases for proving applied learning, or successful integration, which are generally located later in the project life cycle.

3.2 **General release management requirements**

- (a) Project Co shall include in the Release planning, execution and reporting for the specific System of Interest.
- (b) Project Co shall include the RSSOM Project Co operational manager and RSSOM Project Co maintenance manager in the planning and execution of the Releases.
- (c) Project Co shall structure its Release planning, execution and reporting so that relevant evidence of:
 - (i) Performance Readiness can be achieved; and
 - (ii) Schedule 29 – Safety, System Assurance and Security on safety and security management is gathered.
- (d) Project Co shall include at least two readiness gate reviews in advance of all Releases to ensure that Releases will start on time with a stable set of entry criteria and show these readiness reviews in the Project Works Schedule.

3.3 Entry and exit criteria

- (a) Every Release shall contain a list of entry criteria, using all four definitions of readiness as described in Section 2.2.
- (b) Every Release shall contain a list of exit criteria, using the four definitions of readiness, as applicable for the Release, as described in Section 2.2.
- (c) Entry and exit criteria shall contain project management aspects of the tests and technical details within the Release scope.
- (d) Exit criteria shall include, at a minimum:
 - (i) a link between the test results within the Release or Release phase with Project Co's Verification and Validation process to unambiguously measure compliance with requirements,
 - (ii) a narrative on the approach to and execution of the Release to capture lessons learned, and
 - (iii) a reference to the updated Release planning.
- (e) Project Co shall obtain agreement within the Commissioning Steering Group of the entry and exit criteria of the Release if RSSOM Project Co, South Civil Project Co and/or EGS Project Co are involved in the Release or is reliant upon the results of the Release. For all other Releases, Project Co shall inform the Commissioning Steering Group.
- (f) Project Co shall not start the Release until the Commissioning Steering Group has agreed on the entry and exit criteria of the Release.
- (g) Project Co shall insert and manage the entry and exit criteria for all Releases owned by Project Co in the entry and exit criteria database managed by RSSOM Project Co.
- (h) Project Co shall be responsible for purchasing software licenses as required for their activities in the database.

3.4 Release phases and numbering

- (a) Project Co shall use a nomenclature for Releases which is common for Project Co, RSSOM Project Co, South Civil Project Co and EGS Project Co. The Commissioning Steering Group shall agree this nomenclature.
- (b) Project Co shall develop Releases in accordance with the following requirements:
 - (i) Releases which follow each other in time, shall have a number and a descriptive title, such as *Release 7 Pape station control systems*;
 - (ii) within each Release, the different types of readiness tests as per Section 2.2(a) shall be split up into Release phase; and

- (iii) within the Release, the order of sequence of proving readiness shall be performance (including functional), operational and then organizational readiness.

3.5 General rules for the ownership of Releases

- (a) The Commissioning Steering Group shall appoint an owner of a Release to Project Co or to RSSOM Project Co, South Civil Project Co or EGS Project Co.
- (b) If Project Co is an owner of a Release, Project Co shall provide the Release Manager for that specific Release.
- (c) If Project Co is not the owner of a Release, Project Co shall actively participate in the Release insofar as this is required from the definition of the System of Interest.

4. **SYSTEMATIC BUILD-UP OF TESTING**

4.1 **Tiers of commissioning tests**

- (a) Project Co shall systematically build up the complexity, and prove the readiness of, the system or subsystem under review from simple to complex, by following the generic sequence of proving readiness and integration defined in Section 5.

4.2 **Stage gates**

- (a) Project Co shall define and utilize a strict stage-gate approach to ensure that the proof of readiness obtained by testing on any specific Test Tier includes that non-conformances and deficiencies are closed before commencing with testing within a higher Test Tier. Minor deficiencies that have no impact on the function of the system shall be an exception to this.

4.3 **The Tree of Tests**

- (a) Project Co shall structure all testing into a logical build-up of tests, using the Test Tiers defined in this document, (a “**Tree of Tests**”). For an example see Appendix A.
- (b) Project Co shall contribute to the integrated Tree of Tests developed by RSSOM Project Co, using the Commissioning Steering Group.
- (c) The Tree of Tests shall include the use of Releases and a breakdown of subsystems for early testing, where applicable.
- (d) The Tree of Tests shall be defined from a functional breakdown perspective, so that interfacing amongst systems and subsystems is also explicitly shown in the Tree of Tests.
- (e) Project Co shall include the location for FAT, FIT and FPT testing in the Tree of Tests.

4.4 **Commissioning Flow chart**

- (a) Project Co shall develop a diagram (the “**Commissioning Flow Chart**”) that shows groups of tests and integration test dependencies over time.
- (b) Project Co shall ensure that the overall Commissioning Flow Chart aligns with the Project Works Schedule.

4.5 **Keep parallel developments in step with each other**

- (a) Project Co shall use Releases and commissioning tests to provide evidence that the operation and maintenance systems are developed in step with the Project Co Infrastructure.
- (b) Project Co shall specifically include timely readiness and decommissioning of temporary systems to enable the realization of the core systems.
- (c) Project Co shall use Releases as evidence that the activities of the Additional Contractors are developing in step with each other.

4.6 Software integration testing

- (a) Project Co shall cooperate with RSSOM Project Co to test and integrate software in data integration environment, taking into account the need for data protection throughout the Project Term.
- (b) Project Co shall define the required software test hierarchy and include this in the Project Co Commissioning Plan.
- (c) Project Co shall use formal software configuration and acceptance procedures to submit, through Releases, the software to RSSOM Project Co to integrate.
- (d) Project Co handover the final software systems architecture to RSSOM Project Co.
- (e) Project Co shall prove software integration before commencing physical integration testing with components or systems which use this firmware or software.

4.7 Handovers

- (a) Project Co shall regard each Section Substantial Completion, DMCA Construction Works Substantial Completion, TPA Substantial Completion and Early Works Section Handover as Releases.
- (b) Without limiting any other obligation set out in this Schedule 14, Project Co shall conduct and complete all applicable SATs preceding each Section Substantial Completion, DMCA Construction Works Substantial Completion and TPA Substantial Completion.

4.8 Commissioning and Handover of New Third Party Infrastructure

- (a) Project Co shall use the Commissioning process to prove compliance to all requirements in the Construction Technical Requirements for all New Third Party Infrastructure which need to be provided through the act of testing and commissioning, and shall identify such requirements from other requirements in its Verification and Validation process using the Commissioning Requirements Traceability Matrix.
- (b) Project Co shall execute the Commissioning of all New Third Party Infrastructure in accordance with this Agreement, this Schedule 14 and in accordance with the specifications of the relevant third parties.
- (c) Project Co shall commission New City Infrastructure in accordance with the Commissioning and Acceptance Protocol of the City of Toronto.
- (d) Prior to achievement of Handover of each component of New TTC Infrastructure, if applicable, and as a pre-condition of Handover, Project Co shall submit to Contracting Authority a Project Co Commissioning Plan for Handover of each component New TTC Infrastructure for review.
- (e) Project Co shall execute the Commissioning of New TTC Infrastructure in accordance with section 00 91 00 of the TTC master specification as part of the TTC Design Standards (as defined in the Construction Technical Requirements).

5. GENERAL COMMISSIONING HIERARCHY

5.1 General requirements

- (a) Project Co shall follow the Commissioning hierarchy structure from the below Figure 1 up to Test Tier 8.

For clarification, RSSOM Project Co is responsible for Test Tiers 8, 9, 10 and 11.

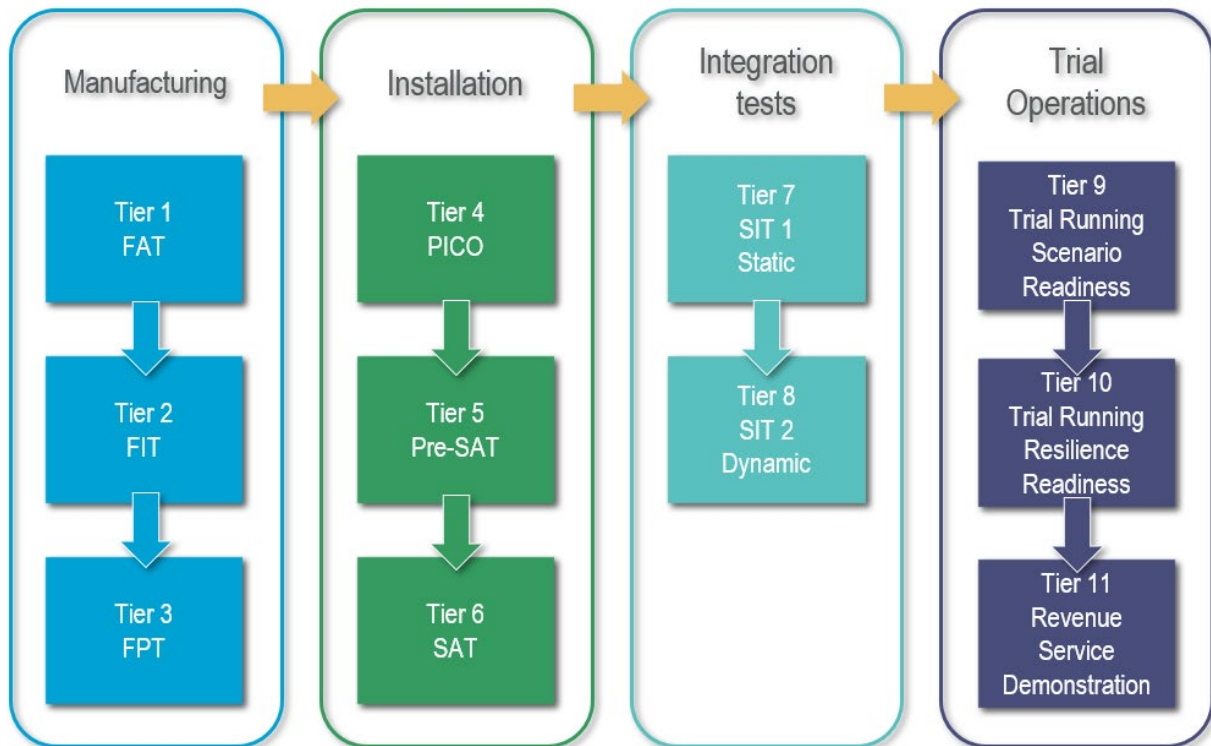


Figure 1: Commissioning hierarchy

- (b) Project Co shall provide all necessary labour, materials, equipment, testing apparatus and incidentals necessary to complete all commissioning tests for the Project Co Infrastructure and the New Third Party Infrastructure.
- (c) Project Co shall perform tests on all systems or subsystems for which the relevant Engineer(s) of Record requires such tests for the Project Co Infrastructure up to Test Tier 7.
- (d) Project Co shall carry out FAT, FIT and FPT testing at the facilities of system assembly, prior to shipping/relocation for final installation or configuration on site. Tests in a data integration environment or configuration on site are part of FAT, FIT and FPT testing.

5.2 Tier 1 – FAT (Factory Acceptance Test)

- (a) The goal of factory acceptance tests is to evaluate discrete systems or subsystems, to prove during and after assembly that the System of Interest complies with the relevant performance specifications (the “**Factory Acceptance Test**”).

5.3 Tier 2 – FIT (Factory Integration Test)

- (a) The goal of factory integration tests is to evaluate the interfacing amongst discrete systems or subsystems and any emergent functionality arising from the combination of these discrete systems or subsystems, to prove during and after assembly that the System of Interest complies with the relevant performance specifications (a “**Factory Integration Test**”).
- (b) Project Co shall conduct FITs after successful completion of the FAT of the System of Interest.
- (c) FITs shall be static in nature but may be energised for the duration of the test.

5.4 Tier 3 – FPT (Factory Performance Test)

- (a) The goal of factory performance tests is to evaluate partial Performance Readiness and Operational Readiness of the System of Interest, to prove during and after assembly that the System of Interest complies with the relevant performance specifications (a “**Factory Performance Test**”).
- (b) Project Co shall conduct FPTs after successful completion of the FAT and FIT (if applicable) of the System of Interest.
- (c) FPTs shall be static and dynamic in nature, insofar the facilities at the place of assembly allows for such tests to also be dynamic.

5.5 Tier 4 – PICO (Post Installation Check-Out)

- (a) The goal of post installation check-out tests is to prove successful installation of a system on site to start Pre-SAT and SAT tests and are tests on a system in a non-energized state, (each a “**Post-Installation Check-Out Test**”).
- (b) Project Co shall conduct PICO tests after installation on site.

5.6 Tier 5 – Pre-SAT (Pre-Site Acceptance Testing)

- (a) Project Co shall use Pre-SAT tests, or pre-commissioning tests on all systems or subsystems for which the relevant Engineer(s) of Record requires such tests.
- (b) The completion of Pre-SAT tests on subsystems of a system, does not constitute a valid SAT on the entire system.

5.7 Tier 6 – SAT (Site Acceptance Test)

- (a) Project Co shall perform site acceptance tests to prove the performance and functionality of the system in compliance with its allocated requirements, after the System of Interest is installed on site, and working as a standalone system (a “**Site Acceptance Test**”).
- (b) Project Co shall conduct SATs after:
 - (i) successfully completing the PICO for the system;
 - (ii) successfully completing the Pre-SAT for the system, if Pre-SATs were used; and
 - (iii) all non-conformances and deficiencies of the previous Test Tiers have been addressed. Minor deficiencies that have no impact on the function of the system shall be an exception to this.
- (c) After completing the SAT of a system, Project Co shall conduct Process Acceptance Tests (PATs) to prove that applicable maintenance and operations processes associated with the System of Interest are also ready.
- (d) Project Co shall successfully complete all PATs before the start of Tier 7 – SIT1.
- (e) Project Co shall include relevant components of its operations and maintenance systems in the SAT testing, including the recording and/or analysis of asset performance and asset health.

5.8 Tier 7 – SIT1 (Site Integration Test 1) Static

- (a) Project Co shall conduct Site Integration Tests – static (SIT1s) after:
 - (i) successful SATs of all the discrete systems within the System of Interest of the SIT1 test;
 - (ii) successful SATs of relevant operation and maintenance systems, including but not limited to a system for the recording and/or analysis of asset performance and asset health; and
 - (iii) all non-conformances and deficiencies arising from previous testing phases have been closed out. Minor deficiencies that have no impact on the function of the system shall be an exception to this.
- (b) The objectives of the SIT1 tests are:
 - (i) prove Performance Readiness of all New Third Party Infrastructure and interfaces with Existing Third Party Infrastructure, insofar these were not already covered in SATs;
 - (ii) prove Performance Readiness of the Project Co Infrastructure up to Project Substantial Completion, including but not limited to:
 - (A) prove Performance Readiness of all Stations as integrated systems, including Tunnel Ventilation Systems, and obtaining the authority to occupy permit for each Station; and

- (B) prove that the software systems architecture and integrated software systems function as a whole with full compliance to its performance specifications, up to such a level of detail that it is fully ready to handle SIT2 testing.
- (iii) support RSSOM Project Co to prove Performance Readiness of Ontario Line Subway, including possible SIT2 testing by RSSOM Project Co; and
- (c) Project Co shall support RSSOM Project Co to do the integrated Process Acceptance Test (iPAT) within the SIT1 and SIT2 testing tiers to provide proof that the standard operating procedures comply with the relevant requirements.
- (d) iPAT testing shall be conducted after completion of the functional and performance testing.
- (e) Project Co shall perform SIT1 tests with energized systems.
- (f) For clarification, RSSOM will perform SIT1 tests with energized systems but not with Trains moving on the Guideway under signaling and train control system control.
- (g) Project Co shall order, structure and sequence the test contents of the SIT1 tests as a Release with various phases.
- (h) Project Co shall, based on the completed SIT1 tests, submit evidence of compliance with the safety and security requirements relevant to the System of Interest in the Commissioning Requirements Traceability Matrix to RSSOM Project Co as input to the System Safety Case in terms of technical safety.

5.9 Tier 8 – SIT2 (Site Integration Test 2) Dynamic

- (a) The objective of the Site Integration Test – dynamic (SIT2) (“**Site Integration Test – dynamic (SIT2)**”) is to prove functionality and Performance Readiness of the Ontario Line Subway with moving Trains.
- (b) Project Co shall provide support staff consisting of, at a minimum, mechanical, electrical and Tunnel Ventilation System experts (the “**Support Team**”) to support RSSOM Project Co to conduct the Site Integration Test – dynamic (SIT2) and Trial Running. The Support Team will provide their services during the SIT2 and Trial Running periods for a maximum period of fifteen (15) months after Project Substantial Completion.
- (c) The Support Team shall be available on site between 6:00 a.m. and 6:00 p.m. on days that RSSOM Project Co is conducting SIT2 tests.
- (d) At times the Support Team is not required to be on site, the Support Team shall be available on-call for 24 hours per day and 7 days per week during the SIT2 testing period.
- (e) The Support Team shall support RSSOM Project Co in case of:
 - (i) knowledge gaps or unclarity in standard operating procedures and OEM manuals; and
 - (ii) issues in relation to Project Co Infrastructure.

- (f) For clarity, the Support Team shall not be responsible for maintenance of the Project Co Infrastructure.
- (g) RSSOM Project Co may seek to commence SIT2 testing on a portion of the Project Co Infrastructure, after agreement with the Contracting Authority, if the entire Project Co Infrastructure is not yet ready to commence SIT2 testing.

5.10 Tier 9 – Trial-ST (Trial running, Scenario Tests)

- (a) For clarification, the goal of the trial running (scenario tests) is to prove the Operational Readiness of the operating and maintenance staff with the operation of the standard operating procedures (“**Trial Running Scenario Tests**”). RSSOM Project Co will be fully responsible for the Trial Running Scenario Tests.
- (b) The Support Team shall be available on-call 24 hours per day and 7 days per week during the Trial – ST period.

5.11 Tier 10 – Trial-RT (Trial Running, Resilience Tests)

- (a) For clarification, the goal of the trial running (resilience tests) is to prove resilience of the Ontario Line Subway, operational and maintenance processes and organization to meet the reliability targets (“**Trial Running Resilience Tests**”). RSSOM Project Co will be fully responsible for the Trial Running Resilience Tests.
- (b) The Support Team shall be available on-call 24 hours per day and 7 days per week during the Trial – RT period.

5.12 Tier 11 – Revenue Service Demonstration

- (a) For clarification, the goal of the revenue service demonstration is to prove readiness to commence revenue service (“**Revenue Service Demonstration**”). RSSOM Project Co will be fully responsible for the Revenue Service Demonstration.

6. THE MINIMUM SET OF RELEASES

6.1 General

- (a) Project Co shall use Table 1 and each Project Co Infrastructure Section and Early Works Section Handover as a minimum set of Releases for the Release Strategy where relevant for the Project Co Infrastructure.
- (b) Project Co shall comply with the contents of the minimum set of Releases, where relevant for Project Co as indicated in Table 1 below.
- (c) Project Co may adjust the sequence of the minimum set of Releases.

6.2 The minimum Set of Releases

Table 1: Minimum Set of Releases

[REDACTED]

7. SUBMITTALS

7.1 Document Hierarchy

- (a) Project Co shall prepare and submit the following submittals (the “**Commissioning Submittals**”) to Contracting Authority for review by Contracting Authority in accordance with Schedule 10 – Review Procedure:
 - (i) Commissioning Brief;
 - (ii) Project Co Commissioning Plan;
 - (iii) Project Co Commissioning Report;
 - (iv) Release Management Plan;
 - (v) Release Management Report;
 - (vi) Test Plan; and
 - (vii) Test Report.

7.2 Commissioning Brief

- (a) Project Co shall submit a Commissioning Brief to Contracting Authority, which shall describe the Commissioning approach to all design items of the Project Co Infrastructure and the New Third Party Infrastructure (the “**Commissioning Brief**”), and which contains at least the:
 - (i) Commissioning Strategy;

- (ii) Release Strategy (3.1);
- (iii) a preliminary Tree of Tests; and
- (iv) a preliminary Commissioning Flow chart (4.4).

7.3 Project Co Commissioning Plan

- (a) Project Co shall prepare and execute a verification, test, acceptance and Project Co Commissioning Plan to demonstrate the successful Commissioning of the Project Co Infrastructure and the New Third Party Infrastructure in accordance with this Agreement (the “**Project Co Commissioning Plan**”).
- (b) Project Co shall send the Project Co Commissioning Plan validated by the Independent Commissioning Agent and the Independent Safety Assessor to RSSOM Project Co, using the Commissioning Steering Group.

For clarification, RSSOM Project Co will integrate the Project Co Commissioning Plan into the integrated commissioning plan prepared by RSSOM Project Co in accordance with the RSSOM Project Agreement.

- (c) Project Co shall submit the Project Co Commissioning Plan to Contracting Authority, the Independent Commissioning Agent and the Independent Safety Assessor, in accordance with Schedule 10 – Review Procedure.
- (d) The Project Co Commissioning Plan shall demonstrate how Project Co intends to validate and verify all functional, technical, quality and safety requirements, and performance criteria set out in this Agreement and demonstrate that such standards have been met or exceeded for the Project Co Infrastructure and the New Third Party Infrastructure.
- (e) The Project Co Commissioning Plan shall describe, at a minimum, all Commissioning activities to be carried out during each stage of the Project.
- (f) The Project Co Commissioning Plan shall contain the following:
 - (i) Release Strategy (3.1);
 - (ii) Tree of Tests (4.3);
 - (iii) Commissioning Flow chart (4.4);
 - (iv) Commissioning Requirements Traceability Matrix;
 - (v) requirements, and the timing and sequence of such requirements, necessary in order that Commissioning shall be completed to achieve:
 - (A) DMCA Construction Works Substantial Completion on or before the applicable DMCA Construction Works Scheduled Substantial Completion Date;

- (B) DMCA Construction Works Final Completion on or before the applicable DMCA Construction Works Scheduled Final Completion Date;
 - (C) TPA Substantial Completion on or before the applicable TPA Scheduled Substantial Completion Date; and
 - (D) TPA Final Completion by the applicable TPA Scheduled Final Completion Date;
 - (vi) the names of the individuals or companies proposed to perform all Commissioning;
 - (vii) a schedule of meetings to be held between the Parties to coordinate the performance of Commissioning;
 - (viii) reference to the latest version of the scope configuration, including software; and
 - (ix) list of Release Management Plans for those Releases under Project Co ownership and that Project Co participates in.
- (g) Project Co shall submit the Project Co Commissioning Plan and any updated revisions of the Project Co Commissioning Plan to RSSOM Project Co as input for the integrated commissioning plan prepared by RSSOM Project Co in accordance with the RSSOM Project Agreement.
- (h) In addition to the tests and inspections specified in the Project Co Commissioning Plan, Contracting Authority and their representatives, with respect to the Project Co Infrastructure, and the applicable third parties, with respect to New Third Party Infrastructure, shall have the right, acting reasonably, to identify and require Project Co to successfully perform any other testing or verifications relating to Commissioning during the review of the Project Co Commissioning Plan and Test Plans, in accordance with Schedule 10 – Review Procedure.
- (i) After the first tier 1 test, Project Co shall update and integrate the Project Co Commissioning Plan monthly with the Project Works Schedule.

7.4 Project Co Commissioning Report

- (a) Project Co shall prepare and submit a report to Contracting Authority, the Independent Commissioning Agent and the Independent Safety Assessor to demonstrate the progress on Project Co’s testing and Commissioning activities of the Project Co Infrastructure and the New Third Party Infrastructure in accordance with this Agreement (the “**Project Co Commissioning Report**”).
- (b) Project Co shall send the Project Co Commissioning Report to RSSOM Project Co, using the Commissioning Steering Group.

For clarification, RSSOM Project Co will integrate the Project Co Commissioning Report into the integrated commissioning report prepared by RSSOM Project Co in accordance with the RSSOM Project Agreement. RSSOM Project Co will send the RSSOM commissioning report and integrated commissioning report to the Commissioning Steering Group in accordance with the RSSOM Project Agreement.

- (c) The Project Co Commissioning Report shall integrate the following documents:

- (i) Release Reports; and
 - (ii) Test Reports.
- (d) Project Co shall submit the Project Co Commissioning Report and any updated revisions of the Project Co Commissioning Report to the Commissioning Steering Group for review.
- (e) Project Co shall submit the Project Co Commissioning Report and any updated revisions of the Project Co Commissioning Report to RSSOM Project Co as input to the integrated commissioning report.

7.5 Release Management Plan

- (a) For each Release appointed to Project Co, Project Co shall prepare and submit to Contracting Authority a plan (a “**Release Management Plan**”) which includes:
- (i) the scope of the Release, including Release objectives and tests included in the release;
 - (ii) approach of the Release, including:
 - (A) required effort to plan, carry out and report on the Release;
 - (B) organization;
 - (C) risk mitigation; and
 - (D) planning;
 - (iii) the agreed Go/No go criteria;
 - (iv) entry and exit criteria; and
 - (v) risk mitigation and opportunities relating to the Release.
- (b) The Release Management Plan shall contain the following documents:
- (i) list of Test Plans that are part of the Release; and
 - (ii) test procedures for the Release.
- (c) Project Co shall ensure the Release Management Plan is current.
- (d) Project Co shall send the Release Management Plan to the Commissioning Steering Group for review.

7.6 Release Report

- (a) Project Co shall prepare and issue a release report (each a “**Release Report**”), for each Release owned by Project Co, to report on the following:

- (i) evaluate the Release progress and success factors;
 - (ii) evaluate the readiness levels of the System of Interest;
 - (iii) entry and exit criteria;
 - (iv) evaluate whether the release testing and Commissioning activities met the Release objectives;
 - (v) the Release Report shall integrate the Test Reports for the Release; and
 - (vi) the configuration of all (sub)systems which are either part of the Release or which interact with the Release, shall be tracked and included in the Release Report.
- (b) Project Co shall send the Release Report to the Commissioning Steering Group within two weeks of completion of the relevant Release for review.
- (c) Project Co shall submit the Release Report to the Contracting Authority within two weeks of completion of the Release after review by the Commissioning Steering Group.

7.7 Test Plan

- (a) Project Co shall prepare individual test plans (each a “**Test Plan**”) for each test contained in the Tree of Tests.
- (b) Project Co shall prepare and issue test plans which shall include at a minimum:
- (i) list of requirements from the Commissioning Requirements Traceability Matrix which will be verified or validated;
 - (ii) method statement(s);
 - (iii) the approvals required from any Governmental Authority, manufacturer or other person that are necessary to meet the requirements of the Project Co Commissioning Plan or Applicable Law;
 - (iv) test scenarios and/or use cases;
 - (v) test pass/fail criteria; and
 - (vi) test procedures.
- (c) Project Co shall submit the Test Plans to Contracting Authority, the Independent Commissioning Agent and the Independent Safety Assessor.

7.8 Test Report

- (a) Project Co shall prepare and issue a test report matching the scope of each Test Plan (a “**Test Report**”).

- (b) Test Reports shall contain at a minimum:
 - (i) test objectives;
 - (ii) test results, including how these relate to the pass/fail criteria;
 - (iii) analysis of results;
 - (iv) conclusions, including possible follow-up or quality assurance activities; and
 - (v) recommendations.
- (c) Project Co shall submit the Test Reports to Contracting Authority, the Independent Commissioning Agent and the Independent Safety Assessor.

PART 2: ORGANIZATION, ROLES AND GOVERNANCE

8. COMMISSIONING RELATED TEAMS

8.1 Organizational structure of the teams

- (a) The Commissioning activities shall be managed by the following three teams, at a minimum:
- (i) The Commissioning Steering Group, under leadership of Contracting Authority;
 - (ii) The Project Co Commissioning Team, which is under leadership of the Project Co Commissioning Manager; and
 - (iii) Release Management Teams, which is under the leadership of a Release Manager.
- (b) The Project Co Commissioning Team and Release Management Teams report to the Commissioning Steering Group.

8.2 Commissioning Steering Group

- (a) Project Co shall establish a group within twelve (12) months after the DMCA Effective Date (the “**Commissioning Steering Group**”), which shall be responsible for:
- (i) monitoring the progress of the commissioning of the Ontario Line Subway;
 - (ii) assigning Releases to the Release Management Teams;
 - (iii) removing bottlenecks or challenges that the Release Management Team cannot solve; and
 - (iv) ensuring that the project environment around the Release is stable enough for Releases to start and is kept stable during the Releases.
- (b) Project Co shall participate in the Commissioning Steering Group during the Project Term.
- (c) The permanent members of the Commissioning Steering Group are:
- (i) Project Co Commissioning Manager;
 - (ii) RSSOM Project Co commissioning manager;
 - (iii) South Civil Project Co commissioning manager;
 - (iv) EGS Project Co commissioning manager (when appointed)
 - (v) RSSOM Project Co operations director;
 - (vi) RSSOM Project Co maintenance director; and
 - (vii) Representative(s) of the Contracting Authority.

- (d) A representative of Contracting Authority chairs the Commissioning Steering Group.
- (e) Commissioning Steering Group meetings shall be held on a monthly basis, or more regular, throughout the Project Term.
- (f) The Commissioning Steering Group shall discuss each (set of) Release on a monthly basis, or more regularly if required.
- (g) Commissioning Steering Group meetings shall focus on all matters pertaining to the integrated planning, execution, reporting and learning from all Releases for Commissioning the Ontario Line Subway.
- (h) The Project Co Commissioning Manager, RSSOM Project Co commissioning manager South Civil Project Co commissioning manager and EGS Project Co commissioning manager shall be responsible for official collection and dissemination of information pertaining to the Commissioning Steering Group and shall work within the Commissioning Steering Group to optimize and standardize the information flow.

8.3 Project Co Commissioning Team

- (a) Project Co shall establish a team within twelve (12) months after the DMCA Effective Date (the “**Project Co Commissioning Team**”), which shall be responsible for:
 - (i) providing evidence of the:
 - (A) Performance Readiness;
 - (B) Organizational Readiness; and
 - (C) Operational Readiness;
 - (ii) contributing to the integration process;
 - (iii) contributing to safety and security process;
 - (iv) health and safety management for the Commissioning;
 - (v) configuration management of the Commissioning activities; and
 - (vi) Release management.
- (b) The Project Co Commissioning Manager shall lead the Project Co Commissioning Team.

8.4 Release Management Teams

- (a) A Release Management Team is responsible for the planning, setup, execution and reporting of the Releases assigned to it.

- (b) The Project Co Commissioning Manager shall appoint a team (the “**Release Management Team**”) with its Release Manager for each Release owned by Project Co.
- (c) The Release Management Team’s composition shall reflect the contents of the Release.
- (d) The Release Management Team shall include representatives of RSSOM Project Co, South Civil Project Co and EGS Project Co involved in the Release.
- (e) Project Co shall accommodate temporary members from relevant third parties within the Release Management Team, to ensure that Construction Works involving third parties are commissioned and coordinated.
- (f) The Release Management Team shall have at least the following tasks:
 - (i) management and coordination of the Release;
 - (ii) planning and scheduling of the Release;
 - (iii) support each Section Substantial Completion, each DMCA Construction Works, each TPA Substantial Completion and each Early Works Section Handover;
 - (iv) test management; and
 - (v) liaise with:
 - (A) contract management of Project Co;
 - (B) maintenance management of RSSOM Project Co;
 - (C) operational management of RSSOM Project Co;
 - (D) health and safety management of Project Co, RSSOM Project Co South Civil Project Co and EGS Project Co; and
 - (E) overall integration management.

9. PROJECT CO COMMISSIONING MANAGER

9.1 Appoint a Project Co Commissioning Manager

- (a) Project Co shall appoint a manager to plan, manage, execute and report its Commissioning obligations, (the “**Project Co Commissioning Manager**”).
- (b) The Project Co Commissioning Manager shall report directly to the Construction Director (as outlined in Schedule 9 – Key Individuals).

9.2 Responsibilities

- (a) The Project Co Commissioning Manager shall appoint and lead the Project Co Commissioning Team to the successful execution of all Commissioning obligations.
- (b) The Project Co Commissioning Manager shall:
 - (i) lead and be end responsible for Commissioning within Project Co;
 - (ii) represent Project Co in the Commissioning Steering Group;
 - (iii) lead the effort to achieve readiness across all four of the readiness definitions described in Section 2.2(a); and
 - (iv) review and integrate the learning across all Releases within Project Co’s scope.
- (c) The Project Co Commissioning Manager shall be responsible to ensure that all Works Submittals are submitted to the Contracting Authority in accordance with Schedule 10 – Review Procedure.
- (d) The Project Co Commissioning Manager shall be responsible for inviting the Contracting Authority, IC, ISA, New Third Party Infrastructure owners and relevant others to be present at tests, with the following arrangement:
 - (i) Contracting Authority has the right to attend all Commissioning activities, while complying with the relevant health and safety rules;
 - (ii) Project Co Commissioning Manager shall provide the schedule of tests with a two (2) month lookahead window; and
 - (iii) Project Co Commissioning Manager shall classify the presence of parties external to Project Co in the role of witness, checker or approver, and deal with the comments or findings accordingly.

10. RELEASE MANAGER

10.1 Responsibilities of a Release Manager

- (a) Project Co shall appoint a manager (the “**Release Manager**”) who shall be responsible for:
 - (i) achieving readiness of the scope of the Release, as assigned by the Commissioning Steering Group;
 - (ii) definition, setup, planning, execution, reporting and analysis (learning) of the Release; and
 - (iii) actively seeking out unallocated scope, missed scope, poorly allocated scope or poorly integrated scope and include this scope within the Release management framework using the Commissioning Steering Group.

- (b) The Release Manager shall act as a first point of contact for all matters pertaining to the Release assigned to the Release Manager, including coordination with RSSOM Project Co South Civil Project Co and EGS Project Co.

APPENDIX A TO SCHEDULE 14

EXAMPLE TREE OF TESTS

[REDACTED]

SCHEDULE 15

OUTPUT SPECIFICATIONS

[REDACTED]

SCHEDULE 16**ENCUMBRANCES**

- (a) For purposes of this Schedule 16, the defined term “Lands” shall include any portion of the Lands.
- (b) Each of the following, to the extent affecting the interest (whether real property interest or contractual interest) of Contracting Authority in the Lands is considered to be an encumbrance for the purposes of this Agreement (each, an “**Encumbrance**”):
- (i) All encumbrances, pledges, liens, charges, security agreements, security interests, leases, subleases, title retention agreements, mortgages, easements, encroachments, right-of-ways, restrictive covenants, work orders, options or adverse claims of any kind or character whatsoever relating to the title to the Lands disclosed or noted on the land registry office parcel registers or abstract indices for the Lands from time to time, including (but not limited to) those that may have been included in the Background Information as of the date of this Agreement and including those referred to in the legal descriptions for the Lands available in the applicable land registry office, in each case as assigned, amended, extended, supplemented, substituted and replaced from time to time.
 - (ii) Liens, charges or prior claims for taxes (which term includes charges, rates and assessments) or utilities (including levies or imposts for sewers and other municipal utility services) not yet due or if due, the validity of which is being contested in good faith, and liens or charges for the excess of the amount of any past due taxes or utilities charges for which a final assessment or account has not been received over the amount of such taxes or utilities charges as estimated and paid by Contracting Authority.
 - (iii) Inchoate liens incidental to construction, renovations or current operations, a claim for which shall not at the time have been registered against the Lands or of which notice in writing shall not at the time have been given to Contracting Authority pursuant to the Construction Act or otherwise or any lien or charge, a claim for which, although registered, or notice of which, although given, relates to obligations not overdue or delinquent and in respect of any of the foregoing cases, Contracting Authority has, where applicable, complied with the holdback or other similar provisions or requirements of the relevant construction contracts.
 - (iv) The rights reserved to or vested in the public or any municipality or governmental or other public authority by any statutory provision.
 - (v) Any subsisting reservations, limitations, provisions and conditions contained in any grants from the Crown of any land or interests therein, including reservations of under-surface rights to mines and minerals of any kind including rights to enter, prospect and remove the same.
 - (vi) Any encroachments, easements, rights of way, rights to use or similar interests revealed by any survey of the Lands or which would be revealed by an up-to-date survey of the Lands.

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- (vii) Any rights in favour of or accruing to holders of under-surface rights which could be ascertained by a review of registered title or other public records, or, if unregistered, which do not materially interfere with the use of the Lands for the purposes of the Works.
 - (viii) Unregistered agreements with any municipal, provincial or federal governments or authorities and any public utilities or private suppliers of services, provided such unregistered agreements have been disclosed to Project Co, or which could be ascertained by commercially standard off-title searches, or, if not so disclosed or ascertained, which do not materially interfere with the use of the Lands for the purposes of the Works, and further provided such agreements have been complied with, or, if not complied with, that any non-compliance does not materially interfere with the use of the Lands for the purposes of the Works.
 - (ix) Unregistered agreements, authorizations, consents, postponements, subordinations, licences or instruments entered into provided that they have been disclosed to Project Co, or which could be ascertained by commercially standard off-title searches, or, if not so disclosed or ascertained by commercially standard off-title searches, or, if not so disclosed or ascertained, which do not materially interfere with the use of the Lands for the purposes of the Works, and further provided such agreements have been complied with, or, if not complied with, that any non-compliance does not materially interfere with the use of the Lands for the purposes of the Works.
 - (x) Unregistered easements, rights of way, rights to use, restrictions, restrictive covenants and similar rights in real property or any interest therein provided that they have been disclosed to Project Co, or which could be ascertained by commercially standard off-title searches, or, if not so disclosed or ascertained by commercially standard off-title searches, or, if not so disclosed or ascertained, which do not materially interfere with the use of the Lands for the purposes of the Works, and further provided such agreements have been complied with, or, if not complied with, that any non-compliance does not materially interfere with the use of the Lands for the purposes of the Works.
 - (xi) Minor imperfections of title.
 - (xii) Statutory exceptions to title and any rights reserved to or vested in any person by any statutory provision.
 - (xiii) The right of any prior owner, occupant or tenant of any portion of the Lands to occupy any portion of the Lands or to remove buildings, fixed machinery, equipment, fittings or other fixtures located on such portion of the Lands.
 - (xiv) The rights of any person entitled to any portion of the Lands through length of adverse possession or prescription.

SCHEDULE 17

ENVIRONMENTAL OBLIGATIONS

1 DEFINITIONS AND ABBREVIATIONS

1.1 Definitions

- 1.1.1 In this Schedule, unless the context indicates a contrary intention, terms which are defined in this Agreement (and not otherwise defined in this Schedule 17) shall have meanings given to them in this Agreement and the following terms shall have the following meanings:
- 1.1.2 “**Additional Construction Noise and Vibration Sensitive Receptor Performance Requirements**” has the meaning given in Section 6.4.4.8.
- 1.1.3 “**Additional Environmental Report**” has the meaning given in Section 5.1.1.
- 1.1.4 “**Additional Sensitive Receptor**” means a specific property or location susceptible to adverse effects from noise or vibration, but which is not explicitly defined in the Applicable Construction Noise and Vibration Requirements.
- 1.1.5 “**Adverse Effect**” has the meaning given in the Environmental Protection Act, R.S.O. 1990, c.E.19.
- 1.1.6 “**Aggregate**” has the meaning given in the Aggregate Resources Act, R.S.O. 1990, c.A.8.
- 1.1.7 “**Air Quality Sensitive Receptor**” means a property or location susceptible to adverse air pollution effects. Such properties or locations include, but are not limited to, residences as well as institutional, for example daycare, schools, hospitals and senior housing.
- 1.1.8 “**Air Quality Specialist**” means an individual possessing the minimum requirements set out in Section 4.6.3.1.
- 1.1.9 “**Annual Environmental Compliance Monitoring Report**” has the meaning given in Section 5.2.1.
- 1.1.10 “**ANSI Recommended Practice**” means ANSI/IES RP-8-18 – Recommended Practice for Design and Maintenance of Roadway and Parking Lighting Facility, as amended from time to time.
- 1.1.11 “**Applicable Construction Air Quality Criteria and Limits**” has the meaning given in Section 6.9.2.1.
- 1.1.12 “**Applicable Construction Noise and Vibration Requirements**” has the meaning given in Section 6.4.1.1.

- 1.1.13 “**Applicable Operations Air Quality Criteria and Limits**” has the meaning given in Section 6.10.2.1.
- 1.1.14 “**Applicable Operations Noise and Vibration Requirements**” has the meaning given in Section 6.5.1.5.
- 1.1.15 “**Aquatic Specialist**” means the individual possessing the minimum requirements set out in Section 4.6.3.2.
- 1.1.16 “**Arborist**” means an individual possessing the minimum requirements set out in Section 4.6.3.3.
- 1.1.17 “**Arborist Report – Metrolinx Lands**” has the meaning given in Section 6.8.3.2.
- 1.1.18 “**Arborist Report – Third Party Lands**” has the meaning given in Section 6.8.3.3.
- 1.1.19 “**Archaeological Risk Management Plan**” has the meaning given in Section 6.7.1.2.
- 1.1.20 “**Biologist**” means an individual possessing the minimum requirements set out in Section 4.6.3.4.
- 1.1.21 “**Canadian Certified Inspector of Sediment and Erosion Control**” means an individual possessing a CAN-CISEC certificate issued by CISEC, Inc.
- 1.1.22 “**Change**” for the purposes of this Schedule 17, means a change to the Project that is inconsistent with the Environmental Reference Documents.
- 1.1.23 “**Climate Mitigation and Resilience Specialist**” means an individual possessing the minimum requirements set out in Section 4.6.3.16.
- 1.1.24 “**Conservation Authority**” means a Governmental Authority established under the *Conservation Authorities Act* (Ontario).
- 1.1.25 “**Construction Air Quality Impact Zone**” has the meaning given in Section 6.9.3.3(d).
- 1.1.26 “**Construction Air Quality Management Plan**” has the meaning given in Section 6.9.3.1.
- 1.1.27 “**Construction Noise and Vibration Management Plan**” has the meaning given in Section 6.4.3.1.
- 1.1.28 “**Construction Noise and Vibration Performance Limits**” has the meaning given in Section 6.4.2.1.
- 1.1.29 “**Construction Noise and Vibration Sensitive Receptors**” means a property or location susceptible to adverse noise or vibration effects. Such properties or locations include, but are not limited to, residences as well as institutional, commercial and industrial buildings.

- 1.1.30 “**Contamination Management Plan**” has the meaning given in Section 6.1.6.1.
- 1.1.31 “**Contracting Authority Environmental Commitments**” has the meaning given in Section 2.3.2.
- 1.1.32 “**Cultural Heritage Specialist**” means an individual possessing the minimum requirements set out in Section 4.6.3.5.
- 1.1.33 “**Designated Substances and Hazardous Materials**” includes,
- 1.1.33.1 those substances identified as “designated substances” pursuant to Ontario Regulation 490/09 made under the Occupational Health and Safety Act (Ontario);
 - 1.1.33.2 polychlorinated biphenyls, as identified and described in Ontario Regulation 362, as amended, made under the Environmental Protection Act (Ontario);
 - 1.1.33.3 mould to the extent that it represents an area of continuous contamination greater than 10 square metres on visible surfaces or in building cavities and represents an unacceptable situation requiring remediation as determined by an accredited professional that is a Registered Occupational Hygienist accredited by the Canadian Registration Board of Occupational Hygienists, a Certified Industrial Hygienist licensed by the American Board of Industrial Hygiene, or a Professional Engineer with a relevant area of expertise; and
 - 1.1.33.4 additionally includes designated substances and hazardous materials in accordance with the *Occupational Health and Safety Act*, O. Reg. 278/05 (Asbestos on Construction Projects and in Buildings and Repair Operations), Regulation 490 (Designated Substances), Regulation 860 (WHMIS Regulation), Regulation 833 (Control of Exposure to Biological or Chemical Agents Regulation), and/or R.R.O. 1990, Regulation 347 General - Waste Management, as amended (R.R.O. 1990, Reg. 347) under the EPA.
- 1.1.34 “**Designated Substances and Hazardous Materials Implementation Report**” has the meaning given in Section 6.1.2.6.
- 1.1.35 “**Designated Substances and Hazardous Materials Discovery Plan**” has the meaning given in Section 6.1.7.1.
- 1.1.36 “**Designated Substances and Hazardous Materials Management Plan**” has the meaning given in Section 6.1.2.4.
- 1.1.37 “**Designated Substances and Hazardous Materials Specialist**” means an individual possessing the minimum requirements set out in Section 4.6.3.6.
- 1.1.38 “**Dewatering**” means the removal of groundwater from the ground through the following means:

- 1.1.38.1 active dewatering, using methods such as dewatering wells, eductor wells, or vacuum lances; or
- 1.1.38.2 passive dewatering, when groundwater inflow is allowed to occur through soil (such as from cohesionless seams in the soil) or through bedrock (such as from joints, shear zones or fault zones).
- 1.1.39 **“Due Diligence Risk Assessment”** has the meaning given in Section 6.1.5.2.
- 1.1.40 **“DFO”** means Fisheries and Oceans Canada.
- 1.1.41 **“Discharge”** means any deposit, emission, leak, spill or release to the environment of any solid, liquid, gas, odour, heat, sound, vibration, radiation or combination thereof that,
 - 1.1.41.1 arises, either directly or indirectly, from human activities; and
 - 1.1.41.2 causes or may cause an Adverse Effect.
- 1.1.42 **“Documents Relating to Indigenous Nations”** has the meaning given in Section 3.4.2.
- 1.1.43 **“Electromagnetic Compatibility (EMC)/ Electromagnetic Interference (EMI) Specialist”** means an individual possessing the minimum requirements set out in Section 4.6.3.7 and update with Section reference, as applicable.
- 1.1.44 **“EMS Software Solution”** has the meaning given in Section 5.4.1.
- 1.1.45 **“Endangered Species Act (Ontario)”** means the *Endangered Species Act, 2007*, S.O. 2007, c.6, as amended from time to time.
- 1.1.46 **“Environmental Activity Sector Registration”** or **“EASR”** means a registration requirement in respect of construction-related water taking activities prescribed under Ontario Regulation 63/16, as well as noise and vibration and air quality activities prescribed under Ontario Regulation 1/17 – Activities Requiring Assessment of Air Emissions made under the Environmental Protection Act (Ontario).
- 1.1.47 **“Environmental Amendment Proposal”** has the meaning given in Section 2.4.2.
- 1.1.48 **“Environmental Approvals”** means:
 - 1.1.48.1 any authorizations(s) issued by the MECP; and
 - 1.1.48.2 any Permits, Licences, Approvals and Agreements relating to environmental matters or relating to Environmental Law, and any Permits, Licences, Approvals and Agreements relating to self-assessment standards that must be followed to demonstrate compliance with Environmental Law.

- 1.1.49 “**Environmental Aspect**” means an element of an organization’s activities or products or services that interacts or can interact with the environment.
- 1.1.50 “**Environmental Assessment**” means any environmental assessment completed or required under the Environmental Assessment Act (Ontario), including any environmental assessment or addendum to the environmental assessment required under Ontario Regulation 341/20 Ontario Line Project, made under the Environmental Assessment Act (Ontario). The Environmental Assessment includes the following documents:
- [REDACTED]
- 1.1.51 “**Environmental Assessment Act (Ontario)**” means the *Environmental Assessment Act*, R.S.O. 1990, c. E18, as amended from time to time.
- 1.1.52 “**Environmental Audit Report**” has the meaning given in Section 5.2.3.
- 1.1.53 “**Environmental Compliance Officer**” has the meaning given in Section 4.5.1.
- 1.1.54 “**Environmental Condition Summary Report**” has the meaning given in Section 6.2.2.4.
- 1.1.55 “**Environmental Consultant**” means one or more reputable, qualified and experienced environmental consulting or engineering firm(s) employing individuals that have been retained by Project Co to provide technical expertise and guidance to Project Co on all Project Co Environmental Commitments, the Environmental Approvals and all other environmental obligation and matters, including monitoring, managing and addressing soil and groundwater impacts and occupational and public health and safety issues, for the duration of the Works.
- 1.1.56 “**Environmental Director**” has the meaning given in Section 4.2.1.
- 1.1.57 “**Environmental Incident**” means an occurrence or a set of circumstances that causes, directly or indirectly an actual or likely Adverse Effect on the environment:
- 1.1.57.1 due to a Spill or Discharge;
 - 1.1.57.2 due to an occurrence that contravenes Applicable Law or the requirements of this Agreement;
 - 1.1.57.3 that results in a stoppage of work; and/or
 - 1.1.57.4 that requires reporting to a Governmental Authority.
- 1.1.58 “**Environmental Inspector**” has the meaning given in Section 4.7.1.
- 1.1.59 “**Environmental Law**” means all Applicable Law relating to environmental assessment processes, public health or the protection of the environment, including (as applicable) public safety or Species-at-Risk.

- 1.1.60 “**Environmental Management System**” or “**EMS**” has the meaning given in Section 5.3.1.
- 1.1.61 “**Environmental Manager**” has the meaning given in Section 4.3.1.
- 1.1.62 “**Environmental Permits and Approvals Coordinator**” has the meaning given in Section 4.4.1.
- 1.1.63 “**Environmental Planning Specialist**” means an individual possessing the minimum requirements set out in Section 4.6.3.8.
- 1.1.64 “**Environmental Protection Act (Ontario)**” means the *Environmental Protection Act*, R.S.O. 1990, c. E. 19, as amended from time to time.
- 1.1.65 “**Environmental Reference Documents**” has the meaning given in Section 2.1.1.1.
- 1.1.66 “**Environmental Specialist**” has the meaning given in Section 4.6.1.
- 1.1.67 “**Environmental Working Group**” or “**EWG**” has the meaning given in Section 4.8.1.
- 1.1.68 “**Environmentally Sensitive Construction Activities**” means complex Construction Activities that have a high potential for causing adverse effects, including,
- 1.1.68.1 Construction Activities that have the potential to impact human health, including with respect to noise, vibration and air quality;
 - 1.1.68.2 rapid-bridge replacements;
 - 1.1.68.3 in-water Construction Activities;
 - 1.1.68.4 steep slope Construction Activities;
 - 1.1.68.5 deep foundation Construction Activities that take place near Sensitive Receptors; and
 - 1.1.68.6 Construction Activities with respect to piers in a watercourse.
- 1.1.69 “**Erosion and Sediment Control Guide for Urban Construction**” means the document issued by TRCA dated 2019 and further amended from time to time.
- 1.1.70 “**Erosion and Sediment Control Plan**” has the meaning given in Section 6.2.6.2.
- 1.1.71 “**Excess Soil**” has the meaning defined by O.Reg 406/19.
- 1.1.72 “**Fish and Wildlife Conservation Act (Ontario)**” means the *Fish and Wildlife Conservation Act*, S.O. 1997, c.41, as amended from time to time.

- 1.1.73 “**Fisheries Act (Canada)**” means the *Fisheries Act*, R.S.C. 1985, c. F-14, as amended from time to time.
- 1.1.74 “**Groundwater Management and Dewatering Implementation Report**” has the meaning given in Section 6.3.3.1.
- 1.1.75 “**Groundwater Management and Dewatering Plan**” has the meaning given in Section 6.3.2.3.
- 1.1.76 “**Groundwater Management Monthly Dashboard**” has the meaning given in Section 5.4.5.2.
- 1.1.77 “**Groundwater Management Software Application**” has the meaning given in Section 5.4.5.1.
- 1.1.78 “**Hazardous Waste**” has the meaning given in Regulation 347 made under the Environmental Protection Act (Ontario).
- 1.1.79 “**Hazardous Waste Program Registry**” has the meaning given in the Resource Recovery and Circular Economy Act, 2016, S.O. 2016, c. 12, Sched. 1, as amended from time to time.
- 1.1.80 “**Heritage Detailed Design Report**” has the meaning given in Section 6.6.2.1.
- 1.1.81 “**Hydrogeologist**” means an individual possessing the minimum requirements set out in Section 4.6.3.9.
- 1.1.82 “**Identified Contaminated Materials**” means the Contaminated Materials set out in Appendix E to this Schedule 17.
- 1.1.83 “**Indigenous Monitors**” means an individual appointed by an Indigenous Nation or an Indigenous Entity to monitor and/or perform fieldwork on behalf of such Indigenous Nation or Indigenous Entity or their assigned consultant.
- 1.1.84 “**Indigenous Nations Engagement**” means a process of meaningfully engaging with Indigenous Nations whose rights and interests may be affected by the Project, with the objective of providing relevant information to community leaders and members about the Project, meaningfully considering their input, and coordinating on matters of interest to avoid, reduce or mitigate potential adverse impacts.
- 1.1.85 “**Industrial, Commercial and Community Property Use**” has the meaning as per Ontario Regulation (O.Reg) 153/04.
- 1.1.86 “**Interpretation/Commemoration Strategy Framework**” has the meaning as outlined in the Heritage Detailed Design Report.
- 1.1.87 “**ISO 14001**” means CAN/CSA-ISO 14001:16 – Environmental management systems – Requirements with guidance for use.

- 1.1.88 “**Licensed Archaeologist**” means an individual possessing the minimum requirements set out in Section 4.6.3.11.
- 1.1.89 “**Liquid Soil**” has the meaning given in Ontario Regulation 406/19.
- 1.1.90 “**MCM**” means the Ontario Ministry of Citizenship and Multiculturalism, and any successor ministry thereto.
- 1.1.91 “**MECP**” means the Ontario Ministry of the Environment, Conservation and Parks, and any successor ministry thereto.
- 1.1.92 “**Memorandum of Understanding**” means the Memorandum of Understanding: Cultural Heritage Process to Support Accelerating Delivery of the Priority Transit Projects between Ministry of Citizenship and Multiculturalism (MCM) and Metrolinx and Ministry of Transportation (MTO).
- 1.1.93 “**Metrolinx Species at Risk Framework**” means the Species-at-Risk framework prepared by Metrolinx, dated 2021.
- 1.1.94 “**MOL Noise Regulation O. Reg. 381/15**” means Ontario Regulation (O. Reg.) 381/15: NOISE under *Occupational Health and Safety Act*, R.S.O. 1990, c. O.1, as amended from time to time.
- 1.1.95 “**Monthly Environmental Report**” has the meaning given in Section 5.2.2.
- 1.1.96 “**Noise Specialist(s)**” means an individual possessing the minimum requirements set out in Section 4.6.3.10.
- 1.1.97 “**Ontario Regulation 1/17**” means Ontario Regulation 1/17- Registrations Under Part II.2 of the Act — Activities Requiring Assessment of Air Emissions made under the Environmental Protection Act (Ontario), as amended from time to time.
- 1.1.98 “**Ontario Regulation 153/04**” means Ontario Regulation 153/04 - Records of Site Condition — Part XV.1 of the Act made under the Environmental Protection Act (Ontario), as amended from time to time.
- 1.1.99 “**Ontario Regulation 381/15**” means Ontario Regulation 381/15 – Noise made under the Occupational Health and Safety Act (Ontario), as amended from time to time.
- 1.1.100 “**Ontario Regulation 406/19**” means Ontario Regulation 406/19 - On-Site and Excess Soil Management made under the Environmental Protection Act (Ontario), as amended from time to time.
- 1.1.101 “**Ontario Water Resources Act**” means the *Ontario Water Resources Act*, R.S.O. c. O.40, as amended from time to time.

- 1.1.102 “**Operations Noise and Vibration Performance Limits**” has the meaning given in Section 6.5.2.1.
- 1.1.103 “**Overall Benefit Permit**” means a permit that:
- 1.1.103.1 is required to perform an activity that is not otherwise allowed under the Endangered Species Act (Ontario); and
 - 1.1.103.2 authorizes a person, company or organization to perform the activity, as long as such person, company or organization provides an overall benefit to a species in the Province of Ontario.
- 1.1.104 “**Permit To Take Water**” or “**PTTW**” means a permit issued by the MECP for the taking of water in accordance with Ontario Regulation 387/04, made under the Ontario Water Resources Act, or an Environmental Activity Sector Registration in accordance with Ontario Regulation 63/16, made under the Environmental Protection Act (Ontario).
- 1.1.105 “**Project Area**” has the meaning given in Ontario Regulation 406/19, made under the Environmental Protection Act (Ontario).
- 1.1.106 “**Project Co Deviation Report**” has the meaning given in Section 2.4.3.
- 1.1.107 “**Project Co Environmental Commitments**” has the meaning given in Section 2.1.1.2.
- 1.1.108 “**Project Information Form**” means the form required by the MCM, pursuant to the *Ontario Heritage Act* (Ontario).
- 1.1.109 “**Project Leader**” has the meaning given in Ontario Regulation 406/19, made under the Environmental Protection Act (Ontario).
- 1.1.110 “**Provincial Heritage Properties**” has the meaning given in the Standards and Guidelines for the Conservation of Provincial Heritage Properties issued by the MCM pursuant to the *Ontario Heritage Act* (Ontario) (as amended from time to time).
- 1.1.111 “**Provincial Heritage Properties of Provincial Significance**” has the meaning given in the Standards and Guidelines for the Conservation of Provincial Heritage Properties issued by the MCM pursuant to the *Ontario Heritage Act* (Ontario) (as amended from time to time).
- 1.1.112 “**Qualified Person**” when used in this Schedule 17 has the meaning given in Ontario Regulation 153/04, as amended, made under the Environmental Protection Act (Ontario).
- 1.1.113 “**Quarterly Well Decommissioning Report**” has the meaning given in Section 6.11.2.16.
- 1.1.114 “**Regional Storm**” means the rainfall event and soil conditions existing during Hurricane Hazel that occurred within the Humber River watershed in Toronto in 1954, transposed over a specific watershed and combined with local conditions as defined by the TRCA.

- 1.1.115 “**Representative Construction Noise and Vibration Sensitive Receptor**” means the Construction Noise and Vibration Sensitive Receptor exposed to the worst-case effects of ground borne vibration, and air and ground borne noise compared to all the nearby Construction Noise and Vibration Sensitive Receptors. The Representative Construction Noise and Vibration Sensitive Receptor is intended to represent all nearby Construction Noise and Vibration Sensitive Receptors.
- 1.1.116 “**Resource Productivity and Recovery Authority**” or “**RPRA**” means the regulator that administers the Resource Recovery and Circular Economy Act, 2016, as amended from time to time; and the Waste Diversion Transition Act, 2016, as amended from time to time.
- 1.1.117 “**Resource Productivity and Recovery Registry**” has the meaning given in the Resource Recovery and Circular Economy Act, 2016, S.O. 2016, c. 12, Sched. 1, as amended from time to time.
- 1.1.118 “**Rules for Soil Management and Excess Soil Quality Standards**” means the document referenced by O. Reg. 406/19 and issued by the MECP, dated December 2022 and further amended from time to time.
- 1.1.119 “**Sensitive Receptor**” means a specific property or location susceptible to adverse effect related to the Project Co Infrastructure. Such properties or locations include, but are not limited to, residences, institutional, commercial and industrial buildings, parklands, watercourses and wetlands. References to Construction Receptors, Representative Receptors and Sensitive Receivers in the Technical Reports listed in Appendix B to this Schedule 17 should also be considered as Sensitive Receptor.
- 1.1.120 “**Significant Change**” for the purposes of this Schedule 17, means a change to the Project that is inconsistent with the Environmental Assessments or issued environmental permits pertaining to the Project as determined to be significant by the Contracting Authority.
- 1.1.121 “**Soil**” has the meaning defined by O. Reg. 406/19.
- 1.1.122 “**Soil and Excavated Material Management Implementation Report**” has the meaning given in Section 6.2.5.1.
- 1.1.123 “**Soil and Excavated Material Management Plan**” has the meaning given in Section 6.2.4.4.
- 1.1.124 “**Soil and Excavated Material Monthly Dashboard**” has the meaning given in Section 5.4.4.9.
- 1.1.125 “**Soil and Excavated Material Software Application**” has the meaning given in Section 5.4.4.1.
- 1.1.126 “**Soil and Groundwater Contamination and Management Specialist**” means an individual possessing the minimum requirements set out in Section 4.6.3.12.

- 1.1.127 “**Soil Reuse Site**” means a site at which excess soil is used for a beneficial purpose and does not include a Waste disposal site.
- 1.1.128 “**Species at Risk Handover Report**” has the meaning given in Section 6.8.2.1(b).
- 1.1.129 “**Species at Risk Specialist**” means an individual possessing the minimum requirements set out in Section 4.6.3.13.
- 1.1.130 “**Spill**” means, a discharge or release to the environment of any solid or liquid that,
- 1.1.130.1 arises, either directly or indirectly, from human activities; and
- 1.1.130.2 causes or may cause an Adverse Effect.
- 1.1.131 “**Spill Prevention and Response Implementation Report**” has the meaning given in Section 6.1.1.5.
- 1.1.132 “**Spill Prevention and Response Occurrence Report**” has the meaning given in Section 6.1.1.4.
- 1.1.133 “**Spill Prevention and Response Plan**” has the meaning given in Section 6.1.1.1.
- 1.1.134 “**Stage 1 Archaeological Assessment**” means a determination made by a Licensed Archaeologist as to whether there is potential for archaeological sites on a property based on a review of reviewing geographic, land use and historical information for such property and the relevant surrounding area, a property inspection to document and assess its current condition and contact with the MCM to identify registered archaeological sites on or near the property. A Stage 2 Archaeological Assessment is required when the Licensed Archaeologist identifies areas of archaeological potential during the Stage 1 Archaeological Assessment.
- 1.1.135 “**Stage 2 Archaeological Assessment**” is comprised of field investigations carried out by a Licensed Archaeologist to identify any archaeological resources on the property being developed based on recommendations made in the Stage 1 Archaeological Assessment. The Licensed Archaeologist will determine whether any archaeological resources found are of sufficient cultural heritage value or interest to require a Stage 3 Archaeological Assessment.

- 1.1.136 “**Stage 3 Archaeological Assessment**” determines the extent of the archaeological site and the characteristics of the artifacts. The purpose is to collect a representative sample of artifacts, assess the cultural heritage value or interest of the archaeological site, and to determine the need for mitigation of development impacts and recommend appropriate strategies for mitigation and future conservation.
- 1.1.137 “**Stage 4 Archaeological Assessment**” addresses development impacts on an archaeological site with a level of cultural heritage value or interest that has been determined to require mitigation, either by avoidance and protection or excavation.
- 1.1.138 “**Stationary Sources**” has the meaning as defined in MECP publication NPC-300.
- 1.1.139 “**Strategic Conservation Plan(s)**” is a document which identifies the conservation principles appropriate for the type of cultural heritage resource/attributes being conserved; provides detailed documentation of the resource and its heritage attributes; includes an assessment of current conditions and deficiencies; and recommends conservation measures and interventions in the short, medium and long term to ensure preservation of the property’s cultural heritage significance.
- 1.1.140 “**Subject Waste**” has the meaning given in Regulation 347 made under the Environmental Protection Act (Ontario).
- 1.1.141 “**Substantial Completion Environmental Report**” has the meaning given in Section 5.2.6.
- 1.1.142 “**Sustainability Management Plan**” has the meaning given in Section 3.1.5.1 (*Sustainability Management Plan*) of the Output Specifications.
- 1.1.143 “**Sustainability Specialist**” means an individual possessing the minimum requirements set out in Section 4.6.3.15.
- 1.1.144 “**System-Wide Noise Exposure Objectives**” has the meaning given in Section 6.5.2.1(a).
- 1.1.145 “**Topsoil**” has the meaning given in section 142(1) of the *Municipal Act* (Ontario).
- 1.1.146 “**TRCA**” means Toronto and Region Conservation Authority.
- 1.1.147 “**Tree Tracker**” has the meaning given in Section 6.8.3.7.
- 1.1.148 “**Unwatering**” means the removal of accumulated water from a structure or excavation”.
- 1.1.149 “**Updated Contamination Management Plan**” has the meaning given in Section 6.1.6.7.
- 1.1.150 “**Updated Designated Substances and Hazardous Materials Discovery Plan**” has the meaning given in Section 6.1.7.7.
- 1.1.151 “**UTM**” means Universal Transverse Mercator.

- 1.1.152 “**Vegetation Compensation**” means the replacement of a lost/altered natural feature or area and its ecological functions, services, and value.
- 1.1.153 “**Vibration Sensitive Structures**” means heritage designated or listed properties and sensitive structures or buildings or infrastructure as defined in City of Toronto By-Law No. 514-2008.
- 1.1.154 “**Vibration Specialist**” means an individual possessing the minimum requirements set out in Section 4.6.3.14.
- 1.1.155 “**Waste Management Plan**” has the meaning given in Section 6.11.3.2.
- 1.1.156 “**Weekly Construction Air Quality Monitoring Report**” has the meaning given in Section 6.9.4.5.
- 1.1.157 “**Weekly Construction Noise and Vibration Monitoring Report**” has the meaning given in Section 6.4.6.5.
- 1.1.158 “**Well Decommissioning Implementation Report**” has the meaning given in Section 6.11.2.17.
- 1.1.159 “**Well Decommissioning and Protection Plan**” has the meaning given in Section 6.11.2.11.
- 1.1.160 “**Well Tracker**” has the meaning given in Section 6.11.2.12.
- 1.1.161 “**Zone of Influence**” is comprised of lands where the noise, vibration, Dewatering or air quality impact of an activity associated with the Project may cause exceedance of applicable exposure criteria or limits.

2 COMPLIANCE OBLIGATIONS

2.1 Compliance with Environmental Reference Documents

2.1.1 Without limitation to any of Project Co’s rights, remedies or obligations under this Agreement:

2.1.1.1 Project Co shall, at all times, perform the Works in accordance with Applicable Law and in a manner that ensures, to the extent within Project Co’s and Project Co Party’s control, that Contracting Authority and the Works are in compliance with all obligations (to the extent that each document is applicable to the Works) and as listed in Appendix B of this Schedule 17 (collectively referred to as the “**Environmental Reference Documents**”).

- (a) Project Co shall provide, on an annual basis as part of the Annual Environmental Compliance Monitoring Report in accordance with Schedule 10 – Review Procedure, an updated list of Environmental Reference Documents as necessary to reflect changes in applicable requirements and Applicable Law.

- 2.1.1.2 Project Co shall comply with all recommendations and requirements, and perform all commitments and obligations in the Environmental Reference Documents (to the extent that each document is applicable), including those set out as the responsibility of the proponent or co-proponents in the Environmental Reference Documents (to the extent that each document is applicable), including, for clarity, the Project Co commitments and obligations that are set out in Appendix A-1 and A-3 of this Schedule 17, except that Project Co,
- (a) shall not be responsible for performance of and compliance with those commitments and obligations that are explicitly set out as Contracting Authority commitments or obligations in Appendix A-1 of this Schedule 17; and
 - (b) shall be responsible for complying with the provisions of the Output Specifications, pertaining to the Environmental Reference Documents in the manner set out in the Output Specifications,

(collectively, the “**Project Co Environmental Commitments**”).

- 2.1.1.3 For clarity, Project Co acknowledges and agrees that, notwithstanding that a recommendation or consideration is not expressed in an Environmental Reference Document as a requirement, commitment or obligation, and is instead expressed as a recommendation or consideration (for example, using the phrase, “may”, “will”, “should”, “it is recommended”, or “to be considered”), such recommendation or consideration is deemed to be a “Project Co Environmental Commitment” for the purposes of this Agreement, and a specific reference to the manner in which an obligation in the Output Specifications should be performed or complied with takes precedence over any discretion accorded to performance of or compliance with such obligation in the Environmental Reference Documents.
- 2.1.2 The Parties acknowledge and agree that if there is any conflict between any criterion, commitment or requirement contained in one or more of the Environmental Reference Documents or under Environmental Law, the more stringent criterion, commitment or requirement shall apply.
- 2.1.3 Project Co shall submit all documentation which demonstrates Project Co is compliant with the Project Co Environmental Commitments in accordance with Schedule 10 – Review Procedure.

2.2 Project Co Additional Environmental Obligations

- 2.2.1 Throughout the Project Term, Project Co shall manage all environmental matters and perform all environmental obligations associated with Project Co’s obligations under this Agreement (including the Works) in accordance with this Agreement, including this Schedule 17, and in coordination with Contracting Authority.

- 2.2.2 Project Co shall submit the following information for review by Contracting Authority in accordance with Schedule 10 – Review Procedure, and Section 4.12 (*Design Review Meetings*) of Schedule 19 – Governance, Meetings and Progress Reporting:
- 2.2.2.1 information that is required by an Environmental Reference Document, an Additional Environmental Report, or by Applicable Law, other than any information that is explicitly Contracting Authority’s obligation to provide pursuant to a Contracting Authority Environmental Commitment that is explicitly set out as a Contracting Authority Environmental Commitment in Appendix A to this Schedule 17; and
 - 2.2.2.2 information that is required pursuant to this Schedule 17, including all plans, reports, submittals and other documents set out in this Schedule 17.

For clarity, the information requested by Contracting Authority in accordance with this Section 2.2.2 may include documentation that is necessary and sufficient to demonstrate that the Works and the Project Co Infrastructure are in compliance with the Project Co Environmental Commitments. Project Co shall provide such documentation to Contracting Authority in accordance with Schedule 10 – Review Procedure following a request by Contracting Authority.

- 2.2.3 Where any plan or document set out in this Schedule 17 is required to be submitted by Project Co in accordance with Schedule 10 – Review Procedure, Project Co shall revise each Works Submittal on receipt of a “RE-SUBMIT” comment.
- 2.2.3.1 Project Co shall implement such plan or document upon receipt of a no further request for “RE-SUBMIT” for the plan or document by Contracting Authority, in accordance with Schedule 10 – Review Procedure.

2.3 Contracting Authority’s Environmental Obligations

- 2.3.1 Contracting Authority shall review all documentation submitted by Project Co under Section 2.2.2 or otherwise in accordance with this Schedule 17 and in accordance with Schedule 10 – Review Procedure.
- 2.3.2 Contracting Authority shall deliver, comply with and perform all commitments and obligations set out in Appendix A-1 of this Schedule 17 and Contracting Authority’s portions of the shared obligations set out in Appendix A-2 to this Schedule 17 (the “**Contracting Authority Environmental Commitments**”).
- 2.3.3 No later than thirty (30) days following the DMCA Effective Date, or such longer period as agreed upon by the Parties, Contracting Authority shall:
- 2.3.3.1 provide Project Co with a summary report of any activities known to Contracting Authority that have been completed, in whole or in part, and the status of works performed prior to the DMCA Effective Date, by Contracting Authority and other

Governmental Authorities relevant to Project Co’s obligations under Sections 2.1 and 2.2;

- 2.3.3.2 provide Project Co with all applicable documentation related to any obligation or commitment contained in any Environmental Reference Documents that have been performed by Contracting Authority or a Governmental Authority and known to Contracting Authority prior to the DMCA Effective Date; and
- 2.3.3.3 schedule an appropriate number of site visits with Project Co to review field activities performed by Contracting Authority prior to the DMCA Effective Date.

2.4 Environmental Impacts and Changes to Environmental Assessment

- 2.4.1 Subject to Section 2.4.2 and Section 2.4.3, Project Co shall carry out the Works in such a manner so that the environmental impacts of the Project Co Infrastructure are at all times within the magnitude and extent permitted by the Environmental Reference Documents, Additional Environmental Reports and Applicable Law.
- 2.4.2 Subject to Section 2.4.3, if it is not possible to contain the environmental impact of any aspect of the Works to what is permitted in the Environmental Reference Documents, Additional Environmental Reports and Applicable Law, Project Co shall comply with any amendment procedures required to amend the applicable Environmental Reference Document or Additional Environmental Report in accordance with Applicable Law. Prior to contacting any Governmental Authority in respect of an amendment or addendum to any Environmental Reference Document or Additional Environmental Report, Project Co shall prepare and submit a proposal (the “**Environmental Amendment Proposal**”) setting out the reason for and details regarding the amendment to Contracting Authority in accordance with Schedule 10 – Review Procedure and Project Co shall obtain the written consent of Contracting Authority.
- 2.4.3 If it is not possible to contain the environmental impact of any aspect of the Works to be within the magnitude and extent permitted by the Environmental Assessments, Environmental Reference Documents and the Additional Environmental Reports, then, prior to carrying out any activity that deviates from the Environmental Assessments, Environmental Reference Documents and the Additional Environmental Reports, Project Co shall prepare and submit a report setting out the reason and details for the deviation for review in accordance with Schedule 10 – Review Procedure (the “**Project Co Deviation Report**”) which shall include the following information:
 - 2.4.3.1 a detailed description of and reason for the change(s) of the design of the Works from the design concept that served as the basis for the Environmental Assessments, Environmental Reference Documents and the Additional Environmental Reports, including the potential use of Additional Lands;
 - 2.4.3.2 Project Co’s assessment and evaluation of any environmental impacts, and the magnitude of such environmental impacts, that may arise, directly or indirectly, from the design of the Project Co Infrastructure, as compared to the reference

- design concept set out in the Environmental Assessments, Environmental Reference Documents and the Additional Environmental Reports;
- 2.4.3.3 Project Co’s proposed measures for mitigating any negative environmental impacts that may arise, directly or indirectly, from the change(s);
- 2.4.3.4 Project Co’s opinion as to whether additional Permits, Licences, Approvals and Agreements or updates to Permits, Licences, Approvals and Agreements are required as a result of the change(s); and
- 2.4.3.5 Project Co’s proposed impacts to schedule and costs as a result of any change of the design concept set out in the Environmental Assessments, Environmental Reference Documents and the Additional Environmental Reports.
- 2.4.4 In accordance with Ontario Regulation 341/20: Ontario Line Project, made under the Environmental Assessment Act (Ontario), Contracting Authority shall, upon receiving the Project Co Deviation Report, determine in its sole discretion whether the change is a Significant Change to the transit project requiring an addendum to the Environmental Assessment or revisions to Environmental Approvals and whether such Significant Change should be implemented. To the extent that the deviation described by Project Co amounts to a Change or a Significant Change that Contracting Authority determines should be implemented:
- 2.4.4.1 which is not assessed in the design concept set out in the Environmental Assessment but is in compliance with this Agreement, including the Output Specifications, Project Co shall carry out all studies and evaluations necessary to assess the environmental effects associated with such Change or Significant Change, as applicable, in a manner consistent with the original assessment of environmental effects of the Works as documented in the Environmental Reference Documents, and in accordance with the conditions within this Schedule 17, and Project Co shall, subject to and in accordance with Schedule 22 – Estimates, Variations and Proposals, be entitled to a Variation; or
- 2.4.4.2 which is not in compliance with this Agreement, including the Output Specifications, Project Co shall carry out all studies and evaluations necessary to assess the environmental effects associated with such Change or Significant Changes, as applicable, in a manner consistent with the original assessment of environmental effects of the Works as documented in the Environmental Reference Documents, and in accordance with the conditions of this Schedule 17.

2.4.5 With respect to any Environmental Assessment or amendments or addenda thereto that may be required as a result of Section 2.4.1, Section 2.4.2, Section 2.4.3, or Section 2.4.4, Metrolinx shall be the “proponent” under Ontario Regulation 341/20: Ontario Line Project, made under the Environmental Assessment Act (Ontario), and Project Co shall be Metrolinx’s agent in preparing any such amendment, which shall be submitted to Contracting Authority in accordance with Schedule 10 – Review Procedure.

3 NOTIFICATION, RECORDS AND REPORTING REQUIREMENTS

3.1 Permits, Licences, Approvals and Agreements

3.1.1 Project Co acknowledges that Schedule 34 – Permits, Licences, Approvals and Agreements applies to all Permits, Licences, Approvals and Agreements necessary to fulfil Project Co’s environmental obligations under this Agreement, including those relating to the amendment of any Environmental Reference Document or Additional Environmental Report.

3.2 Notification to Contracting Authority

3.2.1 Project Co shall immediately notify, within twenty-four hours or less, the Contracting Authority Representative of Project Co’s knowledge of:

3.2.1.1 any breach by Project Co or any Project Co Party of any Environmental Law relating to the performance of the Works or the Lands;

3.2.1.2 any charge, order, investigation or notice of violation or non-compliance issued under any Environmental Law,

(a) against Project Co or any Project Co Party;

(b) relating to the Works; or

(c) relating to the Lands; or

3.2.1.3 any notice, claim, action or other proceeding brought by any person under any Environmental Law,

(a) against Project Co or any Project Co Party;

(b) relating to the Works; or

(c) relating to the Lands.

3.3 Communications with Governmental Authorities

3.3.1 Unless otherwise specified in this Agreement, Project Co shall liaise directly with the MECP and other applicable Governmental Authorities regarding Project Co’s environmental

obligations hereunder, except that Contracting Authority together with Project Co shall establish the first point of contact with MECP and other applicable Governmental Authorities following the DMCA Effective Date.

- 3.3.2 If requested by Contracting Authority, Project Co shall cooperate with and promptly provide the Contracting Authority Representative with any written documentation or authorizations required by Contracting Authority for any inquiry of any Governmental Authority relating to Project Co’s compliance with this Schedule 17, any Environmental Law or any Permits, Licences, Approvals and Agreements in Schedule 34 – Permits, Licences, Approvals and Agreements relating to environmental matters on the Project.
- 3.3.3 Project Co shall submit to the Contracting Authority Representative a copy of any report, submission, application or other document relating to environmental matters on, at, affecting or otherwise relating to the Works or the Lands, concurrent with the filing or submission of the report, submission, application or other document to any Governmental Authority.
- 3.3.4 Project Co shall provide Contracting Authority with a minimum of five (5) Business Days advance Notice of all planned meetings with any Governmental Authority related to environmental matters and Project Co acknowledges that Contracting Authority may, in the sole discretion of Contracting Authority, attend such meetings. Project Co shall minute all such meetings held and distribute all meeting minutes to Contracting Authority.

3.4 Indigenous Nations Engagement

- 3.4.1 Contracting Authority shall be responsible for all Indigenous Nations Engagement, and will liaise directly with the applicable Indigenous Nations throughout the Project Term. Contracting Authority may require Project Co to assist with, and support, Contracting Authority’s Indigenous Nations Engagement.
- 3.4.2 Project Co shall comply with all requirements of Schedule 18 – Communication and Public Engagement Protocol with respect to providing information for, or completing any report, assessment, submission, application, communications material or other document relating to Indigenous Nations (“**Documents Relating to Indigenous Nations**”) and all other planned communications between Contracting Authority and Indigenous Nations.
- 3.4.3 Without limiting or duplicating any other obligation which Project Co may have under this Agreement, including this Schedule 17, for any required archaeological assessment, Project Co shall ensure that the Licensed Archaeologist:
- 3.4.3.1 provides written Notice to Contracting Authority thirty (30) Business Days in advance of obtaining any Project Information Form;
 - 3.4.3.2 complies with the MCM’s current Standards and Guidelines for Consultant Archaeologists, as at the DMCA Effective Date. For clarity, Project Co shall meet both the standards as well as the guidelines as set out in the MCM’s current Standards and Guidelines for Consultant Archaeologists;

- 3.4.3.3 ensures that it follows the process for the involvement of Indigenous Monitors for Stage 2 Archaeological Assessment, Stage 3 Archaeological Assessment and/or Stage 4 Archaeological Assessment monitoring and/or performance of field work in coordination with the IRO’s direction; and
- 3.4.3.4 ensures that the Stage 3 Archaeological Assessment or Stage 4 Archaeological Assessment includes protection, avoidance and construction monitoring strategy, as required under the MCM’s current Standards and Guidelines for Consultant Archaeologists.
- 3.4.4 Project Co acknowledges and agrees that Contracting Authority may, in its sole discretion:
 - 3.4.4.1 circulate to Indigenous Nations any reports and management plans prepared by Project Co as required by this Schedule 17, including reports relating to archaeology, cultural heritage, natural environment, Species-at-Risk, trees (inventory, removal and compensation) and restoration; and
 - 3.4.4.2 invite members of Indigenous Nations to attend and monitor field activities and investigations conducted by Project Co, including field activities and investigations relating to archaeology, cultural heritage, natural environment, Species-at-Risk, trees (inventory and removal) and restoration.
- 3.4.5 Contracting Authority shall provide to Project Co no less than three (3) Business Days written notice of any such Indigenous Nations attendees prior to the commencement of the applicable field activities and investigations.
- 3.4.6 Project Co shall provide information reasonably requested by Contracting Authority with respect to the applicable field activities and investigations in order to coordinate the attendance of the members of the Indigenous Nations.
- 3.4.7 Project Co shall provide such Indigenous Nations attendees with any necessary site-safety training and access to the applicable field activities and investigations.

3.5 Environmental Records

- 3.5.1 Project Co shall maintain and submit to Contracting Authority all documents and records relating to Project Co Permits, Licences, Approvals and Agreements for the Project. When documents or records are submitted to Contracting Authority in a version other than the original, Project Co shall provide a blackline version of the document or record showing revisions made from the previous submitted version to the Contracting Authority in addition to the revised document or record in accordance with Schedule 26 – Record Provisions.
- 3.5.2 Project Co shall ensure that documents and records relating to environmental matters for the Project are retained in all revision and when documents or records are submitted to Contracting Authority in a revision other than the original, a blackline version of the document or record

showing revisions made from the previous submitted version is provided to Contracting Authority in addition to the revised document or record.

3.6 Construction Environmental Inspections

3.6.1 Project Co shall conduct Site inspections of all Environmental Aspects and all Project Co Environmental Commitments, which shall include:

3.6.1.1 inspections of all erosion and sediment control protection measures and stormwater management measures, on a weekly basis, after significant rainfall and snowmelt events (significant rainfall or snow melt event is an event during which at least 15 mm has been received within 24 hours or an event with an intensity of at least 5 mm/hour during which at least 10 mm has been received), and on a daily basis during extended rain or snowmelt periods;

3.6.1.2 inspections of all other Environmental Aspects and all Project Co Environmental Commitments, on a weekly basis or more frequently depending on requirements of Permits, Licences, Approvals and Agreements, until Project Substantial Completion, or on a daily basis when Environmental Incidents or Non-Conformances are documented; and

3.6.1.3 retention of a weekly environmental inspection log, which shall include tracking of items requiring repairs or replacements and photographic evidence to support the observations recorded during such monitoring and inspection events. The environmental inspection log shall include, at a minimum the following:

- (a) Project name, site location, and status;
- (b) Site owner, name of Project Co, name of site supervisor, current date, inspection log number, and Site inspection completion date;
- (c) item number, date of observation, inspection log number, observation, action, responsible party, indication of whether observation has been discussed with Metrolinx and target date for resolution;
- (d) a brief description of that day's work activities and approximate location and depth of excavation and tunnelling activities, if any;
- (e) a list of stockpiles present on site and soil quality, if known.
- (f) visual observations of any dust emissions, erosion and sediment controls, mud tracking or other environmental concerns associated with soil management; and
- (g) a description of groundwater holding tanks and/or water treatment systems on-site, if applicable.

3.6.2 Project Co shall inspect the sediment and erosion control measures until effective stabilization has been achieved with a minimum ground cover of [REDACTED] per cent.

3.6.3 Project Co shall water and monitor all new vegetation planted as part of the Works during the DMCA Warranty Period or the applicable TPA Warranty Period as set out in this Agreement. Project Co shall inspect seeded areas prior to Project Substantial Completion and again prior to expiry of the DMCA Warranty Period or the applicable TPA Warranty Period. Project Co shall replace any seeded areas that are rutted, eroded, bare, or dead, in accordance with the performance measurement requirements of the Erosion and Sediment Control Guide for Urban Construction (TRCA, 2019), as amended from time to time.

4 KEY INDIVIDUALS AND ENVIRONMENTAL WORKING GROUP

4.1 Environmental Positions

4.1.1 Project Co shall ensure that a distinct and qualified individual is appointed to each of the following roles:

4.1.1.1 Environmental Director;

4.1.1.2 Environmental Manager;

4.1.1.3 Environmental Permits and Approvals Coordinator;

4.1.1.4 Environmental Compliance Officer;

4.1.1.5 each Environmental Specialist role set out in Section 4.6; and

4.1.1.6 Environmental Inspector(s).

4.1.2 Project Co shall ensure that no single individual occupies more than one of the roles listed in Sections 4.1.1.1 to 4.1.1.6 unless Project Co has obtained the prior written consent of Contracting Authority.

4.2 Environmental Director

4.2.1 Project Co shall appoint an environmental director who shall, throughout the Project Term and irrespective of such person's other responsibilities, have defined authority for ensuring compliance with all of Project Co's environmental obligations for the Project (the "**Environmental Director**").

4.2.2 The Environmental Director shall be a Key Individual.

4.2.3 The Environmental Director shall have the following minimum qualifications:

- 4.2.3.1 a minimum fifteen (15) years of work-related experience for projects of similar size, scope, and complexity to the Project;
 - 4.2.3.2 a degree from a recognized post-secondary institution with specialization in planning, environmental planning, geography or another related discipline;
 - 4.2.3.3 knowledge of the Province of Ontario’s Transit Project Assessment Process, GO Transit Class EA Document, and Environmental Assessment Act (Ontario);
 - 4.2.3.4 experience with implementation and management of environmental management systems that conform with ISO 14001;
 - 4.2.3.5 experience in successfully managing all Environmental Aspects of transit projects in the Province of Ontario;
 - 4.2.3.6 knowledge of relevant federal and provincial environmental policies, procedures and legislation;
 - 4.2.3.7 experience liaising with other specialty consultants, contractors and Governmental Authorities; and
 - 4.2.3.8 experience with similar projects in the Province of Ontario.
- 4.2.4 Without limiting the generality of Section 4.2.1, the job specification and responsibilities of the Environmental Director shall include the following:
- 4.2.4.1 directing all aspects of Project Co’s environmental and sustainability programs for the Project, including the annual environmental and sustainability reporting activities;
 - 4.2.4.2 ensuring environmental and sustainability issues are addressed and requirements are met in accordance with this Agreement and all Environmental Reference Documents and Additional Environmental Reports;
 - 4.2.4.3 ensuring that all sustainability initiatives are coordinated with Contracting Authority and that the initiatives fit within Contracting Authority’s corporate sustainability priorities and strategies, provided such priorities and strategies are shared with Project Co in advance;
 - 4.2.4.4 establishing and maintaining working relationships with relevant Governmental Authorities and Stakeholders through the Contracting Authority Representative;
 - 4.2.4.5 taking a lead role in internal environmental and sustainability design reviews including development of mitigation and compensation proposals acceptable to the Contracting Authority Representative and Governmental Authorities;

- 4.2.4.6 liaising with the Contracting Authority Representative and with Governmental Authorities (through the Contracting Authority Representative) as required and acting as the single point of contact for Project Co on all matters relating to environmental management and sustainability;
 - 4.2.4.7 directing the preparation and submission to the Contracting Authority Representative of all plans, reports, documents and other information required by this Schedule 17;
 - 4.2.4.8 acting as lead authorizing signatory for Project Co before the release of any new or amended environmental plan, report or document set out in Schedule 10 – Review Procedure and any other environmental plan, report or document identified under Section 2.2.2; and
 - 4.2.4.9 acting as lead authorizing signatory for Project Co before the release of any new or amended plan, report or document pursuant to environmental components of Design Development Submittals, Construction Document Submittals and Project Works Schedules.
- 4.2.5 The Environmental Director shall have the authority up to and including stopping work where the Environmental Management System is not being followed, or where there is a risk of environmental impact.
- 4.2.6 The Environmental Director shall be independent of Project Co.
- 4.2.7 Project Co shall not assign the responsibilities and obligations of the Environmental Director to any other Project Co Party.
- 4.2.8 Project Co shall submit sufficient documentation to Contracting Authority in accordance with Schedule 10 – Review Procedure to demonstrate that the qualifications of the Environmental Director are sufficient to carry out the responsibilities described in this Section 4.2.
- 4.3 Environmental Manager(s)**
- 4.3.1 Project Co shall appoint one or more environmental manager(s) who shall, throughout the Project Term and under the direction of the Environmental Director, have defined authority for ensuring the day-to-day implementation of Project Co’s environmental and sustainability obligations set out in this Agreement (each an “**Environmental Manager**”).
- 4.3.2 Each Environmental Manager shall be a Key Individual.
- 4.3.3 The Environmental Manager(s) shall have the following minimum qualifications:
- 4.3.3.1 ten (10) years of work-related experience on projects of similar size, scope, and complexity to the Project;

- 4.3.3.2 a degree from a recognized post-secondary institution with specialization in planning, environmental planning, geography or another related discipline;
 - 4.3.3.3 knowledge of the Province of Ontario’s Transit Project Assessment Process, GO Transit Class EA Document, and Environmental Assessment Act (Ontario);
 - 4.3.3.4 experience in successfully managing all Environmental Aspects of transit projects in the Province of Ontario;
 - 4.3.3.5 knowledge of relevant federal and provincial environmental policies, procedures and legislation;
 - 4.3.3.6 experience liaising with other specialty consultants, contractors and Governmental Authorities; and
 - 4.3.3.7 experience with similar projects in the Province of Ontario.
- 4.3.4 Without limiting the generality of Section 4.3.1, the job specification and responsibilities of each Environmental Manager shall include the following:
- 4.3.4.1 managing all environmental and sustainability issues associated with the Project on a day-to-day basis, including overseeing the environmental monitoring and follow-up program in accordance with the Environmental Reference Documents, Additional Environmental Reports, Environmental Law and any applicable Permits, Licences, Approvals and Agreements;
 - 4.3.4.2 establishing and maintaining working relationships with relevant Governmental Authorities and Stakeholders in cooperation with the Contracting Authority Representative;
 - 4.3.4.3 ensuring effective operation of the Environmental Management System on a day-to-day basis;
 - 4.3.4.4 ensuring effective operation of the Sustainability Management Plan on an ongoing basis;
 - 4.3.4.5 ensuring environmental and sustainability issues are addressed and requirements are met in accordance with the Environmental Reference Documents, Additional Environmental Reports and this Agreement; and
 - 4.3.4.6 ensuring effective development, tracking and monitoring of environmental and sustainability metrics in line with best practice standards.
- 4.3.5 Project Co shall submit sufficient documentation to Contracting Authority in accordance with Schedule 10 – Review Procedure to demonstrate that the qualifications of the Environmental Manager are sufficient to carry out the responsibilities described in this Section 4.3.

4.4 Environmental Permits and Approvals Coordinator(s)

- 4.4.1 Project Co shall appoint one or more environmental permits and approvals coordinator(s) (each an “**Environmental Permits and Approvals Coordinator**”) who shall, throughout the Project Term and under direction of an Environmental Manager, be responsible for obtaining environmental Permits, Licences, Approvals and Agreements in Schedule 34 – Permits, Licences, Approvals and Agreements, relating to the Works.
- 4.4.2 Without limiting the generality of Section 4.4.1, the job specification and responsibilities of each Environmental Permits and Approvals Coordinator(s) shall include the following:
- 4.4.2.1 managing all environmental and sustainability Permits, Licences, Approvals and Agreements associated with the Project as per Schedule 34 – Permits, Licences, Approvals and Agreements; and
 - 4.4.2.2 establishing and maintaining working relationships with relevant Governmental Authorities and Stakeholders through the Contracting Authority Representative.
- 4.4.3 The Environmental Permits and Approvals Coordinator shall have the following minimum qualifications:
- 4.4.3.1 ten (10) years of work-related experience;
 - 4.4.3.2 a degree from a recognized post-secondary institution with specialization in planning, environmental planning, geography or another related discipline;
 - 4.4.3.3 experience in successfully managing the process of procuring all environmental permits and approvals on transit projects in the Province of Ontario;
 - 4.4.3.4 knowledge of the Province of Ontario’s Transit Project Assessment Process, GO Transit Class EA Document, and Environmental Assessment Act (Ontario);
 - 4.4.3.5 knowledge of relevant federal and provincial environmental policies, procedures and legislation;
 - 4.4.3.6 ability to liaise with other specialty consultants, contractors and Governmental Authorities; and
 - 4.4.3.7 experience with similar projects in the Province of Ontario.
- 4.4.4 Project Co shall submit sufficient documentation to Contracting Authority in accordance with Schedule 10 – Review Procedure to demonstrate that the qualifications of each Environmental Permits and Approvals Coordinator are sufficient to carry out the responsibilities described in this Section 4.4.

4.5 Environmental Compliance Officer

4.5.1 Project Co shall appoint an Environmental Compliance Officer (the “**Environmental Compliance Officer**”) who shall, throughout the Project Term and under the direction of the Environmental Manager(s), be responsible for monitoring and managing the implementation of the Environmental Aspects of the Works on a daily basis to confirm compliance by Project Co and all Project Co Parties with the requirements of:

4.5.1.1 the commitments of the Environmental Reference Documents;

4.5.1.2 environmental Permits, Licences, Approvals and Agreements as per Schedule 34 – Permits, Licences, Approvals and Agreements; and

4.5.1.3 all plans, documents and Additional Environmental Reports implemented pursuant to Section 2.2.3.

4.5.2 Project Co’s Environmental Compliance Officer shall have the following minimum qualifications:

4.5.2.1 an undergraduate degree or higher in a related discipline (ecology/biology/environmental science) from a recognized university;

4.5.2.2 a minimum of five (5) years of experience conducting environmental inspections, monitoring and compliance;

4.5.2.3 knowledge of methods, approaches, and best management practices related to environmental inspections, including experience with the Construction Administration and Inspection Task Manual (MTO, April, 2005, as amended from time to time); and

4.5.2.4 experience with similar projects in the Province of Ontario.

4.5.3 Project Co shall submit sufficient documentation to Contracting Authority in accordance with Schedule 10 – Review Procedure to demonstrate that the qualifications of the Environmental Compliance Officer are sufficient to carry out the responsibilities described in this Section 4.5.

4.6 Environmental Specialists

4.6.1 Project Co shall have available during the Project Term, under direction of an Environmental Manager, a multi-disciplinary team of specialists experienced in the disciplines required to meet Project Co’s obligations under this Schedule 17, including the following. The following roles can be fulfilled through the use of Subcontractors in accordance with this Agreement:

4.6.1.1 Air Quality Specialist(s);

4.6.1.2 Aquatic Specialist(s);

- 4.6.1.3 Arborist(s);
 - 4.6.1.4 Biologist(s),
 - 4.6.1.5 Cultural Heritage Specialist(s);
 - 4.6.1.6 Designated Substances and Hazardous Materials Specialist;
 - 4.6.1.7 Electromagnetic Compatibility (EMC)/ Electromagnetic Interference (EMI) Specialist(s);
 - 4.6.1.8 Environmental Planning Specialist(s);
 - 4.6.1.9 Hydrogeologist(s);
 - 4.6.1.10 Noise Specialist(s);
 - 4.6.1.11 Licensed Archaeologist(s);
 - 4.6.1.12 Species at Risk Specialist(s);
 - 4.6.1.13 Vibration Specialist(s);
 - 4.6.1.14 Soil and Groundwater Contamination and Management Specialist(s);
 - 4.6.1.15 Climate Mitigation and Resilience Specialist(s); and
 - 4.6.1.16 Sustainability Specialist(s),

(each an “**Environmental Specialist**”).
- 4.6.2 Project Co acknowledges and agrees that Contracting Authority requires distinct and qualified individuals to carry out the functions of each of the Environmental Specialist roles. Project Co shall ensure that no single individual occupies more than one of the Environmental Specialist roles listed in Section 4.6.1 unless Project Co has obtained the prior written consent of Contracting Authority.
- 4.6.3 Each Environmental Specialist used by Project Co to meet its obligations under this Agreement shall meet the following minimum qualifications:
- 4.6.3.1 each Air Quality Specialist shall have:
 - (a) ten (10) years of work-related experience;
 - (b) a degree from a recognized university with specialization in chemical or civil or environmental engineering;

- (c) experience in predicting the greenhouse gas emission implications of transportation alternatives;
- (d) experience in designing and evaluating appropriate air quality impact mitigation for transportation projects;
- (e) experience utilizing scientifically approved dispersion models, such as AERMOD, CAL4HQC and CAL3HQCR, and vehicle emission models, such as MOVES;
- (f) experience in the determination of existing ambient air quality, exceedances in ambient air quality criteria prescribed by municipal, provincial and/or national quality standards and identification of Air Quality Sensitive Receptors;
- (g) experience in Air Quality Sensitive Receptor identification, assessment of impacts, and the identification of mitigation;
- (h) understanding of federal, provincial and municipal laws and regulations as they pertain to air quality; and
- (i) ability to liaise with other specialty consultants, contractors and Governmental Authorities;

4.6.3.2 each Aquatic Specialist shall have:

- (a) ten (10) years of work-related experience;
- (b) a degree from a recognized post-secondary institution with specialization in ecology, conservation biology, environmental science or another related discipline;
- (c) knowledge of the Species at Risk Act (Canada), the Fisheries Act (Canada), the Endangered Species Act (Ontario), the Fish and Wildlife Conservation Act (Ontario) and related policies;
- (d) experience in applying for MECP permits and DFO approval as it pertains to aquatic species in preparing Overall Benefit Permits and compensation plans;
- (e) knowledge of the ecological concepts, function of ecosystems and how human land uses are impacting them;
- (f) demonstrated experience involving,
 - (i) the identification and assessment of aquatic species and habitat;

- (ii) aquatic impact assessment;
- (iii) development of aquatic mitigation measures; and
- (iv) experience with similar projects in the Province of Ontario;

4.6.3.3 each Arborist shall have:

- (a) a minimum of five (5) years of work-related experience;
- (b) a degree from a recognized post-secondary institution in a field of study related to trees, landscaping and arboriculture;
- (c) certified membership in good standing with the International Society of Arboriculture;
- (d) knowledge of federal, provincial, municipal and Metrolinx policies, procedures and legislation;
- (e) ability to liaise with other specialty consultants, contractors and Governmental Authorities; and
- (f) experience with similar projects in the Province of Ontario;

4.6.3.4 each Biologist shall have:

- (a) a minimum of ten (10) years of work-related experience;
- (b) degree from a recognized university in one, or several, of the following fields: conservation biology, wildlife biology (including avian and fish), zoology, terrestrial biology, aquatic biology, ecology, or a related field;
- (c) knowledge of ecological concepts, function of ecosystems and how human land uses are impacting them;
- (d) general familiarity with fauna, including bird species and their ecological requirements, which occur in the part of the Province of Ontario in which the Project is located;
- (e) knowledge of federal, provincial policies, standards and guidelines, procedures and legislation including the Species at Risk Act (Canada), the Endangered Species Act (Ontario) and the Fish and Wildlife Conservation Act (Ontario);
- (f) work-related experience involving:

- (i) the identification and assessment of wildlife / ecosystem species and habitat;
 - (ii) wildlife / ecosystem environmental impact assessment; and
 - (iii) development of wildlife / ecosystem environmental mitigation measures; and
- (g) experience with similar projects in the Province of Ontario;

4.6.3.5 each Cultural Heritage Specialist shall have:

- (a) a minimum of ten (10) years of work-related experience;
- (b) a degree from a recognized university in a field of study related to historical and architectural aspects of built heritage resources and cultural heritage landscapes;
- (c) membership in good standing with the Canadian Association of Heritage Professionals;
- (d) experience in the identification and evaluation of cultural heritage resources;
- (e) experience in the development of heritage resource mitigation measures, including relocation, salvage and conservation plans for architecture and landscape;
- (f) knowledge of federal, provincial and Metrolinx cultural heritage policies, standards and guidelines, procedures and legislation;
- (g) ability to liaise with other specialty consultants, contractors and Governmental Authorities; and
- (h) experience with similar projects in the Province of Ontario;

4.6.3.6 each Designated Substances and Hazardous Materials Specialist shall have:

- (a) a minimum of ten (10) years of work-related experience;
- (b) a degree or diploma from a recognized university in a field of study related to occupational hygiene, environmental health and safety, environmental science, civil or environmental engineering;
- (c) experience in the identification and evaluation of designated substances and hazardous materials in accordance with the *Occupational Health and*

Safety Act, O. Reg. 278/05 (Asbestos on Construction Projects and in Buildings and Repair Operations), Regulation 490 (Designated Substances), Regulation 860 (WHMIS Regulation), Regulation 833 (Control of Exposure to Biological or Chemical Agents Regulation), R.R.O. 1990, Regulation 347 General - Waste Management, as amended (R.R.O. 1990, Reg. 347) under the EPA; and/or R.R.O. 1990, Regulation 362 Waste Management – PCB's under the EPA;

- (d) experience in the development of mitigation measures and removal plans for Designated Substances and Hazardous Materials;
- (e) knowledge of federal, provincial and municipal policies, standards and guidelines, procedures and legislation with respect to Designated Substances and Hazardous Materials;
- (f) ability to liaise with other specialty consultants, contractors and Governmental Authorities; and
- (g) experience with similar projects in the Province of Ontario;

4.6.3.7 each Electromagnetic Compatibility (EMC)/ Electromagnetic Interference (EMI) Specialist shall have:

- (a) a minimum of five (5) years of work-related experience;
- (b) a degree from a recognized university with specialization in environmental engineering, or related discipline;
- (c) experience in EMC/EMI in the transit environment;
- (d) knowledge of relevant federal and provincial environmental policies, procedures, legislation and EMC/ EMI reference documents specified in the Output Specifications; and
- (e) ability to liaise with other specialty consultants, contractors and Governmental Authorities;

4.6.3.8 each Environmental Planning Specialist shall have:

- (a) a minimum of ten (10) years of work-related experience;
- (b) a degree from a recognized university with specialization in urban and land use planning, environmental, geography or another related discipline;
- (c) experience in successfully managing transit projects in the Province of Ontario;

- (d) knowledge of the Province of Ontario’s Transit Project Assessment Process;
- (e) knowledge of relevant federal, provincial, municipal and Metrolinx environmental policies, procedures and legislation;
- (f) ability to liaise with other specialty consultants, contractors and Governmental Authorities; and
- (g) experience with similar projects in the Province of Ontario;

4.6.3.9 each Hydrogeologist shall have:

- (a) a minimum of ten (10) years of work-related experience;
- (b) a bachelor or advanced degree from a recognized university in hydrogeology or geoscience or engineering;
- (c) a designation as a “Professional Geoscientist” in the Province of Ontario and be a practicing member of the Association of Professional Geoscientists of Ontario and/or an appropriately trained Professional Engineer, or have other relevant credentials approved by Contracting Authority;
- (d) experience designing, implementing and overseeing Dewatering and Unwatering systems, including obtaining all necessary Permits To Take Water, Environmental Activity Sector Registrations, municipal sewer use permits or other discharge permits;
- (e) experience with groundwater monitoring programs and hydrogeological assessments to support preparation of Environmental Activity Sector Registrations and Permits To Take Water;
- (f) knowledge of Ontario Regulation 387/04, made under the Ontario Water Resources Act, and the Ontario Water Resources Act; and
- (g) experience with similar projects in the Province of Ontario;

4.6.3.10 each Noise Specialist shall have:

- (a) a minimum of ten (10) years of work-related experience;
- (b) a designation as an accredited Professional Engineer in the Province of Ontario, or have other relevant credentials approved by Contracting Authority;

- (c) experience in successfully managing noise assessments for transit projects in North America;
- (d) knowledge of relevant federal, provincial and municipal policies, procedures and legislation and, where none exist, knowledge of and experience with other appropriate legislation, guidance or standards;
- (e) knowledge of municipal heritage policies and the City of Toronto’s Official Plan;
- (f) ability to liaise with other specialty consultants, contractors and Governmental Authorities; and
- (g) experience with similar projects in the Province of Ontario;

4.6.3.11 each Licensed Archaeologist shall have:

- (a) a minimum of ten (10) years of work-related experience;
- (b) a licence to practice archaeology in the Province of Ontario in accordance with the *Ontario Heritage Act* (Ontario);
- (c) knowledge of federal, provincial and Metrolinx archaeological and heritage policies, standards and guidelines, procedures and legislation;
- (d) experience in industrial archaeology, specifically in rail line construction and historic engineering;
- (e) ability to liaise with other specialty consultants, contractors and Governmental Authorities and Indigenous Nations; and
- (f) experience with similar projects in the Province of Ontario;

4.6.3.12 each Soil and Groundwater Contamination and Management Specialist shall have:

- (a) a minimum of ten (10) years of work-related experience;
- (b) qualifications required by Section 5 of Ontario Regulation 153/04 under the Environmental Protection Act (Ontario), as applicable to be a Qualified Person;
- (c) experience with and understanding of the application and interpretation of Canadian Standards Association (CAN/CSA Z768 and CAN/CSA Z769) investigation criteria and criteria relating to the assessment of contaminated lands;

- (d) experience with and understanding of the application and interpretation of Ontario Regulation 153/04 and Ontario Regulation 406/19, made under the Environmental Protection Act (Ontario), as amended from time to time, and investigation criteria relating to the assessment of contaminated lands;
- (e) experience in designing, implementing and overseeing:
 - (i) soil management plans;
 - (ii) phase 1 and 2 environmental site assessments;
 - (iii) soil and groundwater characterization programs;
 - (iv) vapour intrusion assessments;
 - (v) remedial action plans for soil and/or groundwater and/or surface water;
 - (vi) site inspection and monitoring programs for construction activities;
 - (vii) excess soil beneficial re-use strategies; and
 - (viii) Dewatering effluent treatment and discharge strategies;
- (f) knowledge of risk assessment procedures and requirements;
- (g) knowledge of relevant federal and provincial policies, procedures and legislation, including Waste management and related legislation, regulations, guidelines, policies for water protection and materials management and MTO contaminated property process;
- (h) ability to liaise with other specialty consultants, contractors and Governmental Authorities;
- (i) experience with similar projects in the Province of Ontario; and
- (j) no conflict of interest as set out in Ontario Regulation 153/04 made under the Environmental Protection Act (Ontario), including with respect to conducting or supervising environmental site assessments, preparing or supervising risk assessments, completing certifications with respect to records of site condition, or undertaking any other obligations under Applicable Law;

4.6.3.13 each Species at Risk Specialist shall have:

- (a) a minimum of ten (10) years of work-related experience;
- (b) a degree from a recognized university with specialization in ecology, conservation biology, environmental science or another related discipline;
- (c) knowledge of the ecological concepts, function of ecosystems and how human land uses are impacting them;
- (d) general familiarity with flora and fauna, and knowledge of the Species-at-Risk and their ecological requirements, that occur in the part of the Province of Ontario in which the Project is located;
- (e) knowledge of the Species at Risk Act (Canada), the Fisheries Act (Canada), the Endangered Species Act (Ontario), and related policies;
- (f) experience in registration of species with MECP and implementing MECP Species-at-Risk permits including Overall Benefit Permits for Species-at-Risk; and
- (g) experience with similar projects in the Province of Ontario;

4.6.3.14 each Vibration Specialist shall have:

- (a) a minimum of ten (10) years of work-related experience;
- (b) a designation as an accredited Professional Engineer in the Province of Ontario, or have other relevant credentials approved by Contracting Authority;
- (c) experience in successfully managing vibration assessments for transit projects in North America;
- (d) knowledge of relevant federal and provincial environmental policies, procedures and legislation and, where none exist, knowledge and experience of other appropriate legislation, guidance or standards;
- (e) knowledge of municipal heritage policies and the City of Toronto's Official Plan; and
- (f) ability to liaise with other specialty consultants, contractors and Governmental Authorities;

4.6.3.15 Each Sustainability Specialist shall have:

- (a) a minimum of five (5) years of work-related experience in sustainability considerations in infrastructure;

- (b) a degree from a recognized university with specialization in sustainability, environmental studies, or related discipline;
- (c) knowledge of sustainability systems and metrics;
- (d) experience on other transit and transportation projects in developing sustainability plans and tracking performance;
- (e) knowledge of the “Envision Rating System for Sustainable Infrastructure” published by the Institute for Sustainable Infrastructure; and
- (f) knowledge of the “LEED Rating System”;

4.6.3.16 each Climate Mitigation and Resilience Specialist shall have:

- (a) a minimum of five (5) years of work-related experience;
- (b) a degree from a recognized university in one, or several, of the following fields: geology, geochemistry, physics, geophysics, climatology, meteorology, or related field;
- (c) knowledge of methods, tools, and approaches to evaluating and mitigating the risks and vulnerability of infrastructure to climate change;
- (d) knowledge of methods and tools with respect to climate modelling; and
- (e) experience with similar projects in North America.

4.6.4 For each Environmental Specialist, Project Co shall submit sufficient documentation to Contracting Authority in accordance with Schedule 10 – Review Procedure to demonstrate that the qualifications of the individual meet or exceed the applicable requirements described in Section 4.6.3.

4.7 Environmental Inspector(s)

4.7.1 Project Co shall appoint two or more environmental inspector(s) who shall, under direction of the Environmental Compliance Officer, ensure compliance of the Works with the Environmental Management System and this Agreement (each an “**Environmental Inspector**”).

4.7.2 Each Environmental Inspector shall have a minimum of three (3) years of demonstrated working experience in all aspects of environmental monitoring / mitigation during transportation project construction, specifically with respect to work in and around watercourses and in the application and correction of erosion and sedimentation control measures, reporting Spills and the containment of effluent and dust during construction, and with projects in the Province of Ontario of a similar scope and complexity to this Project. Each Environmental Inspector shall

also hold certification as a Canadian Certified Inspector of Sediment and Erosion Control (CAN-CISEC), or have proven proficiency in observing, inspecting and reporting on the implementation of Erosion and Sediment Control Plans.

- 4.7.3 Without limiting the generality of Section 4.7.1, the job specification and responsibilities of each Environmental Inspector shall include the following:
- 4.7.3.1 as a minimum, conduct monitoring and inspections on all aspects of the Works in accordance with the Environmental Management System;
 - 4.7.3.2 maintain a log of monitoring and inspection events, which shall include photographic evidence to support the observations recorded during such monitoring and inspection events;
 - 4.7.3.3 complete monitoring and inspection reports and provide to the Environmental Compliance Officer and as part of the Monthly Environmental Report in accordance with Schedule 10 – Review Procedure; and
 - 4.7.3.4 provide advice and recommendations for improving environmental protection and correcting any inefficient practices and/or issues of non-compliance within 24 hours of noticing a potential issue.
- 4.7.4 Project Co shall submit sufficient documentation to Contracting Authority in accordance with Schedule 10 – Review Procedure to demonstrate that the qualifications of each Environmental Inspector are sufficient to carry out the responsibilities described in this Section 4.7.

4.8 Environmental Working Group

- 4.8.1 Project Co shall have qualified representatives, including the Environmental Director, Environmental Manager(s), Environmental Permits and Approvals Coordinator(s), and the Environmental Compliance Officer, who shall form an environmental working group for the Project (the “**Environmental Working Group**” or the “**EWG**”). A representative or representatives from the Contracting Authority will also be a participant in the EWG.
- 4.8.2 The EWG shall meet on an every-other-week basis, or more frequently if required by Contracting Authority, commencing within fourteen (14) days of the DMCA Effective Date until Project Substantial Completion. The EWG shall provide teleconference details for those unable to attend in-person.
- 4.8.3 The EWG shall identify their working relationship, roles and responsibilities matrix, and approvals processes, to comply with the environmental requirements of this Agreement.
- 4.8.4 At the Contracting Authority Representative’s request, applicable Environmental Specialists shall attend EWG meetings to discuss environmental submissions, content, established submission dates and other relevant requirements in compliance with this Agreement and any Applicable Law.

- 4.8.5 At EWG meetings, Project Co shall report on:
- 4.8.5.1 key environmental issues and field activities associated with environmental obligations contemplated in this Schedule 17, including a look-ahead schedule of upcoming field activities and investigations;
 - 4.8.5.2 environmental process, design activities and Construction Activities undertaken as part of the Works;
 - 4.8.5.3 environmentally-related communications with Governmental Authorities;
 - 4.8.5.4 the identification of, and issues related to, all Sensitive Receptors and Environmentally Sensitive Construction Activities for review by Contracting Authority;
 - 4.8.5.5 the status and frequency of the monitoring and inspection activities required in accordance with this Schedule 17;
 - 4.8.5.6 the status of environmental protection measures, issues of non-compliance and associated corrective actions and resolution of issues, including presentation of descriptions and photos as required to facilitate such;
 - 4.8.5.7 the status of information that is required at any time pursuant to this Schedule 17, including all plans, reports, submittals and other documents set out in this Schedule 17; and
 - 4.8.5.8 the status of key environmental, social and economic metrics and progress towards continual improvement, including a summary of trends identified in the Monthly Environmental Report, as they pertain to sustainability; and identify any new initiatives, interested parties, or findings as per Section 3.1.5.1(b) (*Sustainability Management Plan*) of the Output Specifications.
- 4.8.6 The EWG meetings shall be facilitated by Project Co and Project Co shall prepare and distribute an agenda and presentation to the Contracting Authority Representative at least 48 hours in advance of each EWG meeting.
- 4.8.7 Project Co shall prepare EWG meeting minutes and submit to the Contracting Authority Representative within five (5) Business Days following EWG meetings.

5 SYSTEMS AND REPORTING

5.1 Additional Environmental Reports

- 5.1.1 In addition to those plans and reports explicitly set out in this Schedule 17, Project Co shall prepare and submit to Contracting Authority (and to the applicable Governmental Authority, if required) any additional reports, plans and documentation relating to the Project that are

required by any Applicable Law or any Environmental Reference Document (each an “**Additional Environmental Report**”). All plans and reports explicitly set out in this Schedule 17 and all Additional Environmental Reports shall be submitted to Contracting Authority in accordance with Schedule 10 – Review Procedure prior to submission to any Governmental Authority.

- 5.1.2 Without limiting Section 5.1.1 Project Co shall within ten (10) Business Days or within a time period agreed upon in advance with Contracting Authority provide the Contracting Authority Representative with copies of all evaluations and investigations, audits, monitoring data, reports, drawings, electronic files, checklists, documents, and lab or test results relating to the Lands and the Works, including all evaluations and investigations, audits, monitoring data, reports, drawings, electronic files, checklists, documents and lab or test results related to the Project conducted by or on behalf of or coming into the possession of Project Co at any time whether before or after the DMCA Effective Date.

5.2 Other Required Environmental Plans and Reports

- 5.2.1 Project Co shall prepare annual environmental compliance monitoring reports (each an “**Annual Environmental Compliance Monitoring Report**”) in accordance with a format agreed upon by Contracting Authority. Project Co shall submit each Annual Environmental Compliance Monitoring Report to Contracting Authority in accordance with Schedule 10 – Review Procedure.

5.2.1.1 In each Annual Environmental Compliance Monitoring Report, Project Co shall document:

- (a) the status of all Project Co Environmental Commitments;
- (b) a summary of all environmental Permits, Licences, Approvals and Agreements obtained or amended;
- (c) the status of communication with Governmental Authorities;
- (d) a summary of environmental non-compliance issues raised by Contracting Authority and Governmental Authorities, including corrective actions taken to resolve issues, status, and timeline for resolution of issues;
- (e) a summary of recommendations from the Environmental Audit Report and a description of actions including a timeline to implement recommendations;
- (f) a roll-up summary of activities, issues, outcomes, and ongoing matters from the Monthly Environmental Reports of the previous calendar year. Project Co shall provide a clear summary, indicating the number and description of non-compliant items, and timelines for mitigation of

outstanding environmental issues. The summary shall demonstrate data trends and continuous improvement; and

- (g) provide an updated list of Environmental Reference Documents as applicable to the Works and the Project Co Infrastructure and as necessary to reflect changes in applicable requirements and Applicable Law in accordance with Section 2.1.1.1.

5.2.2 Project Co shall prepare and submit to Contracting Authority monthly environmental reports (each a “**Monthly Environmental Report**”). Project Co shall submit each Monthly Environmental Report to Contracting Authority in accordance with Schedule 10 – Review Procedure.

5.2.2.1 In each Monthly Environmental Report, Project Co shall document:

- (a) A summary of the environmental management activities undertaken in the reporting month, and a look-ahead for the next month for the following:
 - (i) status of field activities associated with environmental obligations contemplated in this Schedule 17;
 - (ii) environmental process and design activities and Construction Activities undertaken as part of the Works during the period relevant to Project Co’s obligations under this Schedule 17, including surveys, inspections, repairs, and construction work undertaken for environmental protection and mitigation measures;
 - (iii) key environmental issues, concerns and risks associated with the Works;
 - (iv) studies and permitting activities;
 - (v) consultation activities and environmentally related communications with Governmental Authorities;
 - (vi) design and implementation of mitigation measures (successes and failures), monitoring activities, resolutions to environmental impacts, and a status update on complying with Project Co Environmental Commitments; and
 - (vii) administrative activities, including training meetings, presentations and health and safety, progress of other environmental plans and reports and submission requirements;
- (b) A summary of compliance issues or activities for the reporting month, including:

- (i) description of issues encountered;
 - (ii) non-conformance, incidents, preventative and corrective actions;
 - (iii) outcomes;
 - (iv) follow-up actions;
 - (v) expected timelines; and
 - (vi) responsibilities;
- (c) an updated tree compensation inventory in accordance with this Schedule 17;
 - (d) an updated Well Tracker;
 - (e) copies of any monitoring and inspection reports as completed by the Environmental Inspector(s) in accordance with Section 4.7;
 - (f) a listing of active registration(s), active facilities and Waste streams on Project Co’s Resource Productivity and Recovery Authority Hazardous Waste Program Registry account for the Works;
 - (g) copies of Resource Productivity and Recovery Authority Hazardous Waste Program Registry manifests and a summary table of the quantity, location, type of Waste and date generated during the reporting month; and
 - (h) a summary table of the quantity, location, type of Waste and date of recycled material, along with manifests or receipts from the receiver site(s).

5.2.3 Project Co shall obtain, from an independent Environmental Consultant acceptable to Contracting Authority, acting reasonably, an annual independent environmental audit (and a report from the independent environmental audit (“**Environmental Audit Report**”) of Project Co’s compliance with its environmental and sustainability obligations under this Agreement.

5.2.3.1 Project Co shall submit the qualifications of the independent Environmental Consultant and a work plan for the independent environmental audit to Contracting Authority for review and approval in accordance with Schedule 10 – Review Procedure.

5.2.3.2 Project Co shall complete the Environmental Audit Report annually and submit to Contracting Authority no later than thirty (30) days following the completion of the Environmental Audit Report by the Environmental Consultant in accordance with Schedule 10 – Review Procedure.

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- 5.2.3.3 Project Co may use the Environmental Audit Report to demonstrate compliance with the Environmental Management System as described in Section 5.3.
- 5.2.3.4 The Environmental Audit Report shall set out all auditor findings and recommendations and include a plan and timeline to implement recommendations.
- 5.2.4 Project Co shall provide the Environmental Consultant undertaking the Environmental Audit Report with this Agreement including any documents referenced within this Agreement.
- 5.2.5 The Environmental Consultant undertaking the Environmental Audit Report shall have the knowledge and skills necessary to complete the defined Environmental Audit Report scope, including:
- 5.2.5.1 appropriate education, skills, experience and/or training considering Applicable Law and local or national guidelines;
 - 5.2.5.2 relevant technical skills specific to the scope, boundaries, and Environmental Audit Report objective; and
 - 5.2.5.3 knowledge of the requirements of best practice standards for environmental audits.
- 5.2.6 Project Co shall prepare a substantial completion environmental report (the “**Substantial Completion Environmental Report**”) and shall submit the Substantial Completion Environmental Report to the Contracting Authority Representative prior to Project Substantial Completion in accordance Schedule 10 – Review Procedure.
- 5.2.6.1 The report shall, at a minimum, document compliance with all Project Co Environmental Commitments as set out in Appendix A-2 and Appendix A-3 of this Schedule 17 and all other environmental obligations under this Agreement, as they are related but not limited to contamination management, soils, groundwater and stormwater, noise and vibration, cultural heritage, archaeology, natural heritage, air quality and any other environmental component.
 - 5.2.6.2 The Substantial Completion Environmental Report shall also include a summary of:
 - (a) evidence of Project Co’s compliance with all Project Co Environmental Commitments and all other environmental obligations under this Agreement;
 - (b) environmental compliance obligations as a result of the Works;
 - (c) all Spills, including locations, which had occurred during the Project Term and how all Spill Prevention and Response Plan activities in accordance with Section 6.1.1 were implemented during the Works and the associated outcomes;

- (d) how all Designated Substances and Hazardous Materials Management Plan activities in accordance with Section 6.1.2 were implemented during the Works and the associated outcomes;
- (e) contamination management activities as described in Sections 6.1.3, 6.1.4 and 6.1.5;
- (f) Resource Productivity and Recovery Authority Hazardous Waste Program Registry registrations, facilities and Waste streams, and a summary table of the quantity, type and date of Waste generated as described in Sections 6.1.6 and 6.1.7;
- (g) Soil and excavated materials management activities as described in Section 6.2;
- (h) well management and decommissioning activities as described in Section 6.11.2;
- (i) groundwater, Dewatering/Unwatering and stormwater management activities as described in Sections 6.3.1, 6.3.2 and 6.3.3;
- (j) noise and vibration management activities as described in Section 6.4;
- (k) the noise and vibration self-assessment as described in Section 6.5.1.4;
- (l) cultural heritage management activities as described in Section 6.6;
- (m) archaeological management activities as described in Section 6.7;
- (n) natural heritage management activities including but not limited to Species-at-Risk survey and mitigation activities as described in Section 6.8.2, vegetation and tree management activities as described by Section 6.8.3;
- (o) air quality management activities as described in Section 6.9;
- (p) the air quality self-assessment as described in Section 6.10.1.4; and
- (q) any other environmental activities constituting Project Co Environmental Commitments as identified in this Schedule 17.

5.3 Environmental Management System

- 5.3.1 No later than one-hundred and twenty (120) days following the DMCA Effective Date, Project Co shall establish an environmental management system (“**Environmental Management System**”) that conforms to ISO 14001 and that is administered through the EMS Software

Solution. The Environmental Management System shall be submitted to Contracting Authority in accordance Schedule 10 – Review Procedure.

- 5.3.2 No later than three-hundred and sixty-five (365) days following the DMCA Effective Date, Project Co shall obtain ISO 14001 certification for the Environmental Management System from a certification body accredited by the Standards Council of Canada.
- 5.3.3 The Environmental Management System shall be applicable to all of Project Co’s obligations, including the Works, throughout the Project Term.
- 5.3.4 Project Co shall be the “organization” for the purposes of applying ISO 14001.
- 5.3.5 Project Co shall ensure that Environmental Aspects in the Environmental Management System include all environmental impacts included in the Environmental Reference Documents and in this Schedule 17.
- 5.3.6 Project Co shall ensure that the compliance obligations required in accordance with ISO 14001 includes all requirements under Applicable Law, all requirements of Permits, Licences, and Approvals in Schedule 34 – Permits, Licences, Approvals and Agreements, and all requirements defined in this Schedule 17, including Project Co Environmental Commitments as per Appendix A-3.
- 5.3.7 Notwithstanding the requirement of ISO 14001 for the organization to determine monitoring, measurement, analysis and evaluation requirements, Project Co shall ensure that all requirements for performance evaluation in the Environmental Management System, including,
- 5.3.7.1 the methods for monitoring, measurement, analysis and evaluation;
 - 5.3.7.2 the criteria against which environmental performance is measured;
 - 5.3.7.3 the timing for performance of monitoring and measuring; and
 - 5.3.7.4 the timing for analysis and evaluation of the results from monitoring and measuring
- comply with the requirements set out in this Schedule 17.
- 5.3.8 Project Co shall ensure that the Environmental Management System includes a description of contingency measures developed by Project Co that will be implemented by Project Co during and immediately following Environmental Incidents, including storm and wind events.
- (a) Throughout the Project Term, Project Co shall implement, expand, update and continually improve the Environmental Management System in conformance with ISO 14001.

5.4 Environmental Management System Software Solution

- 5.4.1 No later than one-hundred and twenty (120) days following the DMCA Effective Date, Project Co shall implement Cority Software Inc.’s relevant cloud-based software solutions for the administration of the Environmental Management System (the “**EMS Software Solution**”). The EMS Software Solution shall:
- 5.4.1.1 allow multiple users to remotely log in and access the solution with single sign-on capability;
 - 5.4.1.2 allow users to upload user documents against any individual record contained within the database;
 - 5.4.1.3 be equipped with document control capabilities that enable users to track versions and revisions and that ensure that the latest revision of documents is being employed by users;
 - 5.4.1.4 allow easy access to data, real-time dashboarding features and business analytics features to enable monitoring of the performance indicators determined in accordance with ISO 14001. A monthly dashboard report shall be automatically generated on the first (1st) day of each month for the preceding month, containing at a minimum a summary of the information described in Sections 5.4.4 5.4.5, 5.4.6 and 5.4.7;
 - 5.4.1.5 include a central repository for all historical and current versions of the documents required to be managed in the Environmental Management System, organized in a manner that promotes efficient access to the documents;
 - 5.4.1.6 include a database that accurately and effectively records and tracks all data required to be managed in the Environmental Management System, which shall be maintained at minimum on a monthly basis or more frequently as required until such time as the Works have been completed; and
 - 5.4.1.7 include the software applications set out in Sections 5.4.4 5.4.5, 5.4.6 and 5.4.7.
- 5.4.2 Throughout the Project Term, Project Co shall ensure that,
- 5.4.2.1 the EMS Software Solution is, at all times, the most current, vendor-supported version of the cloud-based software; and
 - 5.4.2.2 the EMS Software Solution and all data and documents contained therein are electronically accessible to Contracting Authority, at all times, on a real-time basis through the single sign-on capability.
- 5.4.3 If, at any time during the Project Term, the EMS Software Solution vendor is no longer in business or otherwise no longer supports the EMS Software Solution, and the EMS Software

Solution is not supported by another vendor, then Project Co shall, in consultation with and upon written approval of Contracting Authority, select and implement an alternative cloud-based software solution for the Environmental Management System that meets the requirements set out in Section 5.4.

5.4.4 Soil and Excavated Material Software Application

5.4.4.1 Project Co’s EMS Software Solution shall use the real-time digital Soil, Excess Soil, and excavated material tracking software application (the “**Soil and Excavated Material Software Application**”) specified by Contracting Authority prior to the commencement of Construction Activities for the Works. If at any time throughout the Project Term, the vendor of the Soil and Excavated Material Software Application specified by Contracting Authority is no longer in business or such vendor no longer supports the Soil and Excavated Material Software Application specified by Contracting Authority, and the Soil and Excavated Material Software Application specified by Contracting Authority is not supported by another vendor, then Contracting Authority shall, in consultation with Project Co, select and implement an alternative cloud-based Soil and Excavated Material Software Application that meets the requirements of this Section 5.4.4.

5.4.4.2 Project Co shall ensure that all historical and real-time Soil and Excess Soil shipping data are available and can be accessed by Contracting Authority through the EMS Software Solution in accordance with Section 5.4.

5.4.4.3 Project Co shall ensure that the Soil and Excavated Material Software Application and all data and documents contained therein are electronically accessible to Contracting Authority, at all times, on a real-time basis through the single sign-on capability, if available. For clarity, Project Co shall ensure that:

- (a) data and documents relating to the collection and/or transport of Soil, Excess Soil, and excavated material are uploaded or otherwise available on the Soil and Excavated Material Software Application within 15 minutes of such collection and/or transport; and
- (b) all other data and documents material are uploaded or otherwise available on the Soil and Excavated Material Software Application within four hours of record or receipt of such data and documents, including circumstances where data is recorded manually.

5.4.4.4 Project Co shall report to Contracting Authority, within two (2) Business Days of Project Co’s knowledge, of the occurrence of:

- (a) any shipment of Excess Soil outside a Project Area without the knowledge of Project Co’s Qualified Person; or

- (b) the discovery of the shipment and placement of Excess Soils exceeding requirements of a receiver site.
- 5.4.4.5 Contracting Authority is under no obligation to review or approve the information provided with respect to the management of Soil, Excess Soil and excavated materials.
- 5.4.4.6 The Soil and Excavated Material Software Application for Soil, Excess Soil and excavated material management, monitoring and tracking shall be implemented prior to Soil, Excess Soil and excavated materials shipping and import for Construction Activities for the Works, and capture each movement of Soil, Excess Soil and excavated materials outside each Project Area within the Lands and import of Soil into each Project Area within the Lands.
- 5.4.4.7 For the movement of Excess Soil and excavated material outside each Project Area, the Soil and Excavated Material Software Application shall include the following:
 - (a) an up-to-date and complete inventory of all receiver sites of Excess Soil and of excavated material generated by the Works that cannot be reused on the Lands including MECP licensed facilities, temporary storage areas, commercial fill operations, beneficial Soil Reuse Sites, soil processing facilities, recycling facilities, landfills and any other receiver site;
 - (b) all information required for the movement of each load of Excess Soil and excavated material outside each Project Area in accordance with best practice and Applicable Law, including Ontario Regulation 406/19 and the Rules for Soil Management and Excess Soil Quality Standards, updated on a real-time basis for the duration of the Project Term, including:
 - (i) the municipal address of each receiver site for each Project Area;
 - (ii) the name of each receiver site owner and operator;
 - (iii) a copy of the written consent from the operator of each receiver site for placement of Excess Soils and excavated material from the Lands and the time and date written consent was received;
 - (iv) the date(s) on which notice was filed and updated, as relevant, in the Resource Productivity and Recovery Registry for each receiver site;
 - (v) the name of Qualified Person overseeing receiver site activities;
 - (vi) the Governmental Authority having jurisdiction over the receiver site;

- (vii) the type of Environmental Approval under which the receiver site is operating, if applicable;
 - (viii) the total volume of Excess Soil and/or excavated material transported to the receiver site or another Project Area within the Lands;
 - (ix) the description of the source of the Excess Soil and excavated material transported to the receiver site or another Project Area within the Lands for each load of Excess Soil and excavated material shipped, including a figure depicting the extent of excavation(s) and UTM coordinates;
 - (x) a description of the number of samples collected and analyzed and a list of parameters included in the analyses that are representative of Excess Soil quality for each load of Excess Soil shipped including a figure depicting the location(s) of samples collected;
 - (xi) an electronic copy of the certificate(s) of analysis for the samples collected and analyzed;
 - (xii) documentation that a written opinion has been provided by Project Co's Qualified Person prior to Excess Soil and excavated material shipment outside the Project Area within the Lands stating that the quality of Excess Soil and excavated material shipped to each receiver site or another Project Area within the Lands is suitable for placement at the receiver site in compliance with Applicable Law based upon information reviewed by Project Co's Qualified Person; and
 - (xiii) electronic copies of any Waste manifests or shipping documentation associated with Excess Soil or excavated material exported from the Lands;
- (c) real-time digital tracking information for each load of Excess Soil and excavated materials moved outside each Project Area, including:
- (i) a unique identification number assigned to each load of Excess Soil and excavated material shipped outside a Project Area;
 - (ii) a description of the Excess Soil and excavated material being shipped outside a Project Area;
 - (iii) a description of the source location of each load of Excess Soil and excavated material shipped outside a Project Area;

- (iv) the departure date and time of each load of Excess Soil and excavated material resulting from the Works shipped from each Project Area;
 - (v) the arrival date and time of each load of Excess Soil and excavated material received at each receiver site;
 - (vi) the name of Project Co’s representative authorizing the departure of each load of Excess Soil and excavated material shipped from each Project Area;
 - (vii) the name of the hauling company, driver name and license plate of the vehicle hauling each load of Excess Soil and excavated material shipped from each Project Area;
 - (viii) the name and address of the receiver site for each load of Excess Soil and excavated material shipped outside the Project Area;
 - (ix) the name of the receiver site representative acknowledging the receipt of each load of Excess Soil and excavated material; and
 - (x) the quantity of each load of Excess Soil shipped from each Project Area to a receiver site or another Project Area; and
- (d) in-month evidence and certification by Project Co’s Qualified Person that the quality of Excess Soil and excavated material transported to each receiver site is compliant with the receiver site license, Environmental Approval and Ontario Regulation 406/19, if applicable.

5.4.4.8 For the import of Excess Soil, which includes Aggregate (where sourced from a site other than a pit or quarry licensed under the Aggregate Resources Act), into the Lands, the Soil and Excavated Materials Application shall include the following:

- (a) all information required for the movement of each load of Excess Soil into the Lands in accordance with industry best practices and Applicable Law, including Ontario Regulation 406/19 and the Rules for Soil Management and Excess Soil Quality Standards, updated on a real-time basis for the duration of the Project Term, including:
 - (i) the municipal address of each source site;
 - (ii) the name of source site owner and operator;
 - (iii) the name of Qualified Person overseeing source site activities;

- (iv) the Governmental Authority having jurisdiction over the source site;
 - (v) the type of Environmental Approval under which the source site is operating, if applicable;
 - (vi) the total volume of Excess Soil from each source site imported to each Project Area;
 - (vii) a description of the source of the Excess Soil imported to the Lands, including a figure depicting the extent of the source material imported and UTM coordinates;
 - (viii) a description of the number of samples collected and analyzed and a list of parameters included in the analyses that are representative of Excess Soil quality for each load of Excess Soil imported, if applicable, including a figure depicting the location(s) of samples collected;
 - (ix) an electronic copy of the certificate(s) of analysis for the samples collected and analyzed;
 - (x) documentation that a written opinion has been provided by Project Co's Qualified Person prior to import of Excess Soil stating that the quality of Excess Soil imported from each source site or Project Area within the Lands is suitable for placement within the Works in compliance with Applicable Law based upon information reviewed by Project Co's Qualified Person; and
 - (xi) shipping documentation associated with Excess Soil imported to the Lands;
- (b) real-time digital tracking information for each load of Excess Soil imported to each Project Area, including:
- (i) a unique identification number assigned to each load of Excess Soil imported to each Project Area;
 - (ii) a description of the Excess Soil imported to each Project Area;
 - (iii) a description of the source location of each load of Excess Soil imported to each Project Area;
 - (iv) a description of the placement location of each load of Excess Soil imported to each Project area, including UTM coordinates;

- (v) the departure date and time from the source site for each load of imported Excess Soil received at each Project Area;
 - (vi) the arrival date and time of each load of imported Excess Soil received at each Project Area;
 - (vii) the name of the source site representative authorizing the departure of each load of Excess Soil from the source site;
 - (viii) the name of the hauling company, driver name and license plate of the vehicle hauling each load of Excess Soil imported to each Project Area;
 - (ix) the name and address of Project Co’s representative authorizing the arrival of each load of Excess Soil imported to each Project Area; and
 - (x) the quantity by volume of each load of Excess Soil imported to each Project Area;
- (c) in-month evidence and certification by Project Co’s Qualified Person that the quality of Excess Soil imported to each Project Area is suitable for placement within the Works in compliance with Applicable Law, Environmental Approvals, and Ontario Regulation 406/19, if applicable; and
- (d) in-month evidence and certification by Project Co’s Qualified Person that each receiver site operated by Project Co for the Works is operating in compliance with Ontario Regulation 406/19 and Applicable Law;
- 5.4.4.9 The Soil and Excavated Material Software Application shall include a monthly dashboard report for Soil, Excess Soil and excavated material which presents cumulative data for each calendar month (the “**Soil and Excavated Material Monthly Dashboard**”). The Soil and Excavated Material Monthly Dashboard shall be automatically generated in accordance with the timeframe for submission set out in Appendix B-2 to this Schedule 17.
- 5.4.4.10 The Soil and Excavated Material Monthly Dashboard shall include the following for the applicable month:
- (a) the total quantity by volume and mass per Project Area, and for the entirety of the Works, of Soil, Excess Soil and of excavated material extracted from the Lands;

- (b) the total quantity by volume and mass per Project Area, and for the entirety of the Works, of Soil and of excavated material that were reused within the Lands;
- (c) the total quantity by volume and mass per Project Area, and for the entirety of the Works, of Soil, Excess Soil, and of excavated material that were transported from the Lands for reuse or disposal, including a detailing of quantity by volume transported to each receiver;
- (d) the total quantity by volume and mass per Project Area, and for the entirety of the Works, of Soil, Excess Soil, and Aggregate imported to the Lands, including a detailing of quantity by volume from each source site; and
- (e) total quantity of Soil and Excess Soil by volume and mass considered to represent Project Co Contamination and Contracting Authority Contamination, respectively, as per the Section 18.3 (*Contamination*) of this Agreement.

5.4.4.1.1 Project Co shall make the information in the Soil and Excavated Material Software Application available to any Governmental Authority when requested by that Governmental Authority.

5.4.5 Groundwater Management Software Application

5.4.5.1 Project Co's EMS Software Solution shall include an application for groundwater management ("**Groundwater Management Software Application**"). The Groundwater Management Software Application shall be implemented prior to extraction and discharge of groundwater, stormwater, surface water, Dewatering/Unwatering effluent or construction process water effluent for Construction Activities for the Works and shall include:

- (a) an up to date and complete inventory of all groundwater, stormwater, surface water, Dewatering/Unwatering effluent and construction process water discharge points generated by the Works including MECP licensed facilities, storm and sanitary sewer connections, surface water discharge points and any other receiver site, including overland infiltration within the Works. The inventory shall include the following details for each month or more frequently as required by Contracting Authority until the end of the Project Term:
 - (i) the municipal address and UTM coordinates of each groundwater, stormwater, surface water, Dewatering/Unwatering effluent and construction process water effluent discharge point;
 - (ii) the municipal address of each receiver site;

- (iii) the name of each receiver site owner and operator;
 - (iv) the Governmental Authority having jurisdiction over the receiver;
 - (v) the type of permit or Environmental Approval under which the receiver is operating;
 - (vi) the total volume of groundwater, stormwater, surface water, Dewatering/Unwatering effluent and construction process water effluent discharged to each receiver;
 - (vii) the description of the source of the groundwater, stormwater, surface water, Dewatering/Unwatering effluent or construction process water effluent discharged to each receiver;
 - (viii) a description of the treatment methods being utilized if treatment is required prior to discharge to the receiver;
 - (ix) a description of the number of samples collected and analyzed (pre and post-treatment if treatment is utilized) and a list of parameters included in the analyses that are representative of groundwater, stormwater, surface water, Dewatering/Unwatering effluent or construction process water effluent discharged to each receiver, including a figure depicting the location(s) of samples collected;
 - (x) an electronic copy of the certificate(s) of analysis for the samples collected and analyzed; and
 - (xi) electronic copies of any Waste manifests or shipping documentation associated with transport of groundwater, stormwater, surface water, Dewatering/Unwatering effluent or construction process water effluent to a receiver; and
- (b) real-time digital tracking information for water taking rates, daily volume of water taken, Dewatering/Unwatering effluent discharge rates, construction process water effluent discharge rates, daily volume of Dewatering/Unwatering effluent discharge and daily volume of construction process water effluent discharge for the duration of the Project Term. Project Co shall ensure that real-time monitoring is tracked in accordance with the following requirements:
- (i) a unique identification number is assigned to each flow meter at each Dewatering/Unwatering effluent and construction process water effluent location;

- (ii) each flow meter collecting real-time flow of Dewatering/Unwatering effluent and construction process water effluent shall have data logging capability with recorded data transmitted and uploaded to the EMS Software Solution on a daily basis within 15 minutes of collection or more frequently as may be required by Applicable Law or any Permit, Licence, Approval or Agreement; and
 - (iii) in-month evidence and certification by the Hydrogeologist or Qualified Person that the quality, volume and discharge rate of groundwater, stormwater, surface water, Dewatering/Unwatering effluent and construction process water effluent discharged to each receiver is compliant with Environmental Approval conditions and is not expected to result in Worsened conditions.
- 5.4.5.2 Project Co’s Groundwater Management Software Application shall include a monthly dashboard report which shall be automatically generated in accordance with the timeframe for submission set out in Appendix B-1 to this Schedule 17 (“**Groundwater Management Monthly Dashboard**”).
- 5.4.5.3 Project Co’s Groundwater Management Monthly Dashboard shall present cumulative data for each calendar month and include the following for the applicable month:
 - (a) the daily and total quantities of Dewatering/Unwatering effluent and construction process water effluent derived from the Works;
 - (b) the daily and total quantities of Dewatering/Unwatering effluent derived from each Dewatering/Unwatering location;
 - (c) the daily and total quantities of construction process water effluent discharged from each point of origin location;
 - (d) the daily and total volume of Dewatering/Unwatering effluent and construction process water effluent discharged to each receiver from each Dewatering/Unwatering location or construction process water location, and a description of the PTTW or EASR or other Environmental Approval under which the taking occurred;
 - (e) the daily and total volume of Dewatering/Unwatering effluent and construction process water effluent discharged to each receiver from all locations and a description of the Environmental Approval under which the discharge occurred;
 - (f) the analytical results supporting the discharge and/or disposal of Dewatering/Unwatering effluent and construction process water effluent;

- (g) the treatment technologies used at each discharge location, as applicable; and
 - (h) records of the monitoring program for potential effects of Dewatering.
 - 5.4.5.4 Project Co shall make the information in the Groundwater Management Software Application available to any Governmental Authority when required by that Governmental Authority.
 - 5.4.5.5 Project Co shall ensure that all historical and real-time daily groundwater taking rates, daily volume of water taken, Dewatering/Unwatering effluent rates, construction process water effluent rates, daily volume of Dewatering/Unwatering effluent discharge, water quality monitoring data, including but not limited to parameter such as pH, turbidity and total suspended solids, and daily volume of construction process water effluent discharge can be accessed by Contracting Authority through the EMS Software Solution throughout the Project Term.
 - 5.4.5.6 Project Co shall ensure that Contracting Authority Representative receives daily e-mail alerts of any exceedances of:
 - (a) water taking rates that exceed Environmental Approval limits;
 - (b) Dewatering/Unwatering effluent and construction process water effluent discharge rates that exceed Environmental Approval limits; and
 - (c) water quality data that exceed Environmental Approval criteria.
 - 5.4.5.7 Contracting Authority is under no obligation to review or approve the information provided with respect to the management of groundwater, stormwater, surface water, Dewatering/Unwatering and construction process water.
- 5.4.6 Noise and Vibration Software Application
 - 5.4.6.1 In accordance with Section 6.4.5, Project Co shall ensure that real-time monitoring data can be accessed by Contracting Authority through the EMS Software Solution;
 - 5.4.6.2 As required, each noise monitor shall have data logging capability with recorded data transmitted to the EMS Software Solution; and
 - 5.4.6.3 Project Co shall ensure that Contracting Authority Representative receives real-time e-mail alerts of any exceedances of Applicable Construction Noise and Vibration Requirements.
- 5.4.7 Construction Air Quality Software Application

- 5.4.7.1 In accordance with Section 6.9.4, Project Co shall ensure that all baseline data and real-time monitoring data are available and can be accessed by Contracting Authority through the EMS Software Solution or other software approved by the Contracting Authority;
- 5.4.7.2 As required, each monitor shall have data logging capability with recorded data transmitted to the EMS Software Solution or other software approved by the Contracting Authority; and
- 5.4.7.3 Project Co shall ensure that Contracting Authority Representative receives real-time e-mail alerts of any exceedances of Applicable Construction Air Quality Criteria and Limits.

6 ENVIRONMENTAL MANAGEMENT

6.1 Contamination Management and Emergency Response

6.1.1 Spill Prevention and Response

- 6.1.1.1 Project Co shall prepare and implement a Spill prevention and response plan (a “**Spill Prevention and Response Plan**”). Project Co's Spill Prevention and Response Plan shall set out the measures Project Co will take to prevent Spills of chemicals, Wastes and other pollutants, and manage or otherwise mitigate the effects of any such Spills. Project Co's Spill Prevention and Response Plan shall consider site-specific characteristics, and include the following:
 - (a) the types and nature of Hazardous Substances, chemicals, Wastes and other pollutants to be used;
 - (b) the facilities and procedures to be used for storing and handling such materials, including Spill response, containment and clean-up materials;
 - (c) monitoring and inspection procedures, including monthly inspections of Spill response and safety equipment, to ensure that management requirements are maintained and that inspections are documented;
 - (d) employee training on the storage and use of chemicals, Wastes and other pollutants and the prevention of Spills;
 - (e) subsurface infrastructure (for example, weeping tile, infiltration galleries, etc.) that may influence the destination of any Spill material;
 - (f) the identification of municipal and natural discharge locations (for example, municipal catch basins) and drainage pathways on the Lands, and a description of the direction of flow in the event of a Spill. Locations shall be outlined in a figure, including nearby waterbodies, if any;

- (g) Spill response procedures for each type of material that may be spilled, and the various environmental media that may be affected (for example, atmosphere, surface water, groundwater, ground surface);
 - (h) procedures for clean-up and restoration of surfaces and environmental media that may be affected by the Spill; and
 - (i) procedures for notification and reporting of Spill events to Project Co Parties and to Governmental Authorities, as applicable.
- 6.1.1.2 Project Co shall submit the Spill Prevention and Response Plan to Contracting Authority for review in accordance with Schedule 10 – Review Procedure and in accordance with submission timeframe set out in Appendix B-2 to this Schedule 17.
- 6.1.1.3 Project Co shall make available a hard copy of the latest revision of the Spill Prevention and Response Plan in all site trailers and all Site Offices.
- 6.1.1.4 After each and any occurrence of a Spill, irrespective of the quantity or characteristics of the material spilled, Project Co shall prepare and submit a Spill prevention and response occurrence report (a “**Spill Prevention and Response Occurrence Report**”) to Contracting Authority in accordance with the submission timeframe set out in Appendix B-2 to this Schedule 17. The Spill Prevention and Response Occurrence Report shall summarize how all Spill Prevention and Response Plan activities were implemented during the remediation and management of the occurrence of the Spill and the associated outcomes, and shall include:
- (a) the date and time when the Spill was discovered;
 - (b) a description of the substance spilled, including the relevant safety data sheet;
 - (c) a description of the location of the Spill (UTM coordinates and municipal address) and a figure depicting the location relative to any municipal and natural discharge locations (for example, municipal catch basins) and drainage pathways on the Lands, and the property boundary;
 - (d) the estimated quantity released and area or volume impacted;
 - (e) a detailed description of estimated damages caused by the Spill;
 - (f) a description of any Spill response actions undertaken by Project Co during the remediation and management of the occurrence and the associated outcomes;

- (g) a description of whether the Spill entered the natural environment, including the soil, groundwater, surface water, storm drain, or other natural features;
- (h) a description of whether the Spill entered lands outside of the Lands;
- (i) a description of any Governmental Authorities or other third parties notified of the Spill, including date and time of notification and names of parties notified, if applicable, and any reference number assigned to the release by notified parties;
- (j) a description of any direction provided by a Governmental Authority in response to notification and status of any actions related to that direction, if applicable;
- (k) results of sampling and analysis, if undertaken, including a figure depicting the location of the samples collected;
- (l) photographs of the Spill at the time of discovery, before response actions were undertaken and after response actions were completed;
- (m) a root cause analysis;
- (n) any waste tickets or manifests and receiving facility information for any contamination media shipped off site;
- (o) remediation activities undertaken;
- (p) restoration activities to return impacted area to original conditions, including a description of quality and quantity of material imported to site for backfill, if any;
- (q) a description of Project Co’s actions to prevent further Spills; and
- (r) a tracking log of all Spills.

6.1.1.5 Project Co shall prepare and submit a Spill prevention and response implementation report (a “**Spill Prevention and Response Implementation Report**”) as part of the Substantial Completion Environmental Report to Contracting Authority for review in accordance with Schedule 10 – Review Procedure and the submission timeframe set out in Appendix B-2 to this Schedule 17. The Spill Prevention and Response Implementation Report shall summarize how all Spill Prevention and Response Plan activities were implemented during the completion of the Construction Activities and the associated outcomes.

6.1.2 Designated Substances and Hazardous Materials Management Plan

- 6.1.2.1 Contracting Authority shall provide Project Co with designated substance surveys available at the time of issuance of this document and in accordance with the Environmental Reference Documents outlined in Section 2.1. Project Co shall be responsible for completing designated substance surveys for all properties where reports are not provided as identified in Appendix B-1 to this Schedule 17.
- 6.1.2.2 Project Co acknowledges and agrees that Good Industry Practice as it relates to management of Designated Substances and Hazardous Materials includes completion of surveys of Designated Substances and Hazardous Materials sufficiently in advance of the commencement of design for the Works and Construction Activities, including demolition activities, so as to allow for adequate understanding and mitigation measures with respect to the abatement and management of Designated Substances and Hazardous Materials during the Works.
- 6.1.2.3 Project Co shall complete a Designated Substances and Hazardous Materials survey for all structures and buildings listed in Schedule 35 – Lands to be occupied, modified or demolished that may require a Designated Substances and Hazardous Materials survey in accordance with Applicable Law, including O. Reg. 490/09, guidelines, and/or PLAA requirements where one is not currently available.
- 6.1.2.4 Project Co shall prepare and implement a Designated Substances and Hazardous Materials management plan (a “**Designated Substances and Hazardous Materials Management Plan**”). Project Co shall submit the Designated Substances and Hazardous Materials Management Plan to Contracting Authority for review in accordance with Schedule 10 – Review Procedure and the submission timeframe set out in Appendix B-1 to this Schedule 17. The Designated Substances and Hazardous Materials Management Plan shall include:
- (a) the process by which Project Co will identify Designated Substances and Hazardous Materials prior to and during the performance of the Works including protocols for surveying and sampling materials for the presence of Designated Substances and Hazardous Materials;
 - (b) how Project Co will manage all Designated Substances and Hazardous Materials, including abatement, handling, transportation, testing, disposal and/or ultimate disposition of all Designated Substances and Hazardous Materials generated as part of the Construction Activities, including management of Designated Substances and Hazardous Materials associated with building demolition (including any Demolition), building dismantling or preservation of built heritage resources and cultural heritage landscapes as applicable;
 - (c) the general principles that Project Co will apply for managing the removal of Designated Substances and Hazardous Materials;

- (d) Project Co’s over-arching Designated Substances and Hazardous Materials management strategy in terms of sustainable principles and compliance with Applicable Law and best practices;
 - (e) locations, types and estimated quantities of Designated Substances and Hazardous Materials to be abated, managed, removed by Project Co during Construction Activities;
 - (f) methods for identifying data gaps in Designated Substances and Hazardous Materials survey reports and procedures for addressing data gaps prior to abatement activities, including locations not addressed by Designated Substances and Hazardous Materials survey reports such as utility conduits and asphalt pavement;
 - (g) Project Co’s protocols for safe handling, abatement, management and removals, including disposal requirements;
 - (h) how Project Co will ensure that no impacts will result to adjacent properties during the abatement, handling, management or removal of Designated Substances and Hazardous Materials;
 - (i) how Project Co will conduct its activities in compliance with the Occupational Health and Safety Act (Ontario) and Applicable Law;
 - (j) Project Co’s contingency plans to mitigate impacts; and
 - (k) Project Co’s reporting procedures to document and report to Contracting Authority how all management activities, best practices and mitigation measures have been implemented.
- 6.1.2.5 Project Co shall be responsible for the characterization, testing and analysis of Designated Substances and Hazardous Materials that requires disposal or management outside of the Works to the satisfaction of the receiver site in accordance with Applicable Law;
- 6.1.2.6 Project Co shall prepare and submit a Designated Substances and Hazardous Materials implementation report (a “**Designated Substances and Hazardous Materials Implementation Report**”) as part of the Substantial Completion Environmental Report to Contracting Authority for review in accordance with Schedule 10 – Review Procedure and the submission timeframe set out in Appendix B-2 to this Schedule 17. The Designated Substances and Hazardous Materials Implementation Report shall summarize how all Designated Substances and Hazardous Materials Management Plan activities were implemented during the completion of the Works and the associated outcomes, and shall include:

- (a) an inventory of all Designated Substances and Hazardous Materials generated and disposed off-site by the Works. This inventory shall include the following details:
 - (i) the municipal address of receiver;
 - (ii) the name of receiver site owner and operator;
 - (iii) the Governmental Authority having jurisdiction over the receiver;
 - (iv) the type of Environmental Approval under which the receiver is operating;
 - (v) the total quantity of Designated Substances and Hazardous Materials transported to each receiver;
 - (vi) the description of the source of the Designated Substances and Hazardous Materials transported to each receiver;
 - (vii) a description of the number of samples collected and analyzed and a list of parameters included in the analyses, including a figure depicting sampling locations, if applicable;
 - (viii) an electronic copy of the certificate(s) of analysis for the samples collected and analyzed; and
 - (ix) an electronic copy of the Waste manifests or shipping documentation associated with the Designated Substances and Hazardous Materials transported to each receiver; and
- (b) certification by the Designated Substances and Hazardous Materials Specialist that the Designated Substances and Hazardous Materials transported to each receiver is compliant with receiver requirements.

6.1.3 Hazardous Substances Brought onto the Lands

- 6.1.3.1 Notwithstanding any Applicable Law or any other provision in this Agreement to the contrary, all products and materials, goods or other items which in their natural, original state, or through environmental transformation or degradation contain Hazardous Substances, that are brought onto the Lands by Project Co or any Project Co Party or any person for whom Project Co is at law responsible shall be and remain the sole and exclusive property and responsibility of Project Co and shall not become the property or responsibility of Contracting Authority, notwithstanding their incorporation into or affixation to the Lands, the Project Co Infrastructure or New Third Party Infrastructure and notwithstanding any termination or expiration of this Agreement, except to the extent to which the

products and materials, goods or other items are environmentally transformed or degraded as a result of an act or omission of someone other than Project Co or any Project Co Party or any person for whom Project Co is at law responsible. Any resulting Contamination at the Lands in respect of any Hazardous Substances so brought onto the Lands and the remediation and/or removal thereof and the cost of such remediation and/or removal shall be the sole responsibility of Project Co, except to the extent to which the products and materials, goods or other items are environmentally transformed or degraded as a result of an act or omission of someone other than Project Co or any Project Co Party or any person for whom Project Co is at law responsible.

6.1.3.2 Notwithstanding the obligation set out in Section 6.1.3.1, Project Co is prohibited from using any materials identified in Appendix D of this Schedule 17 in carrying out Project Co responsibilities.

6.1.4 Notification Requirements in Respect of Contamination and Designated Substances and Hazardous Materials

6.1.4.1 Without limiting the notification obligations of Project Co in Section 18.3 (*Contamination*) of this Agreement in respect of the management of Contamination, Project Co shall:

- (a) immediately notify, within twenty-four hours or less, Contracting Authority of:
 - (i) the discovery of Contamination (e.g., visual/olfactory observations pending receipt of analytical results);
 - (ii) the discovery of Designated Substances and Hazardous Materials;
 - (iii) any Discharge or Spill of any Hazardous Substance on, under, at, from or to the Lands, together with full particulars of such Discharge or Spill including the time and location of the Discharge or Spill, the time Governmental Authorities were notified, names of parties notified, a detailed description of estimated damages caused, suffered or caused by the Discharge or Spill and remedial action taken by Project Co; and
 - (iv) any notice, claim, action or other proceeding by any person against Project Co or any Project Co Party or third party relating to the Work concerning a discovery of potential or actual Contamination or alleged Discharge or Spill of a Hazardous Substance or Designated Substances and Hazardous Materials.

6.1.4.2 The Notice provided by Project Co to Contracting Authority pursuant to Section 6.1.4.1 shall include the following minimum information:

- (a) date and time when the Contamination or Designated Substances and Hazardous Materials was discovered;
- (b) a description of the Contamination or Designated Substances and Hazardous Materials identified including the Hazardous Substance(s) suspected or identified and media impacted;
- (c) location of the Contamination or Designated Substances and Hazardous Materials;
- (d) estimated volume or quantity of the Contamination or Designated Substances and Hazardous Materials;
- (e) proposed method for handling and management of the Contamination or Designated Substances and Hazardous Materials;
- (f) preliminary schedule for works related to the Contamination or Designated Substances and Hazardous Materials; and
- (g) schedule impacts to Project Co due to discovery of the Contamination or Designated Substances and Hazardous Materials.

6.1.4.3 In addition to notifying the Contracting Authority Representative in accordance with Section 6.1.4.1, where required by Applicable Law, Project Co shall notify the relevant Governmental Authority of any Discharge or Spill of a Hazardous Substance or Designated Substances and Hazardous Materials on, under, at, from or to the Lands.

6.1.5 Environmental Site Assessments

6.1.5.1 Project Co acknowledges and agrees that Good Industry Practice as it relates to management of Contamination includes completion of environmental site assessments, including Phase Two Environmental Site Assessments, conducted in accordance with Ontario Regulation 153/04 and CSA Standard Z769-00 (R2018), as amended from time to time, sufficiently in advance of the commencement of design for the Works and Construction Activities, including excavation activities, so as to allow for adequate understanding and mitigation measures with respect to the existence of Contamination on, under, or near the Site including:

- (a) the potential for migration of Contamination as a result of Construction Activities; and
- (b) design and engineering controls that may need to be implemented by Project Co to ensure that the Contamination is appropriately managed, including design and implementation of water treatment plants to ensure compliance with permits or other Applicable Law.

- 6.1.5.2 Project Co shall undertake a due diligence risk assessment for all stations and Emergency Egress Building based on the technical requirements of Ontario Regulation 153/04, as amended, for purposes of due diligence only, to address the presence of contaminants (including volatile organic compounds such as tetrachloroethylene and its breakdown products and other potential contaminants) in soil and groundwater (the “**Due Diligence Risk Assessment**”). Subject to approval from Contracting Authority on a case-by-case basis, a Due Diligence Risk Assessment may not be required for each station and Emergency Egress Building. The Due Diligence Risk Assessment shall be submitted to Contracting Authority for review within the submission timeframe set out in Appendix B-2 to this Schedule 17. The Due Diligence Risk Assessment shall:
- (a) include any risk management measure recommendations that would need to be included into the Project design; and
 - (b) be authored by a Qualified Person for risk assessment, as described in Ontario Regulation. 153/04.
- 6.1.5.3 Project Co will be required to comply with site-specific requirements for the Gerrard/Carlaw north TOC site as outlined in the report listed in Appendix B-1 to this Schedule 17.
- 6.1.5.4 Project Co shall be responsible for completing Phase Two Environmental Site Assessments reports for all properties where reports are not provided as identified in Appendix B-1 to this Schedule 17.
- 6.1.6 Management, Removal and Remediation of Contamination
- 6.1.6.1 If Project Co encounters Contamination that is not addressed in the Soil and Excavated Material Management Plan or the Groundwater Management and Dewatering Plan, and that:
- (a) Project Co is responsible for pursuant to Section 18.3 (*Contamination*) of this Agreement;
 - (b) Contracting Authority is responsible or potentially responsible for pursuant to Section 18.3 (*Contamination*) of this Agreement and, only if Contracting Authority issues an instruction pursuant to Section 18.3 (*Contamination*) of this Agreement; or
 - (c) assignment of responsibility in accordance with Section 18.3 (*Contamination*) of this Agreement is in dispute or pending and, only if Contracting Authority issues an instruction pursuant to Section 18.3 (*Contamination*) of this Agreement;
- unless otherwise instructed by Contracting Authority, Project Co shall:

- (d) within the timeframe specified by Contracting Authority in Appendix B-2 to this Schedule 17, prepare and submit to Contracting Authority, in accordance with Schedule 10 – Review Procedure, a plan for the management of the Contamination (“**Contamination Management Plan**”) in accordance with Section 6.1.6.2, Applicable Law or as otherwise required under this Agreement; or
 - (e) confirm, by Notice to Contracting Authority, that no such remediation or removal of the Contamination is required by Applicable Law.
- 6.1.6.2 Each of Project Co’s Contamination Management Plans shall be completed and signed off by Project Co’s Qualified Person, and should at minimum include:
- (a) the date and time that the Contamination was discovered;
 - (b) a description of the Contamination including the location (municipal address and/or UTM coordinates) and a figure depicting the location of the Contamination;
 - (c) a detailed description of the circumstances under which the Contamination was discovered, including the preliminary field assessment and observations;
 - (d) a detailed description of the handling and management of the Contamination prior to submittal of the Contamination Management Plan;
 - (e) a detailed description of the preliminary field investigation including date, time and depth of samples collected, sampling methods, number of samples collected, chemical parameters, media tested and an explanation of the delineation method for Contamination;
 - (f) a figure depicting sampling locations, sample exceedances and estimated vertical and horizontal extent of the Contamination in relation to the Lands;
 - (g) copies of borehole and test pit logs for sample locations related to the Contamination, including soil description and classification;
 - (h) copies of laboratory certificates of analysis for the samples collected, including grain size analysis (if applicable);
 - (i) sampling and analysis requirements to develop the implementation plan set out in Section 6.1.6;
 - (j) a description of Contamination management options and Project Co’s preferred management option, including a description of whether

Contamination containment measures are required to avoid re-contamination or Contamination migration;

- (k) an implementation plan, including a detailed description of how Contamination will be managed and estimated quantities of soil and groundwater to be disposed outside the Lands and reused within the Lands, if applicable;
 - (l) any impact to the Baseline Works Schedule and any impact to the Critical Path caused by the discovery of Contamination;
 - (m) additional costs, if any, associated with incremental measures required to manage the Contamination;
 - (n) name and address of the receiver site for the Contamination;
 - (o) additional information as requested by Contracting Authority; and
 - (p) rationale for assigning responsibility for the Contamination, in accordance with Section 18.3 (*Contamination*) of this Agreement, including an assessment and comparison of the discovered Contamination characteristics against the characteristics of Project Co Contamination.
- 6.1.6.3 Project Co shall implement the Contamination Management Plan submitted in accordance with Section 6.1.6 upon receipt of a “NO COMMENT” notification from Contracting Authority in accordance with Schedule 10 – Review Procedure.
- 6.1.6.4 Project Co’s Qualified Person shall supervise the extraction, transport, removal, disposal or discharge of contaminated media identified in the Contamination Management Plan.
- 6.1.6.5 In accordance with Applicable Law, Project Co shall be responsible for the characterization, testing, and analysis of soil and groundwater that requires off-Site disposal, off-Site reuse or on-Site reuse, to the satisfaction of the receiver or disposal site and to the satisfaction of Contracting Authority.
- 6.1.6.6 Project Co shall be responsible for Resource Productivity and Recovery Authority Hazardous Waste Program Registry generator registration and recordkeeping for disposal of regulated Waste, as applicable, in accordance with Section 6.11.3.
- 6.1.6.7 Project Co shall update the Contamination Management Plan with additional confirmatory information following the implementation of the Contamination Management Plan (the “**Updated Contamination Management Plan**”) and Project Co shall submit such updated plan to Contracting Authority in accordance with the submission timeframe set out in Appendix B-2 to this Schedule 17. The Updated Contamination Management Plan shall include:

- (a) a summary of the information presented in the Contamination Management Plan, as described in Section 6.1.6;
- (b) a detailed description of the handling and management of the Contamination following submittal of the Contamination Management Plan;
- (c) a detailed description of field investigations conducted during implementation of the Contamination Management Plan including date, time and depth of samples collected, sampling methods, number of samples collected, chemical parameters, media tested and explanation of the delineation method for Contamination;
- (d) a figure depicting sampling locations, sample exceedances and vertical and horizontal extent of the Contamination remediated in relation to the Lands;
- (e) copies of borehole and test pit logs for sample locations related to the Contamination, including soil description and classification;
- (f) electronic copies of laboratory certificates of analysis for the samples collected, including grain size analysis (if applicable);
- (g) quantity of Soil and groundwater disposed outside the Lands and reused within the Lands;
- (h) name and address of the receiver site for the Contamination;
- (i) electronic copies of Waste manifests or bills of lading;
- (j) a description of Contamination containment measures employed to avoid re-contamination or Contamination migration;
- (k) a description of whether the Contamination entered lands outside of the Lands;
- (l) a description of post-implementation monitoring or sampling needed; and
- (m) signature of Project Co's Qualified Person who supervised the implementation of remediation activities and preparation of the Updated Contamination Management Plan.

6.1.6.8 Project Co shall evaluate reuse options to consider Site-specific excess Soil quality criteria in cases where Soil is geotechnically suitable for reuse as engineered fill, including where such Soil may be subject to some reconditioning such as drying

or wetting, but Soil quality does not meet the applicable generic excess Soil quality standard.

6.1.6.9 Project Co shall reuse (rather than remove or replace), as feasible, as much Soil on the Lands as possible in a manner that is consistent with Ontario Regulation 153/04, Ontario Regulation 406/19 and the MECP’s Rules for Soil Management and Excess Soil Quality Standards, as amended, provided that Project Co complies with its obligations under this Agreement.

6.1.7 Management, Removal and Remediation of Designated Substances and Hazardous Materials

6.1.7.1 If Project Co encounters known Designated Substances and Hazardous Materials that is not addressed in the Designated Substances and Hazardous Materials Management Plan, and that:

- (a) Project Co is responsible for pursuant to Section 18.3 (*Contamination*) of this Agreement; or
- (b) Contracting Authority is responsible or potentially responsible for pursuant to Section 18.3 (*Contamination*) of this Agreement and, only if Contracting Authority issues an instruction pursuant to Section 18.3 (*Contamination*) of this Agreement,

unless otherwise instructed by Contracting Authority, Project Co shall:

- (c) within the timeframe specified by Contracting Authority in Appendix B-2 to this Schedule 17, prepare and submit to Contracting Authority, in accordance with Schedule 10 – Review Procedure, a plan for the management of the Designated Substances and Hazardous Materials (“**Designated Substances and Hazardous Materials Discovery Plan**”) in accordance with this Section 6.1.7, Applicable Law or as otherwise required under this Agreement; or
- (d) confirm, by Notice to Contracting Authority, that no such remediation or removal of the Designated Substances and Hazardous Materials is required by Applicable Law within ten (10) Business Days of the discovery of any Designated Substances and Hazardous Materials pursuant to this Section 6.1.7.

6.1.7.2 Each Designated Substances and Hazardous Materials Discovery Plan shall include:

- (a) the date and time when the Designated Substances and Hazardous Materials was discovered;

- (b) a description of the Designated Substances and Hazardous Materials identified including location (municipal address and/or UTM coordinates) and a figure depicting the location of the Designated Substances and Hazardous Materials;
- (c) a detailed description of the circumstances under which the Designated Substances and Hazardous Materials was discovered, including the preliminary field assessment and observations;
- (d) a detailed description of the handling and management of the Designated Substances and Hazardous Materials prior to submittal of the Designated Substances and Hazardous Materials Discovery Plan;
- (e) a detailed description of the preliminary field investigation including date, time and depth of samples collected, sampling methods, number of samples collected, parameters and building materials tested;
- (f) a figure depicting sampling locations, sample exceedances, estimated quantity extent of the Designated Substances and Hazardous Materials in relation to the Works;
- (g) electronic copies of laboratory certificates of analysis for the samples collected (if applicable);
- (h) sampling and analysis requirements to develop the implementation plan;
- (i) implementation plan, including how Designated Substances and Hazardous Materials will be managed and estimated quantities of Designated Substances and Hazardous Materials requiring management or disposal, where applicable;
- (j) any impact to the Baseline Works Schedule and any impact to the Critical Path caused by the discovery of Designated Substances and Hazardous Materials;
- (k) additional costs, if any, associated with incremental measures required to manage the Designated Substances and Hazardous Materials; and
- (l) rationale for assigning responsibility for the Designated Substances and Hazardous Materials, as per Section 18.3 (*Contamination*) of this Agreement, including an assessment and comparison of the discovered designated substances characteristics with information provided as part of Background Information.

If Project Co is required to prepare a Designated Substances and Hazardous Materials Discovery Plan as a result of Designated Substances and Hazardous

Materials, Project Co may be entitled to an Adjustment, subject to and in accordance with Schedule 21 – Risk Allocations.

- 6.1.7.3 Project Co shall implement the Designated Substances and Hazardous Materials Discovery Plan submitted in accordance with this Section 6.1.7 upon receipt of a “NO COMMENT” notification from Contracting Authority in accordance with Schedule 10 – Review Procedure.
- 6.1.7.4 Project Co’s Designated Substances and Hazardous Materials Specialist shall supervise the removal, transport and disposal of building materials identified in the Designated Substances and Hazardous Materials Discovery Plan.
- 6.1.7.5 In accordance with Applicable Law, Project Co shall be responsible for the characterization, testing, and analysis of Designated Substances and Hazardous Materials that requires off-Site disposal to the satisfaction of the disposal site.
- 6.1.7.6 Project Co shall be responsible for Resource Productivity and Recovery Authority Hazardous Waste Program Registry generator registration and recordkeeping for disposal of regulated Waste, as applicable, in accordance with Section 6.11.3.
- 6.1.7.7 Project Co shall update the Designated Substances and Hazardous Materials Discovery Plan with additional confirmatory information following the implementation of the Designated Substances and Hazardous Materials Discovery Plan (the “**Updated Designated Substances and Hazardous Materials Discovery Plan**”) and Project Co shall submit such updated plan to Contracting Authority in accordance with the submission timeframe set out in Appendix B-2 to this Schedule 17. The Updated Designated Substances and Hazardous Materials Discovery Plan shall include:
- (a) a summary of the information presented in the Designated Substances and Hazardous Materials Discovery Plan, as described in this Section 6.1.7;
 - (b) a detailed description of the handling and management of the Designated Substances and Hazardous Materials following submittal of the Designated Substances and Hazardous Materials Discovery Plan;
 - (c) the municipal address of receiver;
 - (d) the name of receiver site owner and operator;
 - (e) the quantity of Designated Substances and Hazardous Materials transported to each receiver;
 - (f) a description of the source of the Designated Substances and Hazardous Materials transported to each receiver;

- (g) a description of the number of samples collected and analyses and a list of parameters included in the analyses, including a figure depicting sampling locations, if applicable;
- (h) an electronic copy of the certificate(s) of analysis for the samples collected and analyzed;
- (i) an electronic copy of the Waste manifests or shipping documentation associated with the Designated Substances and Hazardous Materials transported to each receiver; and
- (j) the signature of Project Co’s Designated Substances and Hazardous Materials Specialist who supervised the implementation of abatement activities and preparation of the Updated Designated Substances and Hazardous Materials Discovery Plan.

6.2 Soils

6.2.1 Soils – General

- 6.2.1.1 In the context of media managed in place, Soil, Excess Soil or sediment is considered “contaminated” if the quality exceeds the applicable Ministry of the Environment, Conservation and Parks Generic Site Condition Standards at the Site for use under Part XV.1 of the Environmental Protection Act (O. Reg. 153/04) or site-specific standards approved by MECP.
- 6.2.1.2 For Soil and Excess Soil extracted during construction and requiring management outside the Project Area, extracted Soil and Excess Soil is considered contaminated if the following conditions are met:
 - (a) the Soil or Excess Soil quality, as assessed and interpreted in alignment with the requirements of O. Reg. 406/19, exceeds the Table 3.1 Excess Soil Quality Standards for Industrial, Commercial and Community Property Use or Table 3.1 Leachate Standard Levels for Industrial, Commercial and Community Property Use (where testing is required). The assessment of Soil or Excess Soil quality must take into consideration O. Reg. 406/19 allowances for interpreting data (e.g., statistical compliance assessment);
 - (b) the Excess Soil quality exceeds the site-specific standard in an instrument for a receiver site or a document (i.e., fill management plan) referenced by an instrument for a receiver site issued by a municipal, provincial or federal agency; and

- (c) the Excess Soil quality exceeds the site-specific standards developed by a Qualified Person using methods in accordance with O. Reg 406/19 (i.e., Beneficial Reuse Assessment Tool).
- 6.2.1.3 Notwithstanding the coming into force provisions set out in Section 30 of O. Reg. 406/19, Project Co shall comply with O. Reg. 406/19 throughout the Project Term.
- 6.2.2 Environmental Condition
 - 6.2.2.1 Contracting Authority shall provide Project Co with all relevant Technical Reports listed in Appendix B to this Schedule 17, available at the time of issuance of this document and in accordance with the Environmental Reference Documents outlined in Section 2.1.
 - 6.2.2.2 Project Co shall be responsible for identifying, obtaining and complying with all applicable records of site condition and certificates of property use based on property impacts determined by Project Co’s design, including mitigation and monitoring requirements;
 - (a) Project Co shall be responsible for completing records of site condition and obtaining or updating certificates of property use where needed for the Works.
 - (b) Project Co shall review the applicable Environmental Reference Documents in accordance with Section 2.1 to assess the actual or potential impacts to Soil and/or groundwater, to inform the Project design and to inform the development of the requirements for Soil management in accordance with Section 6.2.3 and the Soil and Excavated Material Management Plan in accordance with Section 6.2.4
 - 6.2.2.3 Project Co shall utilize Schedule 44 – Geotechnical Baseline Report and the Geotechnical Baseline Statements therein as the reference document by which the basis of the estimated quantities and categories for Soils and excavated materials are to be defined.
 - 6.2.2.4 Prior to handback of Lands to Contracting Authority or to RSSOM Project Co, Project Co shall be responsible for providing Contracting Authority with an environmental condition summary (each an “**Environmental Condition Summary Report**”) for each parcel of Lands within the Works, in accordance with Schedule 10 – Review Procedure and Appendix B-2 to this Schedule 17 which includes:
 - (a) a general description of Project Co’s Construction Activities and Project Co’s use of the subject parcel throughout the Project Term; and

- (b) information required by Section 5.2.6.2 (a) through (f) of the Substantial Completion Environmental Report cross referenced to each parcel.

6.2.3 Compliance Obligations with Ontario Regulation 406/19

6.2.3.1 Without limiting Project Co’s obligations to perform the Works at all times in accordance with Applicable Law, Project Co shall:

- (a) perform the obligations of the Project Leader and the operator of the Project Area for the Works under Ontario Regulation 406/19;
- (b) comply, and cause each Project Co Party to comply, with Applicable Law relating to the management of excavated and Excess Soil, including all requirements of Ontario Regulation 406/19;
- (c) develop and implement plans, procedures, assessments, reports and systems to ensure the Works are performed in compliance with all requirements of Ontario Regulation 406/19 and this Schedule 17, including all such requirements applicable to Project Co in performing its obligations of the Project Leader and the operator of the Project Area; and
- (d) plan and complete all Excess Soil management activities required for the performance of the Works in compliance with the MECP’s Management of Excess Soil – A Guide for Best Management Practices – PIBS 9603e, as amended from time to time.

6.2.3.2 Project Co shall retain the services of a Qualified Person to provide expertise in producing Project Co’s deliverables and provide oversight. The Qualified Person overseeing Soil, Excess Soil and excavated material management for Project Co shall have no conflict of interest.

6.2.3.3 Project Co shall comply with the requirements of Ontario Regulation 406/19 and prepare, amend as necessary, and implement the requirements as outlined in MECP’s Rules for Soil Management and Excess Soil Quality Standards, as amended from time to time, when managing Excess Soil, and shall provide the following, where applicable and notwithstanding any delays in the implementation of Ontario Regulation 406/19:

- (a) assessment of past uses report(s) for each Project Area;
- (b) Soil sampling and analysis plan(s) for each Project Area;
- (c) Soil characterization report(s) for each Project Area;
- (d) Excess Soil destination assessment report(s) for each Project Area;

- (e) implementation of a tracking system, as further described in Section 5.4.4;
 - (f) written opinion of Project Co’s Qualified Person stating that Excess Soil is suitable for transport to each receiver site and/or Class 2 Soil management site at which the Excess Soil will be deposited;
 - (g) written consent from the operator of each receiver site and/or Class 2 Soil management site at which the Excess Soil will be deposited, as required per Ontario Regulation 406/19; and
 - (h) Project Co shall file and update notice(s) in the Resource Productivity and Recovery Registry per Ontario Regulation 406/19, as required, for each Project Area, source site and receiver site within the Lands.
- 6.2.3.4 Project Co shall submit all deliverables as described in Section 6.2.3 to Contracting Authority and Contracting Authority’s Qualified Person in accordance with Schedule 10 – Review Procedure.
- 6.2.4 Soil and Excavated Material Management Plan
- 6.2.4.1 Project Co shall be responsible for designing and constructing the Project Co Infrastructure so that the monitoring and maintenance requirements related to Soil and Excavated Material Management Plan prepared in accordance with Section 6.2.4.4 can be achieved during the operation and maintenance of the Ontario Line Subway System.
 - 6.2.4.2 Prior to Project Substantial Completion, Project Co shall provide all information and data regarding infrastructure, maintenance and monitoring requirements related to Soil and excavated materials management to Contracting Authority for the benefit of RSSOM Project Co during the construction, installation, testing and commissioning phase and subsequent operations for the RSSOM Project.
 - 6.2.4.3 Project Co shall comply with all applicable records of site condition and certificates of property use for properties listed in Schedule 35 – Lands based on property impacts determined by Project Co’s design.
 - 6.2.4.4 Project Co shall prepare and implement a soil and excavated material management plan (a “**Soil and Excavated Material Management Plan**”). The Soil and Excavated Material Management Plan shall set out how Project Co will address management of all excavated material (that is, Soil, Liquid Soil, rock, Excess Soil and solid Waste, including Contamination), including handling, storage, dewatering, stockpiling, transportation, testing, reuse wherever feasible and applicable, disposal and/or ultimate disposition of all excavated material generated as part of Project Co’s performance of its obligations under this Agreement, including the Works. The Soil and Excavated Material Management Plan shall comply with the requirements of Ontario Regulation 153/04, Ontario Regulation

406/19 and, for clarity, all obligations thereunder applicable to Project Co in performing the obligations of the Project Leader and Applicable Law, and shall include the following:

- (a) the general principles that Project Co will apply for managing Soil, Excess Soil, and excavated materials;
- (b) Project Co’s over-arching Soil, Excess Soil, and excavated materials management strategy in terms of sustainable principles and compliance with regulatory requirements and best practices;
- (c) how Excess Soil and excavated materials generated by the Works will be managed according to Applicable Law, including preparation and implementation of all plans and reports set out in Ontario Regulation 406/19, as applicable;
- (d) Project Co’s definition of each Project Area per Ontario Regulation 406/19 within the Lands;
- (e) protocols for characterizing Soil, Excess Soil, and excavated material quality and determining management, including beneficial reuse and Waste disposal requirements;
- (f) estimated quantities by location in each Project Area and by volume and mass of:
 - (i) total Soil, Excess Soil, and excavated materials resulting from the Works;
 - (ii) the Soil, Excess Soil, and excavated materials that will be reused in the Works; and
 - (iii) the Excess Soil and excavated materials to be transported from the Project Area for reuse or disposal and the proposed methods for minimizing these quantities;
- (g) procedures for testing and characterizing the Soil, Excess Soil, and excavated material in compliance with Applicable Law, with consideration given to the regulatory options for confirming compliance with applicable standards (for example, statistical compliance, averaging two or more samples taken from the same sampling points at the same sampling location and depth);
- (h) a description of how Soil, Excess Soil, Liquid Soil and excavated materials will be temporarily staged or stored at each Project Area or other worksites for reuse or subsequent transfer for reuse, treatment or disposal with regard

to potential environmental effects and impacts to human health and safety, including any methods to dewater or otherwise stabilize the Soil, Liquid Soil and excavated materials and incorporating requirements of other management plans, as applicable;

- (i) methods for minimizing the quantity of materials requiring excavation and management;
- (j) methods to maximize the reuse of excavated material within each Project Area;
- (k) presentation of locations, types and estimated quantities to be disposed outside of the Lands of Contamination identified in Background Information or during the Project Term and procedures for how such Contamination will be managed;
- (l) how the discovery of Contamination not previously identified in Background Information or during the Project Term will be managed including a general plan of action for delineation of and the remediation or removal of such Contamination as detailed in the Contamination Management Plan including a summary template and/or table of contents for a proposed Contamination Management Plan incorporating the minimum requirements as referenced by Section 6.1.6;
- (m) a description of how Project Co will manage Soil, including Aggregate (where sourced from a site other than a pit or quarry licensed under the Aggregate Resources Act), that is imported to each Project Area as part of the Works;
- (n) a description of the procedures to be used by Project Co for determining suitable source sites for importing Excess Soil to the Lands;
- (o) a description of the procedures to be used by Project Co for determining which quality of Excess Soil is suitable for importation to each Project Area;
- (p) a description of how Project Co intends to coordinate with the source site Qualified Person, including what documentation will be requested and reviewed by Project Co and provided to Contracting Authority for review;
- (q) a description of the analytical testing to be completed by Project Co on Excess Soil imported to the Lands; and
- (r) reporting procedures to document how all management activities and best practices have been implemented.

- 6.2.4.5 Notwithstanding the coming into force of future provisions of Ontario Regulation 406/19, Project Co shall comply with Ontario Regulation 406/19 upon commencement of the Construction Activities relating to the Works throughout the Project Term.
- 6.2.4.6 Project Co shall submit the Soil and Excavated Material Management Plan to Contracting Authority for review in accordance with Schedule 10 – Review Procedure and in accordance with the submission timeframe set out in Appendix B-2 to this Schedule 17.
- 6.2.4.7 Project Co shall salvage and stockpile materials from the excavation operations that contain peat, Topsoil, and subsoil materials in separate stockpiles in accordance with Good Industry Practice and in accordance with the requirements of Ontario Regulation 406/19. Project Co shall not allow burial of any peat or Topsoil materials. To the extent possible, with the exception of peat materials, Project Co shall reuse geotechnically and environmentally suitable salvaged Topsoil and subsoil materials in the Works.
- 6.2.4.8 Project Co shall reuse (rather than remove or replace) as much Soil on the Lands as possible in a manner that is consistent with Applicable Law, MECP’s Rules for Soil Management and Excess Soil Quality Standards (as amended from time to time), and MECP’s Management of Excess Soil – A Guide for Best Management Practices-PIBS 9603e, as amended from time to time, provided that Project Co complies with its obligations under this Agreement.
- 6.2.4.9 Project Co shall engage a Qualified Person to evaluate reuse options in cases where Soil and Excess Soil is geotechnically suitable for reuse as engineered fill, even subject to some reconditioning such as drying or wetting but Soil and Excess Soil quality does not meet the applicable generic Excess Soil quality standard.
- 6.2.4.10 If Project Co intends to dispose of Excess Soil and excavated material outside the Lands, for beneficial reuse or disposal as Waste, Project Co shall give a minimum of five (5) Business Days’ Notice to Contracting Authority prior to shipping such Excess Soil or excavated materials to a receiver for the first time and shall demonstrate, to the satisfaction of Contracting Authority, that testing and sampling protocols have been followed to establish concentrations for chemical parameters of concern and that Project Co has complied with Applicable Law. Soil and excavated material to be disposed as waste is to be managed by a licensed waste disposal contractor at an MECP-permitted waste management facility. The Notice shall include:
- (a) a description of the Excess Soil and excavated material to be disposed outside the Lands;
 - (b) the name and location of the intended receiver site;

- (c) the type of Environmental Approval under which the receiver site is operated, written consent of the receiver site to accept the material;
 - (d) a copy of sampling and testing results; and
 - (e) a copy of the opinion of the Qualified Person stating that the Excess Soil and excavated material is suitable for the intended receiver site.
- 6.2.4.11 Project Co shall provide a minimum of five (5) Business Days’ Notice to Contracting Authority prior to importing Excess Soil or excavated materials to a Site for the first time with the name and location of the source, and if applicable, testing results and a Qualified Person’s opinion that the Soil is suitable for the Works.
- 6.2.4.12 Project Co shall ensure that contaminated Excess Soils or Soils exhibiting staining or olfactory evidence of contamination shall not be reused on-site.
- 6.2.4.13 Project Co shall ensure Soils shall be visually examined for staining or olfactory evidence of contamination.
- 6.2.4.14 Project Co shall ensure that Soils are screened in the field during excavation activities with portable field instruments including a photoionization detector (PID), at a weekly basis, or when visual/olfactory evidence of contamination is identified.
- 6.2.4.15 Project Co shall ensure Soil identified as impacted or waste will be segregated from clean materials.
- 6.2.4.16 Project Co shall ensure Soils shall be stockpiled in a clearly designated storage area pending disposal. Signage for stockpiles indicating material quality, soil type, destination site, etc. will be posted as indicated once the stockpiling area is established.
- 6.2.4.17 Project Co shall ensure Soils shall be managed in accordance with applicable regulations under the supervision of the responsible Project Co’s Qualified Person and tracked as required by governing regulations.
- 6.2.4.18 Project Co shall ensure tunnel spoils shall be stored in leakproof containers until they are solidified.
- 6.2.4.19 Project Co shall ensure workers will be required to wear personal protective equipment (PPE), including safety boots, safety glasses, work gloves and hard hat to prevent direct contact with potentially impacted materials.
- 6.2.4.20 Project Co shall ensure impacted soils will be disposed of by licensed waste disposal contractor to a MECP-permitted waste disposal facility.

6.2.5 Soil and Excavated Materials Implementation Report

6.2.5.1 Project Co shall prepare and submit a Soil, Excess Soil, and excavated material management implementation report (a “**Soil and Excavated Material Management Implementation Report**”) as part of the Substantial Completion Environmental Report to Contracting Authority for review in accordance with Schedule 10 – Review Procedure and the submission timeframe set out in Appendix B-2 to this Schedule 17. The Soil and Excavated Material Management Implementation Report shall:

- (a) describe and summarize how all of Project Co’s Soil, Excess Soil, and excavated material management activities have been implemented during the completion of the Works;
- (b) provide a summary of the total quantity by volume per Project Area, and for the entirety of the Works, of Soil, Excess Soil, and excavated material extracted from the Lands, Soil and excavated material that was reused within the Lands, and Soil, Excess Soil, and excavated material that was transported from the Lands for reuse or disposal, including a detailing of quantities transported to each receiver site;
- (c) include an accurate and final inventory at each receiver site of Soil and/or excavated material generated by the Works that cannot be reused on the Lands. This includes MECP licensed facilities, temporary Soil storage areas, commercial fill operations, beneficial Soil Reuse Sites, processing and recycling facilities, landfills and any other receiver site. This inventory shall include the following details and shall cover the period of the Works:
 - (i) the municipal address of receiver site;
 - (ii) the name of receiver site owner and operator;
 - (iii) a copy of the written consent from the operator of each receiver site for placement of Soils and excavated material from the Lands and the time and date such written consent was received;
 - (iv) the date(s) on which notice was filed and updated, as relevant, in the Resource Productivity and Recovery Registry for each receiver site;
 - (v) the name of the Qualified Person overseeing receiver site activities;
 - (vi) the Governmental Authority having jurisdiction over the receiver site;

- (vii) the type of Environmental Approval under which the receiver site is operating, if applicable;
 - (viii) the total volume of Soil, Excess Soil, and/or excavated material transported to the receiver site or another Project Area within the Lands;
 - (ix) the description of the source of the Soil and/or excavated material transported to the receiver site or another Project Area within the Lands;
 - (x) a description of the number of samples collected and analyzed and a list of parameters included in the analyses, including a figure depicting the location(s) of samples collected;
 - (xi) an electronic copy of the certificate(s) of analysis for the samples collected and analyzed;
 - (xii) documentation that a written opinion has been provided by Project Co's Qualified Person prior to Soil, Excess Soil and excavated material shipment outside a Project Area within the Lands stating that the quality of Soil and excavated material shipped to each receiver site or another Project Area within the Lands is suitable for placement at the receiver site in compliance with Applicable Law based upon information reviewed by Project Co's Qualified Person; and
 - (xiii) electronic copies of any Waste manifests or shipping documentation associated with Soil or excavated material exported from the Lands;
- (d) include evidence and certification or declaration by Project Co's Qualified Person that the quality of Soil, Excess Soil, and/or excavated material transported to each receiver site is compliant with the receiver site license, Environmental Approval and applicable regulations;
 - (e) provide a summary of all sources of imported Soil and Excess Soil, including Aggregate (where sourced from a site other than a pit or quarry licensed under the Aggregate Resources Act), including information from Section 5.4.4.8 confirming the quality of the imported Excess Soil is suitable for placement within the Lands in compliance with Applicable Law based on information reviewed by Project Co's Qualified Person; and
 - (f) summarize the information provided to Governmental Authorities related to Excess Soil and excavated materials.

6.2.6 Erosion and Sediment Control

- 6.2.6.1 Project Co shall undertake an erosion risk assessment for each location where Construction Activities are proposed in accordance with the *Erosion and Sediment Control Guide for Urban Construction* (Toronto and Region Conservation Authority, 2019), as amended from time to time, the results of which shall be used to inform the Erosion and Sediment Control Plan.
- 6.2.6.2 Project Co shall prepare and implement erosion and sediment control plans (each an “**Erosion and Sediment Control Plan**”) in compliance with the Erosion and Sediment Control Guide for Urban Construction (TRCA, 2019), or other requirements as stipulated by Governmental Authorities, as amended from time to time. Each Erosion and Sediment Control Plan shall be Site-specific to address local conditions.
- 6.2.6.3 Project Co shall submit the Erosion and Sediment Control Plan to Contracting Authority in accordance with Section 2.2.3 and Schedule 10 – Review Procedure. Each Erosion and Sediment Control Plan shall, at a minimum, describe and include the following:
- (a) a description of land use, topography, drainage, and watercourses;
 - (b) a description of Soils on the site, including erodibility and grain size analysis;
 - (c) a description of the erosion and sediment control measures to be used on the site to manage erosion and the release of sediment to the site and to adjacent sites;
 - (d) a description of how erosion and sediment control measures will be monitored and maintained during the performance of the Works;
 - (e) a description of how the Lands will be stabilized after construction is complete; and
 - (f) erosion and sediment control drawings sealed and signed by an accredited Professional Engineer in Ontario.
- 6.2.6.4 Project Co shall conduct inspections of all protections used to control erosion and sediment on a weekly basis, after significant rainfall and snowmelt events (an event during which at least 15 mm has been received within 24 hours or an event with an intensity of at least 5 mm/hour during which at least 10 mm has been received), and daily during extended rain or snowmelt periods, and identify, correct and document any repairs to protections as required.

- 6.2.6.5 Project Co shall implement erosion and sediment control measures prior to commencement of the Construction Activities at any Site location.
- 6.2.6.6 When restoring and stabilizing disturbed soils, Project Co shall ensure seed mixes are appropriate to the local soil conditions and shall follow the Toronto and Region Conservation Authority *Seed Mix Guidelines* (July 2004), as amended from time to time.
- 6.2.6.7 Project Co shall maintain the sediment and erosion control measures until effective stabilization has been achieved with a minimum ground cover of [REDACTED]%.
- 6.2.6.8 Project Co shall prepare and submit to the Contracting Authority a monthly summary as part of the Monthly Environmental Report as set out in Section 5.2.2, describing the results of inspections and corrective actions for the reporting period in accordance with the Erosion and Sediment Control Guide for Urban Construction (TRCA, 2019), as amended from time to time.
- 6.2.6.9 Project Co shall clean visible loose Soil from trucks leaving the Works.
- 6.2.6.10 Project Co shall cover all trucks loaded with Soil leaving the Works.
- 6.2.6.11 Project Co shall remove stockpiles within forty-five (45) days of Soil placement. Project Co shall tarp stockpiles that are not in use or stored within the Works for more than forty-five (45) days.
- 6.2.6.12 Project Co shall cover exposed ground surfaces that are not in-use for more than forty-five (45) days.
- 6.2.6.13 Project Co shall load Soil from excavations directly onto trucks, when possible.
- 6.2.6.14 Project Co has to ensure street sweeping to occur at a minimum once a week or as-needed, to prevent sediments from leaving the Works.
- 6.2.6.15 Project Co shall ensure that entry and exit locations are inspected daily for tracking of sediment outside the Works.
- 6.2.6.16 Project Co shall use misting or non-hazardous chemical stabilization on an-needed basis during Soil handling as a dust suppression mitigation measure.
- 6.2.6.17 Project Co shall use erosion and sediment control methods such as silt sox or soil berms around stockpiles.
- 6.2.6.18 Project Co shall slope the ground surface such that runoff does not exit the Works.

6.3 Groundwater and Stormwater

6.3.1 Groundwater Management, Dewatering/Unwatering and Construction Process Water Effluent – General

6.3.1.1 Project Co shall be responsible for designing and constructing the Project Co Infrastructure so that the permanent Dewatering/Unwatering requirements can be achieved during the operation and maintenance of the Ontario Line Subway System.

6.3.1.2 For clarity, Project Co shall be responsible for the Project Co Infrastructure as described in the Output Specifications.

6.3.1.3 Prior to Project Substantial Completion, Project Co shall provide all information and data regarding infrastructure, maintenance and monitoring requirements related to permanent Dewatering/Unwatering to Contracting Authority for the benefit of RSSOM Project Co during the construction, installation, testing and commissioning phase and subsequent operations for the RSSOM Project.

6.3.1.4 Project Co shall identify and comply with all applicable records of site condition and certificates of property use for properties listed in Schedule 35 – Lands based on property impacts determined by Project Co design, including mitigation and monitoring requirements.

6.3.1.5 In the context of media managed in place, groundwater and Dewatering/Unwatering effluent is considered “contaminated” if the quality exceeds the applicable Ministry of the Environment, Conservation and Parks Generic Site Condition Standards at the Site for use under Part XV.1 of the Environmental Protection Act (O. Reg. 153/04) or site-specific standards approved by MECP.

6.3.1.6 For groundwater and Dewatering/Unwatering effluent extracted during construction, extracted groundwater and Dewatering/Unwatering effluent is considered “contaminated” if the quality exceeds applicable sewer or stormwater bylaw criteria or other applicable water quality criteria for discharge as applicable to the destination of the groundwater discharge.

6.3.2 Groundwater Management and Dewatering Plan

6.3.2.1 Project Co shall review the applicable Environmental Reference Documents in accordance with Section 2.1 to assess the actual or potential impacts to surface or groundwater, to inform the Project design and to inform the development of the requirements of the Groundwater Management and Dewatering Plan in accordance with Section 6.3.2.3 and Section 3.1.10.2(i) (*Groundwater Control*) of the Output Specifications.

- 6.3.2.2 Project Co shall utilize Schedule 44 – Geotechnical Baseline Report and the Geotechnical Baseline Statements therein as the reference document by which the basis of the estimated quantities and categories of contaminated water are to be defined.
- 6.3.2.3 Project Co shall prepare and implement a groundwater management and Dewatering plan (a “**Groundwater Management and Dewatering Plan**”) that sets out how Project Co will address the management of excess water, groundwater, stormwater, surface water, construction process water and Dewatering/Unwatering effluent generated by the Project during the performance of the Works. The Groundwater Management and Dewatering Plan shall include any Dewatering/Unwatering requirements set out in the Output Specifications and shall include the following:
- (a) the general principles that Project Co will apply for managing groundwater, stormwater, surface water, Dewatering/Unwatering activities and activities generating construction process water;
 - (b) Project Co’s over-arching groundwater, Dewatering/Unwatering and construction process water management in terms of sustainable principles and compliance with regulatory requirements and best practices;
 - (c) locations of anticipated groundwater management, Dewatering/Unwatering activities and activities generating construction process water and estimated timeframes of management activities at each location;
 - (d) estimated quantities of Dewatering/Unwatering effluent and construction process water effluent to be managed throughout the Project Term and proposed methods for minimizing these quantities;
 - (e) how areas of groundwater Contamination will be managed and estimated quantities of contaminated groundwater and other contaminated material to be disposed outside of the Lands;
 - (f) the proposed Environmental Approval in accordance with Schedule 34 – Permits, Licences, Approvals and Agreements for the water taking at each Dewatering location and the municipal or Conservation Authority approval required for the water discharge location;
 - (g) protocols for characterizing groundwater, stormwater, surface water, Dewatering/Unwatering effluent and construction process water effluent quality and determining management, including disposal requirements;
 - (h) how groundwater, stormwater, surface water, Dewatering/Unwatering effluent and construction process water effluent will be treated and

disposed of with regard to Applicable Law and potential environmental effects and impacts to human health and safety, including details of any water treatment system(s) employed, including to process flow diagrams, manufacturer guarantees, maintenance schedule, and standard operating procedures;

- (i) procedures for water testing, containment, classification, treatment, and disposal/discharge of extracted groundwater, stormwater, surface water, Dewatering/Unwatering effluent and construction process water effluent;
- (j) how Project Co will ensure that no impacts will result to adjacent trees, vegetation and ecosystems that may be dependent upon existing, near-surface groundwater conditions;
- (k) how Project Co will conduct its groundwater, stormwater, surface water, and construction process water management activities in compliance with Applicable Law, and MECP, municipal and Conservation Authority Environmental Approvals as outlined in Schedule 34 – Permits, Licences, Approvals and Agreements;
- (l) how Project Co will conduct its Dewatering/Unwatering and/or stormwater management activities in compliance with Good Industry Practice and in consideration of flood management recommendations and Conservation Authority policies;
- (m) how Project Co will comply with all applicable records of site condition, certificates of property use and the TSSA Protocol for Fuel Handling Sites based on property impacts determined by Project Co’s design;
- (n) a monitoring program, including but not limited to monitoring of real-time water quality to measure for parameters such as pH, turbidity, and total suspended solids, to establish baseline conditions and monitor for potential effects of Dewatering/Unwatering on the environment, on migration of Contamination and on the structural integrity of adjacent structures;
- (o) a management plan to (A) predict the potential effects of Dewatering/Unwatering on the environment and on the structural integrity of potentially affected structures, and (B) manage and mitigate potential effects of Dewatering on the environment, on migration of Contamination and on the structural integrity of potentially affected structures, all in coordination with the Geotechnical Instrumentation and Monitoring Plan set out in the Output Specifications;
- (p) contingency plans to mitigate impacts due to Dewatering and/or unexpected groundwater or stormwater discharge volumes; and

- (q) reporting procedures to document how all management activities, best practices and mitigation measures have been implemented.
- 6.3.2.4 Project Co shall submit the Groundwater Management and Dewatering Plan to Contracting Authority for review in accordance with Schedule 10 – Review Procedure and the submission timeframe set out in Appendix B-2 to this Schedule 17.
- 6.3.2.5 If Project Co intends to discharge Dewatering/Unwatering effluent or construction process water effluent, Project Co shall give a minimum of five Business Days’ Notice to Contracting Authority prior to discharging any such Dewatering/Unwatering effluent or construction process water effluent to a receiver site for the first time. The Notice shall include:
- (a) a description of the Dewatering/Unwatering effluent or construction process water effluent;
 - (b) the name and location of the intended receiver;
 - (c) the type of Environmental Approval under which the receiver operates;
 - (d) written approval of the receiver to accept the discharge, if applicable;
 - (e) an electronic copy of the sampling and testing results; and
 - (f) a copy of the opinion of the Hydrogeologist or Qualified Person that the quality of the Dewatering/Unwatering effluent or construction process water effluent to be discharged to each receiver is compliant with the Environmental Approval under which the receiver operates and is not expected to result in Worsened conditions.
- 6.3.2.6 Project Co shall ensure that groundwater from utility relocation work will be hauled off-site or discharged to the municipal sewer system.
- 6.3.2.7 Project Co shall ensure that groundwater hauled off-site will be disposed by a licensed waste disposal contractor to a MECP-permitted waste disposal facility.
- 6.3.2.8 Project Co shall ensure that groundwater discharged to the municipal sewer system will be treated to meet sewer discharge limits in accordance with municipal discharge agreements.
- 6.3.2.9 Project Co shall label the contents of groundwater holding tanks.
- 6.3.2.10 Project Co shall post a sign labeled “Water Treatment System” at the location of water treatment systems, if applicable.

6.3.3 Groundwater Management and Dewatering Implementation Report

6.3.3.1 Project Co shall prepare and submit a groundwater management and Dewatering implementation report (a “**Groundwater Management and Dewatering Implementation Report**”) as part of the Substantial Completion Environmental Report to Contracting Authority for review in accordance with Schedule 10 – Review Procedure and the submission timeframe set out in Appendix B-2 to this Schedule 17. The Groundwater Management and Dewatering Implementation Report shall:

- (a) describe and summarize how all of Project Co’s groundwater management, stormwater management, surface water management, Dewatering/Unwatering activities and activities generating construction process water have been implemented during the completion of the Works;
- (b) provide a summary of the total quantity by volume per discharge location, and for the entirety of the Works, of groundwater, stormwater, surface water, Dewatering/Unwatering effluent and construction process water effluent managed from the Works, including a detailing of quantities transported or discharged to each receiver site and a description of the volumes of water taken from each location and under each PTTW or EASR or other Environmental Approval;
- (c) include an accurate and final inventory at each receiver of groundwater, stormwater, surface water, Dewatering/Unwatering effluent and construction process water effluent generated by the Works, including MECP licensed facilities, storm and sanitary sewer connections, surface water discharge points and any other receiver site, including overland infiltration within the Works. This inventory shall include the following details and shall cover the period of the Works:
 - (i) the municipal address and UTM coordinates of each groundwater, stormwater, surface water, Dewatering effluent and construction process water effluent discharge point;
 - (ii) the municipal address of each receiver site;
 - (iii) the name of each receiver site owner and operator;
 - (iv) the Governmental Authority having jurisdiction over the receiver;
 - (v) the type of permit or Environmental Approval under which the receiver site is operating;

- (vi) the total volume of groundwater, stormwater, surface water, Dewatering/Unwatering effluent and construction process water effluent discharged to each receiver;
 - (vii) the description of the source of the groundwater, stormwater, surface water, Dewatering/Unwatering effluent and construction process water effluent discharged to each receiver;
 - (viii) a description of the treatment methods utilized if treatment is required prior to discharge to the receiver;
 - (ix) a description of the number of samples collected and analyzed (pre and post-treatment if treatment is utilized) and a list of parameters included in the analyses that are representative of groundwater, stormwater, surface water, Dewatering/Unwatering effluent and construction process water effluent discharged to each receiver, including a figure depicting the location(s) of samples collected;
 - (x) an electronic copy of the certificate(s) of analysis for the samples collected and analyzed; and
 - (xi) electronic copies of any Waste manifests or shipping documentation associated with transport of groundwater, stormwater, surface water, Dewatering/Unwatering effluent and construction process water effluent to a receiver;
- (d) evidence and certification by the Hydrogeologist or Qualified Person that the quality, volume and discharge rate of Dewatering/Unwatering effluent and construction process water effluent discharged to each receiver is compliant with the Environmental Approval under which the receiver operates and is not expected to result in Worsened conditions; and
 - (e) a summary of the information provided to Governmental Authorities related to discharge of groundwater, stormwater, surface water, Dewatering/Unwatering effluent and construction process water effluent.

6.3.4 Flood Hazard Analysis

6.3.4.1 As part of detailed design process and in accordance with the Output Specifications, Project Co shall wherever infrastructure is proposed to be located within the Regional Storm floodplain:

- (a) complete flood hazard modelling analysis to demonstrate that there is no net increase in risk to human life or property as a result of proposed Works;

- (b) confirm the flood hazard model to be used with TRCA and Waterfront Toronto; and
- (c) provide to Contracting Authority the analysis and floodline mapping, prepared for the watercourse to an appropriate distance for any changes in the proposed condition, detailing the impacts of the proposed Works in accordance with Schedule 10 – Review Procedure.

6.4 Noise and Vibration – Construction

6.4.1 Construction Noise and Vibration – General

6.4.1.1 Project Co shall carry out the Works in compliance with the noise and vibration obligations set out in this Section 6.4 and shall,

- (a) implement measures to minimize and mitigate ground-borne and air-borne noise and vibration generated as a result of the Works;
- (b) comply with,
 - (i) the construction noise limits set out in Section 6.4.2.1;
 - (ii) the environmental obligations as set out in Appendix A-1 and A-3 of this Schedule 17 in accordance with Section 2.1.1.2;
 - (iii) the Environmental Reference Documents listed in Appendix B of this Schedule 17; and
 - (iv) standard industry practice for minimizing ground-borne and air-borne noise and vibration in respect of all performance of the Works;
- (c) when Project Co proposes to complete Construction Activities that deviate from the City of Toronto bylaws time-of-day construction periods (day, nights), notify Contracting Authority prior to performing the Works outside of these time periods; and
- (d) use construction equipment and perform Construction Activities in a manner that minimizes ground-borne and air-borne noise and vibration,

(collectively, the “**Applicable Construction Noise and Vibration Requirements**”).

- 6.4.1.2 If Project Co performs overnight Construction Activities Project Co shall,
- (a) provide Notice to Contracting Authority in accordance with Schedule 18 – Communication and Public Engagement Protocol; and
 - (b) provide public notification in accordance with Schedule 18 – Communications and Public Engagement Protocol.
- 6.4.1.3 Where applicable, Project Co shall ensure that all mobile equipment and vehicles on the Site that have backup alarms are equipped with broadband backup ambient-sensitive alarms only.
- 6.4.1.4 In carrying out the Works, Project Co shall comply with construction noise and vibration reference documents applicable to the Project and listed in Appendix B – Environmental Reference Documents, in accordance with Section 2.1 and as amended or replaced from time to time during the Project Term.
- 6.4.2 Construction Noise and Vibration Performance Limits
- 6.4.2.1 Project Co shall comply with,
- (a) the maximum airborne construction noise exposure limits set out in Table 6.4.2-1;
 - (b) the maximum noise levels for construction equipment as set out in MECP NPC-115 and MECP NPC-118;
 - (c) the ground-borne tunnel construction noise exposure limits for the construction set out in Table 6.4.2-2;
 - (d) construction noise shall comply with MOL Noise Regulation O. Reg. 381/15 and workers exposed to construction noise at or above 85 dBA shall wear hearing protection;
 - (e) the construction vibration limits set out in Table 6.4.2-3 for buildings and structures adjacent to any construction activity, including but not limited to those buildings and structures identified in the Heritage Detailed Design Report in accordance with Section 6.6.2;
 - (f) in order to mitigate the risk of public annoyance and complaints, Project Co shall ensure that the vibration root-mean-square velocity from Construction Activities related to repetitive tunneling support operations (e.g., delivery of tunnel liners, removal of excavated materials) felt at any receiver extending over a period of more than 48 hours does not exceed the higher of 0.175 mm/s or the baseline level of vibration as determined in accordance with Section 6.4.4.5(b);

- (g) the construction vibration limits set out in OPSS 120 for underground utilities, pipelines and structures;
 - (h) unless otherwise indicated, measurements for compliance with construction noise exposure limits, maximum noise levels for construction equipment and ground-borne construction noise exposure limits for tunnel construction shall be measured as described in MECP Publication NPC-103;
 - (i) unless otherwise indicated, measurements for compliance with construction vibration limits shall be measured as described in ISO 8041-1 and ISO 5348; and
 - (j) unless otherwise indicated, the more stringent noise or vibration criteria, limit or requirement shall be used as the performance limits,
- (collectively, the “**Construction Noise and Vibration Performance Limits**”).

Table 6.4.2-1 Maximum Airborne Construction Noise Exposure Limits

[REDACTED]

Table 6.4.2-2 Maximum Ground-Borne Interior Noise Exposure Limits for Tunnel Construction

[REDACTED]

Table 6.4.2-3 Maximum Construction Vibration Peak Particle Velocity Limits

[REDACTED]

6.4.3 Construction Noise and Vibration Management Plan

- 6.4.3.1 Project Co shall develop and submit construction noise and vibration management plans (“**Construction Noise and Vibration Management Plan**”) to the Contracting Authority Representative in accordance with Schedule 10 – Review Procedure.
- 6.4.3.2 In accordance with Section 2.2.3, Project Co shall not commence any activity with the potential to exceed the Applicable Construction Noise and Vibration Requirements prior to receiving a “NO COMMENT” notification from Contracting Authority on the Construction Noise and Vibration Management Plan or any update thereto.
- 6.4.3.3 The Construction Noise and Vibration Management Plan shall include Site-specific sections to address local conditions and, at a minimum, include a schedule of proposed activities and efforts as well as required methodologies, deliverables

and inputs required to comply with Applicable Construction Noise and Vibration Requirements throughout the duration of the Project and shall:

- (a) identify mitigation measures to be applied when and where calculated ground-borne or air-borne noise or vibration levels exceed the Construction Noise and Vibration Performance Limits or any other limit under the Applicable Construction Noise and Vibration Requirements, provided that the inclusion or absence of a mitigation measure from this Construction Noise and Vibration Management Plan shall not limit Project Co's obligation to mitigate any amount of noise and vibration required under this Agreement;
- (b) provide Project Co's procedures for conducting compliance verification measurements, measurement processes, measurement equipment and analysis methods to confirm that the Works are being carried out in compliance with Applicable Construction Noise and Vibration Requirements;
- (c) provide Project Co's procedures for conducting compliance verification measurements to confirm that Construction Noise and Vibration Sensitive Receptors are not exposed to noise and/or vibration that exceed the limits set out in this Section 6.4.2, including an outline of the measurement processes, measurement equipment, and analysis methods that will be implemented;
- (d) provide Project Co's procedures for identification of warning and alert levels to identify an increase in noise and vibration that results in approaching the Construction Noise and Vibration Performance Limits;
- (e) provide Project Co's procedure for the stop work process if the Construction Noise and Vibration Performance Limits are exceeded including identification and implementation of mitigation measures; and
- (f) specify how Project Co intends to consult with Construction Noise and Vibration Sensitive Receptors and any nearby residents.

6.4.3.4 The Construction Noise and Vibration Management Plan shall also:

- (a) include an approach for identifying and assessing potential Representative Construction Noise and Vibration Sensitive Receptors in accordance with Section 6.4.4;
- (b) define all the construction, staging and laydown areas in accordance with Schedule 35 – Lands;

- (c) include an approach for assessing ground-borne and air-borne noise and vibration for Representative Construction Noise and Vibration Sensitive Receptors and possible mitigation measures in accordance with Section 6.4.5;
- (d) include an approach for construction noise and vibration monitoring in accordance with Section 6.4.6; and
- (e) be prepared and signed by an accredited Professional Engineer with a minimum of 10 years of experience in assessing and controlling construction related noise and vibration.

6.4.4 Noise and Vibration Sensitive Receptors – Construction Activities

6.4.4.1 Prior to commencement of Construction Activities, Project Co shall conduct and complete a survey of the Lands and the vicinity of the Works, including a Zone of Influence for potential ground-borne or air-borne noise or vibration impacts from the planned Works, to identify Construction Noise and Vibration Sensitive Receptors, including Vibration Sensitive Structures, and to identify Representative Construction Noise and Vibration Sensitive Receptors, as deemed appropriate and sufficient by Contracting Authority, acting reasonably. The survey shall:

- (a) include the identification of specific sensitive equipment, structures, facilities or procedures;
- (b) be conducted in consultation with the potential Construction Noise and Vibration Sensitive Receptors and in accordance with any public consultation requirements set out in Schedule 18 – Communications and Public Engagement Protocol;
- (c) shall include those receptors identified in accordance with Sections 6.4.4 and 6.4.5; and
- (d) select Representative Construction Noise and Vibration Sensitive Receptors such that they are:
 - (i) exposed to the worst-case effects of ground borne vibration, and air and ground borne noise compared to all the nearby Construction Noise and Vibration Sensitive Receptors that the Representative Construction Noise and Vibration Sensitive Receptor is intended to represent; and
 - (ii) distributed across areas with differing characteristics affecting noise and vibration levels from the Works. Example characteristics include:

- (I) differences in setback from the designed track alignment;
- (II) differences in grade elevation between the designed track alignment and Representative Construction Noise and Vibration Sensitive Receptor;
- (III) differences in shielding from the Works (for example, buildings and barriers);
- (IV) differences in sensitivity to vibration (for example, theatres and high sensitivity medical imaging);
- (V) have soil and structural characteristics, geometry and propagation characteristics from the Project similar to the other Construction Noise and Vibration Sensitive Receptors that the Representative Construction Noise and Vibration Sensitive Receptor is intended to represent; and
- (VI) Project Co shall include the results of the Construction Noise and Vibration Sensitive Receptor survey as part of the Construction Noise and Vibration Management Plan as set out in Section 6.4.3.

- 6.4.4.2 If two or more adjacent structures could potentially be subject to differences in impact from the worst-case effects of noise or vibration, then Project Co shall select all such adjacent structures to be included as Representative Construction Noise and Vibration Sensitive Receptors.
- 6.4.4.3 Project Co shall prepare, and keep up to date, a list of Representative Construction Noise and Vibration Sensitive Receptors for the Work and shall submit the list along with any updates, as part of the Construction Noise and Vibration Management Plan as set out in Section 6.4.3 and Schedule 10 – Review Procedure.
- 6.4.4.4 Project Co shall submit all existing conditions noise and vibration measurement data in respect of Representative Construction Noise and Vibration Sensitive Receptors to the Contracting Authority as a component of the Construction Noise and Vibration Management Plan as set out in Section 6.4.3 and Schedule 10 – Review Procedure.

- 6.4.4.5 Project Co shall perform and record existing conditions baseline noise and vibration measurements prior to the commencement of Construction Activities at or within each Representative Construction Noise and Vibration Sensitive Receptor, consisting of:
- (a) seven (7) days of continuous noise monitoring at each Representative Construction Noise and Vibration Sensitive Receptor, provided that for any outdoor locations the weather conditions are suitable for measurement as per MECP Publication NPC-103;
 - (b) seven (7) days of continuous vibration monitoring at each Representative Construction Noise and Vibration Sensitive Receptor as per ISO 8041-1 and ISO 5348;
 - (c) noise and vibration monitoring shall be conducted at the building façade of each Representative Construction Noise and Vibration Sensitive Receptor where permission has been obtained from the building owner. Where permission has not been obtained, then a location on public property as close to the Representative Construction Noise and Vibration Sensitive Receptor in direct impact of the construction noise or vibration source shall be used;
 - (d) where indoor noise baseline measurements are required, sound level measurements will be conducted in accordance with the following:
 - (i) Type 1 sound level meters shall be used;
 - (ii) measurements shall be conducted in one-third octave bands;
 - (iii) factory calibrated sound level meter within six (6) months and field calibrate the sound level meter before and after the indoor measurements such that dBA does not exceed +/- 0.5 dBA;
 - (iv) a minimum of three (3) sound level measurements shall be completed in each indoor space required for indoor noise assessment, with additional measurements (up to ten (10)) as space allows for in the room;
 - (v) the shortest distance from any sound level measurement to any major extended surface shall be at least 1.0 m;
 - (vi) each measurement location shall be at least 1.5 m from any other measurement;
 - (vii) each measurement shall be at a height of 1.5 m from the floor;

- (viii) measurements shall be made in the third-octave mid-frequencies from 80 – 5000 Hz; and
- (ix) measurements shall be consolidated into a single Noise Criterion (NC) number from third-octave measurements, provided with the NC data in tabular and graphic form; and
- (e) where indoor vibration baseline measurements are required, vibration level measurements will be conducted in accordance with the following:
 - (i) indoor vibration levels shall measure the root-mean-square (RMS) value directly – conversion from peak-particle velocity (PPV) shall not be accepted;
 - (ii) root-mean-square (RMS) vibration levels shall be measured in 1 second intervals over a last a 1 hour period with [REDACTED]% overlap, with the highest RMS 1 second interval value being reported;
 - (iii) all vibration level data shall be provided, including 1 second interval data over 5 min measurement period for each measurement location;
 - (iv) vibration measurement equipment capable to measure frequencies to 4Hz and up to 250Hz;
 - (v) a minimum of three (3) vibration level measurements shall be completed in each indoor space with an area of over 9.5 m², and one (1) vibration level measurement shall be completed in each indoor space with an area of 9.5 m² or less;
 - (vi) one indoor vibration measurement shall be taken in the centre of the indoor space;
 - (vii) vibration measurements shall be 1 m from any wall; and
 - (viii) vibration equipment shall be factory calibrated within six (6) months of the indoor vibration measurement.

6.4.4.6 For the purposes of establishing the baseline noise levels for the purposes of Table 6.4.2-1, Project Co shall calculate baseline values for each Representative Construction Noise and Vibration Sensitive Receptor using the following averages from the continuous monitoring data obtained by the measurements taken in accordance with Section 6.4.4.5:

- (a) 16-hour weekday and weekend averages from 7:00 to 23:00 to be used for the day-time baseline in Table 6.4.2-1; and
 - (b) 8-hour weekday and weekend averages from 23:00 to 7:00 to be used for the nighttime baseline in Table 6.4.2-1.
- 6.4.4.7 If Project Co and a property owner or receiver do not agree on whether to designate a particular location or property as a Construction Noise and Vibration Sensitive Receptor, Contracting Authority shall make a final determination, in its sole discretion, based on,
 - (a) a review of the baseline noise and vibration measurement data for the particular property or location; and
 - (b) any evidence of susceptibility of the location or property to noise or vibration levels at or lower than the Applicable Construction Noise and Vibration Requirements.
- 6.4.4.8 Project Co shall develop additional construction noise and vibration performance requirements for any Construction Noise and Vibration Sensitive Receptors not covered by the construction noise and vibration reference applicable to the Project and listed in Appendix B – Environmental Reference Documents through,
 - (a) an assessment and evaluation of the baseline measurements;
 - (b) consultation with the Construction Noise and Vibration Sensitive Receptor groups, in accordance with Schedule 18 – Communications and Public Engagement Protocol; and
 - (c) a review of the noise and vibration requirements for any sensitive equipment or operation that may be impacted by the Works,

(the “**Additional Construction Noise and Vibration Sensitive Receptor Performance Requirements**”).
- 6.4.4.9 Project Co shall submit all Additional Construction Noise and Vibration Sensitive Receptor Performance Requirements, including any associated measurement data, as a component of the Construction Noise and Vibration Management Plan as per Section 6.4.3 and Schedule 10 – Review Procedure.
- 6.4.5 Noise and Vibration Assessment During the Construction Activities
 - 6.4.5.1 Prediction and Assessment of Construction Noise and Vibration
 - (a) Project Co shall, throughout the duration of the Project, undertake ground-borne and air-borne noise and vibration assessments for Representative

Construction Noise and Vibration Sensitive Receptors and the possible mitigation measures identified in the Construction Noise and Vibration Management Plan in compliance with “Construction Noise Assessment” and “Construction Vibration Assessment” methods as such terms are defined and described in the FTA Manual (as defined in Appendix B hereto), as amended from time to time.

- (b) Project Co may apply alternative and equivalent methods of assessment to the methods set out in Section 6.4.5.1(a) if such alternatives are deemed appropriate by Contracting Authority, in its sole discretion.

6.4.5.2 Prior to the commencement of any Construction Activity that is at any receptor referenced in Section 6.4.4.1(d), and that is,

- (a) expected to exceed the noise exposure limits in Table 6.4.2-1 and Table 6.4.2-2;
- (b) expected to exceed a construction vibration Zone of Influence threshold for a Vibration Sensitive Structure as per Table 6.4.2-3; or
- (c) expected to last more than seven (7) days and reasonably expected to produce air-borne or ground-borne noise exceeding the ambient Leq1h due to road traffic (as measured by Project Co in accordance with MECP procedures).

Project Co shall conduct and submit to Contracting Authority an assessment at all Representative Construction Noise and Vibration Sensitive Receptors likely to be impacted by such Construction Activity. The assessment shall include estimated ground-borne and air-borne noise and vibration, the expected duration and the mitigation measures that Project Co will apply to demonstrably minimize any impacts of noise and vibration and to meet the Applicable Construction Noise and Vibration Requirements and shall be included as a component of the Construction Noise and Vibration Management Plan in accordance with Section 6.4.3, Section 2.2.3 and Schedule 10 – Review Procedure.

6.4.5.3 Prior to the use of any construction equipment on a Site, Project Co shall conduct an assessment (using either the manufacturer’s noise data or by measurement) to confirm that such equipment can and will be used in compliance with the Applicable Construction Noise and Vibration Requirements. The results of the construction equipment assessment will be documented in a technical memo and included as a component of the Construction Noise and Vibration Management Plan in accordance with Section 6.4.3 and Schedule 10 – Review Procedure.

6.4.6 Noise and Vibration Monitoring During the Construction Activities

- 6.4.6.1 Project Co shall continuously monitor noise in accordance with the requirements of Section 6.4.5.1 of any Construction Activity that,
- (a) is localized and where Sensitive Receptors are exposed to the Project’s noise for more than thirty (30) days within a 6-week period;
 - (b) uses processes or equipment for over 10 minutes during the daytime with a noise emission level exceeding 85 dBA; or
 - (c) uses processes or equipment for over 10 minutes during the nighttime with a noise emission level exceeding 75 dBA.
- 6.4.6.2 If Project Co is required to undertake continuous noise monitoring in accordance with Section 6.4.6, Project Co shall ensure that such continuous noise monitoring is carried out in accordance with the following requirements:
- (a) the location of the monitor shall be adjusted in response to changes in Construction Activity to capture the highest noise exposure level;
 - (b) the microphone of the monitor shall be placed between 1.5 metres and 4.5 metres above the ground level;
 - (c) continuous noise monitoring shall employ Type 1 or Class 1 integrating sound level meters meeting IEC Standard 61672-1:2013;
 - (d) each sound level meter shall be calibrated no later than one week prior to its initial use and no less frequently than once per month thereafter;
 - (e) the frequency weighting of the sound level meter shall be set to “A” and the speed of response shall be set to “fast”;
 - (f) each noise monitor shall have data logging capability with recorded data;
 - (g) output data shall contain for each day:
 - (i) the maximum level recorded;
 - (ii) each 10-minute average; and
 - (iii) each 16-hour daytime average (7:00 to 23:00) and each 8-hour average (23:00 to 7:00);

Project Co shall ensure that real-time monitoring data can be accessed by Contracting Authority through the EMS Software Solution in accordance with Section 5.4.5.

- 6.4.6.3 Project Co shall undertake vibration monitoring in accordance with the Construction Noise and Vibration Management Plan for structures that are within the Zone of Influence of construction related vibration and expected to experience vibration peak particle velocities in exceedance of 5 mm/s. The Zone of Influence for vibration shall be established in accordance with the methodology described in the FTA Manual (as defined in Appendix B hereto).
- 6.4.6.4 Project Co shall undertake vibration monitoring in accordance with the Construction Noise and Vibration Management Plan for any heritage attributes identified for built heritage resource or cultural heritage landscapes (as identified in the Heritage Detailed Design Report as per Section 6.6.2), art structures or other vibration-sensitive structure from any Construction Activity within the construction, staging or laydown site where construction related vibration may results in vibration peak particle velocities in exceedance of the criteria set out in Table 6.4.2-3.
- 6.4.6.5 Project Co shall prepare and submit to the Contracting Authority a weekly report describing the monitoring conducted and summarizing the data collected for the reporting period (each a “**Weekly Construction Noise and Vibration Monitoring Report**”) in accordance with Schedule 10 – Review Procedure. The Weekly Construction Noise and Vibration Monitoring Report shall contain, at a minimum, the following:
- (a) cover page with project name, monitoring report type (noise or vibration), date of monitoring;
 - (b) document information and revision history, including author, quality and independent reviewer names and signatures;
 - (c) executive summary, indicating any noise or vibration exceedances including exceedance level, date and time of exceedance, and Project Co actions to investigate and mitigate the exceedance;
 - (d) introduction, identifying the purpose of the monitoring report;
 - (e) criteria, identifying the noise or vibration criteria used for the monitoring, including both a warning (before action is taken by Project Co) and alert (action is taken by Project Co) criteria;
 - (f) data in both tabular and graphical format, identifying hourly noise and vibration levels that were monitored and those monitoring levels that exceed criteria;
 - (g) technical issues encountered during the monitoring, including equipment issues, power failures, damage/theft, or other issues that affect the monitoring or data analysis;

- (h) further investigation, including Project Co commitments to review and investigate noise and vibration exceedances, and what mitigation measures are to be implemented to ensure exceedances do not continue to occur;
- (i) site summaries, showing the location of the monitoring equipment, including photograph, with UTM coordinates and address location on a map; and
- (j) include a summary of any complaints received and actions taken to address said complaint as set out in Section 6.4.7.

6.4.6.6 Project Co shall develop and implement mitigation measures to address any non-conformance identified through the monitoring conducted in accordance with Section 6.4.6 in consultation with any affected Construction Noise and Vibration Sensitive Receptor and Contracting Authority. The mitigation measures proposed shall be included in the Weekly Construction Noise and Vibration Monitoring Report in accordance with Section 6.4.6.5.

6.4.7 Complaints During Construction Activities

6.4.7.1 Prior to the commencement of the Works, Project Co shall develop, as a component of its Complaints Protocol detailed in Schedule 18 – Communications and Public Engagement Protocol, a process for managing and responding to noise and vibration concerns during the Project Term. This component of the Complaints Protocol shall be developed in consultation with Construction Noise and Vibration Sensitive Receptors, if applicable, and other concerned Stakeholders identified by Project Co.

6.4.7.2 Project Co shall address and respond to each complaint regarding noise or vibration received during the Construction Activities in accordance with the Complaint Protocol developed in accordance with Schedule 18 – Communications and Public Engagement Protocol. Upon receipt of a request by Contracting Authority to investigate a complaint regarding noise or vibration, Project Co shall conduct additional ground-borne and air-borne noise and vibration measurements, as required by Contracting Authority, to determine:

- (a) the source of the ground-borne and air-borne noise and vibration that is the subject of the complaint;
- (b) if the ground-borne or air-borne noise or vibration exceeds any of the limits required by the Applicable Construction Noise and Vibration Requirements; and

- (c) if mitigation measures or additional monitoring are required to confirm compliance with the Applicable Construction Noise and Vibration Requirements.

6.4.7.3 If mitigation measures or additional monitoring are required pursuant to Section 6.4.7.2(c), then Project Co shall completely define the required mitigation measures and additional monitoring, as applicable, within two (2) Business Days of the completion of additional field measurements conducted in accordance with the request by Contracting Authority to investigate, or within a longer time frame agreed to by the Contracting Authority. Project Co shall implement the mitigation measures and additional monitoring, as applicable, in full within a timeframe agreed upon by the Parties and shall rectify any non-conformance with Applicable Construction Noise and Vibration Requirements.

6.4.7.4 If Contracting Authority receives complaints from the public with respect to Construction Activities that are not in compliance with Applicable Construction Noise and Vibration Requirements, then Contracting Authority may, acting reasonably, require Project Co to cancel or discontinue such Construction Activities, and Project Co shall cancel or discontinue such Construction Activities as instructed by Contracting Authority.

- (a) Project Co may re-start Construction Activities upon demonstration of compliance with this Section 6.4.7.
- (b) Project Co shall not be entitled to a Variation, an Adjustment Event or a Relief Event, or any other form of relief, delay or compensation whatsoever arising from any such instruction by Contracting Authority to discontinue Construction Activities.

6.5 Noise and Vibration – Operations

6.5.1 Operational Noise and Vibration – General

6.5.1.1 Project Co shall be responsible for designing and constructing the Project Co Infrastructure so that the overall noise and vibration criteria and limits as per Section 6.5.2 can be achieved during the operation and maintenance of the Ontario Line Subway System.

6.5.1.2 For clarity, Project Co shall be responsible for the Project Co Infrastructure as described in the Output Specifications.

6.5.1.3 Prior to Project Substantial Completion, Project Co shall provide all information and data regarding infrastructure, maintenance and monitoring requirements related to noise and vibration to Contracting Authority for the benefit of RSSOM Project Co during the construction, installation, testing and commissioning phase and subsequent operations for the RSSOM Project.

- (a) Project Co shall undertake a predictive analysis assessment of stationary noise sources to demonstrate that the total noise emission from stationary sources meets a sound level limit in compliance with Section 6.5.2.1(d).
- 6.5.1.4 Project Co shall undertake and complete a self-assessment to demonstrate compliance with sections 9 and 47.3 of the Environmental Protection Act (Ontario), and the requirements of O. Reg. 1/17 Registrations Under Part II.2 of the Act – Activities Requiring Assessment of Air Emissions.
 - (a) Project Co shall provide a summary of the self-assessment as part of the Substantial Completion Environmental Report as per Section 5.2.6.
 - (b) For clarity, Project Co is not responsible for obtaining any permits if identified in the self-assessment completed in accordance with this Section 6.5.1.4.
- 6.5.1.5 Project Co shall, design and construct the Project Co Infrastructure in compliance with the noise and vibration obligations set out in this Section 6.5, specifically:
 - (i) the Operations Noise and Vibration Performance Limits set out in Section 6.5.2;
 - (ii) the Environmental Reference Documents as listed in Appendix B of this Schedule 17; and
 - (iii) standard industry practice for ground-borne and air-borne noise and vibration in respect to operations where a noise and vibration limit is not otherwise identified under Applicable Law or in Section 6.5.2,

(collectively, the “**Applicable Operations Noise and Vibration Requirements**”).
- 6.5.2 Operations Noise and Vibration Performance Limits
 - 6.5.2.1 Project Co shall,
 - (a) comply with the system-wide, long-term maximum noise exposure objectives set out in Table 6.5.2-1 (the “**System-Wide Noise Exposure Objectives**”);
 - (b) ensure that the Station fire ventilation openings comply with NPC-300 noise limits for stationary sources at the nearest point of reception, and not exceed 80 dBA at 3 m from the outdoor ventilation opening;

- (c) ensure that the Station outdoor paging system does not exceed the noise limits in NPC-300 for stationary sources at the nearest point of reception;
- (d) ensure that the total noise emission from stationary sources shall meet a sound level limit of 47dBA for daytime (07:00-23:00) operation and 42dBA for nighttime (23:00-07:00) operation at the nearest receptors;
- (e) ensure that the fire ventilation system servicing the Station complies with noise limits identified in Section 3.1.21.2(c) (*Tunnel Ventilation System*) of the Output Specifications;
- (f) ensure that the Station paging system complies with noise limits identified in Section 3.1.13.5(g) (*Acoustical Sound Levels and Acoustics*) of the Output Specifications;
- (g) coordinate with RSSOM Project Co to ensure the Station vibration levels from the track do not generate vibration levels greater than 2 mm/s inside the Station to address human comfort;
- (h) unless otherwise indicated, ensure that the measurements for compliance with operational indoor or outdoor noise exposure limits shall be measured as described in MECP Publication NPC-103;
- (i) unless otherwise indicated, ensure that the measurements for compliance with operational vibration limits shall be measured with equipment that meets the requirements of ISO 8041-1, ISO 10815:2016 and ISO 5348; and
- (j) unless otherwise indicated, ensure that the more stringent noise or vibration criteria, limit or requirement shall be used as the performance limit,

(collectively, the “**Operations Noise and Vibration Performance Limits**”).

Table 6.5.2-1 System-Wide Noise Exposure Objectives

[REDACTED]

6.5.3 Prediction and Assessment of Operations Noise and Vibration

- 6.5.3.1 Project Co shall verify by predicative analysis compliance with Section 6.5.2.1(a) in accordance with ISO 9613-2 based on a sound measurement inventory of all stationary sources.

- 6.5.3.2 Project Co shall undertake ground-borne and air-borne noise and vibration assessments in compliance with MECP NPC-300 and NPC-233 in relation to noise and vibration emitted by Stationary Sources.
- (a) Project Co shall complete an operational noise audit in accordance with MECP NPC-233 to verify compliance with MECP NPC-300 noise criteria, using the baseline noise levels measured in accordance with Section 6.4.4.5.
- 6.5.3.3 Project Co may apply an alternative and equivalent method of assessment to the method set out in Section 6.5.3.1 if such alternative is deemed appropriate by Contracting Authority, in its sole discretion.
- 6.5.4 Noise and Vibration Commissioning
- 6.5.4.1 Project Co shall develop and implement a noise and vibration compliance verification measurement plan for Commissioning of Project Co Infrastructure and New Third Party Infrastructure to demonstrate compliance with applicable performance limits and applicable environmental permits or approvals in accordance with Schedule 14 – Commissioning. The compliance verification noise and vibration measurements shall be representative of the applicable criteria, and be taken at the same locations, where possible, referenced in Section 6.5.2, and be representative of the worst-case sensitive points of reception surrounding the Project.
- 6.5.4.2 Test equipment, including all microphones and transducers, shall be selected appropriately to ensure they have low enough noise floors to measure levels consistent with the applicable criteria. As a minimum, Project Co shall use the following measurement equipment: Type 1 sound level meter with octave band filters and vibration transducers with sensitivities of 1 V/g.

- 6.5.4.3 Measurements shall be conducted by Project Co with consideration for the intended use of the space. Unless dictated otherwise by the use of the space, ambient noise measurements shall be performed in octave bands with the meter time constant set to fast (125 ms) response and shall be performed during ambient conditions that are representative of the intended usage of the space. Where appropriate, and consistent with its intended use, extraneous noise interruptions shall be excluded from the measurements.
- 6.5.4.4 The measured noise and vibration levels shall not exceed the Operations Noise and Vibration Performance Limits as set out in Section 6.5.2. If the Operations Noise and Vibration Performance Limits are exceeded then Project Co shall carry out remedial measures as are appropriate to reduce the noise and/or vibrations levels as applicable and then repeat the measurement in accordance with Section 6.5.4.1 to demonstration compliance.

6.6 Cultural Heritage

6.6.1 Cultural Heritage – General

- 6.6.1.1 Project Co shall be responsible for designing and constructing the Project Co Infrastructure so that that the overall cultural heritage management can be achieved during the operation and maintenance of the Ontario Line Subway System.
- 6.6.1.2 For clarity, Project Co shall be responsible for Project Co Infrastructure as described in the Output Specifications.
- 6.6.1.3 Prescribed heritage mitigation requirements are provided in Section 3.1.13.7 (*Heritage Facilities*) of the Output Specifications.
- 6.6.1.4 Prior to Project Substantial Completion, Project Co shall provide all information and data regarding infrastructure, maintenance, and monitoring requirements related to cultural heritage to Contracting Authority for the benefit of RSSOM Project Co during the construction, installation, testing and commissioning phase and subsequent operations for the RSSOM Project.
- 6.6.1.5 Project Co shall comply with the cultural heritage reference documents in accordance with Appendix B of this Schedule 17 and Section 2.1.
- 6.6.1.6 For all heritage buildings identified in Table 3.1.13.7-1 (*Overview of Heritage Buildings Scope of Work*) of the Output Specifications, Contracting Authority will complete salvage reports to identify salvageable material and/or heritage attributes prior to alteration in order to inform what building components should be retained and conserved and/or restored for all directly impacted built heritage resources and cultural heritage landscapes thirty (30) days prior to the Commencement Dates identified in Schedule 35 – Lands.

- 6.6.1.7 In accordance with Section 3.1.13.7(b) (*Heritage Documentation*) of the Output Specifications, Project Co shall submit a Heritage Documentation Package (as defined in the Output Specifications) for each heritage building which will satisfy documentation requirements described in the Heritage Detailed Design Report. Where a Heritage Documentation Package is not required, as identified in Table 6.6.1-1 below, the Contracting Authority will prepare documentation, where required.

Table 6.6.1-1: Contracting Authority Documentation Subject Sites

[REDACTED]

- 6.6.1.8 As per the Heritage Detailed Design Report, Project Co shall consider the use of salvage materials in their design as described in the salvage reports as provided by Contracting Authority in accordance with Sections 6.6.1.6 and 6.6.1.7. Project Co shall include their rationale for use or non-use of salvage materials in their revised Heritage Detailed Design Report as per Section 6.6.2.2 and in accordance with Section 3.1.13.7 (*Heritage Facilities*) of the Output Specifications.
- 6.6.1.9 As per the Heritage Detailed Design Report, where permanent relocation or demolition/alteration of a built heritage resource or cultural heritage landscape is required, Project Co shall prepare an Interpretation/Commemoration Strategy Framework. These shall be included as an appendix to the Heritage Detailed Design Report for comment by the City of Toronto and include commemorative signage text to communicate the cultural heritage value of the relocated/removed structure/landscape to the public.

6.6.2 Heritage Detailed Design Report

- 6.6.2.1 Contracting Authority shall provide Project Co with the preliminary heritage detailed design report (the “**Heritage Detailed Design Report**”) in accordance with the Cultural Heritage Report (as defined in Appendix B hereto).
- 6.6.2.2 Project Co shall review, update and submit a revised Heritage Detailed Design Report based on final design, consistent with preliminary Heritage Detailed Design Report format, to the Contracting Authority, including all supplementary reports, and comparative requirements required based on detailed design to the Contracting Authority in accordance with Schedule 10 – Review Procedure.
- (a) Project Co shall ensure that the revised Heritage Detailed Design report is prepared by a Cultural Heritage Specialist.
 - (b) Project Co shall comply with the mitigation measures, monitoring, and commitments made within the Heritage Detailed Design Report and all supplementary reports or any supplementary revisions.

- 6.6.2.3 In accordance with Section 2.2.3, Project Co shall file the revised Heritage Detailed Design Report with the MCM after receipt of notification from Contracting Authority in accordance with Schedule 10 – Review Procedure.

6.7 Archaeology

6.7.1 Archaeology Risk Management

- 6.7.1.1 Project Co shall comply with the archaeological reference documents in accordance with Section 2.1.

- 6.7.1.2 Project Co shall prepare and implement an archaeological risk management plan for the Works (the “**Archaeological Risk Management Plan**”). The Archaeological Risk Management Plan shall be consistent with Project Co’s obligations set out in Section 18.4 (*Items of Geological, Historical Heritage or Archaeological Interest or Value*) of this Agreement and shall address any recommendations resulting from Environmental Reference Documents, as identified in Appendix B of this Schedule 17 in accordance with Section 2.1, prepared for the Project.

- (a) The Archaeological Risk Management Plan shall include, at a minimum, the following requirements:
- (i) the actions required resulting from the recommendations of the Archaeological Reports identified in Appendix B of this Schedule 17 including any archaeological monitoring requirements by a Licensed Archaeologist during the Construction Activities;
 - (ii) a review of registered archaeological sites located within one kilometre of the Project footprint;
 - (iii) a process for amending the Archaeological Risk Management Plan to incorporate any additional actions required resulting from subsequent archaeological assessment reports completed;
 - (iv) a protocol to be followed if human remains are discovered which includes how Project Co will ensure that human remains are managed in compliance with Applicable Law and all requirements of Governmental Authorities with respect to such discovery, including the Funeral, Burial and Cremations Services Act, 2002 (Ontario) and the Standards and Guidelines for the Conservation of Provincial Heritage Properties issued by the MCM pursuant to the *Ontario Heritage Act* (Ontario);
 - (v) a protocol to be followed if previously undocumented archaeological resources are discovered which describes how

Project Co will comply with Applicable Law regarding management of previously undocumented archaeological resources;

- (vi) a process to ensure that Project Co complies with Applicable Law for the management of archaeological sites, including the City of Toronto’s Terms of Reference for archaeological assessment;
 - (vii) a process to ensure that Project Co complies with Applicable Law for the management of archaeological resources at a National Historic Site;
 - (viii) a process for the involvement of Indigenous Monitors for Stage 2 Archaeological Assessment, Stage 3 Archaeological Assessment and/or Stage 4 Archaeological Assessment field work, as applicable, in accordance with Schedule 18 – Communication and Public Engagement Protocol;
 - (ix) be developed in accordance with any Indigenous Nations Engagement commitments as identified in the Archaeological Reports identified in Appendix B of this Schedule 17 as provided by Contracting Authority; and
 - (x) all public consultations will be carried out in accordance with the requirements set out in Schedule 18 – Communications and Public Engagement Protocol.
- (b) Project Co shall submit the Archaeological Risk Management Plan to Contracting Authority in accordance with Schedule 10 – Review Procedure.

6.8 Natural Heritage

6.8.1 Natural Heritage – General

- 6.8.1.1 Project Co shall carry out the Works in compliance with the Erosion and Sediment Control Plan as per Section 6.2.6.
- 6.8.1.2 Project Co shall carry out the Works in compliance with Section 6.8.3, and the planting and landscape plan in accordance with the Output Specifications.
- 6.8.1.3 For Construction Activities that may result in the death of fish or the harmful alteration, disruption or destruction of fish habitat, Project Co shall complete an assessment and DFO request for review, as required.

- 6.8.1.4 Should any works be proposed below the high-water mark, Project Co shall develop an in-water works plan in accordance with the Erosion and Sediment Control Guide for Urban Construction (TRCA, 2019), as amended from time to time and consult with the TRCA in accordance with Schedule 34 – Permits, Licences, Approvals and Agreements.
- 6.8.1.5 Project Co shall be responsible for designing and constructing the Project Co Infrastructure so that that the overall natural heritage management can be achieved during the operation and maintenance of the Ontario Line Subway System.
- 6.8.1.6 Prior to Project Substantial Completion, Project Co shall provide all information and data regarding infrastructure, maintenance, and monitoring requirements related to natural heritage in accordance with Sections 6.8.2 and 6.8.3 to Contracting Authority for the benefit of RSSOM Project Co during the construction, installation, testing and commissioning phase and subsequent operations for the RSSOM Project.
- 6.8.2 Endangered Species and Species-at-Risk
- 6.8.2.1 Project Co shall carry out the Works in compliance with the obligations set out in this Section 6.8.2 and in compliance with Permit #: CR-D-002-19 and in accordance with the Species-at-Risk framework as set out in the Metrolinx Species at Risk Framework, as listed in Appendix B-1 to this Schedule 17.
- (a) Throughout the Project Term, Project Co shall comply with and implement the Project Co requirements of the Metrolinx Species at Risk Framework. Project Co shall be responsible for:
- (i) additional investigations and assessment of impacts associated with Project Co’s design of the Project, as identified in the Metrolinx Species at Risk Framework;
 - (ii) adherence to the timing constraints, environmental parameters and requirements identified in the Metrolinx Species at Risk Framework, and where necessary, confirmation of timing constraints, environmental parameters and requirements in consultation with Contracting Authority and the appropriate Governmental Authority;
 - (iii) preparation of all documentation and deliverables identified in the Metrolinx Species at Risk Framework;
 - (iv) monitoring and associated reporting as identified in the Metrolinx Species at Risk Framework;

- (v) decommissioning and inspection activities as identified in the Metrolinx Species at Risk Framework and any required or associated corrective actions and reports.
 - (b) Project Co shall submit to Contracting Authority a Species-at-Risk handover report (the “**Species at Risk Handover Report**”) in accordance with Schedule 10 – Review Procedure. The Species at Risk Handover Report shall include:
 - (i) the status of Works related to Species-at-Risk, including Works completed and to be completed prior to the end of the Project Term; and
 - (ii) all conditions identified in the Metrolinx Species at Risk Framework that are the responsibility of Project Co.
- 6.8.2.2 If required, Project Co shall obtain any and all necessary approvals, clearances or permits required under the Endangered Species Act (Ontario MECP), the Fish and Wildlife Conservation Act (Ontario MNR), the Species at Risk Act (Canada ECCC), Migratory Birds Convention Act (ECCC), the Fisheries Act (DFO) or from the TRCA and shall provide any required protection, mitigation, compensation or monitoring required to adhere to such approvals, clearances or permits, and shall provide any supplementary documentation or reporting needed to achieve compliance with such approvals, clearances or permits, except where such obligations are set out specifically as Contracting Authority Environmental Commitments.
- 6.8.2.3 During detailed design, if it is determined that a suitable habitat to support identified Species-at-Risk exists within the Metrolinx Lands, Project Co shall complete targeted surveys to confirm the presence or absence of the Species-at-Risk listed in Table 6.8.2-1 as required in compliance with the Metrolinx Species at Risk Framework.

Table 6.8.2-1 Species-at-Risk Identified within Proposed Metrolinx Lands

[REDACTED]

6.8.3 Tree Management

- 6.8.3.1 Project Co shall be responsible for tree protection and management on the Lands until Project Substantial Completion, including compliance with all Applicable Law, Environmental Reference Documents and this Agreement.
- (a) Where applicable, Project Co shall be responsible for tree protection and management in accordance with the municipal and permit requirements as per Schedule 34 – Permits, Licences, Approvals and Agreements, and the

recommendations of an Arborist as documented through an arborist report or tree protection plan.

- (b) Project Co shall determine the required compensatory activities related to all permitting requirements, as per the Metrolinx Vegetation Guidelines.
- (c) Project Co shall be responsible for tree and vegetation replacement, compensation and management activities throughout the Project Term for any trees removed.

6.8.3.2 Project Co shall engage an Arborist to develop an arborist report for the Metrolinx Lands that are owned by Metrolinx (the “**Arborist Report – Metrolinx Lands**”) that includes,

- (a) a detailed inventory of all trees on the Metrolinx Lands as of the DMCA Effective Date, including,
 - (i) a description of the type of tree and the GPS location of tree; and
 - (ii) a clear indication of whether each tree will be removed, protected, or left as is by Project Co during the course of the Works; and
- (b) for the trees that Project Co intends to protect during the course of the Works, a description of Project Co’s protection measures to ensure that the trees will be preserved and undamaged.

6.8.3.3 Project Co shall engage an Arborist to develop an arborist report for Lands that are not Metrolinx Lands or Metrolinx Lands that are not owned by Metrolinx (the “**Arborist Report – Third Party Lands**”) which

- (a) meets the requirements of applicable municipal by-laws;
- (b) is developed in accordance with the municipalities’ requirements and Schedule 34 – Permits, Licences, Approvals and Agreements;
- (c) provides a detailed inventory of all trees on the Lands (other than Metrolinx Lands) as of the DMCA Effective Date, including,
 - (i) a description of the type of tree and the GPS location of tree; and
 - (ii) a clear indication of whether each tree will be removed, protected, or left as is by Project Co during the course of the Works; and
- (d) for the trees that Project Co intends to protect during the course of the Works, a description of Project Co’s protection measures to ensure that the trees will be preserved and undamaged.

- 6.8.3.4 Project Co shall submit the Arborist Report – Metrolinx Lands and the Arborist Report – Third Party Lands to Contracting Authority in accordance with Schedule 10 – Review Procedure.
- 6.8.3.5 Project Co shall include a tree end use section within the Arborist Report – Metrolinx Lands or the Arborist Report – Third Party Lands in accordance with Section 6.8.3.2 or Section 6.8.3.3, as applicable. The Arborist shall assign a high, medium or low value to each tree inventoried in accordance with the Metrolinx Vegetation Guideline (2022).
- (a) Project Co shall include a timeline for tree removal as a component of the Project Work Schedules in accordance with Schedule 12 – Work Schedules Requirements.
 - (b) Project Co shall provide sixty (60) days Notice to Contracting Authority prior to felling of high value trees.
 - (c) Project Co shall cut trees identified as high value, as per the Arborist Report – Metrolinx Land or Arborist Report – Third Party Lands, as applicable, to a maximum section length of 5 m, or longest possible length, for use by community groups. Project Co shall salvage high value trees for this purpose.
 - (d) Project Co shall store the high value logs on the Site in a designated laydown area identified by Project Co. Project Co shall notify the Contracting Authority for collection of the logs.
 - (i) Contracting Authority will collect the logs within twenty (20) Business Days of notification to Contracting Authority. If the logs are not collected within this timeframe, or at an alternate agreed-to timeframe, Project Co shall have no obligation to maintain the logs on the Site.
 - (e) Project Co may use trees that are not identified as high value for innovative sustainability ideas or design solutions in accordance with the Output Specifications.
- 6.8.3.6 For Lands that are not Metrolinx Lands or Metrolinx Lands that are not owned by Metrolinx, Project Co shall obtain all tree removal/injury permits from the City of Toronto that are required to perform the Works in accordance with Appendix B of Schedule 34 – Permits, Licences, Approvals and Agreements. Project Co shall ensure that Contracting Authority is kept apprised of all discussions and agreements respecting tree and vegetation replacement and compensation with municipalities.

- 6.8.3.7 Throughout the Project Term, Project Co shall continuously manage and update a tracker that includes a detailed inventory of all trees on the Metrolinx Lands and Third Party Lands that are greater than 10 cm diameter at breast height and that have been removed during the Project Term, including a description of the tree (botanical and common names, diameter at breast height, dripline radius, required tree protection zone distance and condition) and the GPS location of tree (the “**Tree Tracker**”). Project Co shall provide such list to Contracting Authority upon request by Contracting Authority in accordance with Schedule 10 – Review Procedure.
- (a) Project Co shall provide updates on permitting and tree compensation requirements as part of the Monthly Environmental Report in accordance with Section 5.2.2 and Schedule 10 – Review Procedure.

6.9 Air Quality During Construction

6.9.1 Air Quality During Construction – General

- 6.9.1.1 Project Co shall meet all applicable regulatory requirements and standards regarding air emissions, including fugitive dust and odour, during the performance of the Works, and shall:
- (a) comply with all Applicable Law, Environmental Approvals and Permits, Licences, Approvals and Agreements as they relate to air quality management, including when designing, purchasing and operating equipment;
- (b) implement measures for managing the Project’s construction-related air emissions, including fugitive dust and odour; and
- (c) if any Applicable Construction Air Quality Criteria and Limits are exceeded, and if deemed to be caused by construction activities, implement mitigation measures to achieve compliance with the Applicable Construction Air Quality Criteria and Limits.

6.9.2 Applicable Construction Air Quality Criteria and Limits

- 6.9.2.1 In carrying out the Works, Project Co shall ensure that ambient particulate matter and any other contaminants, such as respirable crystalline silica and nitrogen oxides, generated from construction activities complies with:
- (a) Ontario Regulation 419/05 for Air Pollution – Local Air Quality (O. Reg. 419/05) and relevant guidelines and jurisdictional screening levels as published in the MECP document Air Contaminants Benchmarks (ACB) List – Standards, Guidelines and Screening Levels for Assessing Point of Impingement Concentrations of Air Contaminants;

- (b) Ontario Ambient Air Quality Criteria (AAQC), published by MECP and updated April 2019;
- (c) The Canadian Ambient Air Quality Standards (CAAQS), published by CCME, and dated 2017; and
- (d) Metrolinx mitigation threshold for construction projects shown in Table 6.9.2-1,

(collectively, the “**Applicable Construction Air Quality Criteria and Limits**”).

Table 6.9.2-1 Applicable Construction Air Quality Criteria and Mitigation Thresholds for PM2.5, PM10 and Silica

[REDACTED]

- 6.9.2.2 Project Co shall ensure that odours from sulfur-containing and other odour producing substances are controlled to meet the 10-minute odour standards in the Ontario Ambient Air Quality Criteria or Schedule 3 of O. Reg. 419/05, made under the Environmental Protection Act (Ontario).
- 6.9.2.3 Project Co shall ensure that other contaminants generated from construction activities, such as combustion gases from vehicles/equipment used for construction, meet Applicable Construction Air Quality Criteria and Limits. All off-road diesel-powered equipment used during the Project must meet the Canadian Non-Road (Off-Road) Compression Ignition Engine Exhaust Emission Standards or Canadian Non-Road (Off-Road) Spark Ignition Engine Exhaust Emission Standards. These standards are aligned with corresponding US EPA standards.
- 6.9.2.4 All road vehicles will meet applicable Canadian road vehicle exhaust and evaporative emission standards. Project Co shall maintain diesel and electric equipment and their emission control systems to manufacturers’ specifications.
- 6.9.3 Construction Air Quality Management Plan
 - 6.9.3.1 Project Co shall submit a detailed and comprehensive air quality management plan (“**Construction Air Quality Management Plan**”) for all Construction Activities to the Contracting Authority Representative in accordance with Schedule 10 – Review Procedure.

- 6.9.3.2 The Construction Air Quality Management Plan shall include Site-specific sections to address local conditions and will include a description of Project Co's mitigation and dust control measures for each and all Construction Activities to demonstrate conformance, as practical, to recognized standard specifications as outlined in the Best Practices for the Reduction of Air Emissions from Construction and Demolition Activities (Environment Canada, 2005), as amended from time to time, and in accordance with the Metrolinx Environmental Guide for Air Quality and Greenhouse Gas Emissions Assessment (2019), as amended from time to time.
- 6.9.3.3 The Construction Air Quality Management Plan shall include, at a minimum, the following:
- (a) a description of the Construction Activity(ies) and conditions with the potential to result in the generation or dispersion of airborne particulate matter or other airborne contaminants including crystalline silica;
 - (b) a description of potential environmental impacts, nuisance impacts and impacts on human health and safety of the contaminants;
 - (c) identify specific air quality objectives relevant to the Project identified in Table 6.9.2-1 and as outlined in the Metrolinx Environmental Guide for Air Quality and Greenhouse Gas Emissions Assessment (2019), as amended from time to time;
 - (d) identification of all Sensitive Receptors (such as residences, daycare, schools, hospitals and senior housing) within Project Co's estimation of the potential worst-case air quality impacts of the Works on Lands within 500 m radius of the boundaries of the Site ("**Construction Air Quality Impact Zone**") per Best Practices for the Reduction of Air Emissions from Construction and Demolition Activities (Environment Canada, 2005) and Metrolinx Environmental Guide for Air Quality and Greenhouse Gas Emissions Assessment (2019), both as amended from time to time;
 - (e) a description of the existing conditions baseline air sampling and monitoring program in accordance with Section 6.9.4.1;
 - (f) provide Project Co's procedures for identification of warning and alert levels to identify an increase in emissions that results in approaching the Applicable Construction Air Quality Criteria and Limits;
 - (g) provide Project Co's procedure for investigating the cause and stop work process if the Applicable Construction Air Quality Criteria and Limits are exceeded including identification and implementation of mitigation measures;

- (h) establish protocols for documenting, reporting and addressing public complaints in accordance with Section 6.9.5;
- (i) a list of mitigations to be implemented by Project Co for each and all major Construction Activity in order to reduce, control and manage emissions to prevent the discharge of airborne particulate matter, fugitive dust and other airborne contaminants to offsite areas, including,
 - (i) relevant best practices per Construction Activity from the Best Practices for the Reduction of Air Emissions from Construction and Demolition Activities, published by Environment Canada, dated 2005, as amended from time to time; and
 - (ii) the best practices set out in Section 6.9.6; and
- (j) including measures required by any and all of the Environmental Reference Documents in accordance with Appendix B of this Schedule 17 and Section 2.1.

6.9.4 Air Quality Monitoring Requirements – Construction Activities

- 6.9.4.1 Project Co shall develop and implement an existing conditions baseline air sampling program prior to commencement of construction and a monitoring program during construction to,
 - (a) establish air monitoring and sampling methods, locations and frequencies for each relevant air contaminant; the rationale for the choice of such methods, locations and frequencies; and any changes that will be made to such methods, locations and frequencies over the duration of the Project for any contaminant;
 - (b) establish protocols for action items when relevant air quality criteria are exceeded, such as investigation procedures, mitigation measures and timeframes to implement;
 - (c) establish reporting requirements and timeframes, such as, reporting to Metrolinx any exceedance of any continuously monitored ambient air quality objective at any location within one to two hours of the occurrence; reporting of an exceedance of a non-continuously monitored contaminant will be made within 24-hours of receipt of the data;
 - (d) prior to the commencement of any Demolition or other Construction Activities, establish an existing conditions level by monitoring air contaminants typically generated from Construction Activities with known health hazards, including particulate matter within the Construction Air Quality Impact Zone. The existing conditions air quality

should be measured over a minimum period of one week prior to construction activities, where large local sources of pollution, such as highways, major arterial roads, industrial operations, etc., directly affect the zone of influence of the Project; and

- (e) monitoring of particulate matter and other contaminants in the air during and following Demolition and any other Construction Activities in the Construction Air Quality Impact Zone.

6.9.4.2 No later than thirty (30) days following the DMCA Effective Date, Project Co shall develop, as a component of the Complaints Protocol set out in Schedule 18 – Communication and Public Engagement Protocol, a process for managing and responding to air quality concerns during the Project Term. This component of the Complaints Protocol shall be developed in consultation with concerned Stakeholders identified by Project Co.

6.9.4.3 For Construction Activities that take place on a specific Site for fewer than thirty (30) consecutive days over a 6-week period, which may generate air contaminants with the potential to exceed the Applicable Construction Air Quality Criteria and Limits, Project Co shall ensure that there are no visible dust emissions discharged into the atmosphere beyond the geographical boundaries of the Site. Dust shall be considered “visible” if opacity at a geographical boundary of the Site exceeds [REDACTED]% for more than 3 minutes during any 60-minute period, as measured with a calibrated opacity meter.

6.9.4.4 For longer-term Construction Activities that take place on a specific Site for a minimum of thirty (30) or more consecutive days within a 6-week period, which may generate air contaminants with the potential to exceed the Applicable Construction Air Quality Criteria and Limits, Project Co shall continuously and simultaneously monitor PM2.5 and PM10 over the course of the performance of the Construction Activities in order to assess compliance with the Applicable Construction Air Quality Criteria and Limits in accordance with the following:

- (a) Project Co shall log data frequently, and at a maximum of fifteen-minute intervals and the monitoring instrument shall be calibrated according to manufacturer’s specifications;
- (b) Project Co shall ensure that Contracting Authority Representative receives real-time e-mail alerts of any exceedances of the Applicable Construction Air Quality Criteria and Limits for PM2.5, PM10 and any other air contaminant being monitored; and
- (c) Project Co shall ensure that all historical and real-time monitoring data are available and can be accessed by Contracting Authority through the EMS Software Solution or other approved software in accordance with Section 5.4.7.

- 6.9.4.5 Project Co shall prepare and submit to the Contracting Authority Representative, for information, a weekly report describing the monitoring conducted and data collected in accordance with Section 6.9.4 as well as instrument calibration data (“**Weekly Construction Air Quality Monitoring Report**”). Project Co shall submit each Weekly Construction Air Quality Monitoring Report to the Contracting Authority Representative in accordance with the time frame set out in Schedule 10 – Review Procedure.
- 6.9.4.6 Project Co shall develop and implement air quality mitigation measures to address any non-conformance with the Applicable Construction Air Quality Criteria and Limits in consultation with Contracting Authority.
- 6.9.5 Complaints During Construction Activities
- 6.9.5.1 Project Co shall address and respond to each complaint regarding air quality arising from the Works in accordance with the Complaints Protocol developed in accordance with Schedule 18 – Communication and Public Engagement Protocol. Upon receipt of a request by Contracting Authority to investigate a complaint regarding air quality, Project Co shall conduct additional air quality investigations and measurements, as required by Contracting Authority, in order to determine:
- (a) the source of the air quality issue that is the subject of the complaint;
 - (b) if concentration of the contaminant of concern exceeds any of the Applicable Construction Air Quality Criteria and Limits; and
 - (c) if mitigation measures or additional monitoring are required to confirm compliance with the Applicable Construction Air Quality Criteria and Limits.
- 6.9.5.2 If mitigation measures or additional monitoring are required pursuant to Section 6.9.4.1(e), then Project Co shall completely define the required mitigation measures and additional monitoring, as applicable, within two (2) Business Days following Project Co’s completion of additional air quality investigations and measurements required by Contracting Authority, or within a longer timeframe that may be agreed to by the Parties. Project Co shall implement the mitigation measures and additional monitoring, as applicable, in full within a timeframe agreed upon by the Parties and shall rectify any non-conformance with Applicable Construction Air Quality Criteria and Limits.
- 6.9.5.3 If Contracting Authority receives complaints from the public with respect to Construction Activities that are not in compliance with Applicable Construction Air Quality Criteria and Limits, then Contracting Authority may, in its sole discretion, require Project Co to cancel or discontinue such Construction Activities, and Project Co shall cancel or discontinue such Construction Activities as instructed by Contracting Authority.

- (a) Project Co may re-start Construction Activities upon demonstration of compliance with this Section 6.9.5.

6.9.6 Equipment and Best Practice Requirements

- 6.9.6.1 Project Co shall ensure that all diesel fuel and gasoline powered on-road and off-road equipment meet applicable exhaust and evaporative exhaust emission standards established pursuant to O. Reg. 457/19, and the Off-road Compression-Ignition (Mobile and Stationary) and Large Spark-Ignition Engine Emission Regulations (SOR/2020-258), as amended from time to time, and are maintained in accordance with the applicable manufacturer’s specifications.
- 6.9.6.2 Project Co shall coordinate its air pollution management and noise mitigation measures for maximum effectiveness, so as to ensure that the use of noise walls, curtains, enclosures and other potential noise control methods are also effective for air pollution control where possible.

6.10 Air Quality During Operations

6.10.1 Air Quality During Operations – General

- 6.10.1.1 Project Co shall be responsible for designing and constructing the Project Co Infrastructure so that the overall air quality criteria and limits as per Section 6.10.2 can be achieved during the operation and maintenance of the Ontario Line Subway System.
- 6.10.1.2 For clarity, Project Co shall be responsible for the Project Co Infrastructure as described in the Output Specifications.
- 6.10.1.3 Prior to Project Substantial Completion, Project Co shall provide all information and data regarding infrastructure, maintenance and monitoring requirements related to air quality to Contracting Authority for the benefit of RSSOM Project Co during the construction, installation, testing and commissioning phase and subsequent operations for the RSSOM Project.
- 6.10.1.4 Project Co shall:
 - (a) undertake and complete a self-assessment to demonstrate compliance with Section 9 of the Environmental Protection Act (Ontario), the requirements of O. Reg. 419/05 Air Pollution and Local Air Quality and the requirements of O. Reg. 1/17 Registrations Under Part II.2 of the Act - Activities Requiring Assessment of Air Emissions.
 - (i) Project Co shall provide a summary of the self-assessment as part of the Substantial Completion Environmental Report as per Section 5.2.6.

- (ii) For clarity, Project Co is not responsible for obtaining any permits if identified in the self-assessment completed in accordance with this Section 6.10.1.4.
- (b) comply with all applicable Environmental Approvals and Permits, Licences, Approvals and Agreements as set out in Schedule 34 – Permits, Licences, Approvals and Agreements as they relate to air quality management when designing, purchasing and operating equipment;
- (c) comply with all applicable records of site condition and certificate of property use based on property impacts determined by Project Co design in accordance with Section 6.2.2.1;
- (d) design and construct the Project Co Infrastructure to include measures for managing vapour intrusion of Hazardous Substances or seepage of Hazardous Substance into Project Co Infrastructure;
- (e) implement measures for managing Project-related air emissions including fugitive dust and odour;
- (f) implement measures for preventing and managing vapour intrusion of Hazardous Substances or seepage of Hazardous Substances into Project Co Infrastructure from soil or groundwater contamination; and
- (g) design the Project Co Infrastructure to ensure air emissions from its operations and equipment will be in compliance with the Applicable Operations Air Quality Criteria and Limits in accordance with Section 6.10.2.1.

6.10.2 Applicable Operations Air Quality Criteria and Limits

- 6.10.2.1 Project Co shall design the Project Co Infrastructure to ensure that air emissions from its operations and equipment comply with:
- (a) Ontario Regulation 419/05 for Air Pollution - Local Air Quality and relevant guidelines and jurisdictional screening levels as published in the MECP document Air Contaminants Benchmarks (ACB) List - Standards, Guidelines and Screening Levels for Assessing Point of Impingement Concentrations of Air Contaminants;
 - (b) Ontario Ambient Air Quality Criteria, published by MECP, and updated April 2019; and
 - (c) The Canadian Ambient Air Quality Standards, published by CCME, and dated 2017,

(collectively, the “Applicable Operations Air Quality Criteria and Limits”).

6.10.3 Equipment and Best Practice Requirements

6.10.3.1 Project Co shall design and construct the Project Co Infrastructure so that mitigation measures for minimizing air quality emissions during the performance of operations are in accordance with Metrolinx Environmental Guide for Air Quality and Greenhouse Gas Emissions Assessment (2019).

6.10.3.2 Project Co shall ensure that all new equipment complies with Canadian emissions standards applicable to new equipment at the time of purchase.

6.11 Other Environmental Matters

6.11.1 Light Pollution

6.11.1.1 Project Co shall assign lighting zone designations for the Site and all adjacent areas that may be impacted by the Work in accordance with ANSI Recommended Practice in order to determine the ratings that apply to each lighting zone, as further set out in this Section 6.11.1.

6.11.1.2 Project Co shall undertake all mitigation measures that may be required in order to:

- (a) prevent areas with lower lighting zone designations from being impacted by the Work occurring in areas with higher lighting zone designations; and
- (b) minimize light trespass or to address visibility problems caused by eye adaptation when transitioning from a brightly lit area to a more dimly lit area.

6.11.1.3 If Project Co uses outdoor luminaires in a lighting zone, such luminaires shall not, where reasonably practicable, exceed the ratings shown in Table 6.11.1-1, Table 6.11.1-2 and Table 6.11.1-3 that are applicable to such lighting zone.

Table 6.11.1-1 MLO Recommended Uplight Ratings for Light Zones

[REDACTED]

Table 6.11.1-2 MLO Recommended Backlight Ratings for Light Zones

[REDACTED]

Table 6.11.1-3 MLO Maximum Allowable Glare Ratings for Light Zones

[REDACTED]

- 6.11.1.4 If adherence to ratings set out in Table 6.11.1-1, Table 6.11.1-2 and Table 6.11.1-3 is not reasonably practicable, Project Co shall not be permitted to use outdoor luminaires, other than full cut-off outdoor luminaires for temporary nighttime illumination.
- 6.11.1.5 Project Co shall not exceed the maximum initial vertical illuminance spill light from exterior lighting recommended for a lighting zone, as recommended by ANSI Recommended Practice.
- 6.11.1.6 Project Co shall mitigate sources of glare to observers within line of sight of light sources on construction work areas. Mitigation methods may include one or several options such as using an internal or external shield of light source, adjusting mounting heights, decreasing source lumens, using luminaires with low-G BUG ratings, or dimming light sources.
- 6.11.1.7 Project Co shall provide a summary of lighting mitigation implemented by Project Area as part of the Monthly Environmental Report in accordance with Section 5.2.2 and Schedule 10 – Review Procedure.

6.11.2 Protection/Decommissioning of Existing Monitoring Wells

- 6.11.2.1 Contracting Authority shall provide Project Co with a summary of monitoring well locations as listed in Appendix F of this Schedule 17, as amended or replaced from time to time during the Project Term.
- 6.11.2.2 Project Co shall be responsible for designing and constructing the Project Co Infrastructure so that management of permanent monitoring wells during the operation and maintenance of the Ontario Line Subway System can be completed in accordance with O. Reg 903 under the Ontario Water Resources Act (Ontario).
- 6.11.2.3 For clarity, Project Co shall be responsible for the Project Co Infrastructure as described in the Output Specifications.
- 6.11.2.4 Prior to Project Substantial Completion, Project Co shall provide all information and data regarding infrastructure, maintenance and monitoring requirements related to monitoring wells to Contracting Authority for the benefit of RSSOM Project Co during the construction, installation, testing and commissioning phase and subsequent operations for the RSSOM Project.
- 6.11.2.5 Project Co shall be responsible for the temporary protection and final decommissioning of all existing or newly installed monitoring wells prior to Project Substantial Completion, by a licenced well driller in accordance with Ontario Regulation 903 made under the Ontario Water Resources Act, as directed and confirmed by Contracting Authority prior to well decommissioning, as per the

timeline described in Section 3.1.10.4 (*Geotechnical Instrumentation and Protection of Existing Adjacent Structures*) of the Output Specifications. Project Co shall be responsible for temporary protection and decommissioning of all monitoring wells and piezometers, including with respect to:

- (a) any and all monitoring wells installed as part of geotechnical, environmental and hydrogeological investigations in connection with the Project as identified in Appendix F to this Schedule 17;
- (b) all wells installed as part of the studies undertaken by Contracting Authority and that were provided as part of Appendix F of this Schedule 17; and
- (c) any supplementary wells installed by Project Co as part of its own investigation and monitoring work and dewatering systems, as necessary to complete the Works.

- 6.11.2.6 Project Co shall maintain monitoring wells in a state of good repair in accordance with Applicable Law.
- 6.11.2.7 Prior to decommissioning any wells, Project Co shall consult with Contracting Authority to identify any wells that shall remain protected as required by Contracting Authority.
- 6.11.2.8 Where it is necessary for Project Co to temporarily decommission a monitoring well that is required by Contracting Authority per Section 6.11.2.7 in order to avoid interference with Project Co’s performance of the Works, Project Co shall install a new monitoring well in a nearby location to avoid interference with Project Co’s performance of the Works and at a depth and design as approved by the Contracting Authority, prior to Project Substantial Completion.
- 6.11.2.9 Project Co shall complete the decommissioning of monitoring wells at any additional locations identified and as directed by Contracting Authority from time to time, in accordance with any timelines prescribed by Applicable Law, but in no event later than Project Substantial Completion.
- 6.11.2.10 Project Co shall be responsible for the filing of well decommissioning records with the MECP.
- 6.11.2.11 Project Co shall, prior to commencing any Works, submit to Contracting Authority in accordance with Schedule 10 – Review Procedure and the timeframe for submission set out in Appendix B-2 to this Schedule 17, a well decommissioning and protection plan (a “**Well Decommissioning and Protection Plan**”). Project Co shall notify the Contracting Authority of the intention to decommission monitoring instruments and provide a minimum of fifteen (15) Business Days Notice. Each Well Decommissioning and Protection Plan shall outline the

protection methods for wells that would be impacted by Construction Activities. Each Well Decommissioning and Protection Plan shall provide for the plan, procedure and schedule for decommissioning of monitoring wells other than those wells which are to remain protected pursuant to Section 6.11.2.7. Each Well Decommissioning and Protection Plan shall be site-specific.

- 6.11.2.12 Project Co shall, throughout the Project Term, continuously manage and update a tracker that includes a detailed inventory of all existing, newly installed, protected, and decommissioned wells, including the well identification names, MECP well tag numbers (if applicable), UTM coordinates, well construction details, instrumentation used within the well, well condition and current status including use of the well for current or future monitoring during the performance of the Construction Activities (the “**Well Tracker**”). Project Co shall maintain the Well Tracker on the EMS Software Solution.
- 6.11.2.13 The Well Tracker shall include the locations identified in Appendix F of this Schedule 17.
- 6.11.2.14 Project Co shall, throughout the Project Term, provide GPS location of all monitoring wells in GIS and CAD file format.
- 6.11.2.15 Project Co’s licensed well driller shall prepare and submit MECP single well records for monitoring wells installed or decommissioned on behalf of Project Co.
- 6.11.2.16 Project Co shall prepare and submit, on a quarterly basis, updated decommissioning reports (“**Quarterly Well Decommissioning Report**”) including data obtained from all decommissioned wells and piezometers to Contracting Authority in accordance with Schedule 10 – Review Procedure and Appendix B-2 of Schedule 17. Project Co shall include in each Quarterly Well Decommissioning Report at a minimum the following:
- (a) a summary of the total number of wells decommissioned, UTM coordinates of each well decommissioned, MECP well tag numbers (if applicable), a map depicting the location of each well decommissioned and a description of the methodology used to decommission each well;
 - (b) the depth of each monitoring well;
 - (c) groundwater levels prior to decommissioning;
 - (d) MECP well tag numbers, if applicable;
 - (e) data obtained from all decommissioned wells and piezometers;; and
 - (f) copies of MECP well decommissioning records completed by the licensed well driller.

- 6.11.2.17 Project Co shall prepare and submit as part of the Substantial Completion Environmental Report a well decommissioning summary report (“**Well Decommissioning Implementation Report**”) containing the following information:
- (a) a description and summary of how all Project Co’s well decommissioning activities have been implemented during the Works;
 - (b) a summary of the total number of wells decommissioned, UTM coordinates of each well decommissioned, MECP well tag numbers (if applicable), a map depicting the location of each well decommissioned and a description of the methodology used to decommission each well;
 - (c) MECP well tag numbers, if applicable;
 - (d) data obtained from all decommissioned wells and piezometers; and
 - (e) copies of MECP well decommissioning records completed by the licensed well driller.
- 6.11.2.18 Project Co shall handover to Contracting Authority all monitoring data for the monitoring wells identified by the Contracting Authority.

6.11.3 Disposal of Waste

- 6.11.3.1 For solid and Hazardous Waste produced by Construction Activities, Project Co shall comply with Applicable Law, including, for clarity, the following, each as amended from time to time:
- (a) Waste Free Ontario Act, 2016, S.O. 2016, c. 12;
 - (b) Resource Recovery and Circular Economy Act, 2016, S.O. 2016, c. 12;
 - (c) Ontario Regulation 102/94 made under the Environmental Protection Act (Ontario);
 - (d) Ontario Regulation 103/94 made under the Environmental Protection Act (Ontario);
 - (e) applicable municipal by-laws;
 - (f) Cross-border Movement of Hazardous Waste and Hazardous Recyclable Material Regulations, SOR/2021-25;
 - (g) Ontario Regulation 347 made under the Environmental Protection Act (Ontario); and

- (h) Transportation of Dangerous Goods Act, 1992, S.C. 1992, c. 34.
- 6.11.3.2 Project Co shall prepare a Waste management plan (the “**Waste Management Plan**”) in accordance with Schedule 10 – Review Procedure and Appendix B-2 of this Schedule 17. The Waste Management Plan shall demonstrate how Project Co will conduct Waste management activities in compliance with regulatory requirements listed in Section 6.11.2.2. The Waste Management Plan shall include a Waste Audit and Reduction Program and Source Separation Program, as required by O. Reg. 102/94: Waste Audits and Waste Reduction Work Plans and O. Reg. 103/94: Industrial, Commercial and Institutional Source Separation Programs, which shall be implemented throughout the Works.
- 6.11.3.3 The Waste Management Plan shall describe and include, at minimum, the following:
- (a) general principles and sustainable principles for the management of Waste;
 - (b) compliance with regulatory requirements and best practices;
 - (c) methods for reducing, re-using and recycling Waste, including Waste reduction targets, if applicable;
 - (d) types of Waste, estimated quantities to be managed and proposed methods for minimizing these quantities;
 - (e) inclusion of construction mitigation measures for implementation by Project Co; and,
 - (f) methods of management of Waste and locations of re-use, recycling and disposal.
- 6.11.3.4 Project Co shall not bury rubbish, Waste, debris and excess materials on the Lands and shall dispose of it in accordance with Applicable Law.
- 6.11.3.5 Project Co shall not dispose of Waste, excess materials, chemicals, liquid Waste, volatile materials, Hazardous Substances, Designated Substances and Hazardous Materials on the Lands, on the ground surface, in excavations, into waterways, surface drainage features, sanitary sewers or storm sewers.
- 6.11.3.6 All concrete washouts shall be contained by Project Co and removed as Waste.
- 6.11.3.7 Project Co shall be responsible for generator requirements for the management and disposal of Hazardous Waste and Subject Waste on the Hazardous Waste Program Registry administered by the Resource Productivity and Recovery Authority in accordance with Applicable Law. For clarity, Project Co shall assume the

responsibilities of the Operator of the Waste Generation Facility as defined in O. Reg. 347, as amended. Project Co shall be responsible for:

- (a) registration as the generator of Waste on the Hazardous Waste Program Registry;
- (b) payment of Hazardous Waste Program Registry fees;
- (c) creation, activation, deactivation and status updates for facilities where Waste is generated;
- (d) creation, editing, activation and deactivation of Waste activities and Waste streams;
- (e) creation of manifests and other necessary documents required for the transportation and disposal of the Waste;
- (f) signing of manifests; and
- (g) recordkeeping requirements.

6.11.4 Rail Tie Storage and Disposal

6.11.4.1 Project Co shall be responsible for the handling, storage and disposal of new and used wooded railway ties in a manner that complies with all Applicable Law and does not present a nuisance to properties in proximity to the Works.

6.11.4.2 Project Co shall:

- (a) stage and schedule Construction Activities and tie disposal in a manner that minimizes storage time within the Project Area to the greatest extent practicable;
- (b) cover and underlay all tie stockpiles with heavy duty white tarpaulin, or equivalent, to reduce radiant heating and prevent fugitive odour emissions as soon as is practicable and not later than 5:00 p.m. each day; and
- (c) ensure all tie stockpiles are covered, as above, continuously until removed from the Site, as above.

6.11.5 Salt Management

6.11.5.1 Application of salt is not permitted. It is recommended that Project Co use alternatives such as plant-based de-icing substances.

- 6.11.5.2 Project Co shall construct, operate, and maintain streets, roads, highways, parking lots and other large, paved surfaces in a manner that reduces the discharge of pollutants into the drainage system, including but not limited to pollutants related to de-icing activities, as well as concrete and asphalt resurfacing and rehabilitation.
- 6.11.5.3 Application of de-icing material in TRCA Regulated Areas is not permitted without consultation and written approval from TRCA.

APPENDIX A-1 TO SCHEDULE 17

CONTRACTING AUTHORITY ENVIRONMENTAL COMMITMENTS

[REDACTED]

APPENDIX A-2 TO SCHEDULE 17

SHARED ENVIRONMENTAL COMMITMENTS

[REDACTED]

APPENDIX A-3 TO SCHEDULE 17

PROJECT CO'S GENERAL ENVIRONMENTAL COMMITMENTS

[REDACTED]

APPENDIX B-1 TO SCHEDULE 17

ENVIRONMENTAL REFERENCE DOCUMENTS

[REDACTED]

APPENDIX B-2 TO SCHEDULE 17

PLANS AND REPORTS

[REDACTED]

APPENDIX C TO SCHEDULE 17

LOCATIONS OF ARCHAEOLOGICAL ASSESSMENTS

[REDACTED]

APPENDIX D TO SCHEDULE 17

METROLINX BANNED SUBSTANCE LIST

[REDACTED]

APPENDIX E TO SCHEDULE 17

IDENTIFIED CONTAMINATED MATERIALS

[REDACTED]

APPENDIX F TO SCHEDULE 17

SUMMARY OF MONITORING WELL LOCATIONS

[REDACTED]

SCHEDULE 18**COMMUNICATION AND PUBLIC ENGAGEMENT PROTOCOL****1. DEFINITIONS**

In this Schedule 18, unless the context indicates a contrary intention, terms which are defined in this Agreement (and not otherwise defined in this Schedule 18) shall have meanings given to them in this Agreement and the following terms shall have the following meanings:

- 1.1 “**Accessibility for Ontarians with Disabilities Act (Ontario)**” means the *Accessibility for Ontarians with Disabilities Act, 2005*, S.O. 2005, c. 11, as amended from time to time.
- 1.2 “**Business Improvement Areas**” means any municipally designated “Business Improvement Areas” as recognized by the City of Toronto.
- 1.3 “**Communications and Public Engagement Protocol**” means this Schedule 18.
- 1.4 “**Communications Calendar**” has the meaning given in Section 4.4(a)(ii).
- 1.5 “**Communications Repository**” has the meaning given in Section 5(a).
- 1.6 “**Communications Signage**” has the meaning given in Section 9.9(b).
- 1.7 “**Communications Working Group**” has the meaning given in Section 4.1(a).
- 1.8 “**Community Benefits and Supports Protocol**” has the meaning given in Appendix A to this Schedule 18.
- 1.9 “**Complaints Protocol**” has the meaning given in Section 9.14(b)(i).
- 1.10 “**Construction Activities Incident**” has the meaning given in Section 10.5(a).
- 1.11 “**Construction Liaison Committee**” has the meaning given in Section 4.3(a).
- 1.12 “**Crisis Communication Plan**” has the meaning given in Section 9.3(a).
- 1.13 “**Documents Relating to Indigenous Nations**” has the meaning given in Schedule 17 – Environmental Obligations.
- 1.14 “**Elected Officials**” means any Member of Parliament or their staff or representatives, any Member of the Provincial Parliament (including the Premier) or their staff or representatives or any Municipal Councillor (including the Mayor) or their staff or representatives.
- 1.15 “**Indigenous Entities Engagement**” means a process of meaningfully engaging with Indigenous Entities whose interests may be affected by the Project, with the objective of providing relevant information to Indigenous Entities about the Project and meaningfully considering their input.

- 1.16 “**Indigenous Nations Engagement**” has the meaning given in Schedule 17 – Environmental Obligations.
- 1.17 “**Level 1 Call**” means a comment, suggestion and/or complaint where a caller is providing an opinion on, or reaction to, construction activities and is requesting items be addressed as soon as possible. This Level 1 Call will be tracked, and an initial response by Project Co is to be provided to Contracting Authority within twenty-four (24) hours of receipt.
- 1.18 “**Level 2 Call**” means a media request for information and/or influencer escalation where a caller belongs to a category of media that has stakeholder impact and is looking to have that information provided to them on a fast track. Initial response by Project Co for a Level 2 Call is to be provided to Contracting Authority within two (2) hours. Project Co is to work with Contracting Authority to resolve the response.
- 1.19 “**Level 3 Call**” means a report of personal injury and/or allegations of a safety concern or serious and illegal misconduct where a caller is witness to, or party of, an event on or adjacent to construction activities for which security and health and safety or site supervisory staff must investigate upon receipt of call in order to secure public safety. Incidents and emergencies will require members of the Project Co team to resolve issues overnight, or on weekends.
- 1.20 “**Major Impact**” has the meaning given in Section 10.2(b).
- 1.21 “**Medium Impact**” has the meaning given in Section 10.3(b).
- 1.22 “**Metrolinx Brand**” has meaning in Section 9.8.1(a).
- 1.23 “**Metrolinx Branded Items**” has meaning in Section 9.8.1(a).
- 1.24 “**Minor Impact**” has the meaning given in Section 10.4(b).
- 1.25 “**Monthly Editorial Meeting**” has the meaning given in Section 9.2(c).
- 1.26 “**Project Co Brand**” has meaning in Section 9.8.2(a);
- 1.27 “**Project Co Branded Items**” has meaning in Section 9.8.3(a);
- 1.28 “**Project Co Communications Plan**” has the meaning given in Section 7.1(a).
- 1.29 “**Project Co Communications Protocol**” has the meaning given in Section 6(a).
- 1.30 “**Project Co Communications Team**” has the meaning given in Section 3(a).
- 1.31 “**Project Co Shop Local Plan**” has the meaning given in Section 9.11(a).
- 1.32 “**Project Website**” means Contracting Authority’s websites www.metrolinx.com and www.infrastructureontario.ca, a section of which will be designated for the Project.
- 1.33 “**Project Website and Social Media Calendar**” has the meaning given in Section 4.4(a)(ii).

1.34 “**Signage and Hoarding Coverage Plan**” has the meaning given in Section 9.9(a).

1.35 “**Stakeholder Working Group**” has the meaning given in Section 4.2(a).

2. GENERAL

2.1 General Communications Principles

(a) The Project represents an important transit infrastructure commitment by Contracting Authority. Project Co will lead the communication and community engagement requirements pertaining to its scope of work under this Agreement. By developing comprehensive communication plans and materials, Project Co must ensure the public and Stakeholders are informed and engaged in a timely manner, and that appropriate action is taken to address complaints, mitigate impacts to residents and businesses, and to effectively communicate such impacts and progress of the Works. Project Co will also provide support and collaborate with RSSOM Project Co, South Civil Project Co and EGS Project Co, who are leading their own communication and community engagement requirements, by providing information, messaging and participation in events and meetings, as reasonably requested by Contracting Authority.

(b) Project Co acknowledges that:

- (i) in the event that Contracting Authority informs Project Co by written Notice that an obligation that is otherwise required under this Schedule 18 is no longer required, Contracting Authority and Project Co will work collaboratively to re-allocate resources to meet the communications and community engagement requirements of Contracting Authority; and
- (ii) Project Co shall work together with Contracting Authority to deliver the communications and public engagement activities pursuant to this Agreement, including this Schedule 18.

2.2 General Communications Responsibilities

(a) During the Project Term, Project Co shall:

- (i) proactively identify communication issues;
- (ii) be accountable for the effective delivery of communications and community engagement plans as set out in this Agreement;
- (iii) carry out all activities required to fulfill all of Project Co’s communications and community engagement obligations in accordance with and as set out in this Schedule 18;
- (iv) develop all plans, protocols, and other documentation that Project Co is required to develop in accordance with this Schedule 18 in consultation with Contracting Authority, Stakeholders, and Governmental Authorities, and submit all such plans, protocols and documentation to Contracting Authority for review in accordance with Schedule 10 – Review Procedure;

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- (v) in consultation with Contracting Authority, Stakeholders, and Governmental Authorities, implement and comply with all plans, protocols and other documentation that have been reviewed and accepted or approved by Contracting Authority in accordance with this Schedule 18;
 - (vi) provide all information, materials, support and consultation to Contracting Authority as Contracting Authority may require with respect to Contracting Authority’s communications, public engagement, community liaison and public and customer notification activities, Stakeholder consultation, and reporting related to the Project in accordance with this Schedule 18;
 - (vii) be available to assist Contracting Authority in responding to media, government and public enquiries related to the Project as requested and in accordance with all timelines prescribed by Contracting Authority;
 - (viii) review and develop communications and/or technical materials reasonably requested by Contracting Authority;
 - (ix) support Contracting Authority with the following Stakeholders when carrying out Project Co’s obligations as set out in this Schedule 18:
 - (A) the City of Toronto and the TTC;
 - (B) MTO, MOI, conservation authorities and other Governmental Authorities;
 - (C) Utility Companies; and
 - (D) Emergency Service Providers;
 - (x) provide experienced communications and public engagement staff, as set out in Section 3(a), to support the implementation of this Schedule 18;
 - (xi) ensure that all Project Co Parties exhibit a high degree of professionalism and courtesy when working on the Project and when interacting with Elected Officials, Stakeholders, Indigenous Nations, Indigenous Entities, customers, businesses, residents and the public when carrying out Project Co’s obligations under this Schedule 18. This includes:
 - (A) acting with appropriate decorum when attending public consultations and events;
 - (B) parking in a manner that will not negatively impact neighbourhood or station access or customer parking;
 - (C) not littering and being respectful of public and private property;
 - (D) replacing or repairing waste receptacles, plantings and signage should these items become damaged or defaced as a result of Project Co activities; and
 - (E) not engaging in inconsiderate conversation near public spaces;

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- (xii) provide experienced staff, as set out in Section 3(a), to participate in the Communications Working Group, Stakeholder Working Group, Construction Liaison Committee meetings, internal and external meetings, public in-person and virtual events;
 - (xiii) communicate anticipated construction activities and impacts, construction progress, Project highlights, potential traffic, transit system, service or station access changes and other traffic or transit information to the public and customers;
 - (xiv) provide the Stakeholders with regular and timely information in respect of Project status and progress, potential traffic or transit system changes and noise, dust, vibration, and congestion impacts on businesses and residents and other actual and potential impacts of Project activities;
 - (xv) support Contracting Authority to mitigate impacts and rectify complaints to Stakeholders, residents and businesses where appropriate;
 - (xvi) provide regular updates and support to Contracting Authority related to all community impacts associated with the Project;
 - (xvii) work with Contracting Authority to build and foster relationships with local businesses and the public in order to address the community’s concerns about the Works that may impact the community, and use best practices for seeking and receiving public comments;
 - (xviii) develop and execute business disruption mitigation and business engagement strategies, in consultation with Contracting Authority, in order to address businesses’ concerns about Construction Activities;
 - (xix) support Contracting Authority with the following Stakeholders when carrying out Project Co’s obligations as set out in this Schedule 18:
 - (A) neighbourhood groups (including property owners, ratepayers, citizens);
 - (B) local businesses (including individual operators and Business Improvement Areas); and
 - (C) various community interest groups (including employment, environmental, health, natural and cultural heritage, advocacy groups); and
 - (xx) carry out all activities required to fulfill all of Project Co’s obligations set out in Section 26.3 (*Claims Management*) of this Agreement and Section 17 (*Incident Reporting and Claims Settlement*) of Schedule 25 – Insurance and Bond Requirements.
- (b) Project Co shall ensure that all public-facing communications materials and information are provided in colour (and not black and white), unless otherwise directed by Contracting Authority.
- (c) Project Co acknowledges and agrees that, notwithstanding any other provision in this Schedule 18,

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- (i) all communications-related protocols, plans, materials, advertisements, notices, activities, approaches and strategies with respect to the Project, shall be subject to Contracting Authority’s review and approval; and
 - (ii) Project Co may not engage with, consult with, communicate with or disseminate any materials to the public, Governmental Authorities, Stakeholders, Indigenous Nations or Indigenous Entities with respect to the Project without the prior written consent of Contracting Authority.
- (d) No later than three (3) months after the Project Substantial Completion Date, Project Co shall handover to Contracting Authority, all communications submittals, stakeholder/contact and comment database, logs, documents, plans, deliverables, agendas, photos, videos, and any other communications-related information related to the Project. Project Co shall ensure there is a seamless transition of the Complaints Protocol data and all public-facing communications material to Contracting Authority.
- (e) Project Co may fulfill any obligations that are required to be performed “in person”, as required by this Schedule 18, by hosting a virtual event or participating virtually, subject to the prior written approval of Contracting Authority, not to be unreasonably withheld.

3. PROJECT CO COMMUNICATIONS TEAM

- (a) Project Co shall form a dedicated communications team (the “**Project Co Communications Team**”) no later than thirty (30) days following the DMCA Effective Date. The Project Co Communications Team shall be comprised of the following:
- (i) During the Project Term,
 - (A) a full-time communications and public engagement lead who shall,
 - (I) be a media-trained spokesperson with a minimum of twelve (12) years of communications experience in media relations, crisis communications, issues management, communications marketing, corporate and community relations and experience in managing a team;
 - (II) have relevant experience with linear projects in a dense urban environment, such as in the transportation, transit, energy, construction, utilities or infrastructure sectors, managing or engaging with impacted communities;
 - (III) oversee the Project Co Communications Team in Section 3(a)(i)(B) who shall directly report to the communications and public engagement lead;
 - (IV) ensure that Project Co’s communications-related obligations under this Agreement are being met, with the responsibility to review and sign-off on all plans submitted by Project Co; and

- (V) be a Key Individual that has a direct reporting relationship to or is embedded with the design and construction team, to ensure appropriate flow of relevant information;
 - (B) a communications team that shall possess no fewer than five (5) additional full-time staff members, each of whom shall possess a minimum of five (5) years of communications, marketing or other relevant experience in media relations, customer communications, crisis communications, issues management, community relations and public engagement (transportation, transit, energy, construction, utility or infrastructure sector experience should be considered an asset); and
 - (C) any additional staff that may be required in order for Project Co to fulfill its communications obligations under this Agreement.
- (b) The Project Co Communications Team shall work closely with Contracting Authority’s staff at community office locations, when required.

4. WORKING GROUPS

4.1 Communications Working Group

- (a) For the Project Term, Contracting Authority representatives and the Project Co Communications Team shall form a communications working group (the “**Communications Working Group**”). The Communications Working Group shall develop and implement all communications plans and public consultation, marketing and community engagement activities for the Project in accordance with this Schedule 18. Project Co shall ensure that Key Individuals and any other staff from Project Co or any Project Co Party that Contracting Authority may require, are made available to support the Communications Working Group as required. Strategies and tactics developed and employed by the Communications Working Group shall,
- (i) provide for timely, open, transparent, effective, consistent and proactive communications with Contracting Authority, elected officials and the public;
 - (ii) foster and maintain positive and constructive relationships with neighbourhoods, Stakeholders, residents and customers that may be affected by decisions regarding the scope or in-service operations of the Project; and
 - (iii) build trust and maximize public understanding and support for the Project.
- (b) No later than forty-five (45) days following the DMCA Effective Date, the Communications Working Group shall convene to discuss the Project Co Communications Protocol and to identify the working relationship, roles and responsibilities matrix, and approvals processes for the Project. The Communications Working Group shall provide direction and feedback on communications deliverables and plans expected from Project Co on an ongoing basis.
- (c) During the performance of the Works, the Communications Working Group shall meet bi-weekly (or more frequently as the Parties agree, acting reasonably), to plan and implement communications, marketing and public engagement strategies for the Project, share information,

discuss community relations updates, identify and plan for communications and Project milestones, manage issues and receive schedule updates.

4.2 Stakeholder Working Group

- (a) During the performance of the Works, Contracting Authority representatives, the Project Co Communications Team, and representatives from the City of Toronto, community, agency and others, as identified by Contracting Authority, shall form a stakeholder working group (the “**Stakeholder Working Group**”). The Stakeholder Working Group shall meet quarterly, or more frequently as the Parties agree acting reasonably, to discuss best practices, share information, develop strategies, and provide oversight and support towards Project Co’s obligations with respect to local employment and local business procurement opportunities, as per Section 8.3(j) of this Schedule 18, in each case in connection with the Parties’ obligations under this Schedule 18.
- (b) The strategies and tactics developed and employed by the Stakeholder Working Group shall,
 - (i) foster and maintain positive and constructive relationships with community groups and agencies that may be affected by the Project; and
 - (ii) maximize public understanding of the employment and training opportunities and benefits to the community as a result of the Project.
- (c) Project Co shall ensure that Key Individuals and any other staff from Project Co or any Project Co Party that Contracting Authority may require, are made available to support the Stakeholder Working Group as required.
- (d) Upon reasonable Notice by Contracting Authority, the Stakeholder Working Group shall convene to provide an overview of the Project and discuss objectives, roles and responsibilities.
- (e) The Stakeholder Working Group shall provide direction and feedback to Project Co and Contracting Authority on deliverables expected from Project Co.

4.3 Construction Liaison Committee

- (a) During the performance of the applicable Works, Project Co shall lead monthly construction liaison committee meetings to provide construction updates for the Project (the “**Construction Liaison Committee**”).
- (b) Representatives from the City of Toronto, emergency services, business improvement areas, resident, school, business and community organizations will be invited to serve on the Construction Liaison Committee. As members, they are responsible for:
 - (i) actively participating in meetings;
 - (ii) acting as representatives of their communities and formally communicating back to them; and
 - (iii) providing meaningful and timely feedback to Project Co.

- (c) Project Co will prepare a presentation for each Construction Liaison Committee meeting to be distributed five (5) Business Days prior to the meeting and will present an overview of the applicable Works schedule, local impacts and address questions during the meeting, in addition to supporting Contracting Authority in following-up with the various representatives on matters concerning their communities.

4.4 Submittals for Communications Working Group

- (a) No later than five (5) Business Days prior to each Communications Working Group meeting, Project Co shall provide the following submittals to Contracting Authority for review:

- (i) a draft agenda for the Communications Working Group meeting, a final version of which is to be circulated at least two (2) Business Days prior to the meeting; and
- (ii) an up-to-date calendar outlining the communications deliverables and activities for the next six (6) month period, including,
- (A) the identification and scope of the deliverable or activity being addressed;
- (B) the tactic or tools to be employed in order to achieve each deliverable and carry out each activity;
- (C) the objectives, target audience, timing and deadline associated with each deliverable and activity; and
- (D) the Project Co resource(s) assigned to each deliverable and activity,

(the “**Communications Calendar**”). As part of the Communications Calendar, Project Co shall provide a stand-alone content calendar that includes the timeline for development, submission, review and approval for the content described in Section 9.2(b) (the “**Project Website and Social Media Calendar**”).

- (b) Contracting Authority may, in its sole discretion, provide comments to Project Co with respect to the conformance of the Communications Calendar and the Communications Repository with the requirements of this Agreement. Project Co shall incorporate all such comments provided by Contracting Authority and shall provide updated, corrected versions to Contracting Authority in accordance with the timeframes prescribed by Contracting Authority, acting reasonably.
- (c) The minutes of all meetings, recommendations and decisions of the Communications Working Group, including those made by telephone or other form of communication, shall be recorded and maintained by Project Co. Project Co shall circulate copies of such minutes within two (2) Business Days of the holding of the meeting or the making of the recommendation or decision. Unless Contracting Authority notifies Project Co within five (5) Business Days of receipt of the minutes that Contracting Authority disagrees with the contents of the minutes, Contracting Authority and Project Co shall be deemed to have approved such minutes. Project Co shall maintain a complete set of all minutes of the meetings of the Communications Working Group and shall make such minutes available for inspection by Contracting Authority during regular business hours.

4.5 Submittals for Stakeholder Working Group

- (a) No later than ten (10) Business Days prior to each Stakeholder Working Group meeting, Contracting Authority shall provide,
- (i) a draft agenda for the Stakeholder Working Group meeting, a final version of which is to be circulated at least two (2) Business Days prior to the meeting; and
 - (ii) meeting minutes from the previous meeting, if applicable, for review prior to commencement of the next meeting.
- (b) At each Stakeholder Working Group meeting, Project Co shall provide a presentation and/or report for discussion, which provides an overview of the following:
- (i) a dashboard comprised of statistics as noted for activities in Section 8.3(j) regarding Construction Activities, including,
 - (A) magnitude of local procurement investments, investments supporting local business promotions and main street beautification and cleaning efforts by Project Co Parties;
 - (B) number of jobs created by Project Co Parties;
 - (C) a high-level overview of the Project Works Schedule, with anticipated non-trades professional administrative and technical positions on a year-by-year basis;
 - (D) key schedule milestones; and
 - (E) any other submittal that may be requested by Contracting Authority, acting reasonably.
- (c) The minutes of all meetings, recommendations and decisions of the Stakeholder Working Group, including those made by telephone or other form of communication, shall be recorded and maintained by Project Co. Project Co shall circulate copies of such minutes within five (5) Business Days of the holding of the meeting or the making of the recommendation or decision. Unless Contracting Authority notifies Project Co within five (5) Business Days of receipt of the minutes that Contracting Authority disagrees with the contents of the minutes, Contracting Authority and Project Co shall be deemed to have approved such minutes. Project Co shall maintain a complete set of all minutes of the meetings of the Stakeholder Working Group and shall make such minutes available for inspection by Contracting Authority during regular business hours.

5. COMMUNICATIONS REPOSITORY

- (a) Project Co shall implement and maintain, throughout the Project Term, an electronic repository using software that is agreed upon by the Parties (the “**Communications Repository**”). The Communications Repository shall include all communications submittals, stakeholder/contact and comment database, documents, plans, deliverables, agendas, photos, videos, and other media contemplated in this Schedule 18. Project Co shall, throughout the Project Term, allow

Contracting Authority users to remotely log in and access the Communications Repository to review and/or export all information set out in the Communications Repository.

6. PROJECT CO COMMUNICATIONS PROTOCOL

- (a) Project Co shall, no later than sixty (60) days following the DMCA Effective Date, submit a communications protocol for review by Contracting Authority pursuant to Schedule 10 – Review Procedure that describes how Project Co will meet its communications-related obligations under this Agreement (the “**Project Co Communications Protocol**”). The Project Co Communications Protocol shall include the following:
- (i) an executive summary of objectives and description of Project Co’s approach to all communications aspects of the Project;
 - (ii) a summary of proposed communications tools to be used by Project Co to consult with and report to Contracting Authority in accordance with this Schedule 18, with a view towards ensuring that a system is in place for media and community relations, social media management, graphics capabilities, issues management, complaints management, dispute resolution and crisis communications for the purposes of informing and engaging the community, businesses and other Stakeholders about the progress of the Project, as well as any impacts and the benefits of the Project;
 - (iii) a summary of Project Co’s proposed plan with respect to notifying, in consultation with Contracting Authority, affected residents and businesses, including Contracting Authority’s community relations representatives, as soon as possible of unplanned or unexpected impacts of the Works (including going door-to-door, providing updates for Contracting Authority’s Project Website and information telephone line, including after-hours support), and providing an estimate of the expected duration of the impact to affected residents and businesses; and
 - (iv) a description of the Project Co Communications Team, including,
 - (A) the identification by name of the communications and public engagement lead and all other staff comprising the Project Co Communications Team; and
 - (B) the roles, responsibilities and experience of each member of the Project Co Communications Team.
- (b) Project Co shall update the Project Co Communications Protocol,
- (i) on an annual basis; or
 - (ii) more frequently as required to account for any changes in circumstances with respect to the Project or lessons learned, or as directed by Contracting Authority, acting reasonably.

Project Co shall resubmit each updated Project Co Communications Protocol to Contracting Authority for review pursuant to Schedule 10 – Review Procedure.

7. PROJECT CO COMMUNICATIONS PLAN

7.1 Project Co Communications Plan

- (a) Project Co shall, no later than ninety (90) days following the DMCA Effective Date, submit a communications plan for review by Contracting Authority pursuant to Schedule 10 – Review Procedure that describes how Project Co will meet its communications-related obligations under this Agreement (the “**Project Co Communications Plan**”). The Project Co Communications Plan shall include:
- (i) a description of Project Co’s objectives and strategies and specific tactics, timelines, deliverables and responsibilities to support,
 - (A) initiatives for public engagement and consultation, including in-person and virtual; and
 - (B) local or community-based communications, advertising and notification related to the Works;
 - (ii) a detailed description of the communications tools outlined in the Project Co Communications Protocol;
 - (iii) a description of the communications and community engagement activities as set out in Section 8 and Section 9, including a description of how Project Co will carry out such communications activities in accordance with its obligations set out in this Schedule 18;
 - (iv) a description of how the approach will be coordinated with respect to other protocols and plans developed by Contracting Authority or Project Co as part of this Schedule 18;
 - (v) the Communications Calendar, including, for clarity, the Project Website and Social Media Calendar; and
 - (vi) a description of Project Co’s approach and strategy with respect to maintaining and updating the Communications Calendar and Communications Repository.
- (b) Project Co shall update the Project Co Communications Plan,
- (i) on an annual basis; or
 - (ii) more frequently as may be directed by Contracting Authority, acting reasonably, or as may be required to account for any changes in the circumstances of or lessons learned with respect to the Project.

Project Co shall resubmit each updated Project Co Communications Plan to Contracting Authority for review pursuant to Schedule 10 – Review Procedure.

8. COMMUNITY ENGAGEMENT

8.1 General

- (a) During the performance of the Works, Project Co shall identify in its Project Co Communications Plan how it will lead community engagement activities, in consultation with Contracting Authority, related to:
- (i) each future location of Pape Station and Cosburn Station;
 - (ii) the tunnels, portals, Emergency Egress Buildings and Emergency Service Buildings (each as defined in the Output Specifications), Sammon crossover and interfaces; and
 - (iii) communicating any other Works which may impact the community and require notification, and which are not covered as part of the RSSOM Project, South Civil Project and the Elevated Guideway and Stations Project.
- (b) During the performance of the Works, Project Co shall support community engagement activities in consultation with Contracting Authority, related to:
- (i) the RSSOM Project;
 - (ii) the South Civil Project;
 - (iii) the Elevated Guideway and Stations Project;
 - (iv) the Early Contractor Activities undertaken by Contracting Authority or its contractors; and
 - (v) any other Works or initiatives that may be required by Contracting Authority on a reasonable basis.
- (c) Project Co shall develop issue, location or event-specific community engagement plans as requested by Contracting Authority for various purposes including, but not limited to:
- (i) conducting community engagement or consultation on a specific aspect of the Project or concern in the community;
 - (ii) mitigating negative impacts of the Project on the community; and
 - (iii) celebrating key milestones of the Project that positively impact the community.

8.2 Community Engagement – Events

- (a) Contracting Authority and Project Co shall collaborate to develop, plan, and coordinate various events during the performance of Works. Project Co shall,
- (i) participate in planning and executing events for the Project as needed and as requested by Contracting Authority;

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- (ii) participate in supporting events for the RSSOM Project, the South Civil Project and the Elevated Guideway and Stations Project as needed and as requested by Contracting Authority;
 - (iii) facilitate reasonable access to the Metrolinx Lands and the Project Co Infrastructure from time to time for governmental, public relations, media and public tours and events;
 - (iv) ensure sufficient insurance and liability coverage is in place for any special events or venues;
 - (v) make Project Co staff available for events and tours and provide access and support as may be required by Contracting Authority;
 - (vi) where in-person events are not feasible, provide resources to deliver virtual events; and
 - (vii) provide support to produce various communication materials required for the event and for other events related to the Ontario Line Subway System, as reasonably requested.
- (b) During the performance of Works, Contracting Authority shall,
- (i) lead and organize ministerial and government events, including tours of the Metrolinx Lands for dignitaries, costs of which will be borne by Contracting Authority; and
 - (ii) provide no less than two (2) weeks advance notice to Project Co to support the events described in Section 8.2(b)(i) as requested by Contracting Authority.
- (c) During the performance of Works, Project Co shall, in consultation with Contracting Authority, lead or support up to twenty-four (24) formal public engagement events or meetings per year, such as town halls and open houses, to help mitigate contentious community issues directly related to the Project, including but not limited to business impacts, noise and vibration impacts, traffic impacts, and safety concerns. This will include:
- (i) planning, organizing, leading, resourcing and executing these events or meetings;
 - (ii) preparing and submitting to Contracting Authority for review and approval individual plans and materials for each public engagement event or meeting, at least one (1) month prior to each event or meeting, including clear objectives, target audiences, event or meeting format, approach and tactics;
 - (iii) being responsible for all logistics for the events and meetings, including,
 - (A) renting the venue (which can consist of a school, library, community centre, place of worship, etc. but must be publicly accessible), tables and chairs;
 - (B) producing displays, invitations, signage and printed material;
 - (C) undertaking print, social media and radio advertising in trade, community and national media outlets as determined by Contracting Authority;

- (D) issuing invitations, tracking RSVPs and administering surveys to attendees;
 - (E) using reasonable commercial efforts to ensure that the majority of attendees at each event and meeting are residents, individuals associated with a business, and Stakeholders located within a one kilometre radius of the area; and
 - (F) supplying computers, projectors, cables, power cords, screens, easels, flip charts, pens, markers, registration and sign in sheets;
- (iv) providing Project Co staff to present on the event or meeting topic or theme, conduct outreach by engaging with the public and responding to inquiries related to the Project;
 - (v) preparing event and meeting summaries for submission to Contracting Authority for approval, including both quick turnaround synopses for Contracting Authority’s exclusive use and more comprehensive reports at the conclusion of a particular public engagement program (e.g., a set of workshops);
 - (vi) submitting high resolution, professional-quality photos and video clips of the event or meeting which may be used publicly; and
 - (vii) collecting feedback from participants, note lessons learned, and collect stakeholder contact information, all of which is to be stored in the Communications Repository.
- (d) Upon reasonable Notice by Contracting Authority, Project Co shall attend, with representatives of Contracting Authority, Stakeholder meetings, municipal council meetings and presentations, and such other events or meetings as Contracting Authority deems necessary, including providing sufficient and appropriately experienced personnel to present at or to staff the event and meeting and to provide draft meeting materials for review by Contracting Authority.
 - (e) Project Co shall support Contracting Authority in arranging events or meetings, in advance, with residents and businesses where Project Co requires access to properties of such residents and businesses.
 - (f) In addition to the requirements set out in Section 8.2(c), Project Co shall also attend and participate in no fewer than fifty (50) events or meetings per year (or as otherwise agreed to between the Parties), which are organized by local schools, community associations, Stakeholders, the RSSOM Project Co, the South Civil Project Co, the EGS Project Co and other events or meetings as reasonably requested by Contracting Authority. Project Co shall,
 - (i) provide materials for such events and distribute marketing information for the Project;
 - (ii) provide Project Co staff to present on the event topic or theme, conduct outreach by engaging with the public and to respond to inquiries related to the Project;
 - (iii) no later than ten (10) Business Days after the event/meeting, submit high resolution, professional-quality photos and video clips of the event/meeting which may be used publicly; and

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- (iv) collect feedback from participants, note lessons learned, and collect stakeholder contact information, all of which is to be stored in the Communications Repository.
- (g) Project Co shall, in consultation with Contracting Authority, plan, organize, and execute one public tradeshow no later than one-hundred and eighty (180) days following the DMCA Effective Date, in accordance with the following requirements:
- (i) no later than sixty (60) days prior to the tradeshow, Project Co shall prepare and submit to Contracting Authority for review and approval plans and materials for the tradeshow, including an outline of clear objectives, target guest list, tradeshow format, approach and tactics;
 - (ii) the tradeshow plan shall ensure that the tradeshow provides a beneficial and efficient networking opportunity between Project Co and local contractors, vendors, job-seekers, community businesses and agencies, with the intent to foster mutually-beneficial relationships and contracts;
 - (iii) hosting relevant stakeholders, Project Co Parties and community agencies to staff their own booth or table to provide beneficial networking, business and job information to attendees;
 - (iv) Project Co shall be responsible for planning, implementing and paying for all logistics for the public tradeshow, including:
 - (A) renting the venue, tables and chairs. The venue is to be in a central location for the Project which is publicly accessible, can accommodate a tradeshow layout with booths set up from various stakeholders and partners, and a capacity to hold up to three-hundred (300) people;
 - (B) organizing other logistics such as supplying computers, projectors, cables, power cords, screens, easels, flip charts, pens, markers, and registration and sign in sheets;
 - (C) providing a virtual option for engagement and presentation (for example, telephone and online town hall);
 - (D) producing displays, invitations, signage and printed material;
 - (E) catering for a full-day event, which accommodates the hours between 8:00 am to 8:00 pm EST;
 - (F) print, social media and radio advertising in trade and community and national media outlets in consultation with Contracting Authority targeted to industry vendors, suppliers, businesses and job seekers as Project Co seeks to promote procurement and employment opportunities early on regarding the Project;
 - (G) issuing invitations, tracking RSVPs and administering a survey to attendees; and

- (H) providing Project Co staff to make presentations, conduct outreach by engaging with the public and responding to inquiries related to the Project, business and job opportunities;
- (v) promptly following the tradeshow, Project Co shall prepare and submit to Contracting Authority a post-tradeshow report summarizing feedback from event participants, lessons learned and confirmed contracts and business opportunities attained for the Project as a result of the tradeshow;
- (vi) promptly following the tradeshow, Project Co shall submit high resolution, professional-quality photos and video clips to Contracting Authority, the content of which may be posted publicly; and
- (vii) following the tradeshow, during the performance of Works, Project Co and Project Co Parties shall continue to track and report on their progress of the tradeshow objectives and outcomes as per Section 8.3(j)(ii).

8.3 Community Engagement – General Obligations

- (a) Project Co shall provide technical staff for involvement and participation in community events and meetings, including,
 - (i) Key Individuals;
 - (ii) architects;
 - (iii) urban designers;
 - (iv) landscape architects;
 - (v) noise and vibration specialists; and
 - (vi) other technical staff as requested by Contracting Authority.
- (b) Technical staff must have strong presentation skills to deliver appropriate messages and to respond appropriately to questions and concerns in a public forum. It is therefore recommended that these technical staff be media-trained to best represent the Project and Project Co's interests.
- (c) In consultation with Contracting Authority, Project Co shall determine how Stakeholder input shall be considered, responded to, and/or accommodated in the Project, including provision of respectful, meaningful, and timely feedback to those providing comments and ideas.
- (d) Project Co shall provide any necessary information required to demonstrate compliance with and fulfillment of the consultation related provisions of the Environmental Approvals.
- (e) In order to allow local residents and businesses easy access to information about progress, Construction Activities, mitigation measures and other Project information, Project Co shall provide dedicated communications staff in accordance with Section 3 to work out of Contracting Authority's community offices at the following locations:

- (i) Riverside: 770 Queen Street East, Toronto, Ontario, M4M 1H4; and
 - (ii) Thorncliffe Park: East York Town Centre 45 Overlea Boulevard, Toronto, Ontario, M4H 1C3, Unit 153.
- (f) Notwithstanding Section 9.14, Project Co shall make staff available and support Contracting Authority to respond to enquiries from the public and Stakeholders about the Works.
- (g) In consultation with Contracting Authority, Project Co shall provide updates to the immediately affected property owners, tenants and neighbourhoods on Works-related issues with particular attention to communicating the scope, schedule and status of the Works. This includes having processes to proactively address any Works-related enquiries and issues (for example, public enquiries and complaints regarding noise, hours of work and dust).
- (h) In consultation with Contracting Authority, Project Co shall notify affected residents and businesses, including Contracting Authority’s community relations representatives, as soon as possible of unplanned or unexpected Level 3 impacts of Construction Activities (including local outreach if necessary by delivering supplies or notices by going door-to-door to affected buildings as well as providing updates for the Project Website and updated messages on Contracting Authority’s information telephone line, including after-hours support), and provide an estimate of the expected duration of the impact.
- (i) Project Co shall maintain a written record of all public enquiries, complaints and communications and shall provide copies to Contracting Authority’s lead communications contact on a weekly basis (or immediately if urgent) as per the Complaints Protocol as set out Section 9.14.
- (j) Project Co shall develop and track a dashboard that is agreed by the Parties to,
- (i) demonstrate other local employment impacts, including the hiring of professional, administrative and technical staff for the Project by Project Co and Project Co Parties, in order to track economic benefits, including employment benefits, arising from the Project; and
 - (ii) demonstrate how Project Co has utilized local businesses for goods and services during the construction of the Project, noting:
 - (A) business name and location;
 - (B) type(s) of good(s) or service(s) procured and dollar amount of the contract;
 - (C) details pertaining to the performance or quality of the work; and
 - (D) how the contract was sourced.

8.4 Communications with Indigenous Nations and Indigenous Entities

- (a) Contracting Authority shall be responsible for Indigenous Entities Engagement and will liaise directly with Indigenous Entities throughout the Project Term. Contracting Authority may require Project Co to assist with, and support, Contracting Authority’s Indigenous Entities Engagement.

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- (b) No later than forty-five (45) days following the DMCA Effective Date, Project Co shall attend a meeting with the IRO as directed and organised by Contracting Authority. The meeting shall be for the purpose of the IRO providing Project Co with an overview and a series of guidelines for Indigenous Nations Engagement and Indigenous Entities Engagement and ensuring that Project Co’s communications and interactions in connection with its participation in such Indigenous Nations Engagement and Indigenous Entities Engagement will be appropriately culturally sensitive.
- (c) Project Co shall consult with the IRO prior to establishing any contact with any Indigenous Nation or Indigenous Entity and shall follow any direction of the IRO relating to the Project.
- (d) During the Project Term, Project Co shall attend and provide assistance to Contracting Authority with respect to planning and executing one special event for, and a maximum of two meetings collectively, with any Indigenous Nation and Indigenous Entity identified by Contracting Authority, for which Project Co shall be responsible for,
- (i) logistical and organizational requirements;
 - (ii) catering; and
 - (iii) provision of presentation or other meeting materials that are required for the special event and meetings.
- (e) Project Co shall prepare, in accordance with templates provided by Contracting Authority, as requested by Contracting Authority:
- (i) Documents Relating to Indigenous Nations, all communications and communications materials, to support Contracting Authority’s Indigenous Nations Engagement; and
 - (ii) any report, assessment, submission, application, communication, communications material or other documents to support Contracting Authority’s Indigenous Entities Engagement.
- (f) Project Co shall submit to Contracting Authority in accordance with Schedule 10 – Review Procedure and clearly noted as an “Indigenous Relations Matter”:
- (i) as it relates to Indigenous Nations Engagement, all Documents Relating to Indigenous Nations and all other planned communications with Indigenous Nations;
 - (ii) as it relates to Indigenous Entities Engagement, all planned reports, assessments, submissions, applications, communications, communications materials or other document concerning or with Indigenous Entities,
- prior to providing to any Governmental Authority, Indigenous Nation or Indigenous Entity as applicable. Project Co shall proceed only after receipt of a “NO COMMENT” notification from Contracting Authority in accordance with Schedule 10 – Review Procedure, unless a longer period for review is otherwise prescribed by this Agreement.

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- (g) Project Co shall, subject to and in accordance with Schedule 22 – Estimates, Variations and Proposals, be entitled to a Variation where Contracting Authority’s request for assistance, support, information or documentation is not specified as being a responsibility of Project Co with respect to Indigenous Nations Engagement and Indigenous Entities Engagement pursuant to this Agreement.
 - (h) For clarity, Project Co shall not contact or provide information to persons beyond the Project Co Parties related to Indigenous Nations Engagement and Indigenous Entities Engagement, or comment on any issues related to Indigenous Nations and Indigenous Entities, unless permission is first obtained from Contracting Authority, or as otherwise contemplated by this Agreement.
 - (i) Project Co shall provide Contracting Authority with a minimum of five (5) Business Days advance Notice of any identified need for meetings or communications with any Indigenous Nation or Indigenous Entity. Project Co shall not proceed with any such meeting or communication without Contracting Authority’s authorization. Project Co acknowledges and agrees that Contracting Authority may, in the sole discretion of Contracting Authority, attend, facilitate, or lead any meeting with Indigenous Nations or Indigenous Entities. The IRO shall minute any such meetings and distribute those minutes, including attendance, key issues discussed and action items.

8.5 Community Benefits and Supports Protocol

- (a) Project Co shall comply with its obligations with respect to the Community Benefits and Supports Protocol as set out in Appendix A to this Schedule 18.

9. COMMUNICATIONS ACTIVITIES

9.1 Communications Activities – General

- (a) Project Co shall support Contracting Authority in the implementation of the following communication tactics during the Project Term:
 - (i) Project Website and social media;
 - (ii) crisis communications;
 - (iii) issues management;
 - (iv) media relations;
 - (v) government relations;
 - (vi) branding;
 - (vii) signage;
 - (viii) advertising;
 - (ix) shop local campaigns;

- (x) marketing delivery and support;
- (xi) photography and video production; and
- (xii) complaints protocol.

9.2 Project Website and Social Media

- (a) Throughout the Project Term, Project Co shall:
 - (i) support Contracting Authority’s social media strategy for the Project (which includes tools such as Twitter, Facebook, YouTube and Instagram);
 - (ii) support the Project Website by providing static (written) and dynamic (multimedia) content; and
 - (iii) ensure the quality of multimedia content aligns with the latest Contracting Authority branding standards.
- (b) During the performance of the Works, as part of Project Co’s obligations set out in Section 9.2(a), Project Co shall provide the following content for review and approval by Contracting Authority:
 - (i) no less frequently than once every two weeks, Project Co shall provide static (written) and/or dynamic (multimedia) content related to the Works and upcoming notifications;
 - (ii) no less frequently than once per week, Project Co shall provide professional-grade, high resolution visuals, graphics, renderings, photos or video clips showcasing the design of the Works and progress of Construction Activities, if any;
 - (iii) no less frequently than once every two months, Project Co shall provide a feature web article that,
 - (A) is of a minimum length of 500 words;
 - (B) includes static (written) and dynamic (multimedia content); and
 - (C) highlights at least one aspect of the Project, including design, innovations on the Project, local workers, general contractors, local companies, Construction Activities (if any), features/highlights of the communities the Project connects to, or Project benefits, along with additional content to support related posts on the Project’s social media channels and content for virtual public engagement events;
 - (iv) no less frequently than once per month, Project Co shall provide e-newsletter content and associated multimedia content, using the design template provided by Contracting Authority; and
 - (v) as requested by Contracting Authority, acting reasonably, Project Co shall provide,

- (A) draft content with respect to public notification of events, public consultations, consultation materials and post-consultation summaries; and
 - (B) draft content to support government and Stakeholder (for example, MTO, MOI and City of Toronto) web and social media communications needs.
- (c) No later than fifteen (15) days following the finalization of the Project Co Communications Plan, and thereafter on a monthly basis, Project Co shall attend and participate in an editorial meeting with Contracting Authority for the purpose of planning and discussing the content described in Section 9.2(b) (each, a “**Monthly Editorial Meeting**”). At the Monthly Editorial Meetings, Project Co shall present on the topics and content, and shall incorporate all comments received from Contracting Authority into the content that is submitted to Contracting Authority for review and approval.
- (d) In addition to the submittal requirements set out in Section 4.4(a), no later than one week in advance of each Monthly Editorial Meeting, Project Co shall provide an updated Project Website and Social Media Calendar to Contracting Authority.
- (e) Project Co shall employ social media tools to monitor and analyze public responses to the Project, and no later than two hours after Project Co or Contracting Authority becomes aware of an adverse impact identified by the public that could attract media attention, spread misinformation or pose a safety risk, Project Co shall provide draft responses to online comments for Contracting Authority to review and issue.

9.3 Crisis Communication

- (a) No later than sixty (60) days following the DMCA Effective Date, Project Co shall submit a crisis communications plan for the performance of the Works that is consistent with Contracting Authority’s crisis communications plan as provided to Project Co as at the DMCA Effective Date and that includes the following:
- (i) the identification of individuals comprising Project Co’s crisis response team, including the name, title and role of lead staff;
 - (ii) a description of the roles and responsibilities of Project Co, Contracting Authority and other partners and Stakeholders as required (for example, City of Toronto, local transit authorities and MTO) with respect to crisis communications;
 - (iii) a list of tools and tactics to be employed by Project Co in crisis communications;
 - (iv) identification and ranking of a list of potential crisis issues that could develop during the performance of the Works;
 - (v) key messages to be communicated to the public; and
 - (vi) a description of the crisis simulations that Project Co intends to conduct during the performance of the Works,

(the “**Crisis Communication Plan**”).

- (b) Project Co shall submit the Crisis Communication Plan to Contracting Authority for review in accordance with Schedule 10 – Review Procedure. Project Co shall update each of the Crisis Communication Plan,
- (i) on an annual basis; or
 - (ii) more frequently as may be directed by Contracting Authority, in its sole discretion, or as may be required to account for any changes in the circumstances of or lessons learned with respect to the Project.

Project Co shall resubmit each updated Crisis Communication Plan to Contracting Authority for review pursuant to Schedule 10 – Review Procedure.

- (c) During the performance of the Works, Project Co shall:
- (i) consult with and provide assistance to Contracting Authority to implement the Crisis Communication Plan and update the Crisis Communication Plan;
 - (ii) during a crisis situation, make available sufficient Project Co communications staff and Project Co resources in order to work effectively with Contracting Authority to proactively manage and perform Project Co’s communications responsibilities as set out in this Schedule 18; and
 - (iii) conduct a crisis simulation annually (tabletop, full scale or in-person, depending on the crisis topic and resources required) in accordance with the Crisis Communication Plan, and Project Co shall take all actions and make all adjustments in response to lessons learned from each crisis simulation exercise.

9.4 Issues Management

- (a) During the Project Term, Project Co shall consult with and provide assistance to Contracting Authority, as reasonably requested by Contracting Authority, with respect to:
- (i) identifying issues and trends as they emerge, including social media monitoring approach, and develop strategies for tracking, addressing, mitigating, and minimizing issues related to the Project;
 - (ii) developing messages and strategies to address issues and provide accurate and timely information to affected Stakeholders; and
 - (iii) sharing information about potential issues related to the Project with other Stakeholders.
- (b) Project Co shall respond to all issues identified by Contracting Authority within a timeframe determined by Contracting Authority.

9.5 Media Relations

- (a) During the Project Term, Project Co shall,

- (i) direct all media enquiries and interview requests to Contracting Authority's lead communications contact who will determine the organization that is most suitable to respond to the enquiry or request;
- (ii) provide draft responses and messaging to Contracting Authority with respect to all media enquiries and interview requests in a timely manner;
- (iii) implement and maintain an electronic media request log using software, and in a format, agreed upon by the Parties, which shall track each request that Project Co receives and responds to;
- (iv) support Contracting Authority with respect to all media enquiries and interview requests;
- (v) provide designated media relations staff (with back-up media-trained personnel, as required) with 24/7 availability to monitor, draft messaging and respond to enquiries as requested by Contracting Authority;
- (vi) make available a Project Co designated media relations spokesperson and construction manager or similar expert who is media trained, for the purposes of responding to technical matters related to media and interview requests as requested by Contracting Authority; and
- (vii) provide communications training to Project Co staff, including refresher training regarding Contracting Authority's communication protocols and policies for handling media, public, and Stakeholder interaction.

9.6 Government Relations

- (a) Except as otherwise set out in this Section 9.6, Contracting Authority shall be responsible for any government relations activities.
- (b) Throughout the Project Term, Project Co shall:
 - (i) support Contracting Authority as Contracting Authority liaises with affected Governmental Authorities and boards to provide information about the Project status, upcoming milestones, and issues that may affect the Project;
 - (ii) support Contracting Authority by regularly providing information about construction status, upcoming Works milestones, and issues related to Construction Activities and reviewing messaging for government relations purposes; and
 - (iii) participate in meetings with Contracting Authority, the City of Toronto and Stakeholders as and when requested by Contracting Authority.
- (c) Except as otherwise set out in this Schedule 18, Project Co, in carrying out its obligations as set out in this Schedule 18, shall not engage with any elected officials or their staff or agents at any level of government without the prior written approval of Contracting Authority.

9.7 Branding Requirements – General

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- (a) Unless explicitly permitted or required by this Schedule 18, Project Co shall not apply any advertising or branding to any infrastructure, plant, equipment, or other items with respect to the Project without the prior written consent of Contracting Authority, which consent may be withheld in Contracting Authority’s sole discretion.
 - (b) Project Co acknowledges and agrees that Project Co shall not be entitled to receive any payment or compensation from Contracting Authority or any third party (in any form) from any branding or advertising in respect of the Project, and that Contracting Authority reserves the right to all such branding and advertising.

9.8 Branding

9.8.1 Metrolinx Brand and Metrolinx Branded Items

- (a) Contracting Authority shall provide Project Co with its corporate brand name and logo (the “**Metrolinx Brand**”). Project Co shall apply the Metrolinx Brand to Pape Station, Cosburn Station and all other sites for the Ontario Line Subway in accordance with the standards set out in Section 9.7 (collectively, the “**Metrolinx Branded Items**”).

9.8.2 Project Co Brand

- (a) During the performance of the Works, Project Co shall develop and use a single corporate brand name and logo for the Project (the “**Project Co Brand**”). The Project Co Brand shall,
 - (i) have a name that is clearly distinguishable from each of Metrolinx, Infrastructure Ontario, GO Transit, UP Express, and any other stakeholders of Contracting Authority, and that is clearly distinguishable from the name of any other brand used in other Contracting Authority projects;
 - (ii) have a logo of distinctive design that is visually and graphically distinct of the Metrolinx logo; and
 - (iii) be simple in design and consistently applied by Project Co on Project Co Branded Items throughout the Project Term.
- (b) No later than ninety (90) days following the DMCA Effective Date, Project Co shall submit the designs and sample of the Project Co Brand to Contracting Authority for review. Project Co shall not apply the Project Co Brand on any item with respect to the Project, including on any Metrolinx Branded Item, unless and until Contracting Authority approves Project Co’s design and samples.

9.8.3 Project Co Branded Items

- (a) Project Co shall apply the Project Co Brand that is reviewed and accepted by Contracting Authority in accordance with Section 9.8.2(b) on the following items:
 - (i) each of Project Co’s corporate communications materials;
 - (ii) each of Project Co’s personnel uniforms and forms of identification;

- (iii) each of Project Co’s vehicle liveries and equipment

(collectively, the “**Project Co Branded Items**”).
- (b) Project Co shall provide each Project Co Branded Item to Contracting Authority for review. Project Co shall not introduce any Project Co Branded Item during the performance of the Works unless and until Contracting Authority approves each Project Co Branded Item.

9.9 Communications Signage

- (a) Project Co shall submit a signage and hoarding short-term and long-term coverage plan (“**Signage and Hoarding Coverage Plan**”) in accordance with Schedule 10 – Review Procedure, no later than one-hundred and twenty (120) days following the DMCA Effective Date, which shall include:
 - (i) the mapping of signage to be installed, the number of signage required and the locations for each future location of Pape Station, Cosburn Station and other sites as determined by Contracting Authority, type and purpose of each sign, including other details as reasonably requested by Contracting Authority.
 - (b) Project Co shall, for the Pape Station, Cosburn Station and other sites as determined by Contracting Authority, design, translate (if required), print and install various communications signage, including Project promotional signage, business support and shop local signage, wayfinding and safety campaign signage in accordance with any signage templates that may be provided by Contracting Authority from time to time or tailored signs developed in consultation with Contracting Authority and stakeholders (the “**Communications Signage**”) including:
 - (i) install purpose-built billboards (2 panels, 12ft x 8ft per panel – 24ft x 8ft in total) to promote the benefit of the work to the customer, using Contracting Authority provided templates and messaging, following the DMCA Effective Date but in advance of construction commencement, at the direction of Contracting Authority;
 - (ii) install one government sign (Ontario Builds) to promote the investment by government, using government provided templates and messaging, following the DMCA Effective Date but in advance of construction commencement, at the direction of Contracting Authority. The sign shall always be displayed in a visible location; and
 - (iii) ensure a minimum of [REDACTED] per cent of the public-facing surface area of all construction hoarding, fencing and barriers at each future location of Pape Station, Cosburn Station and other sites as determined by Contracting Authority, are covered with Communications Signage. Project Co shall provide to Contracting Authority the dimensions of all hoarding, fencing and barriers at each future location of Pape Station, Cosburn Station and other sites as determined by Contracting Authority, in order to enable Contracting Authority to evaluate Project Co’s conformance with this requirement. Project Co shall ensure that appropriate Communications Signage is provided in a visible location on the Site to indicate the presence of and means of accessing affected businesses.
 - (c) Prior to installing any Communications Signage, Project Co shall provide to Contracting Authority for approval, stamped shop drawings of the sign fabrication (where required by local zoning by-laws) and installation details, together with a graphic design mock-up of the signage including

- panel dimensions, location and confirmation of the applicable Permits, Licences, Approvals and Agreements;
- (d) Project Co shall ensure Communication Signage is installed in accordance with the requirements for signage as set out in Section 9.9(b) within twenty-one (21) days of Contracting Authority approval (or such longer period of time agreed to by the Parties, acting reasonably).
- (e) During the Project Term, Project Co shall,
- (i) use signage material for Communications Signage based on Good Industry Practice and in accordance with Applicable Law;
 - (ii) choose hoarding or fencing to accommodate signs tailored for specific sites to limit the intrusion of the construction site, as far as reasonably practical;
 - (iii) ensure that all Communications Signage is kept in good condition;
 - (iv) replace any Communications Signage that is damaged at Project Co's expense;
 - (v) remove graffiti on all Communications Signage within forty-eight (48) hours;
 - (vi) provide personnel to install, remove and relocate signage within two (2) weeks, as requested by Contracting Authority from time to time at its sole discretion;
 - (vii) install, remove or relocate any signage that is provided by Contracting Authority or a Governmental Authority, and ensure that such signs are visibly displayed on the Site; and
 - (viii) remove all construction-related Communications Signage along the corridor within three (3) months of Project Substantial Completion.
- (f) The requirements for signage as set out in this Section 9.9 shall not limit and are intended to supplement Project Co's other obligations with respect to signage as set out in the rest of this Agreement including, for clarity, the Output Specifications.

9.10 Advertising

- (a) During the performance of the Works, Contracting Authority shall:
- (i) plan, develop and execute advertisement strategies for the Project;
 - (ii) review and approve advertisements produced by Project Co related to the Project; and
 - (iii) provide templates to Project Co to use as well as messaging, where required.
- (b) During the performance of the Works, Project Co shall:
- (i) support and contribute to the planning, development and execution of Contracting Authority's public education and advertising campaigns related to the Works;

- (ii) plan, develop, and coordinate the placement of advertisements to communicate ongoing construction impacts and to inform the public of public engagement activities through a mix of media, including print community and commuter newspapers, multi-lingual community newspapers and radio stations, radio and television, digital programmatic platforms, social media and online video, along with unaddressed mail in accordance with this Section 9.10;
- (iii) identify ethnic and diverse populations across the full Project alignment and coordinate the booking of appropriate advertisements via a multichannel media approach and in a multi-lingual format (where required), including print (newspapers, magazine etc.) display media units (email, programmatic banners etc.), social platforms (Facebook, Twitter, Instagram etc.), terrestrial/digital audio (Spotify), and online video placements (OLV) such as YouTube/Connected TV spots;
- (iv) for social media campaigns, Project Co shall plan, develop and execute an effective community management strategy where applicable to measure campaign impact and adjust such strategy as needed (e.g. respond to comments, provide information to users, sentiment tracking etc.);
- (v) for each of the 24 public engagement meetings set out in Section 8.2(c), provide one advertisement insertion in two local community newspapers (in full colour and half page in size); as well as considerations of digital executions such as Facebook event advertisement, as digital platforms provide a more measurable response and target for success (for example, in volume of total signups and cost-per acquisition);
- (vi) for construction notices that indicate significant, long-term construction impacts of more than six (6) months in duration, provide advertisements and notices, including one local newspaper and one major daily newspaper per major Works stage (in full colour and quarter page in size);
- (vii) procure and coordinate the distribution of construction notices, through Canada Post, based on a distribution area of five-hundred (500) metre radius of the Works, where the applicable Construction Activities are set up;
- (viii) produce and use sample designs in public information and public engagement materials to illustrate principles, provided that such information and materials are reviewed and approved by Contracting Authority;
- (ix) not use hoarding or any other areas within the Lands for advertisement and shall not permit, engage or authorize any third party to use any areas within the Lands for advertisement, without the prior written consent of Contracting Authority; and
- (x) submit all advertisements, insertions, construction notices, messages, and other associated documentation contemplated in Section 9.10(b) for review and approval by Contracting Authority prior to distributing, placing, posting, issuing, or producing any such advertisement, insertion, construction notice, message or any other documentation.

9.11 Shop Local

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- (a) Project Co shall, no later than ninety (90) days following the DMCA Effective Date, submit a shop local plan for review by Contracting Authority pursuant to Schedule 10 – Review Procedure that describes how Project Co will meet its construction shop local-related obligations under this Agreement (the “**Project Co Shop Local Plan**”). The Project Co Shop Local Plan shall include Project Co’s plan to support “shop local” or local business sustainment and promotion efforts, including:
- (i) release two direct mail pieces (printed in full colour) annually to residential and business owners, tenants and other property occupants who own, lease and otherwise occupy property within a 1,000-metre radius on either side and end of the corridor;
 - (ii) annually issue four advertisements in each of the City of Toronto consisting of two ad insertions in local newspapers (in full-colour and half page in size);
 - (iii) hire an external team to conduct quantitative and qualitative research on an annual basis with local Chambers of Commerce, Business Improvement Areas or equivalent to develop, and amend as required, a “shop local” campaign and business support strategy, in which Project Co shall:
 - (A) develop and fund promoted social media advertising to support a “shop local” campaign; promoted as always on component (full year) along with other digital media considerations (for example, YouTube and display banners);
 - (B) develop promotions and “construction hat specials” for local businesses (particularly the restaurants and service industry);
 - (C) leverage restaurant week-type events or create events if no program exists on the corridor for the duration of construction, and on-board restaurants along the corridor with food delivery platforms;
 - (D) hire a promotional or events company to design and carry out community events in support of a “shop local” campaign and cover street event fees for community events, if applicable; and
 - (E) in conjunction with local arts councils or equivalent, conduct a review of street art, mural, and alleyway opportunities along the corridor and commission new projects at Project Co’s expense; and
 - (iv) develop and implement a community engagement program, in which Project Co shall,
 - (A) canvass every street-level, front-facing corridor property within a 1,000-metre radius of the corridor, on an annual basis, in order to raise awareness for the Project, provide information about Project social media, and obtain email addresses from local residents and businesses for newsletter updates. Project Co is expected to reach out to these properties both in-person and digitally;
 - (B) produce and print canvassing materials for distribution to the public as directed by Contracting Authority;

- (C) twice annually, provide information sessions during a four to six week period for residential and commercial high rises, to provide project updates, address concerns and inform on-going communications planning;
 - (D) use a source cloud-based canvass software to support the program, which Project Co shall use while canvassing to record email addresses and keep track of where Project Co has canvassed; and
 - (E) recruit, train, support and manage a part-time, seasonal team, as needed to facilitate the program and in accordance with the requirements as set out in this Section 9.11(a)(iv), who Project Co shall provide with seasonal apparel with project identifier and logos as identified by Contracting Authority for the purposes of canvassing.
- (b) Within the Project Co Shop Local Plan, Project Co shall include a separate section that describes how Project Co will meet its construction shop local-related obligations, specifically related to the permitted Lane Closures (as defined in the Output Specifications) of traffic lanes along Pape Avenue as set out in Section 3.2.8.6 (*Permitted Closures*) of the Output Specifications. This shall also include Project Co’s plan to support “shop local” or local business sustainment and promotion efforts along Pape Avenue, including consideration of partnerships with:
- (i) the City of Toronto;
 - (ii) the Bethany Baptist Church;
 - (iii) and other users as applicable, in accordance with the requirements of this Agreement.
- (c) For significant, long-term construction impacts and in support of “shop local” or local business sustainment and promotion efforts, Contracting Authority shall, in its sole discretion, require Project Co to produce and book regular 15 second sponsor messages on the radio on weekdays, in the morning and afternoon peak commuter times for the duration of the long-term construction impacts in accordance with the following:
- (i) radio advertisements shall be played twice each hour between 6:00 a.m. and 10:00 a.m. in the morning and between 3:00 p.m. and 7:00 p.m. in the afternoon; and
 - (ii) radio advertisements shall appear on local Toronto radio stations (for example, CFRB and 680 News).

9.12 Marketing Delivery and Support

- (a) During the performance of the Works, Project Co shall:
- (i) secure paid advertising space for a four (4) week time slot per quarter that includes,
 - (A) two (2) transit shelters within 800 metres of each future station/shop location;
 - (B) up to ten (10) horizontal billboards and mobile signs (colour and 10’ x 20’ in size);

- (C) up to three (3) superboards (48' x 14' in size) and/or horizontal backlights (22' x 9'); and
 - (D) Geotargeted programmatic display advertising at each future Pape Station and Cosburn Station and other sites as determined by Contracting Authority;
- (ii) secure paid radio advertising space for a four (4) week time slot, semi-annually to appear on local Toronto radio stations such as CFRB and 680 News;
 - (iii) secure paid TV advertising space for a four (4) week time slot, semi-annually, to appear on local Toronto TV station such as CP24; and
 - (iv) support Contracting Authority's efforts to communicate with English speaking populations, as well as ethnic and diverse populations by:
 - (A) identifying ethnic and diverse populations along the corridor, their share of the market, and their associated languages;
 - (B) working with Contracting Authority to draft and translate content for advertisements, according to the ethnic and diverse populations identified;
 - (C) securing paid media space in ethnic publications for the placement of advertisements including print (newspapers, magazines, etc.), display media units (email, programmatic banners, etc.), social platforms (Facebook, Twitter, Instagram, etc.), terrestrial/digital audio (Spotify), and online video placements (OLV) such as YouTube/Connected TV spots, as directed by Contracting Authority; and
 - (D) placing the final advertisements produced by Contracting Authority in the media spaces outlined in Section 9.12(a)(iv)(C), as approved by Contracting Authority.

9.13 Photography and Video

- (a) During the performance of the Works, for the purposes of record-keeping and demonstrating the progress of the Project, Project Co shall provide the following to Contracting Authority:
 - (i) professional quality (high resolution) photos of the Site that capture the same angles as renderings provided in design on a monthly basis;
 - (ii) annually, a professional quality (high resolution) time-lapse video that is branded using templates provided by Contracting Authority and that is professionally edited with music, capturing the construction of the Site from start to finish;
 - (iii) monthly, a professional quality (high resolution) video clip, that is branded using templates provided by Contracting Authority and that is professionally edited with music, capturing the construction of the Project at the Site; and

- (iv) twice annually, a professional quality (high resolution) video of drone footage, that is branded using templates provided by Contracting Authority and that is professionally edited with music, capturing the construction of the Project at the Site.
- (b) During the performance of the Works, Project Co shall,
- (i) obtain all of the rights necessary for Project Co and Contracting Authority to use, reproduce, modify and brand all of the images and footage described in this Schedule 18 without restrictions;
 - (ii) ensure that Project Co and all Project Co Parties provide consent to disclosure of photos and videos relating to the Project and that all photo and video content has been reviewed by Project Co for health and safety clearance; and
 - (iii) review all photo and video content before submitting to Contracting Authority, to reduce the number of revisions back and forth.
- (c) During the performance of the Works, Project Co shall provide Contracting Authority with access to all images and video files through a cloud-based server that is accessible to Contracting Authority’s authorized users throughout the performance of the Works.
- (d) During the performance of the Works, Project Co shall, from time to time, as reasonably requested by Contracting Authority, facilitate on-site access for Contracting Authority-designated photographers and videographers.

9.14 Complaints Protocols

- (a) Until Project Substantial Completion Date, Contracting Authority shall:
- (i) be responsible for approving all responses to complaints and enquiries relating to the Project;
 - (ii) implement the Contracting Authority community telephone number 416-212-5100 which will be in operation to take complaint calls from the public 24/7/365;
 - (iii) in-take all Level 1 Calls, Level 2 Calls and Level 3 Calls from the public, and triage and forward to Project Co to manage in accordance with Section 9.14(b); and
 - (iv) submit to Project Co an invoice no later than sixty (60) days prior to the Project Substantial Completion Date for a total of up to \$[REDACTED] per month from the DMCA Effective Date to the Project Substantial Completion Date. This invoice will set out the costs associated with Contracting Authority’s obligations under Section 9.14(a)(iii) to in-take, triage and forward calls to Project Co.
- (b) Until Project Substantial Completion Date, Project Co shall:
- (i) incorporate into the Project Co Communications Plan, and align with the Crisis Communication Plan, a complaints protocol (the “**Complaints Protocol**”) that,

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- (A) addresses how Project Co will deal with and respond to enquiries, suggestions, claims and complaints received with respect to the Project and identify complaints that require escalation; and
 - (B) requires that Project Co deal with all enquiries, suggestions, claims and complaints and suggestions no later than the initial response period required by Level 1 Calls, Level 2 Calls and Level 3 Calls, as applicable;
- (ii) provide 24/7 call service support staff to be available to provide regular and timely intake and responses to Level 1 Calls, Level 2 Calls and Level 3 Calls;
 - (iii) provide drafted responses and tactics to implement for Level 1 Calls, Level 2 Calls and Level 3 Calls, as required, to Contracting Authority for review;
 - (iv) maintain a software system that will track all complaints, enquiries and responses, and for each entry, document the response and the date in which it was provided;
 - (v) provide monthly complaint reports to Contracting Authority, including an analysis of the main areas of concern to complainants;
 - (vi) coordinate Project Co's complaint tracking and complaint reports with any internal complaint tracking, or complaint reports established by Contracting Authority with respect to the Project, as requested by Contracting Authority; and
 - (vii) pay Contracting Authority up to \$[REDACTED] per month from the DMCA Effective Date to the Project Substantial Completion Date in accordance with the invoice from Contracting Authority set out in Section 9.14(a)(iv) within thirty (30) days from receipt of such invoice.
- (c) Project Co shall update the Complaints Protocol,
 - (i) on a semi-annual basis; or
 - (ii) more frequently as may be requested by Contracting Authority, or as may be required to account for any changes in the circumstances of or lessons learned with respect to the Project.
 - (d) Project Co acknowledges and agrees that the Complaints Protocol may be made publicly available at the request of Contracting Authority.

10. NOTIFICATION

10.1 Major Impact on Third Party Owners

- (a) During the Project Term, with respect to Construction Activities that are reasonably anticipated to have a Major Impact on third-party property owners, Project Co shall:
 - (i) provide Notice to Contracting Authority of such Construction Activities no later than six (6) months prior to the commencement of such Construction Activities or impacts;

- (ii) provide a draft public notification for Contracting Authority’s review, no later than four (4) months prior to the commencement of such Construction Activities; and
 - (iii) prepare and distribute, via Canada Post, public notifications printed in full colour and approved by Contracting Authority, to all property owners within a five-hundred (500) metre radius of the Construction Activities, at least one (1) month prior to the commencement of the Works or impact.
- (b) The public notifications provided by Project Co in accordance with this Section 10.1 shall include a comprehensive list of the elements owned by a third party which Project Co anticipates will have to be removed or relocated by the property owner, what elements can remain on the property, detailed drawings that describes the proposed Construction Activities (including new location of relocated items or impacts that might result from the Construction Activities and restoration plans), proposed timeline for Construction Activities (including duration and anticipated completion), contact information to obtain additional information, and any updates relating to such Construction Activities.

10.2 Major Impact on Transit Users, Customers and Public

- (a) During the Project Term, with respect to Construction Activities that are reasonably anticipated to have a Major Impact on transit users, pedestrians, cyclists, residents, traffic, and/or the public generally, Project Co shall:
- (i) provide Notice to Contracting Authority of such Construction Activities no later than three (3) months prior to the commencement of such Construction Activities or impacts;
 - (ii) provide a draft public notification for Contracting Authority’s review, no later than two (2) months prior to the commencement of such Construction Activities;
 - (iii) prepare and distribute, via Canada Post, public notifications printed in full colour and approved by Contracting Authority, to residents, business owners and the community within a five-hundred (500) metre radius of the Construction Activities, at least one (1) month prior to the commencement of the Works or impact; and
 - (iv) provide notification using geo-targeted advertising on social media to residents, business owners and the community based on the same distribution area for printed notifications, unless otherwise instructed by Contracting Authority at least one (1) month prior to the commencement of the Works or impact.
- (b) For the purposes of Section 10.1 and this Section 10.2, a major impact shall include overnight construction, temporary Construction Activities, paving, privately owned elements to be relocated or removed by Project Co, transit stop relocations, any disruption to water, gas and/or other utilities, and activities that affect pedestrian circulation (“**Major Impact**”).

10.3 Medium Impact

- (a) During the Project Term, with respect to Construction Activities that are reasonably anticipated to have a Medium Impact on business owners, property owners, transit users, pedestrians, cyclists, residents, traffic, and/or the public generally, Project Co shall:

- (i) provide Notice to Contracting Authority of such Construction Activities no later than twenty (20) Business Days prior to the commencement of such Construction Activities or impacts;
 - (ii) provide a draft public notification for Contracting Authority’s review, no later than fifteen (15) Business Days prior to the commencement of such Construction Activities;
 - (iii) prepare and distribute, via Canada Post, public notifications printed in full colour and approved by Contracting Authority, to residents, business owners and the community within a five-hundred (500) metre radius of the Construction Activities at least ten (10) Business Days prior to the commencement of the Works or impact; and
 - (iv) provide notification using geo-targeted advertising on social media to residents, business owners and the community based on the same distribution area for printed notifications, unless otherwise instructed by Contracting Authority at least ten (10) Business Days prior to the commencement of the Works or impact.
- (b) For the purposes of this Section 10.3, a medium impact shall include major intersection work, and impacts from noise, vibration or dust (“**Medium Impact**”). For clarity, the notification provided by Project Co pursuant to Section 10.3(a)(ii) shall be delivered by Contracting Authority to all affected properties by Project Co and in consultation with Utility Companies, as applicable.

10.4 Minor Impact

- (a) During the Project Term, with respect to Construction Activities that are reasonably anticipated to have a Minor Impact on business owners, property owners, transit users, pedestrians, residents, traffic and/or the public generally, Project Co shall:
- (i) provide Notice to Contracting Authority of such Construction Activities no later than five (5) Business Days prior to the commencement of such Construction Activities or impacts;
 - (ii) provide a draft public notification for Contracting Authority’s review no later than forty-eight (48) hours prior to the commencement of such Construction Activities to Contracting Authority for review; and
 - (iii) prepare and distribute by hand delivery, public notifications printed in full colour and approved by Contracting Authority, to all impacted residents, business owners and the community within a five-hundred (500) meter radius at least twenty-four (24) hours prior to the commencement of the Works or impact.
- (b) For the purposes of this Section 10.4, a minor impact shall include short-term lane closures, minor pedestrian detours, and minor access and driveway work (“**Minor Impact**”). Project Co shall ensure that access is maintained to properties impacted by the Construction Activities.

10.5 Other Impact

- (a) During the Project Term, with respect to incidents related to Construction Activities that are reasonably anticipated to have an impact on Project Co’s employees and contractors, transit users, pedestrians, residents, traffic and/or the public generally, and with respect to which Project Co

cannot reasonably provide advance notice of any kind to Contracting Authority or the public (each a “**Construction Activities Incident**”), Project Co shall:

- (i) immediately notify Contracting Authority of such Construction Activities Incident;
 - (ii) comply with all requirements of Schedule 29 – Safety, System Assurance and Security;
 - (iii) provide a draft public notification or messaging to Contracting Authority for review, no later than two (2) hours following the commencement of the Construction Activities Incident to Contracting Authority for review;
 - (iv) be prepared to provide a public statement with respect to the Construction Activities Incident at the request of Contracting Authority; and
 - (v) be prepared to enact a Crisis Communication Plan in consultation with Contracting Authority and to react quickly to provide an immediate response to the public and Stakeholders.
- (b) For the purposes of this Section 10.5, a Construction Activities Incident shall include an accident on site or a major catastrophe.

11. ACCESSIBILITY

11.1 Accessibility

- (a) Project Co shall ensure that all communications with respect to the Project comply with the *Accessibility for Ontarians with Disabilities Act* (Ontario).
- (b) As required by Contracting Authority, Project Co shall provide translation of communication materials (which could include video and photo captions, advertising, multimedia and other communication content) into French and in the top five (5) languages most commonly used in the City of Toronto, as reasonably requested by Contracting Authority, in accordance with this Schedule 18.

12. PUBLIC DISCLOSURE AND MEDIA RELEASES

12.1 Public Disclosure and Media Releases

- (a) Except as otherwise permitted in this Agreement, neither Project Co or its staff nor any of Project Co’s Parties or its staff shall issue or disseminate any media release, public announcement, social media post or public disclosure (whether for publication in the press, on the radio, television, internet or any other medium) relating to the Project, this Agreement, Contracting Authority’s activities or any related matters, without the prior written consent of Contracting Authority; and
- (b) Project Co shall comply and shall ensure that all Project Co Parties comply, at all times, with Contracting Authority’s media release and publicity protocols or guidelines, as such protocols and/or guidelines are updated by Contracting Authority from time to time.

APPENDIX A TO SCHEDULE 18**COMMUNITY BENEFITS AND SUPPORTS PROTOCOL****1. DEFINITIONS**

In this Appendix A to this Schedule 18, unless the context indicates a contrary intention, terms which are defined in this Agreement (and not otherwise defined in this Appendix A to this Schedule 18) shall have meanings given to them in this Agreement and the following terms shall have the following meanings:

- 1.1** “**Community Benefits and Supports**” means goals that are identified by Contracting Authority in conjunction with its project development and overall operational platform that seek to benefit the community and activities pursued to further such goals, including those activities and requirements set out in this Appendix A to this Schedule 18.
- 1.2** “**Community Benefits and Supports Protocol**” means this Appendix A to this Schedule 18.
- 1.3** “**Local Business**” means a local based business that sell goods or services in the marketplace within a 10 km radius of the Project alignment and/or Project related activity area (for example, road closure, construction staging, area impacted by the Works).
- 1.4** “**Social Enterprise**” means a business or organization whose objective is to have a social impact and operate with a social goal (for example, Indigenous-owned business, registered charity, non-profit organization, co-op corporation, socially responsible for-profit business corporation with a social purpose).
- 1.5** “**Workforce Plan**” means the workforce plan submitted in accordance with Section 4.1 of this Appendix A to this Schedule 18 which sets out Project Co’s project-specific approach to promoting workforce opportunities for apprentices, historically disadvantaged and equity seeking groups, maximizing high quality jobs and local job opportunities in connection with the performance of the Works on the Project.

2. GENERAL**2.1 Community Benefits and Supports Principles**

- (a) The Project represents an important transit infrastructure commitment by Contracting Authority. As Project Co carries out its responsibilities under this Agreement, Community Benefits and Supports are required to ensure the public is informed and engaged where necessary. Project Co efforts in Community Benefits and Supports will support effective, timely, and transparent communications and engagement with Stakeholders, customers, local businesses, residents, transit users and the public during the Project Term.
- (b) Project Co acknowledges that:
- (i) Project Co is Contracting Authority’s primary source of information with respect to all matters within Project Co’s control in respect of the Project;

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- (ii) Contracting Authority and the Stakeholders, at all times during the Project Term, shall rely upon Project Co to anticipate matters which may be of interest and concern to Contracting Authority or Stakeholders (based on Project Co’s experience and lessons learned during the Project); and
- (iii) Contracting Authority and the Stakeholders, at all times during the Project Term, shall rely upon Project Co to organize and disseminate information in accordance with its obligations in this Agreement so as to permit the Parties to perform their obligations hereunder.
- (c) Project Co acknowledges that the Community Benefits and Supports goals of the Project are as follows:
- (i) *Employment Opportunities* – promote apprenticeship training and workforce development opportunities for local communities and equity seeking groups, including an Anti-Racism policy and the following hiring targets throughout the Project:
- (A) [REDACTED]% of persons who identify as Black, Indigenous Nations, persons of colour, and/or other racialized communities;
- (B) [REDACTED]% of persons who identify as female or woman; and
- (C) [REDACTED]% of apprentices;
- (ii) *Local Business Supports* – build and foster relationships with Local Businesses and Social Enterprises to minimize and alleviate business disruptions and reduce the economic impacts as a result of construction (for example, through shop local initiatives and procurement from Local Businesses and Social Enterprises);
- (iii) *Public Realm Improvements* – find ways to leave the surroundings in an improved state when the construction of the Project creates temporary disruptions; and
- (iv) *Community Improvement Supports* – work with communities as a connector to the right decision-makers to make improvements to public spaces surrounding transit project construction, where no funding is available.
- (d) Project Co agrees to provide regular and timely updates during the Project Term in order to:
- (i) communicate Community Benefits and Supports in accordance with this Agreement, including this Appendix A to this Schedule 18;
- (ii) generally, enhance opportunities for open, transparent, effective and proactive communications with the public to increase the public’s awareness and understanding of the Project and Community Benefits and Supports;
- (iii) ensure that Stakeholder input is obtained in a timely manner in accordance with this Schedule 18 so that it may be properly considered by the Parties;

- (iv) be accountable to the Stakeholders for the effective implementation of Community Benefits and Supports as set out in this Agreement; and
 - (v) recognize the contribution of the Parties with respect to the Project.
- (e) Contracting Authority and Project Co shall work together to deliver Community Benefits and Supports pursuant to this Agreement, including this Appendix A to this Schedule 18.

3. GENERAL COMMUNICATIONS RESPONSIBILITIES

- (a) Project Co shall carry out all communications, community engagement and public activities required to fulfill all of Project Co's Community Benefits and Supports obligations in accordance with this Agreement, including this Appendix A to this Schedule 18.
- (b) During the Project Term, public engagement activities may be conducted by Contracting Authority and Project Co on a range of topics, in accordance with the Project Co Communications Plan, some of which will be overarching and apply to the entirety of the Project, while others may be more staged, topic focused or location specific. The nature and form of the public engagement will vary based on the topic being addressed.

4. COMMUNITY BENEFITS AND SUPPORTS ACTIVITIES

4.1 Workforce Plan

- (a) No later than sixty (60) days following the DMCA Effective Date, Project Co shall prepare and submit the Workforce Plan for review by Contracting Authority in accordance with Schedule 10 – Review Procedure.
- (b) The Workforce Plan shall include Project Co's specific approach to workforce development including forecasting, activities, events and methods for:
- (i) the following hiring targets throughout the Project:
 - (A) [REDACTED]% of persons who identify as Black, Indigenous Nations, persons of colour, and/or other racialized communities;
 - (B) [REDACTED]% of persons who identify as female or woman; and
 - (C) [REDACTED]% of apprentices;
 - (ii) promoting apprenticeship training opportunities including:
 - (A) the forecasting and identification of trades determined to be in-demand and utilized for the Project and an estimate of the year they would be required; and
 - (iii) maximizing local job opportunities in connection with the performance of the Works on the Project.

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- (c) Contracting Authority may, in its sole discretion, release the Workforce Plan to the public and Stakeholders. Project Co acknowledges and agrees that such Workforce Plan shall not constitute Confidential Information.
 - (d) Project Co shall include requirements in all Subcontracts for Subcontractors to adhere to the same hiring targets set out in this Section 4 of this Appendix A to this Schedule 18 and shall ensure the Workforce Plan contains reporting obligations on such hiring targets among its Subcontractors.

4.2 Social Enterprises and Local Business Procurement

- (a) In support of local economic development, Project Co shall support the use of local content on various aspects of the delivery of the Project, consistent with Applicable Law.
- (b) Project Co shall develop and execute business disruption mitigation and business engagement strategies, in consultation with Contracting Authority, in order to address Local Businesses' concerns about construction related to the Project in accordance with this Schedule 18.
- (c) Project Co shall include within its procurement strategies associated with the Works details of how its tendering and subcontracting procurement strategy will include Social Enterprises and Local Businesses throughout the Project Term.
- (d) Project Co shall:
 - (i) procure from and support Social Enterprises and Local Businesses to ensure that Local Businesses and Social Enterprises are utilized during the construction of the Project;
 - (ii) increase opportunities, in the form of services and employment;
 - (iii) build and foster relationships with Local Businesses to minimize business disruptions; and
 - (iv) support business activities in accordance with this Schedule 18.

4.3 Community Engagement Activities

- (a) Project Co shall undertake community engagement activities in accordance with this Schedule 18 in communities impacted by construction to:
 - (i) ensure community voices and perspectives are heard;
 - (ii) enable early community involvement, being inclusive of local communities and ensuring the community's feedback is shared with decision makers for consideration; and
 - (iii) ensure open and timely communication that is easily understood and accessible, be delivered through transparent processes that enable Stakeholders to understand their role and the outcome of the process, and foster mutual trust and respect.
- (b) Project Co shall consult with Contracting Authority with respect to design opportunities to engage the community in the Project's design process where feasible, and as directed by Contracting Authority.

5. REPORTING OF COMMUNITY BENEFITS AND SUPPORTS ACTIVITIES

- (a) Project Co shall keep detailed records on Community Benefits and Supports in accordance with this Schedule 18.
- (b) Project Co shall report to Contracting Authority quarterly in a form provided on Community Benefits and Supports goals which shall include, but are not limited to:
- (i) status of the Workforce Plan, including:
 - (A) number of people identifying as Black, Indigenous Nations or person of colour;
 - (B) number of people identifying as women;
 - (C) number of professional, administrative and technical jobs;
 - (D) number of skilled labour;
 - (E) number of apprenticeships;
 - (F) number of local hires;
 - (G) total number of hires; and
 - (H) number of outreach events; and
 - (ii) type(s) of good(s) or service(s) procured, including:
 - (A) Local Business or Social Enterprise utilized;
 - (B) value of procurement; and
 - (C) type and number of shop local marketing campaigns.
- (c) Contracting Authority will, acting reasonably, prescribe the format for reporting and submission by Project Co at any point during the Project Term.
- (d) Contracting Authority may, acting reasonably, amend the requirements for reporting at anytime throughout the Project Term.

SCHEDULE 19

GOVERNANCE, MEETINGS AND PROGRESS REPORTING

1 DEFINITIONS

- (a) In this Schedule 19, unless the context indicates a contrary intention, terms which are defined in this Agreement (and not otherwise defined in this Schedule 19) shall have the meanings given to them in this Agreement and the following terms shall have the following meanings:
- (i) “**Ad Hoc Meetings**” has the meaning given in Section 4.13(a).
 - (ii) “**Best for Project**” means an approach, determination, decision, method, solution, interpretation, outcome, or resolution that is consistent with the Value for Money Statement and, after it is developed and agreed upon by the Parties in accordance with this Agreement, the Development Works Charter.
 - (iii) “**Checkpoint Meeting**” has the meaning given in Section 4.8(a).
 - (iv) “**Design Presentation Meeting**” has the meaning given in Section 4.11(a).
 - (v) “**Design Review Meetings**” has the meaning given in Section 4.12(a).
 - (vi) “**Design Validation Report**” has the meaning given in Appendix 1 (*Development Works Submittals, Deliverables and Requirements*) to Schedule 2 – Development Works Submissions and Project Development Process.
 - (vii) “**Design Validation Workshop**” has the meaning given in Section 4.9(a).
 - (viii) “**Development Works Charter**” has the meaning given in Section 4.5(a).
 - (ix) “**DMCA Charter Workshop**” has the meaning given in Section 4.5(a).
 - (x) “**First Development Phase**” has the meaning given in Schedule 2 – Development Works Submissions and Project Development Process.
 - (xi) “**Initial Risk Workshops**” has the meaning given in Section 4.7(a).
 - (xii) “**Leadership Team**” has the meaning given in Section 3.3(a).
 - (xiii) “**Management Team**” has the meaning given in Section 3.4(a).
 - (xiv) “**Onboarding Workshops**” has the meaning given in Section 4.4(a).
 - (xv) “**Project Checkpoint**” has the meaning given in Schedule 2 – Development Works Submissions and Project Development Process.
 - (xvi) “**Project Office**” has the meaning given in Section 6.1(a).

- (xvii) “**Senior Executives Team**” has the meaning given in Section 3.2(a).
- (xviii) “**Start-Up Meeting**” has the meaning given in Section 4.2(a).
- (xix) “**Start-Up Workshop**” has the meaning given in Section 4.3(a).
- (xx) “**Value Engineering Workshop**” has the meaning given in Section 4.10(a).
- (xxi) “**Value Engineering Report**” has the meaning given in Appendix 1 (*Development Works Submittals, Deliverables and Requirements*) to Schedule 2 – Development Works Submissions and Project Development Process.
- (xxii) “**Working Group**” has the meaning given in Section 3.5(a).

2 OVERVIEW OF THIS SCHEDULE 19

2.1 Overview

- (a) This Schedule 19 sets out:
 - (i) the Project’s governance model;
 - (ii) general meeting requirements for meetings between the Parties;
 - (iii) certain specific meetings that are to occur between the Parties; and
 - (iv) the terms and processes for determining and implementing Project Co’s reporting obligations,in respect of this Agreement and the Works.
- (b) Nothing in this Schedule 19 shall limit Project Co’s obligations to communicate, attend meetings and consult regularly with and provide progress reporting to Contracting Authority during the performance of the Works, including at the request of Contracting Authority or as otherwise required by Project Co to perform and complete the Works, all in accordance with this Agreement.

3 GOVERNANCE MODEL

3.1 General

- (a) The Parties agree that the Project governance model for this Agreement and the Works shall be based on the following four-tiered governance structure, which is intended to efficiently and effectively (A) facilitate the exchange of information and collaboration between the Parties during the Project Term, (B) allow the Parties to make decisions and carry out, manage and oversee the performance of the Works, and (C) establish appropriate channels of escalation to resolve issues that could become or are Disputes under this Agreement:

- (i) the Senior Executives Team;
 - (ii) the Leadership Team;
 - (iii) various Management Teams; and
 - (iv) the Working Groups.
- (b) The Parties acknowledge and agree that the continuous involvement in and attendance by their representatives at meetings of the Senior Executives Team, the Leadership Team, the Management Teams and the Working Groups are critical to the successful delivery of the Works and the Project.

3.2 Senior Executives Team

- (a) Within twenty (20) Business Days following the DMCA Effective Date, the Parties shall constitute a team comprised of two (2) senior executives of each Party for the purpose set out in Section 3.2(b), who initially shall be those individuals identified in Appendix A to this Schedule 19 (the “**Senior Executives Team**”).
- (i) Contracting Authority shall further identify an additional senior executive, as identified in Appendix A to this Schedule 19, who will be available to represent Contracting Authority at meetings of the Senior Executives Team in the event that a member of the Senior Executives Team is unable to attend any particular meeting of the Senior Executives Team carried out in accordance with this Section 3.2.
 - (ii) Project Co shall further identify two additional senior executives, as identified in Appendix A to this Schedule 19, who will be available to represent Project Co at meetings of the Senior Executives Team in the event that a member of the Senior Executives Team is unable to attend any particular meeting of the Senior Executives Team carried out in accordance with this Section 3.2.
- (b) Upon the delivery of no fewer than ten (10) Business Days’ prior Notice by a Party Representative to the other Party Representative, the Party Representative may, in their sole discretion and from time to time, request that a meeting of the Senior Executives Team occur for the purpose of each Party providing the Senior Executives Team with an update on the progress of the Works and any issues that have arisen with respect to the Project.
- (c) The precise date, time and location of each meeting of the Senior Executives Team shall be scheduled by Contracting Authority, acting reasonably.
- (d) Without limiting any decision-making authority of any member of the Senior Executives Team, the Parties acknowledge that the sole purpose of the Senior Executives Team and its meetings is set out in Section 3.2(b) and that the Senior Executives Team is not intended to be a decision-making team or committee.
- (e) All discussions at any meeting of the Senior Executives Team and documents exchanged between the Parties in respect of any such meeting shall be on a without prejudice basis

and shall not limit or prejudice any Party’s rights or obligations under this Agreement, including under the Dispute Resolution Procedure.

3.3 Leadership Team

- (a) Within twenty (20) Business Days following the DMCA Effective Date, the Parties shall establish a team consisting of the following representatives, who initially shall be those individuals identified in Appendix A to this Schedule 19 (the “**Leadership Team**”):
 - (i) four (4) representatives appointed by Contracting Authority from time to time, one of whom shall be the Contracting Authority Representative; and
 - (ii) three (3) representatives appointed by Project Co, being the Project Co Representative, a representative of the Primary Construction Team, and a representative of the Primary Design Team.
- (b) Two (2) representatives of Contracting Authority, with one being the Contracting Authority Representative, and two (2) representatives of Project Co, with one being the Project Co Representative, shall constitute a quorum at any meeting of the Leadership Team. A quorum of members may exercise all the powers of the Leadership Team. The members shall not transact business at a meeting of the Leadership Team unless a quorum is present.
- (c) Contracting Authority shall be entitled to replace any of its respective representatives on the Leadership Team by written Notice to Project Co. Contracting Authority will use commercially reasonable efforts to deliver prior written Notice of any such replacement to Project Co. Project Co may replace any of its representatives on the Leadership Team with the prior written consent of Contracting Authority.
- (d) The Contracting Authority Representative shall be the chairperson of the Leadership Team.
- (e) The role of the Leadership Team shall be to:
 - (i) provide leadership in respect of and oversee all aspects of the Works, including to ensure that the Parties act in accordance with the agreements and principles set out in Sections 3.3 (*Parties to Collaborate and Cooperate*) and 26.4 (*Transparency*) of this Agreement;
 - (ii) ensure all aspects of the Works are in alignment with the Value for Money Statement;
 - (iii) assist the Parties by promoting cooperative and effective communication with respect to matters related to the Works;
 - (iv) establish and implement transparent governance and accountability structures;
 - (v) address issues and Disputes escalated through other forums, including by any Management Team before escalating to the Senior Executives Team, as necessary;

- (vi) facilitate dialogue between any Management Team and the Senior Executives Team;
 - (vii) exercise responsibilities referred to it by the Senior Executives Team; and
 - (viii) consider those matters referred to it by the Senior Executives Team and make recommendations thereon to the Senior Executives Team.
- (f) No decision can be made by the Leadership Team unless:
- (i) the decision is unanimous;
 - (ii) the Contracting Authority Representative and the Project Co Representative are present; and
 - (iii) the decision is recorded in writing.
- (g) Subject to Sections 3.3(f) and 3.3(h), any unanimous decision of the Leadership Team shall be final and binding on the Parties.
- (h) Unless the applicable matter is referred to the Leadership Team by the Senior Executives Team, the Leadership Team shall not have authority to make decisions with respect to or approve:
- (i) any amendment to or waiver of any provision of this Agreement;
 - (ii) any change to a material milestone date set out in this Agreement or in the Project Works Schedule;
 - (iii) any Variation;
 - (iv) any change that may materially adversely affect Project Co’s ability to complete any Works by any material milestone date set out in this Agreement or in the Project Works Schedule; and
 - (v) any matter with respect to which Contracting Authority has a right of consent or approval or in respect of which Contracting Authority may exercise its discretion pursuant to this Agreement.
- (i) The members of the Leadership Team may:
- (i) adopt such procedures and practices for the conduct of the activities of the Leadership Team and meet in such locations or by way of such mediums as they consider appropriate from time to time; and
 - (ii) invite to or exclude from any meeting of the Leadership Team such other persons as the members of the Leadership Team may agree.

- (j) The Leadership Team shall hold monthly meetings unless a different frequency of meetings is reasonably required, either temporarily or permanently, by either Party.
- (k) Any Party Representative on the Leadership Team may convene a special meeting of the Leadership Team at any time. Special meetings of the Leadership Team may be convened on not less than ten (10) Business Days' Notice from the Party Representative to all other members of the Leadership Team, provided that, in an Emergency, a meeting may be called at any time on such Notice as may be reasonable in the circumstances.
- (l) Project Co shall record meeting minutes of the Leadership Team. Unless Contracting Authority notifies Project Co within five (5) Business Days after receipt of the minutes that Contracting Authority disagrees with the contents of the minutes, Project Co and Contracting Authority shall be deemed to have approved such minutes. Project Co shall maintain a complete set of all minutes of the meetings of the Leadership Team and shall make such minutes available for inspection by Contracting Authority upon request.

3.4 Management Teams

- (a) Within fifteen (15) Business Days following the DMCA Effective Date or such longer period agreed by the Parties, the Parties shall establish management teams for the Project, who shall oversee and facilitate the effective performance and completion of certain specific parts of the Works, who initially shall be those individuals identified in Appendix A to this Schedule 19 (each is a “**Management Team**”), including the following Management Teams:
 - (i) a design management team;
 - (ii) a construction management team;
 - (iii) a controls management team;
 - (iv) a risk management team;
 - (v) a commercial management team;
 - (vi) an integration management team;
 - (vii) a City of Toronto management team; and
 - (viii) a TTC management team.
- (b) It is intended that each Management Team be comprised of management-level representatives from Project Co and the Project Co Parties (including relevant Key Individuals) and from Contracting Authority.
- (c) Contracting Authority shall be entitled to replace any of its respective representatives on any Management Team by written Notice to Project Co. Contracting Authority will use commercially reasonable efforts to deliver prior written Notice of any such replacement to

Project Co. Project Co may replace any of its representatives on any Management Team with the prior written consent of Contracting Authority.

- (d) The Parties shall discuss and seek to reach agreement upon, (i) the number and types of Management Teams in addition to the teams specified in Section 3.4(a), and (ii) the mandate, composition, procedures and practices of each Management Team, prior to the expiry of the period set out in Section 3.4(a) or as soon as possible thereafter. Project Co shall be responsible for drafting the terms of reference for each Management Team before the expiry of such period or as soon as possible thereafter, which terms of reference shall be subject to Contracting Authority’s approval, acting reasonably.

3.5 Working Groups

- (a) Within fifteen (15) Business Days following the DMCA Effective Date or such longer period agreed by the Parties, the Parties shall establish a series of working groups, including those working groups specified in Appendix B to this Schedule 19, to facilitate the effective performance and completion of certain specific parts of the Works (each is a “**Working Group**”). The Parties shall use reasonable commercial efforts to agree to the number and types of Working Groups at the Start-Up Workshop. The Parties may establish other working groups for the Project Term which are in addition to those Working Groups listed in Appendix B to this Schedule 19, and each such additional working group shall constitute a Working Group for the purposes of this Schedule 19.
- (b) It is intended that each Working Group be comprised of representatives of Project Co and the Project Co Parties (including relevant Key Individuals) and Contracting Authority. It may also include representatives of relevant Stakeholders.
- (c) The Parties shall discuss and seek to reach agreement upon the mandate, composition, procedures and practices of each Working Group prior to the expiry of the period set out in Section 3.5(a) or as soon as possible thereafter. This shall include the process for escalating any issues and Disputes that arise between the Parties to a Management Team that oversees the activities of each Working Group. Project Co shall be responsible for drafting the terms of reference for each Working Group before the expiry of such period or as soon as possible thereafter, which terms of reference shall be subject to Contracting Authority’s approval, acting reasonably.
- (d) To the extent that the Parties establish working groups which are in addition to those Working Groups listed in in Appendix B to this Schedule 19 for the Project Term, the Parties shall discuss and reach agreement upon the mandate, composition, procedures, practices and terms of reference of each additional Working Group within fifteen (15) Business Days of the establishment of such Working Group (or such longer period as may otherwise be agreed by the Parties, acting reasonably), including the process for escalating any issues and Disputes that arise between the Parties to a Management Team that oversees the activities of each such Working Group. Project Co shall be responsible for drafting the terms of reference for each Working Group before the expiry of such period or as soon as possible thereafter, which terms of reference shall be subject to Contracting Authority’s approval, acting reasonably.

4 MEETINGS

4.1 General Meeting Obligations

- (a) Project Co shall:
 - (i) participate in meetings of the representatives of the Parties described in Section 3;
 - (ii) participate in additional Ad Hoc Meetings required by Contracting Authority;
 - (iii) record and maintain minutes of all meetings, recommendations and decisions, including those made by telephone or other form of communication;
 - (iv) for each weekly meeting, unless otherwise noted in this Schedule 19, be responsible for:
 - (A) distributing the agenda at least two (2) Business Days prior to the meeting date, or as otherwise agreed with Contracting Authority; and
 - (B) distributing meeting minutes for each meeting in draft to attendees for review and comment within two (2) Business Days after the meeting and to be finalized by the earlier of the subsequent meeting, or five (5) Business Days after the meeting. Meeting minutes shall be on an agreed template. The final agreed meeting minutes shall be submitted through Contracting Authority’s document management system software; and
 - (v) for all other meetings, unless otherwise noted in this Schedule 19 or any terms of reference approved by Contracting Authority pursuant to this Schedule 19, and without limiting any obligation of Project Co in Section 3.3(1), be responsible for:
 - (A) distributing the agenda at least three (3) Business Days prior to the meeting date, or as otherwise agreed with Contracting Authority; and
 - (B) distributing meeting minutes for each meeting in draft to attendees for review and comment within two (2) Business Days after the meeting and to be finalized by the earlier of the subsequent meeting, or five (5) Business Days after the meeting. Meeting minutes shall be on an agreed template. The final agreed meeting minutes shall be submitted through Contracting Authority’s document management system software.

4.2 Start-Up Meeting

- (a) Within five (5) Business Days after the DMCA Effective Date, Project Co shall attend a start-up meeting (the “**Start-Up Meeting**”) organized by Contracting Authority.
- (b) The agenda for the Start-Up Meeting shall include the following:
 - (i) an overview of Contracting Authority’s expectations and objectives for the Project Term;

- (ii) an overview of Parties’ obligations during the First Development Phase;
- (iii) a review of the project schedules and work plans to be finalized early during the Project Term;
- (iv) scheduling and confirming the attendees that will attend the DMCA Charter Workshop;
- (v) determining the number, frequency and topics of the Onboarding Workshops;
- (vi) an overview of the list of potential Working Groups that Contracting Authority is considering for the purposes of this Agreement, including those set out in Appendix B to this Schedule 19; and
- (vii) the expectations for all meetings and Working Groups.

4.3 Start-Up Workshop

- (a) Within ten (10) Business Days following the DMCA Effective Date, Project Co shall attend a start-up workshop (the “**Start-Up Workshop**”) organized by Contracting Authority to workshop and agree on certain elements of the activities that will occur during the Project Term in greater detail, as outlined in Section 4.3(b).
- (b) The agenda for the Start-Up Workshop shall include the following:
 - (i) a review of the Onboarding Workshops’ structure and schedule set out by Contracting Authority;
 - (ii) a review of and agreement upon the Working Groups to be established under this Agreement as set out in Section 3.5(a), including any associated revisions Project Co wishes to propose to the potential Working Groups described in Appendix B to this Schedule 19; and
 - (iii) a discussion of next steps with respect to plans to be submitted under this Agreement by Project Co, including:
 - (A) the resolution of any remaining conformance issues;
 - (B) the further development of such plans under this Agreement, particularly to allow for the commencement and implementation of the DMCA Construction Works; and
 - (iv) any other items identified by the Parties necessary or desired to support the start-up of the Project.

4.4 Onboarding Workshops

- (a) Within twenty (20) Business Days following the DMCA Effective Date, Contracting Authority will organize a series of meetings with Project Co to support the onboarding of Project Co on to the Project (“**Onboarding Workshops**”).
- (b) The agenda for the first Onboarding Workshop shall include an overview of the following:
 - (i) the final Reference Concept Design, outlining main drivers of the reference design at each location;
 - (ii) any relevant design alternatives considered during the Reference Concept Design’s development;
 - (iii) documents available as Background Information, including the Project due diligence completed;
 - (iv) any updates to Contracting Authority’s works schedule; and
 - (v) any updates to Contracting Authority’s Early Works Infrastructure program.

4.5 DMCA Charter Workshop and Development Works Charter

- (a) The Parties agree to participate, no later than twenty (20) Business Days after the DMCA Effective Date, in a charter workshop (the “**DMCA Charter Workshop**”), during which senior representatives of each of the Parties responsible for overseeing the performance of the Party under this Agreement (including each of the Party Representatives) shall develop, and Contracting Authority and Project Co shall subsequently agree in writing on, a charter that will govern the relationship between the Parties and the conduct of the Parties and their representatives under this Agreement (the “**Development Works Charter**”).
- (b) The Development Works Charter shall:
 - (i) include a statement whereby the Parties acknowledge the importance of complying with the agreements and principles set out in Sections 3.3 (*Parties to Collaborate and Cooperate*) and 26.4 (*Transparency*) of this Agreement, including to achieve a Best for Project outcome, during the Project Term;
 - (ii) establish and include a Best for Project governance framework for this Agreement;
 - (iii) otherwise be consistent with the provisions of this Agreement, including Sections 3.3 (*Parties to Collaborate and Cooperate*) and 26.4 (*Transparency*) of this Agreement; and
 - (iv) be supplemental to and shall not amend this Agreement, except as expressly permitted by this Agreement.
- (c) Following the DMCA Charter Workshop and the agreement upon the Development Works Charter in accordance with Section 4.5(a), each Party shall comply with the Development

Works Charter and be responsible for ensuring that its personnel, contractors and subcontractors (including the Subcontractors) understand the Development Works Charter and the requirement to perform the Party’s obligations under this Agreement in accordance with the Development Works Charter.

4.6 Partnering Sessions

- (a) During the Project Term, the Parties shall participate in training and discussion sessions designed to encourage the understanding of their respective collaborative and Project Co’s transparency obligations in this Agreement, including as set out in Sections 3.3 (*Parties to Collaborate and Cooperate*) and 26.4 (*Transparency*) of this Agreement and, after it is agreed by the Parties, the Development Works Charter. These sessions shall be organized and scheduled by Contracting Authority, acting reasonably.

4.7 Initial Risk Workshops

- (a) Within twenty-five (25) Business Days following the DMCA Effective Date, the Parties shall attend a series of risk management workshops (the “**Initial Risk Workshops**”).
- (b) As part of the Initial Risk Workshops, the Parties shall:
 - (i) establish risk management process, methodologies, reporting tools and mechanisms that will be implemented throughout the Project Term and under this Agreement, including frequency, topics, and objectives of certain regularly occurring risk review meetings that will be held by the Parties, which will be used to develop the Risk Management Plan (as defined in the Output Specifications);
 - (ii) review Project risks identified to date and identify any additional Project risks, which may be included in the Project’s risk register; and
 - (iii) review the Target Price Development Guidelines (as defined in Schedule 2 – Development Works Submissions and Project Development Process).

For clarity, discussions on which risks may be included within the Target Price are not intended to occur at the Initial Risk Workshops.

4.8 Checkpoint Meetings

- (a) Project Co shall schedule meetings with Contracting Authority no later than five (5) days after each Project Checkpoint (each a “**Checkpoint Meeting**”) to review the following, as applicable:
 - (i) technical requirements database;
 - (ii) major design or scope changes that have occurred since the previous Project Checkpoint, including any associated cost and schedule impacts;
 - (iii) variances in cost estimates compared to budget and previous submissions, as applicable;

- (iv) variances in the Critical Path or Near Critical Path Activities of the construction schedule compared to its previous submission;
 - (v) top new risks, proposed mitigations and updates to previous top risks, as applicable;
 - (vi) critical issues and proposed path(s) forward;
 - (vii) design standard variances;
 - (viii) any additional scope requests from third parties;
 - (ix) summary of the major packages under the Project Execution Plan;
 - (x) confirmation of compliance with the requirements of Schedule 15 – Output Specifications;
 - (xi) a summary of modifications to the draft Target Price Agreement that occurred in accordance with this Agreement since the last Project Checkpoint, and the identification of key draft Target Price Agreement issues that the Parties will resolve prior to the subsequent Project Checkpoint; and
 - (xii) a summary of the Value for Money Compliance Report (as defined in Appendix 1 (*Development Works Submittals and Requirements*) of Schedule 2 – Development Works Submissions and Project Development Process) prepared for the applicable Project Checkpoint in accordance with Schedule 2 – Development Works Submissions and Project Development Process.
- (b) Project Co shall distribute meeting materials no later than five (5) Business Days prior to the date of each Checkpoint Meeting.
 - (c) The Project Co Representative shall chair each of the Checkpoint Meetings.
 - (d) The Contracting Authority Representative shall attend each of the Checkpoint Meetings.

4.9 Design Validation Workshop

- (a) Project Co shall perform and complete the design validation work described in Schedule 2 – Development Works Submissions and Project Development Process prior the First Checkpoint, including through a series of workshops (each a “**Design Validation Workshop**”).
- (b) Prior to each Design Validation Workshop, the Parties will agree on the participation from Stakeholders in the workshop.
- (c) Project Co shall provide its initial findings in respect of such design validation work to Contracting Authority prior to the first Design Validation Workshop.

- (d) Project Co shall conduct each Design Validation Workshop using typical value engineering methodologies, with the intention of achieving value for money and completing such design validation work, prior to the commencement of Second Development Phase.
- (e) Project Co shall, as required, ensure that appropriate subject matter experts are available to discuss and justify each of the items to be discussed at each Design Validation Workshop.
- (f) After each Design Validation Workshop, Project Co shall submit a Design Validation Report to Contracting Authority as described in and in accordance with Schedule 2 – Development Works Submissions and Project Development Process.
- (g) Contracting Authority may, in its sole discretion, adopt any or part of the recommendations provided by Project Co as part of a Design Validation Report, whereby the Change Request process described in Section 8 (*Change Request Process*) of Schedule 2 – Development Works Submissions and Project Development Process shall be utilized.

4.10 Value Engineering Workshop

- (a) Upon request from Contracting Authority, Project Co shall schedule a multi-day workshop immediately following the Second Checkpoint and each applicable TPA Development Checkpoint to perform value engineering activities in respect of the Project on the basis of the Second Development Phase Lockdown Submittals or the TPA Development Phase Lockdown Submittals, as applicable, (each a “**Value Engineering Workshop**”).
- (b) Project Co and Contracting Authority shall collaboratively assign a panel of subject matter experts to participate in each Value Engineering Workshop.
- (c) Project Co and Contracting Authority will agree on the participation of Stakeholders in each Value Engineering Workshop.
- (d) Project Co shall chair and conduct each Value Engineering Workshop using certified value management consultant(s).
- (e) For greater certainty, Project Co shall submit a Value Engineering Report described in and in accordance with Appendix 1 (*Development Works Submittals, Deliverables and Requirements*) to Schedule 2 – Development Works Submissions and Project Development Process.
- (f) Contracting Authority may, in its sole discretion, adopt any or part of the recommendations provided by Project Co as part of a Value Engineering Report, whereby the Change Request process described in Section 8 (*Change Request Process*) of Schedule 2 – Development Works Submissions and Project Development Process shall be utilized.

4.11 Design Presentation Meetings

- (a) Project Co shall schedule and participate in a meeting with Contracting Authority, and any persons invited by Contracting Authority, (each a “**Design Presentation Meeting**”) no later than five (5) Business Days following each submission by Project Co to Contracting Authority of the final Development Works Submittal in respect of the Design Works

pursuant to the Review Procedure required as part of a Project Checkpoint, where Project Co shall present to Contracting Authority:

- (i) both (A) changes to the design from the Reference Concept Design with respect to the submittals outlined in Appendix A to Schedule 10 – Review Procedure of this Agreement denoted with an “X” in the applicable “Development Works Submittals” column, and (B) changes to the design made from the design submissions submitted as part of any previous Project Checkpoints;
- (ii) areas of concern or areas that require further development;
- (iii) responses to or resolution of comments received from Contracting Authority or Stakeholders;
- (iv) an overview of open comments from Contracting Authority or Stakeholders with anticipated resolution timelines and proposed approaches;
- (v) items requiring input or decision from Contracting Authority or Stakeholders with anticipated resolution timelines and proposed approaches;
- (vi) the validation of conformance to technical requirements; and
- (vii) changes to the design due to any changes in standards.

4.12 Design Review Meetings

- (a) In order to obtain input in the preparation of, and prior to submitting, the Design Development Submittals and the Construction Document Submittals, Project Co and the Design Team shall hold design review meetings with the Contracting Authority Design Team (the “**Design Review Meetings**”) upon the following terms:
 - (i) the Project Co Representative shall arrange the Design Review Meetings in consultation with the Contracting Authority Representative;
 - (ii) unless otherwise agreed to by the Parties, all Design Review Meetings shall take place in the City of Toronto. Meetings of the Design Review Meetings may be held by means of such telephonic, electronic or other communication facilities as permit all persons participating in the meeting to communicate with each other simultaneously and instantaneously. A person participating in a meeting by such means will be deemed to be present at such meeting;
 - (iii) the Parties shall cooperate to develop a reasonable schedule for the Design Review Meetings, and Project Co shall incorporate such schedule into each of the relevant Project Works Schedules;
 - (iv) Project Co shall circulate to Contracting Authority and the Contracting Authority Design Team an agenda for each of the Design Review Meetings no later than ten (10) Business Days prior to the relevant Design Review Meeting;

- (v) in advance of a Design Review Meeting, Project Co may submit to the Contracting Authority Design Team for comment any interim drafts of any designs or plans required under this Agreement, which submissions shall be used to inform Contracting Authority on the development of Project Co Infrastructure and New Third Party Infrastructure design and provide an opportunity for dialogue on compliance with the requirements of this Agreement. If a Proposal Part corresponds to the interim submissions, then Project Co shall ensure that the interim submissions are substantially the same content and level of detail as the corresponding Proposal Part. For greater certainty:
 - (A) interim submissions shall be informal and shall not be reviewed in accordance with Schedule 10 – Review Procedure; and
 - (B) the requirement for Project Co to submit interim submissions that are substantially the same content and level of detail as the corresponding Proposal Part, shall not:
 - (I) lessen, reduce or otherwise modify or amend Contracting Authority’s rights under this Agreement to review any Design Development Submittals or Construction Document Submittals in accordance with Schedule 10 – Review Procedure; or
 - (II) constitute acceptance by Contracting Authority of the corresponding Proposal Part or any Design Development Submittals or Construction Document Submittals in accordance with Schedule 10 – Review Procedure;
 - (vi) Project Co shall maintain minutes of the Design Review Meetings, including possible design solutions and changes in design, and, within five (5) Business Days after each Design Review Meeting, Project Co shall provide to Contracting Authority and the Contracting Authority Design Team a copy of the minutes, together with a copy of any notes, comments, sketches, drawings, tracings, lay-outs, plans or diagrams prepared at the Design Review Meeting. Unless Contracting Authority notifies Project Co within five (5) Business Days of receipt of the minutes that Contracting Authority disagrees with the contents of the minutes, notes, comments, sketches, drawings, tracings, lay-outs, plans or diagrams, Contracting Authority and Project Co shall be deemed to have approved such minutes; and
 - (vii) Contracting Authority and Project Co agree that the subject matter of the Design Review Meetings shall not be regarded as Works Submittals to which Schedule 10 – Review Procedure applies, and that Contracting Authority shall not be bound by the input provided in connection with the Design Review Meetings.
- (b) The Parties shall, together with the Contracting Authority Design Team, hold Design Review Meetings prior to the submission of:
- (i) each of the Design Development Submittals; and

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

4.13 Ad Hoc Meetings

- (a) From time to time, Contracting Authority may require that Project Co attend or attend and support Contracting Authority at ad hoc meetings (“**Ad Hoc Meetings**”), which are in addition to any other meetings expressly required under this Agreement and may include virtual open houses, public information centers, elected official briefings, community liaison committees, property owner meetings, Stakeholder briefings, Contracting Authority senior management briefings, and any other ad hoc meetings.
- (b) Subject to Section 4.13(c), Contracting Authority may require that Project Co:
 - (i) participate in Ad Hoc Meetings, and answer questions live or in the form of frequently asked questions in advance of the meetings; or
 - (ii) prepare or contribute to materials for Ad Hoc Meetings,and in each case, Project Co shall participate, prepare or contribute to materials as required.
- (c) Contracting Authority shall provide Project Co with Notice of each such Ad Hoc Meeting in relation to which Contracting Authority requires Project Co’s participation, preparation or contribution. Contracting Authority’s Notice shall be provided no less than five (5) Business Days prior to the applicable Ad Hoc Meeting and to include an outline of Contracting Authority’s requirements in relation to Project Co’s participation, preparation or contribution.
- (d) Project Co acknowledges that it may be required to attend and participate in some Ad Hoc Meetings that occur in the evening or outside of regular business hours.

5 WORKS REPORTING REQUIREMENTS FOR DEVELOPMENT WORKS

5.1 Development Works and Works Reporting

- (a) By no later than the end of the First Development Phase, Project Co and Contracting Authority shall develop and agree in writing upon:
 - (i) a method for Project Co to report in writing to Contracting Authority on the progress of the Development Works on a weekly basis; and

- (ii) subject to Section 5.1(b), the form and content of each report to be provided by Project Co.
- (b) Each weekly report shall be submitted by Project Co to Contracting Authority by no later than the date that is one (1) Business Day following the end of each five (5) Business Day period, and shall include, at a minimum:
 - (i) a Development Works progress narrative, inclusive of pictures for manufacturing and construction;
 - (ii) a list and status of all Development Works Submittals submitted during the previous week and to be submitted in the following week;
 - (iii) earned value management for engineering, procurement, and construction activities;
 - (iv) awarded contracts, including any manufacturing or construction contracts;
 - (v) a schedule showing planned and actual dates for activities performed in the reporting period;
 - (vi) a three-week look-ahead schedule, including milestones, major activities and submittals;
 - (vii) the outcomes of any third-party engagements that occurred;
 - (viii) key performance indicators for engineering, procurement, construction activities;
 - (ix) any changes to risk; and
 - (x) any areas of concern.
- (c) As soon as practicable during the First Development Phase, Project Co and Contracting Authority shall develop and agree in writing upon:
 - (i) a method for Project Co to report in writing to Contracting Authority on the progress of the Development Works on a monthly basis; and
 - (ii) subject to Section 5.1(d), the form and content of each report to be provided by Project Co.
- (d) Each monthly report shall be submitted by Project Co to Contracting Authority by no later than the date that is five (5) Business Days following the last calendar day of the reporting month in conjunction with the Works Report as set out in Schedule 33 – Works Report Requirements. At a minimum, the monthly reporting on the progress of the Development Works shall include:
 - (i) all items captured as part of Section 5.1(b) for the weeks within each month's reporting period;

- (ii) a schedule showing planned and actual dates for activities performed in the reporting period;
 - (iii) a three-month look-ahead schedule showing planned and target dates for design and construction activities;
 - (iv) a critical issues with a work-back schedule for resolution and major next steps;
 - (v) an updated issues log;
 - (vi) during the Project Term only, each report shall include a copy of the updated Project risk register; and
 - (vii) reporting on design progress, in a format to be agreed by the Parties following the DMCA Effective Date, referencing the “Engineering Progress & Performance Reporting (EPPR) Guideline for PTUS” (provided by Contracting Authority to Project Co as Background Information) as a standard.
- (e) At the same time as or promptly following each agreement on the weekly or monthly reporting described in, as applicable, Section 5.1(a) or Section 5.1(c) that will be undertaken by Project Co pursuant to any Target Price Agreement, the Parties shall, subject to and in accordance with Schedule 2 – Development Works Submissions and Project Development Process, negotiate and finalize the Negotiable Draft TPA Provisions in respect of such reporting, including for the purposes of finalizing Schedule 33 – Works Report Requirements of the applicable Target Price Agreement.
- (f) Unless otherwise agreed by Contracting Authority, Project Co shall provide weekly timecards with a detailed justification for each resource on a daily basis by no later than three (3) Business Days after the date of each week’s end date.
- (g) The weekly and monthly reporting described in this Section 5.1 shall be in addition to any other reporting requirements that are set out in and applicable to the Development Works under this Agreement.

6 PROJECT OFFICE

6.1 Project Office

- (a) Contracting Authority will provide a climate-controlled office space at [REDACTED] (the “**Project Office**”) for use during the Development Works and the DMCA Construction Works.
- (b) The Project Office shall be the primary hub for Project Co’s technical, design review, project management, contract administration and coordination team, Project Co’s development of the Target Price (including work on the schedule, estimating and threats and opportunities), development of early execution activities, and shall allow for in-person coordination with Contracting Authority and other major Ontario Line Subway System contractors. The Project Office may also include space for the City of Toronto, the TTC and other Stakeholder staff.

- (c) The Occupancy Agreement will detail, among other things, the duration of access and the exact size of the Project Office, including providing one floor of office space for the Project, which shall accommodate desks and offices for both Contracting Authority (approximately 60 desks/offices) and Project Co (approximately 80 desks/offices).
- (d) Subject to the provisions of the Occupancy Agreement, Contracting Authority shall:
 - (i) pay for janitorial services, garbage removal, utilities and services, including hydro, water, heating and cooling, at the Project Office;
 - (ii) ensure the Project Office is ready for Project Co to move into, including office furniture, IT voice and data cabling and Wi-Fi internet connection; and
 - (iii) not be required to provide parking access to Project Co at the Project Office.
- (e) Subject to obtaining prior approval of Contracting Authority, Project Co shall:
 - (i) be responsible for re-configuring the floor at the Project Office to its needs, including any additional office furniture required for conference rooms, offices and workstations;
 - (ii) provide its own appliances, office equipment, office supplies, telephones, additional IT voice and data cabling at the Project Office;
 - (iii) provide for establishing and using its own Wi-Fi internet connection and any other internet requirements at the Project Office over and above that provided by Contracting Authority;
 - (iv) be responsible for any security alarm systems it requires in addition to the building alarm systems that are provided at the Project Office, which shall comply with the Occupancy Agreement;
 - (v) manage the access/swipe cards provided by the Project Office landlord; and
 - (vi) acquire any necessary parking access at the Project Office.
- (f) Project Co shall co-locate its staff to the Project Office to support an efficient engagement, design integration and construction integration process with Contracting Authority, other major Ontario Line Subway System contractors and Stakeholders. This shall include, at a minimum, the following Key Individuals as identified in Schedule 9 – Key Individuals to allow for efficient communication and collaboration:
 - (i) Project Co Representative;
 - (ii) Design Director;
 - (iii) Tunnel Design Manager;
 - (iv) Construction Director;

- (v) Construction Health and Safety Manager;
- (vi) Project Controls Lead;
- (vii) Estimating Lead;
- (viii) Schedule Manager; and
- (ix) Procurement Lead.

APPENDIX A TO SCHEDULE 19

TEAM REPRESENTATIVES

[REDACTED]

APPENDIX B TO SCHEDULE 19

INITIAL LIST OF PROPOSED WORKING GROUPS

[REDACTED]

SCHEDULE 20

WARRANTY LETTER OF CREDIT

[REDACTED]

SCHEDULE 21

RISK ALLOCATIONS

1. DEFINITIONS

1.1 Definitions

- (a) In this Schedule 21, unless the context indicates a contrary intention, terms which are defined in this Agreement (and not otherwise defined in this Schedule 21) shall have meanings given to them in this Agreement and the following terms shall have the following meanings:
- (i) “**Adjustment**” means:
 - (A) a Schedule Adjustment; or
 - (B) a Target Price Adjustment; or
 - (C) both (A) and (B).
 - (ii) “**Adjustment Event**” means each event or circumstance identified in the column entitled “Adjustment Event” set forth in the Risk Allocations Matrix.
 - (iii) “**CA-Incurred Defined Costs**” has the meaning given in Section 8.1(a).
 - (iv) “**Risk Allocations Matrix**” means the matrix set forth in Appendix A to this Schedule 21.
 - (v) “**Schedule Adjustment**” means an adjustment to any TPA Longstop Date, TPA Scheduled Substantial Completion Date, TPA Scheduled Final Completion Date, Critical Works Deadline, or Critical Data Deadline, as applicable pursuant to Section 3 of this Schedule 21.
 - (vi) “**Target Price Adjustment**” means an adjustment to any Target Price pursuant to Sections 4 or 8 of this Schedule 21.

2. RISK ALLOCATIONS FOR ADJUSTMENT EVENTS

2.1 Risk Allocations

The Risk Allocations Matrix specifies each Adjustment Event in relation to which Project Co may apply for an Adjustment to:

- (i) any TPA Longstop Date, TPA Scheduled Substantial Completion Date, TPA Scheduled Final Completion Date, Critical Works Deadline, or Critical Data Deadline pursuant to Section 3; or
- (ii) any Target Price pursuant to Section 4.

2.2 Entitlement

For the purposes of determining Project Co’s entitlement to a Schedule Adjustment, a Target Price Adjustment, or both, the following terms shall have the following meanings:

“**YES**” means, in relation to the applicable Adjustment Event and the applicable column in the Risk Allocations Matrix, Project Co may be entitled to an Adjustment, subject to compliance with the provisions of this Schedule 21; and

“**NO**” means, in relation to the applicable Adjustment Event and the applicable column in the Risk Allocations Matrix, Project Co is not entitled to an Adjustment.

3. SCHEDULE ADJUSTMENTS

3.1 General

- (a) The provisions of this Section 3 apply to those Adjustment Events identified in the column entitled “Schedule Relief Entitlement” in the Risk Allocations Matrix, and any reference to an Adjustment Event in this Section 3 shall only be in reference to an Adjustment Event so identified.
- (b) There shall be no Schedule Adjustment except as provided in this Section 3.

3.2 Process

- (a) Project Co shall provide Notice to the Contracting Authority Representative, the CDB and the Independent Commissioning Agent within five Business Days after becoming aware of the occurrence of an Adjustment Event which, at the time of its occurrence, is reasonably likely to form the basis of a future claim by Project Co for a Schedule Adjustment caused by the Adjustment Event.
- (b) Project Co shall, within 10 Business Days (or such longer period of time as the Parties may agree) after delivering such notification under Section 3.2(a), provide further written details to the Contracting Authority Representative, the CDB and the Independent Commissioning Agent which shall include:
 - (i) identification of the Adjustment Event on which Project Co’s future claim for an entitlement under this Section 3 would be based if such event or circumstances were to form the basis of a claim for an entitlement as an Adjustment Event under this Section 3;
 - (ii) details of the event or circumstances forming the basis of Project Co’s notification under Section 3.2(a);
 - (iii) details of the contemporary records which Project Co shall thereafter maintain to substantiate its claim for extra time if the event or circumstances detailed in accordance with Section 3.2(b)(ii) forms the basis of a future claim by Project Co for an Adjustment Event under this Section 3;
 - (iv) details of the consequences (whether direct or indirect, financial or non-financial) that such event or circumstances may have upon any TPA Longstop Date, TPA Scheduled Substantial Completion Date, TPA Scheduled Final Completion Date, Critical Works Deadline, or Critical Data Deadline, as applicable, if such event or circumstances forms

the basis of a future claim by Project Co for an entitlement to an Adjustment Event under this Section 3; and

- (v) details of any measures that Project Co proposes to adopt to prevent such event or circumstances from forming the basis of a future claim by Project Co for an entitlement to an Adjustment Event under this Section 3, or to mitigate the consequences of such claim if such event or circumstances were to become an Adjustment Event.
- (c) If Project Co does not provide further written details to the Contracting Authority Representative, the CDB and the Independent Commissioning Agent as required under Section 3.2(b) within the 10 Business Day period referred to in such Section, Project Co acknowledges and agrees that, after a further 10 Business Days, Project Co shall not be entitled to rely upon, and the Contracting Authority Representative shall not be obligated to consider, the notice given under Section 3.2(a) for the purposes of determining Project Co's entitlement under this Section 3. Project Co, at its option, may submit a new, currently dated Notice which complies with the provisions of Section 3.2(b) for the same event or circumstance which gave rise to the previous, unsubstantiated Notice, and the provisions of this Section 3 shall apply to any new Notice, *mutatis mutandis*. Project Co acknowledges and agrees that the Contracting Authority Representative, in determining Project Co's entitlement pursuant to this Section 3, without limiting any other right of the Contracting Authority Representative under this Agreement, shall be entitled to take into account the delay between:
- (i) Project Co becoming aware of the occurrence of the event or circumstance forming the basis of the original Notice delivered pursuant to Section 3.2(a); and
 - (ii) Project Co submitting the new Notice pursuant to Section 3.2(c) in respect of that event or occurrence.
- (d) As soon as possible but in any event within three Business Days after Project Co receiving, or becoming aware of, any supplemental information pertaining to the event or circumstances disclosed in Section 3.2(a), Project Co shall submit further particulars based on such information to the Contracting Authority Representative, the CDB and the Independent Commissioning Agent.
- (e) The Contracting Authority Representative shall, after receipt of written details under Section 3.2(a), or of further particulars under Section 3.2(b), be entitled by Notice to require Project Co to provide such further supporting particulars as the Contracting Authority Representative may reasonably consider necessary. Project Co shall comply with such further requests and afford the Contracting Authority Representative, the CDB and the Independent Commissioning Agent reasonable facilities for their investigations, including on-site inspection.
- (f) In addition to complying with its obligations under Sections 3.2(a), 3.2(b), 3.2(d) and 3.2(e), Project Co shall provide Notice to the Contracting Authority Representative, the CDB and the Independent Commissioning Agent within five Business Days (or such longer period of time as the Parties may agree) after becoming aware that an event or circumstances has satisfied, or will satisfy, in the opinion of Project Co, the applicable definition of an Adjustment Event. Project Co shall, within 10 Business Days after such notification, provide further written details of the Adjustment Event to the Contracting Authority Representative, the CDB and the Independent Commissioning Agent, including, if and as applicable, to substitute or supplement the information given in Sections 3.2(a),

3.2(b), 3.2(d) and 3.2(e), to substantiate or support Project Co's claim which shall include, to the extent not previously provided:

- (i) a statement of which Adjustment Event upon which the claim is based;
 - (ii) details of the circumstances from which the Adjustment 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 Adjustment Event may have upon any TPA Longstop Date, TPA Scheduled Substantial Completion Date, TPA Scheduled Final Completion Date, Critical Works Deadline, or Critical Data Deadline, as applicable, including a critical path analysis of the event or circumstances, indicating the impact upon the applicable TPA Longstop Date, TPA Scheduled Substantial Completion Date, TPA Scheduled Final Completion Date, Critical Works Deadline, or Critical Data Deadline, as applicable; and
 - (v) details of any measures which Project Co proposes to adopt to mitigate the consequences of such Adjustment Event.
- (g) As soon as possible, but in any event within three Business Days after Project Co receiving, or becoming aware of, any supplemental information which may further substantiate or support Project Co's claim under Section 3.2(f), Project Co shall submit further particulars based on such information to the Contracting Authority Representative, the CDB and the Independent Commissioning Agent.
- (h) The Contracting Authority Representative shall, after receipt of written details under Section 3.2(f), or of further particulars under Section 3.2(g), be entitled by Notice to require Project Co to provide such further supporting particulars as the Contracting Authority Representative may reasonably consider necessary. Project Co shall comply with such further requests and afford the Contracting Authority Representative, the CDB and the Independent Commissioning Agent reasonable facilities for investigating the validity of Project Co's claim, including on-site inspection.

3.3 Schedule Adjustment as a Consequence of an Adjustment Event

- (a) If an Adjustment Event occurs, Project Co's entitlement to a Schedule Adjustment in relation to such Adjustment Event shall be subject to, and determined in accordance with, this Schedule 21.
- (b) Subject to the provisions of this Section 3, if it is (i) agreed or (ii) determined in accordance with Schedule 27 – Dispute Resolution Procedure, that an Adjustment Event has occurred which entitles Project Co to a Schedule Adjustment, then the Contracting Authority Representative shall allow Project Co an extension of time equal to the delay to the applicable TPA Longstop Date, TPA Scheduled Substantial Completion Date, TPA Scheduled Final Completion Date, Critical Works Deadline, or Critical Data Deadline, as applicable, caused by the Adjustment Event and shall determine: a revised (A) TPA Longstop Date, (B) TPA Scheduled Substantial Completion Date, (C) TPA Scheduled Final Completion Date, (D) Critical Works Deadline, or (E) Critical Data Deadline, as applicable, as soon as reasonably practicable and in any event within 10 Business Days following the later of:

- (i) the date of receipt by the Contracting Authority Representative of Project Co’s Notice given in accordance with Section 3.2(f) and the date of receipt of adequate further particulars (if such are required under Section 3.2(g)), whichever is later; and
 - (ii) the date of receipt by the Contracting Authority Representative of any supplemental information supplied by Project Co or requested by Contracting Authority in accordance with Section 3.2(g) and the date of receipt of any further particulars (if such are required under Section 3.2(h)), whichever is later.
- (c) If:
- (i) the Contracting Authority Representative declines to determine a revised (A) TPA Longstop Date, (B) TPA Scheduled Substantial Completion Date, (C) TPA Scheduled Final Completion Date, (D) Critical Works Deadline, or (E) Critical Data Deadline, as applicable; or
 - (ii) Project Co considers that a different: (A) TPA Longstop Date, (B) TPA Scheduled Substantial Completion Date, (C) TPA Scheduled Final Completion Date, (D) Critical Works Deadline, or (E) Critical Data Deadline should be determined,
- then Project Co shall be entitled to refer the matter for resolution in accordance with Schedule 27 – Dispute Resolution Procedure.
- (d) To the extent that Project Co does not comply with its obligations under Sections 3.2(a), 3.2(b), 3.2(d), 3.2(e), 3.2(f), 3.2(g) or 3.2(h), and subject to Section 3.2(c), such failure shall be taken into account in determining Project Co’s entitlement to an Adjustment Event pursuant to this Section 3.
 - (e) Where there are concurrent delays, some of which are caused by Contracting Authority or others for whom Contracting Authority is responsible, and some of which are caused by Project Co or others for whom Project Co is responsible, Project Co shall not be entitled to an extension of the affected TPA Longstop Date, TPA Scheduled Substantial Completion Date, TPA Scheduled Final Completion Date, Critical Works Deadline, or Critical Data Deadline to the extent of the concurrent delays. Concurrent delays are those that are caused by two or more independent events which affect any TPA Longstop Date, TPA Scheduled Substantial Completion Date, TPA Scheduled Final Completion Date, Critical Works Deadline, or Critical Data Deadline, as applicable, where the time period over which such delays occur overlap in time, but only for the duration of the overlap.
 - (f) Subject to Sections 11.19(b) and 11.19(c) (*Coordination and Minimization of Disruption and Interference*) of this Agreement, Contracting Authority shall provide Project Co with access to and use of the Metrolinx Lands and the Existing Metrolinx Infrastructure as required pursuant to Section 16 (*Land Access and Investigation*) of this Agreement in a manner consistent with the applicable Project Works Schedule(s) and in accordance with the notification requirements and restrictions set out in this Agreement, provided that Project Co agrees that the inability of Contracting Authority to provide Project Co with access to an area for Construction Activities not on the Critical Path for reasons set out in Sections 11.19(b) and 11.19(c) (*Coordination and Minimization of Disruption and Interference*) of this Agreement will not result in the occurrence of an Adjustment Event (and, for greater certainty, there shall not be a Schedule Adjustment).

- (g) In no event shall the extension of time for an Adjustment Event be more than the necessary extension of the Critical Path as a result of such Adjustment Event.

3.4 Mitigation

- (a) Subject to Section 7, if Project Co is (or claims to be) affected by an Adjustment 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 Agreement;
 - (ii) to continue to perform its obligations under this Agreement to the extent possible notwithstanding the subject Adjustment Event; and
 - (iii) to resume performance of its obligations under this Agreement affected by the subject Adjustment Event as soon as practicable.
- (b) To the extent that Project Co does not comply with its obligations under this Section 3.4, such failure shall be taken into account in determining Project Co’s entitlement to an extension of time pursuant to this Section 3.

4. TARGET PRICE ADJUSTMENTS

4.1 General

- (a) The provisions of this Section 4 apply to those Adjustment Events identified in the column entitled “Target Price Relief Entitlement” in the Risk Allocations Matrix, and any reference to an Adjustment Event in this Section 4 shall only be in reference to an Adjustment Event so identified.
- (b) The Target Price shall not be subject to adjustment except as provided in this Section 4 and Section 8.

4.2 Process

- (a) Project Co shall provide Notice to the Contracting Authority Representative, the CDB and the Independent Commissioning Agent within five Business Days after becoming aware of the occurrence of an Adjustment Event which, at the time of its occurrence, is reasonably likely to form the basis of a future claim by Project Co for a Target Price Adjustment caused by the Adjustment Event.
- (b) Project Co shall, within 10 Business Days (or such longer period of time as the Parties may agree) after delivering such notification under Section 4.2(a), provide further written details to the Contracting Authority Representative, the CDB and the Independent Commissioning Agent which shall include:
 - (i) identification of the Adjustment Event on which Project Co’s future claim for an entitlement under this Section 4 would be based if such event or circumstances were to

- form the basis of a claim for a Target Price Adjustment arising as a consequence of such Adjustment Event;
- (ii) details of the event or circumstances forming the basis of Project Co's notification under Section 4.2(a);
 - (iii) details of the consequences of the proposed a Target Price Adjustment that such event or circumstances may have if such event or circumstances forms the basis of a future claim by Project Co for a Target Price Adjustment arising as a consequence such Adjustment Event; and
 - (iv) details of any measures that Project Co proposes to adopt to prevent such event or circumstances from forming the basis of a future claim by Project Co for a Target Price Adjustment arising as a consequence such Adjustment Event, or to mitigate the consequences of such claim if such event or circumstances were to become an Adjustment Event.
- (c) If Project Co does not provide further written details to the Contracting Authority Representative, the CDB and the Independent Commissioning Agent as required under Section 4.2(b) within the 10 Business Day period referred to in such Section, Project Co acknowledges and agrees that, after a further 10 Business Days, Project Co shall not be entitled to rely upon, and the Contracting Authority Representative shall not be obligated to consider, the Notice given under Section 4.2(a) for the purposes of determining Project Co's entitlement under this Section 4. Project Co, at its option, may submit a new, currently dated Notice which complies with the provisions of Section 4.2(b) for the same event or circumstance which gave rise to the previous, unsubstantiated Notice, and the provisions of this Section 4 shall apply to any new Notice, *mutatis mutandis*. Project Co acknowledges and agrees that the Contracting Authority Representative, in determining Project Co's entitlement pursuant to this Section 4, without limiting any other right of the Contracting Authority Representative under this Agreement, shall be entitled to take into account the delay between:
- (i) Project Co becoming aware of the occurrence of the event or circumstance forming the basis of the original Notice delivered pursuant to Section 4.2(a); and
 - (ii) Project Co submitting the new Notice pursuant to Section 4.2(c) in respect of that event or occurrence.
- (d) As soon as possible but in any event within three Business Days after Project Co receiving, or becoming aware of, any supplemental information pertaining to the event or circumstances disclosed in Section 4.2(b), Project Co shall submit further particulars based on such information to the Contracting Authority Representative, the CDB and the Independent Commissioning Agent.
- (e) The Contracting Authority Representative shall, after receipt of written details under Section 4.2(b), or of further particulars under Section 4.2(d), be entitled by Notice to require Project Co to provide such further supporting particulars as the Contracting Authority Representative may reasonably consider necessary. Project Co shall comply with such further requests and afford the Contracting Authority Representative, the CDB and the Independent Commissioning Agent reasonable facilities for their investigations, including on-site inspection.

- (f) In addition to complying with its obligations under Sections 4.2(b), 4.2(d) and 4.2(e), Project Co shall provide Notice to the Contracting Authority Representative, the CDB and the Independent Commissioning Agent within five Business Days (or such longer period of time as the Parties may agree) after becoming aware that an event or circumstances has satisfied, or will satisfy, in the opinion of Project Co, the applicable definition of an Adjustment Event. Project Co shall, within 10 Business Days after such notification, provide further written details of the Adjustment Event to the Contracting Authority Representative, the CDB and the Independent Commissioning Agent, including, if and as applicable, to substitute or supplement the information given in Sections 4.2(b), 4.2(d) and 4.2(e), to substantiate or support Project Co's claim which shall include, to the extent not previously provided:
- (i) a statement of which Adjustment Event upon which the claim is based;
 - (ii) details of the circumstances from which the Adjustment Event arises; and
 - (iii) details of any measures which Project Co proposes to adopt to mitigate the consequences of such Adjustment Event.
- (g) As soon as possible, but in any event within three Business Days after Project Co receiving, or becoming aware of, any supplemental information which may further substantiate or support Project Co's claim under Section 4.2(f), Project Co shall submit further particulars based on such information to the Contracting Authority Representative, the CDB and the Independent Commissioning Agent.
- (h) The Contracting Authority Representative shall, after receipt of written details under Section 4.2(f), or of further particulars under Section 4.2(g), be entitled by Notice to require Project Co to provide such further supporting particulars as the Contracting Authority Representative may reasonably consider necessary. Project Co shall comply with such further requests and afford the Contracting Authority Representative, the CDB and the Independent Commissioning Agent reasonable facilities for investigating the validity of Project Co's claim, including on-site inspection.
- (i) Subject to Sections 11.9(b) and 11.9(c) (*Protection of Works and Property and Reinstatement Work*) of this Agreement, Contracting Authority shall provide Project Co with access to and use of the Metrolinx Lands and the Existing Metrolinx Infrastructure as required pursuant to Section 16 (*Land Access and Investigation*) of this Agreement in a manner consistent with the applicable Project Works Schedule(s) and in accordance with the notification requirements and restrictions set out in this Agreement, provided that Project Co agrees that the inability of Contracting Authority to provide Project Co with access to an area for Construction Activities not on the Critical Path for reasons set out in Sections 11.9(b) and 11.9(c) (*Protection of Works and Property and Reinstatement Work*) of this Agreement will not result in the occurrence of an Adjustment Event (and, for greater certainty, there shall not be a Target Price Adjustment).

4.3 Target Price Adjustment as a Consequence of an Adjustment Event

- (a) If an Adjustment Event occurs, Project Co's entitlement to a Target Price Adjustment in relation to such Adjustment Event shall be subject to, and determined in accordance with, this Schedule 21.
- (b) Subject to Sections 4.4 and 4.5, if:

- (i) it is (I) agreed, or (II) determined in accordance with Schedule 27 – Dispute Resolution Procedure, that an Adjustment Event has occurred; and
- (ii) it is (I) agreed, or (II) determined in accordance with Schedule 27 – Dispute Resolution Procedure, that Project Co is entitled to a Target Price Adjustment, subject to and in accordance with this Schedule 21,

then Project Co shall be entitled to a Variation and the provisions of Schedule 22 – Estimates, Variations and Proposals shall apply.

- (c) To the extent that Project Co does not comply with its obligations under Sections 4.2(a), 4.2(b), 4.2(d), 4.2(e), 4.2(f), 4.2(g), or 4.2(h), and subject to Section 4.2(c), such failure shall be taken into account in determining Project Co's entitlement to a Target Price Adjustment pursuant to this Section 4.3.

4.4 Mitigation

- (a) Subject to Section 7, if Project Co is (or claims to be) affected by an Adjustment Event, Project Co shall, and shall require all Project Co Parties to, take and continue to take commercially reasonable steps to minimize the Target Price Adjustment that may arise from such Adjustment Event.
- (b) To the extent that Project Co does not comply with its obligations under this Section 4.4, such failure shall be taken into account in determining Project Co's entitlement arising from an Adjustment Event pursuant to this Section 4.

4.5 Insured Exposure

- (a) The amount of the Target Price Adjustment pursuant to this Section 4 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 Agreement in respect of insurance or the terms of any policy of insurance required under this 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.

5. RELIEF EVENTS

5.1 Consequences of a Relief Event

- (a) Subject to Section 5.2, no right of termination, other than either Party's right to terminate this Agreement and any Target Price Agreement then in effect pursuant to Section 33.1 (*Termination for Relief Event*) of this Agreement, shall arise under this Agreement or Target Price Agreement then in effect by reason of any failure by a Party to perform any of its obligations under this Agreement or applicable Target Price Agreement, to the extent that such failure to perform is caused only 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 Agreement or applicable Target Price Agreement remain unaffected by the occurrence of a Relief Event).
- (b) If a Relief Event occurs, Project Co:

- (i) shall only be relieved of its obligations under this Agreement or applicable Target Price Agreement to the extent, if any, provided for in Section 3 of this Schedule 21, if applicable; and
 - (ii) shall not be entitled to receive any Target Price Adjustment other than as expressly provided in Section 4 of this Schedule 21.
- (c) Subject to Section 34 (*Effect of Termination*) of this Agreement, Project Co's sole right to payment or otherwise in relation to the occurrence of a Relief Event shall be as provided in this Schedule 21.

5.2 Mitigation and Process

- (a) Subject to Section 7, 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 Agreement and applicable Target Price 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 a Party does not comply with its obligations under this Section 5.2, such failure shall be taken into account in determining such Party's entitlement arising from a Relief Event pursuant to this Section 5.
- (c) The Party claiming that a Relief Event has occurred shall give Notice to the other Party within five Business Days after such first-mentioned Party noted in Section 5.2(b) 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 Notice shall be given by the Party claiming that a Relief Event has occurred to the other Party within a further five Business Days of the initial Notice, which Notice shall contain such relevant information relating to the failure to perform (or delay in performing) as is available, including the effect of the Relief Event on the ability of the Party to perform, the action being taken in accordance with Section 5.1(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 that a Relief Event has occurred shall notify the other Party 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 5.2(d), the Party claiming that a Relief Event has occurred 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.

5.3 Corporate Overhead for a Relief Event

- (a) Except as set out in Section 5.3(b), Project Co shall not be paid Corporate Overhead and Profit in respect of Defined Cost incurred as a result of a Relief Event.

- (b) If a Relief Event occurs and the effects of the Relief Event continue for one-hundred and twenty (120) days from the date on which Project Co gives Notice to Contracting Authority pursuant to Section 5.2(c), Contracting Authority agrees to pay Project Co the actual corporate overhead costs, assessed on an open book basis, incurred by Project Co in respect of such Relief Event following such one-hundred and twenty (120)-day period; provided, however, that no corporate overhead costs shall be payable in excess of the Corporate Overhead calculated in accordance with Section 2.1 (*Corporate Overhead and Profit*) of Schedule 47 – Corporate Overhead and Profit, for Defined Cost incurred in respect of the Relief Event following such one-hundred and twenty (120)-day period. For greater certainty, Project Co shall not be entitled to any payment of corporate overhead costs incurred in the first one-hundred and twenty (120)-day period.
- (c) For the avoidance of doubt, the corporate overhead costs identified in Section 5.3(b) shall not account for any costs that are considered and payable as Defined Costs.

6. FORCE MAJEURE

6.1 Consequences of Force Majeure

- (a) Subject to Section 6.2, the Party claiming relief shall be relieved from liability under this Agreement or any Target Price Agreement then in effect to the extent that, by reason of the Force Majeure, it is not able to perform its obligations under this Agreement or Target Price Agreement then in effect.
- (b) If an event of Force Majeure occurs, Project Co:
 - (i) shall only be relieved of its obligations under this Agreement or applicable Target Price Agreement to the extent, if any, provided for in Section 3 of this Schedule 21, if applicable; and
 - (ii) shall not be entitled to receive any Target Price Adjustment other than as expressly provided in Section 4 of this Schedule 21.
- (c) Subject to Section 34 (*Effect of Termination*) of this Agreement, 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 Schedule 21.

6.2 Mitigation and Process

- (a) Subject to Section 7, 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 Agreement, or applicable Target Price Agreement shall resume performance of its obligations affected by the event of Force Majeure as soon as practicable and shall use commercially reasonable efforts to remedy its failure to perform, including efforts to minimize any negative impact of the event of Force Majeure on the Project Works Schedules.
- (b) To the extent that Project Co does not comply with its obligations under this Section 6.2, such failure shall be taken into account in determining Project Co's entitlement arising from an event of Force Majeure pursuant to this Section 6.

- (c) The Party claiming an event of Force Majeure shall give Notice to the other Party within five Business Days after such Party becoming aware of the relevant event of Force Majeure. Such initial Notice shall give sufficient details to identify the particular event claimed to be an event of Force Majeure.
- (d) A subsequent Notice shall be given by the Party claiming an event of Force Majeure to the other Party within a further five Business Days of the initial Notice, which Notice shall contain such relevant information relating to the failure to perform (or delay in performing) as is available, including the effect of the event of Force Majeure on the ability of the Party to perform, the action being taken in accordance with Section 6.2(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 an event of Force Majeure shall notify the other Party 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 6.2(d), the Party claiming an event of Force Majeure 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.

6.3 Modifications

- (a) The Parties shall use commercially reasonable efforts to agree to any modifications to this Agreement which may be equitable having regard to the nature of an event or events of Force Majeure. Schedule 27 – Dispute Resolution Procedure shall not apply to a failure of Contracting Authority and Project Co to reach agreement pursuant to this Section 6.3.

6.4 Corporate Overhead for an event of Force Majeure

- (a) Except as set out in Section 6.4(b), Project Co shall not be paid Corporate Overhead and Profit in respect of Defined Cost incurred as a result of an event of Force Majeure.
- (b) If an event of Force Majeure occurs and the effects of the event of Force Majeure continue for one-hundred and twenty (120) days from the date on which Project Co gives Notice to Contracting Authority pursuant to Section 6.2(c), Contracting Authority agrees to pay Project Co the actual corporate overhead costs, assessed on an open book basis, incurred by Project Co in respect of such an event of Force Majeure following such one-hundred and twenty (120)-day period; provided, however, that no corporate overhead costs shall be payable in excess of the Corporate Overhead calculated in accordance with Section 2.1 (*Corporate Overhead and Profit*) of Schedule 47 – Corporate Overhead and Profit, for Defined Cost incurred in respect of the event of Force Majeure following such one-hundred and twenty (120)-day period. For greater certainty, Project Co shall not be entitled to any payment of corporate overhead costs incurred in the first one-hundred and twenty (120)-day period.
- (c) For the avoidance of doubt, the corporate overhead costs identified in Section 6.4(b) shall not account for any costs that are considered and payable as Defined Costs.

7. MITIGATION MEASURES

7.1 General

- (a) If the Defined Cost of any mitigation measures which Project Co is required to take (or continue to take) pursuant to this Schedule 21 are likely to exceed \$[REDACTED] (index linked) in relation to an event or circumstances specified in this Schedule 21 then Project Co shall obtain the prior written consent of the Contracting Authority Representative prior to taking (or continuing to take) such measures except to the extent necessary to address any Emergency or public safety needs. Project Co shall provide Contracting Authority with such supporting documentation as may be reasonably requested in relation to such consent.
- (b) Notwithstanding this Section 7.1, where there is danger to life or property which arises out of or in connection with the performance of such mitigation measures, either Party may, but Project Co shall, immediately take such emergency action as is necessary to remove the danger.

8. ADJUSTMENT TO TARGET PRICE BASED ON WORKS PERFORMED BY CONTRACTING AUTHORITY

8.1 General

- (a) Without prejudice to any right or remedy Contracting Authority may have, if:
 - (i) Contracting Authority performs certain TPA Works as a consequence of its exercise or enforcement of any right, remedy, power or entitlement under or pursuant to this Agreement or applicable Target Price Agreement, as applicable, in response to, or as a consequence of, Project Co’s failure to carry out any of the TPA Works or to perform any other obligation in accordance with this Agreement or applicable Target Price Agreement; and
 - (ii) Contracting Authority incurs any costs or expenses in performing such TPA Works or obligation, and such costs or expenses would constitute a Defined Cost if incurred by Project Co (such costs or expenses, the “**CA-Incurred Defined Costs**”),

then Project Co acknowledges and agrees that the applicable Target Price shall be reduced by the aggregate of the CA-Incurred Defined Costs.

9. DISPUTE

- 9.1 If there is a dispute as to whether an Adjustment Event has occurred, then Project Co shall be entitled to refer the matter for resolution in accordance with Schedule 27 – Dispute Resolution Procedure.

APPENDIX A

RISK ALLOCATIONS MATRIX

No.	Adjustment Event	Schedule Relief Entitlement	Target Price Relief Entitlement
1.	Implementation of a Variation initiated by Contracting Authority.	YES	YES
2.	Subject to compliance by Project Co with the provisions of Section 11.12 (<i>Additional Works and Third Party Works</i>) of this Agreement, damage, costs or delays from the execution of Additional Works on the Metrolinx Lands by Additional Contractors, as applicable, in the circumstances described in Section 11.12(f) (<i>Additional Works and Third Party Works</i>) of this Agreement.	YES	YES
3.	A requirement that Project Co perform obligations under an Encumbrance pursuant to Sections 17.2(c)(iii) or 17.2(d) (<i>No Encumbrances</i>) of this Agreement, which performance imposes costs or delays in the performance of the Works.	YES	YES
4.	A breach by Contracting Authority of its obligations under this Agreement (including any delay by Contracting Authority in giving access to the Metrolinx Lands pursuant to Section 16.1(a) (<i>Access to Metrolinx Lands</i>) of this Agreement or any obstruction of the rights afforded to Project Co under Section 16.1(a) (<i>Access to Metrolinx Lands</i>) of this Agreement), except to the extent that any such breach is caused, or contributed to, by Project Co or any Project Co Party.	YES	YES
5.	Any Differing Geotechnical Site Condition pursuant to Section 18.2(c)	YES	YES

No.	Adjustment Event	Schedule Relief Entitlement	Target Price Relief Entitlement
	<i>(Geotechnical Site Conditions)</i> of this Agreement.		
6.	Any Contracting Authority Contamination pursuant to Section 18.3(g) <i>(Contamination)</i> of this Agreement.	YES	YES
7.	Any Differing Major Existing Infrastructure Condition pursuant to Section 18.5(c) <i>(Major Existing Infrastructure Condition)</i> of this Agreement.	YES	YES
8.	Any Contracting Authority Utility Infrastructure pursuant to Section 18.6(d) <i>(Mislocated or Unknown Utility Infrastructure)</i> of this Agreement.	YES	YES
9.	An uncovering of the Works pursuant to Section 20.3 <i>(Right to Uncover)</i> of this Agreement where such Works are not subsequently found to be defective or not in compliance with the requirements of this Agreement (including the Construction Technical Requirements and the Design Data), unless such opening up of the Works was reasonable in the light of other defects or non-compliance previously discovered by Contracting Authority in respect of the same or a similar component of the Works or subset of the Works.	YES	YES
10.	Any steps taken by Contracting Authority or Project Co as a result of a Reimbursement Event pursuant to Section 25 <i>(Contracting Authority's Remedial Rights)</i> of this Agreement that cause Project Co to incur additional costs that would not otherwise have been incurred in the proper performance of its obligations under this Agreement.	NO	YES

No.	Adjustment Event	Schedule Relief Entitlement	Target Price Relief Entitlement
11.	A requirement pursuant to Schedule 27 – Dispute Resolution Procedure for Project Co to proceed in accordance with the written instructions of Contracting Authority during the pendency of a Dispute, to the extent that the Dispute is subsequently determined in Project Co’s favour.	YES	YES
12.	Subject to and in accordance with Schedule 34 – Permits, Licences, Approvals and Agreements, an Issuing Authority rejects a Listed Project Co PLAA Application due to a failure by Project Co to include documentation and information, or satisfy an obligation, that was not set out in the Project Co PLAA Requirements or where the Listed Project Co PLAA Application is not completed in accordance with Good Industry Practice, as set out in Section 10.2(d) (<i>Rejection by Issuing Authority of Listed Project Co PLAA Application</i>) of Schedule 34 – Permits, Licences, Approvals and Agreements.	YES	YES
13.	Subject to and in accordance with Schedule 34 – Permits, Licences, Approvals and Agreements, if an Issuing Authority fails to issue a Listed Project Co PLAA or notify Project Co that it refuses to issue a Listed Project Co PLAA on or before the Listed Project Co PLAA Deadline, as set out in Section 10.4(a) (<i>Failure to Make a Determination</i>) of Schedule 34 – Permits, Licences, Approvals and Agreements.	YES	YES
14.	Subject to and in accordance with Schedule 34 – Permits, Licences, Approvals and Agreements, if an Issuing Authority has refused to issue a Listed Project Co PLAA for any reason other than Project Co failing to comply with the applicable Project Co PLAA	YES	YES

No.	Adjustment Event	Schedule Relief Entitlement	Target Price Relief Entitlement
	Requirements, as set out in Section 10.5(d) (<i>Refusal to Issue a Project Co Permit, Licence, Approval and Agreement</i>) of Schedule 34 – Permits, Licences, Approvals and Agreements.		
15.	Subject to and in accordance with Schedule 34 – Permits, Licences, Approvals and Agreements, if an Issuing Authority has issued a Listed Project Co PLAA with terms and conditions that are inconsistent with Project Co PLAA Requirements, as set out in Section 10.6(c) (<i>Issuance of Project Co Permits, Licences, Approvals and Agreements</i>) of Schedule 34 – Permits, Licences, Approvals and Agreements.	YES	YES
16.	Subject to and in accordance with Schedule 34 – Permits, Licences, Approvals and Agreements, Contracting Authority’s failure to obtain or renew a Contracting Authority Permit, Licence, Approval or Agreement on or before the date listed in Appendix A (<i>Contracting Authority Permits, Licences, Approvals and Agreements</i>) of Schedule 34 – Permits, Licences, Approvals and Agreements.	YES	YES
17.	Damage, costs or delays arising from any act or omission of RSSOM Project Co or a RSSOM Project Co Party (unless such act is expressly contemplated in this Agreement) including any such damage to or destruction of Project Co Infrastructure caused by RSSOM Project Co or a RSSOM Project Co Party, except to the extent caused or contributed to by an act or omission of Project Co or a Project Co Party.	YES	YES

No.	Adjustment Event	Schedule Relief Entitlement	Target Price Relief Entitlement
18.	A change in Project Co’s cost of performing the Works as a result of repair work carried out pursuant to Section 6.5(b)(ii) (<i>Protection of Project Co Infrastructure Subsection During Subsection RSSOM Access Period</i>) of Schedule 45 – Integration with RSSOM Project.	NO	YES
19.	If any Critical RSSOM Infrastructure Works are not Critical RSSOM Infrastructure Works Complete on or prior to the applicable Critical RSSOM Infrastructure Works Deadline, or cease to be Critical RSSOM Infrastructure Works Complete thereafter, except to the extent caused or contributed to by an act or omission of Project Co or a Project Co Party.	YES	YES
20.	Any change to the terms, conditions or requirements of the Environmental Assessments, except, in each case, to the extent resulting from any change by Project Co in the design of the Project or from any other act or omission on the part of Project Co.	YES	YES
21.	An Early Works Section Handover Date occurring on a day after the applicable No Later Than Date.	YES	YES
22.	An Early Works Construction Defect which Project Co may claim pursuant to the terms of Schedule 41 – Early Works Handover, except to the extent caused or contributed to by an act or omission of Project Co or a Project Co Party.	YES	YES
23.	Subject to compliance by Project Co with the provisions of Sections 4.4 and 4.5 (<i>Warranty Claims, Warranty Work and Seasonal Minor Deficiencies</i>) of Schedule 41 – Early Works Handover, damage, costs or delays caused by an act or	YES	YES

No.	Adjustment Event	Schedule Relief Entitlement	Target Price Relief Entitlement
	omission of an Early Works Contractor while performing Early Works Warranty Work or completing Seasonal Minor Deficiencies (each as defined in Schedule 41 – Early Works Handover) in the circumstances described in Section 4.7 (<i>Warranty Claims, Warranty Work and Seasonal Minor Deficiencies</i>) of Schedule 41 – Early Works Handover.		
24.	A Relief Event.	YES	YES
25.	An event of Force Majeure.	YES	YES
26.	Implementation of a Variation arising from a Relevant Change in Law.	YES	YES
27.	Implementation of a Variation arising from a Pandemic and Epidemic Change in Law.	YES	YES
28.	A TBM Marine Event pursuant to Section 11.30(b) (<i>Tunnel Boring Machine</i>) of this Agreement.	YES	NO
29.	Subject to and in accordance with Section 11.35 (<i>Utility Agreements</i>) of this Agreement, a failure of a Utility Company to execute and deliver a completed Utility Agreement in the Form of Utility Agreement applicable to such Utility Company or in a form otherwise agreed to between Project Co and such Utility Company.	YES	YES
30.	Subject to compliance by Project Co with the provisions of Section 11.19 (<i>Coordination and Minimization of Disruption and Interference</i>) of this Agreement, a failure by Contracting Authority to complete or to cause the completion of the Preparatory Activities on or before the dates set out in Appendix Q (<i>Utilities Preparatory Activities</i>) of the Output Specifications, subject to and in	YES	YES

No.	Adjustment Event	Schedule Relief Entitlement	Target Price Relief Entitlement
	accordance with the terms and conditions of Section 3.1.12.7(i) (<i>Preparatory Activities</i>) of the Output Specifications.		
31.	Subject to compliance by Project Co with the provisions of Section 11.19 (<i>Coordination and Minimization of Disruption and Interference</i>) of this Agreement, a failure by a Utility Company to perform any such Utility Company’s obligations set out in Section 3.1.12.7(h) (<i>Specific Requirements</i>) of the Output Specifications, provided Project Co has complied with the provisions of Section 3.1.12.7(h) (<i>Specific Requirements</i>) of the Output Specifications.	YES	YES
32.	A stop work order issued by a Governmental Authority in respect of the Project Co Infrastructure, the New Third Party Infrastructure or the Works, provided that such order was not issued as a result of a Relief Event, an act of Force Majeure, or as a result of an act, omission or fault of Project Co or a Project Co Party.	YES	YES
33.	A Protest Action, subject to and in accordance with Section 11.13(e) (<i>Protest and Trespass</i>) of this Agreement, except to the extent any delay or Defined Costs incurred by Project Co were caused, or contributed to, by a breach of this Agreement by Project Co or any Project Co Party.	YES	YES
34.	A requirement that Project Co comply with terms and conditions of an easement, licence or similar agreement entered into by Contracting Authority after the Technical Reference Date with respect to the Metrolinx Lands or portion thereof and such terms and conditions are substantively different than those	YES	YES

No.	Adjustment Event	Schedule Relief Entitlement	Target Price Relief Entitlement
	contained in the Standard Agreements (as defined in Schedule 35 – Lands) and such differences impose costs or delays in the performance of the Works, in accordance with Section 2(e) of Schedule 35 – Lands.		
35.	If Contracting Authority cancels or reschedules a TTC Station Weekend Closure in the circumstances described in Section 3(j) (<i>Scheduling and Cancelling TTC Station Weekend Closures</i>) of Schedule 46 – TTC Station Weekend Closures.	YES	YES
36.	An EGS Infrastructure Access Date does not occur on or prior to the applicable No Later Than Access Date.	YES	YES
37.	A requirement, pursuant to Section 11.40(l) (<i>Competitive Procurement Requirements</i>) of this Agreement, that Project Co competitively procure any Subcontract in respect of TPA Works subject to any Target Price Agreement then in effect.	YES	YES
38.	For all Categories of Access and Subcategories of Access except for a Major Track Closure, a reduction to the length of time that Project Co will be allowed for a Permitted Rail Corridor Access after the issuance of an Access Pack, if the reduction is equal to or exceeds the greater of fifteen minutes in total or [REDACTED] percent of the total planned duration for Rail Corridor Access under the applicable Access Pack (measured from the date and time the Railway Foreman was scheduled to arrive at the location of the applicable Works on the Rail Corridor), in accordance with Section 3.4(a)(i)(A) (<i>Reduction in the Time Allocated for a Permitted Rail</i>	NO	YES

No.	Adjustment Event	Schedule Relief Entitlement	Target Price Relief Entitlement
	<i>Corridor Access</i>) of Schedule 40 – Rail Corridor Access and Flagging.		
39.	For all Categories of Access and Subcategories of Access except for a Major Track Closure, if Contracting Authority reduces more than [REDACTED] percent of the total number of Permitted Rail Corridor Accesses, each by less than [REDACTED] percent of the total planned duration for Rail Corridor Access under the applicable Access Pack (measured from the date and time the Railway Foreman was scheduled to arrive at the location of the applicable Works on the Rail Corridor), in accordance with Section 3.4(a)(i)(B) (<i>Reduction in the Time Allocated for a Permitted Rail Corridor Access</i>) of Schedule 40 – Rail Corridor Access and Flagging.	YES	YES
40.	For all Categories of Access and Subcategories of Access except for a Major Track Closure, if Contracting Authority reduces more than [REDACTED] percent of the total number of Permitted Rail Corridor Accesses, each by less than fifteen minutes, in accordance with Section 3.4(a)(i)(C) (<i>Reduction in the Time Allocated for a Permitted Rail Corridor Access</i>) of Schedule 40 – Rail Corridor Access and Flagging.	YES	YES
41.	For Major Track Closures, a reduction to the length of time that Project Co will be allowed for a Permitted Rail Corridor Access after the issuance of an Access Pack, if the reduction is for less than two hours in total, in accordance with Section 3.4(a)(ii)(A) (<i>Reduction in the Time Allocated for a Permitted Rail Corridor</i>	NO	YES

No.	Adjustment Event	Schedule Relief Entitlement	Target Price Relief Entitlement
	<i>Access</i>) of Schedule 40 – Rail Corridor Access and Flagging.		
42.	For Major Track Closures, a reduction to the length of time that Project Co will be allowed for a Permitted Rail Corridor Access after the issuance of an Access Pack, if the reduction is for greater than two hours in total, in accordance with Section 3.4(a)(ii)(B) (<i>Reduction in the Time Allocated for a Permitted Rail Corridor Access</i>) of Schedule 40 – Rail Corridor Access and Flagging.	YES	YES
43.	For all Categories of Access and Subcategories of Access except for a Major Track Closure, a delay to the date or time for any requested Rail Corridor Access after the submission by Project Co of an Application for Access or at any time after the issuance of an Access Pack due to unplanned events, if Contracting Authority has given Project Co at least seven (7) calendar days prior Notice of the delay and the delay is for seven (7) calendar days or less, in accordance with Section 3.5(a)(i)(A) (<i>Delay of a Requested Rail Corridor Access</i>) of Schedule 40 – Rail Corridor Access and Flagging.	NO	YES
44.	For all Categories of Access and Subcategories of Access except for a Major Track Closure, a delay to the date or time for any requested Rail Corridor Access after the submission by Project Co of an Application for Access or at any time after the issuance of an Access Pack due to unplanned events, if Contracting Authority fails to give Project Co at least seven (7) calendar days’ prior Notice of the delay or if the delay is for more than seven (7) calendar days, in accordance with Section 3.5(a)(i)(B) (<i>Delay of a Requested Rail Corridor Access</i>) of	YES	YES

No.	Adjustment Event	Schedule Relief Entitlement	Target Price Relief Entitlement
	Schedule 40 – Rail Corridor Access and Flagging.		
45.	For Major Track Closures, a delay to the date or time for any requested Rail Corridor Access after the submission by Project Co of an Application for Access or at any time after the issuance of an Access Pack due to unplanned events, if Contracting Authority has given Project Co at least one hundred forty (140) Business Days prior Notice of the delay and the delay is for seven (7) calendar days or less, in accordance with Section 3.5(a)(ii)(A) (<i>Delay of a Requested Rail Corridor Access</i>) of Schedule 40 – Rail Corridor Access and Flagging.	NO	YES
46.	For Major Track Closures, a delay to the date or time for any requested Rail Corridor Access after the submission by Project Co of an Application for Access or at any time after the issuance of an Access Pack due to unplanned events, if Contracting Authority fails to give Project Co at least one hundred forty (140) Business Days’ prior Notice of the delay or if the delay is for more than seven (7) calendar days, in accordance with Section 3.5(a)(ii)(B) (<i>Delay of a Requested Rail Corridor Access</i>) of Schedule 40 – Rail Corridor Access and Flagging.	YES	YES
47.	A Contracting Authority direction as a result of an Emergency Rail Situation, provided that the Emergency Rail Situation did not arise as a result of an act or omission of Project Co or a Project Co Party, in accordance with Section 4.1(c) (<i>General – Rail Corridor Safety and Training</i>) of Schedule 40 – Rail Corridor Access and Flagging.	YES	YES

SCHEDULE 22

ESTIMATES, VARIATIONS AND PROPOSALS

PART A – DEVELOPMENT VARIATIONS AND DMCA VARIATIONS

Part A of this Schedule 22 shall apply to Development Works and DMCA Construction Works.

1. DEFINITIONS

1.1 Definitions

- (a) The following terms shall have the following meanings:
- (i) “**Additional Project Works Agreement**” has the meaning given in Part A, Section 4.1(e).
 - (ii) “**Development Variation**” means a variation, addition, reduction, substitution, omission, modification, deletion, removal or other change to the whole or any part of the Development Works.
 - (iii) “**Development Variation Confirmation**” has the meaning given in Part A, Section 3.5(a).
 - (iv) “**Development Variation Directive**” means a written instruction which is issued on a form designated as a “Development Variation Directive” and signed by the Contracting Authority Representative directing Project Co to immediately proceed with a Development Variation pending the execution and delivery of a Development Variation Confirmation for that Development Variation.
 - (v) “**Development Variation Enquiry**” has the meaning given in Part A, Section 3.2(a).
 - (vi) “**DMCA Variation**” means a variation, addition, reduction, substitution, omission, modification, deletion, removal or other change to the whole or any part of the DMCA Construction Works.
 - (vii) “**DMCA Variation Confirmation**” has the meaning given in Part A, Section 3.5(a).
 - (viii) “**DMCA Variation Directive**” means a written instruction which is issued on a form designated as a “DMCA Variation Directive” and signed by the Contracting Authority Representative directing Project Co to immediately proceed with a DMCA Variation pending the execution and delivery of a DMCA Variation Confirmation for that DMCA Variation.
 - (ix) “**DMCA Variation Enquiry**” has the meaning given in Part A, Section 3.2(a).
 - (x) “**Estimate**” means Project Co’s detailed breakdown, estimate and other information in response to a Request for Estimate, which shall be prepared and submitted by Project Co to Contracting Authority, may be modified and revised, and shall be accepted or rejected

by Contracting Authority, in accordance with the process and requirements set out in Part A, Section 2.

- (xi) “**Estimate Approval**” has the meaning given in Part A, Section 2.5(a).
- (xii) “**Estimate Deadline**” has the meaning given in Part A, Section 2.1(b)(ii).
- (xiii) “**Estimate Rejection**” has the meaning given in Part A, Section 2.5(a).
- (xiv) “**Maximum Price**” has the meaning given in Part A, Section 2.1(b)(iv).
- (xv) “**Pandemic CIL Overhead**” means:
 - (A) in relation to Primary Team Self-Performed Design Work, an amount equal to [REDACTED]% payable in relation to the applicable Design Works;
 - (B) in relation to Primary Team Subcontracted Design Work, an amount equal to [REDACTED]% payable in relation to the applicable Design Works;
 - (C) in relation to Primary Team Self-Performed Development Work and Construction Work, an amount equal to [REDACTED]% payable in relation to the applicable Development Works or Construction Works;
 - (D) in relation to Primary Team Subcontracted Development Work and Construction Work, an amount equal to [REDACTED]% payable in relation to the applicable Development Works or Construction Works; and
 - (E) in relation to Works performed by a Subcontractor (other than a Primary Team Member), an amount equal to [REDACTED]% of the aggregate of the overhead and profit rates payable in relation to the applicable Subcontract (provided such rates have been approved by Contracting Authority (in writing)).
- (xvi) “**Project Specific**” has the meaning given in Section 2.3 (*Staff and Site Labour*) of Appendix A (*Cost Element Allocation Tables Rules*) to Schedule 48 – Defined Cost.
- (xvii) “**Project Work Proposal**” has the meaning given in Part A, Section 4.1(a).
- (xviii) “**Project Work Proposal Notice**” has the meaning given in Part A, Section 4.1(c).
- (xix) “**Request for Estimate**” has the meaning given in Part A, Section 2.1(a).
- (xx) “**Request for Estimate Work Scope**” has the meaning given in Part A, Section 2.1(a).
- (xxi) “**Work Plan**” has the meaning given in Part A, Section 2.4(a)(i)(C).

2. ESTIMATES

2.1 Request for Estimate

- (a) In accordance with Section 4.4 (*DMCA Construction Works*) of this Agreement in respect of the DMCA Construction Works, or Section 1.4 (*Estimates*) of Schedule 2 – Development Works Submissions and Project Development Process to this Agreement in respect of the Development Works, Contracting Authority may at any time require that Project Co deliver an Estimate (each a “**Request for Estimate**”) in respect of the performance of any specific part of the Development Works or DMCA Construction Works, any Development Variation or any DMCA Variation, including in relation to any Development Variation Directive or any DMCA Variation Directive, or Project Work Proposal Notice, as applicable, (the “**Request for Estimate Work Scope**”). Without limiting the generality of the foregoing, Contracting Authority may require Project Co to provide an Estimate to Contracting Authority in respect of Project Co’s preparation and submission of any TPA Proposal in accordance with this Agreement.
- (b) A Request for Estimate shall, at a minimum:
- (i) describe the Request for Estimate Work Scope with sufficient detail to enable Project Co to prepare a detailed Estimate, including the time specified for commencement and/or completion of the Request for Estimate Work Scope;
 - (ii) identify the latest date for submission of the Estimate by Project Co to Contracting Authority (the “**Estimate Deadline**”), which date shall be reasonable and take into consideration the size, complexity and nature of the Request for Estimate Work Scope and any time identified by Project Co as being required by Project Co to develop and finalize the Estimate identified in any estimate provided by Project Co in accordance with Part A, Section 2.1(c)(i);
 - (iii) in Contracting Authority’s sole discretion, specify Contracting Authority’s budget constraints for:
 - (A) Project Co to prepare the Estimate; and
 - (B) Project Co’s performance of the Request for Estimate Work Scope;
 - (iv) if agreed by Contracting Authority and Project Co in writing prior to the provision of the Request for Estimate, contain:
 - (A) any agreed upon maximum price that will be charged by Project Co and the Project Co Parties in respect of the development and finalization of the Estimate; and/or
 - (B) a request for Project Co to provide to Contracting Authority a maximum price that will be charged by Project Co and the Project Co Parties in respect of the performance of the Request for Estimate Work Scope,(each a “**Maximum Price**”); and

- (v) include any other information Contracting Authority reasonably considers relevant to the provision of the Estimate, the performance of the Request for Estimate Work Scope and/or their impact on the Project, including on any or all of the Development Works or the DMCA Construction Works, as applicable.
- (c) Without limiting any provision, and subject to all other provisions, of Part A of this Schedule 22:
 - (i) prior to Contracting Authority’s provision of a Request for Estimate and at the written request of Contracting Authority, Project Co shall, as soon as reasonably possible, deliver to Contracting Authority a written estimate of:
 - (A) the time required by Project Co to develop and finalize an Estimate for an anticipated Request for Estimate Work Scope specified by Contracting Authority; and
 - (B) the cumulative amount of the Defined Cost, Corporate Overhead and Profit that would be payable by Contracting Authority to Project Co in respect of Project Co developing and finalizing the Estimate under this Agreement,if Contracting Authority were to provide such Request for Estimate in accordance with Part A of this Schedule 22; and
 - (ii) the Parties agree that:
 - (A) any such time set out by Project Co in any estimate provided by Project Co in accordance with Part A, Section 2.1(c)(i) shall be taken into account by Contracting Authority in establishing the Estimate Deadline set out in any such Request for Estimate;
 - (B) unless otherwise agreed by the Parties in writing, any such amount of Defined Cost, Corporate Overhead and Profit set out by Project Co in any estimate provided by Project Co in accordance with Part A, Section 2.1(c)(i) shall only be an estimate by Project Co of such Defined Cost, Corporate Overhead and Profit and not a fixed or lump sum price; and
 - (C) if, following the delivery of any such Request for Estimate and during Project Co’s development or finalization of the Estimate related to any estimate provided by Project Co in accordance with Part A, Section 2.1(c)(i), Project Co anticipates that such Defined Cost, Corporate Overhead and Profit will likely materially exceed the amount set out in such estimate, the Project Co Representative shall promptly provide the Contracting Authority Representative with advance Notice of same.

2.2 Delivery of Estimate

- (a) Subject to Part A, Section 2.2(b), as soon as practicable and in any event before the Estimate Deadline (or such longer period as the Parties subsequently agree in writing, acting reasonably), Project Co shall deliver to Contracting Authority its Estimate in response to Contracting Authority’s Request for Estimate.

- (b) In the event that a Development Variation Directive or DMCA Variation Directive, as applicable, is issued before Project Co delivers an Estimate in respect of such Development Variation or DMCA Variation, Project Co shall deliver such Estimate as soon as practicable and in any event within 10 Business Days after Contracting Authority’s issuance of such Development Variation Directive or DMCA Variation (or such longer period as the Parties agree in writing, acting reasonably).

2.3 Project Co Grounds for Objection

- (a) Project Co may only refuse to deliver an Estimate if Project Co can demonstrate to Contracting Authority’s satisfaction, acting reasonably, within the period for delivery of an Estimate specified or agreed pursuant to Part A, Section 2.2, that:
- (i) the Request for Estimate does not comply with the requirements of Part A, Section 2.1(b);
 - (ii) subject to Part A, Section 3.4, the Request for Estimate Work Scope would, if implemented, result in a change in the essential nature of the Project; or
 - (iii) the time specified for the implementation of the Request for Estimate Work Scope cannot be achieved by Project Co, despite commercially reasonable efforts.
- (b) If Project Co cannot provide an Estimate on the grounds set out in Part A, Section 2.3(a), Project Co shall, as soon as possible, deliver to the Contracting Authority Representative a Notice specifying the grounds upon which Project Co, acting reasonably, objects to the Request for Estimate, and requesting an amendment and resubmission of the Request for Estimate by Contracting Authority, after Contracting Authority takes into account and considers the objections of Project Co, which in such an event Contracting Authority agrees to do, acting reasonably.

2.4 Estimate Requirements

- (a) Unless Contracting Authority provides Notice to the Project Co Representative that it only requires certain specific information, each Estimate shall be in the form prescribed by Contracting Authority and include the following information, sufficient to demonstrate to Contracting Authority’s satisfaction:
- (i) the steps Project Co will take to implement the Request for Estimate Work Scope, in such detail as is reasonable and appropriate in the circumstances, including:
 - (A) a work breakdown structure that aligns with the Request for Estimate Work Scope;
 - (B) a staff list, including (1) positions and names for all resources that were identified by Project Co during the Request for Proposals process, or where specific resources were not identified during such process, the position and title for each proposed resource, including, for clarity, any corporate and Project Specific staff identified as a Defined Cost in each of Tables A and B of Appendix B (*Cost Element Allocation Tables*) to Schedule 48 – Defined Cost; (2) anticipated or forecasted rates for each resource, benchmarked within industry standards and

subject to the approval of Contracting Authority; and (3) the location of each resource;

- (C) a work plan (each is a “**Work Plan**”), in accordance with the template provided by Contracting Authority, which shall be based on the work breakdown structure and shall, at a minimum, include:
- (1) a scope of work description and methodology statements for each task defined;
 - (2) assumptions, exclusions, and concerns;
 - (3) a description of the resources to be engaged by Project Co in the delivery of the Request for Estimate Work Scope;
 - (4) an estimate of the hours required to perform the Request for Estimate Work Scope and any allowable disbursements;
 - (5) an organizational chart;
 - (6) individuals’ names, with a description of roles and responsibilities;
 - (7) a description of any additional Subcontract anticipated as being required to deliver the Request for Estimate Work Scope;
 - (8) a list of deliverables;
 - (9) a description of assumptions used in and exclusions to the Request for Estimate Work Scope, and areas of concern;
 - (10) any information, assistance and/or facilities required from Contracting Authority in relation to the Request for Estimate Work Scope;
 - (11) identification of all key stakeholders with whom Project Co may be required to interface;
 - (12) subject to the limitations and the Parties’ rights and obligations set out in this Agreement, a description of any Lands and Permits, Licences, Approvals and Agreements Project Co and the Project Co Parties will require for the performance of the Request for Estimate Work Scope and who will obtain them;
 - (13) the schedule for performing and completing the Request for Estimate Work Scope and any schedule impact on the performance of all of the Development Works or DMCA Construction Works, as applicable, together with a critical path schedule analysis detailing and demonstrating such impact, all in accordance with the requirements of Schedule 12 –

Works Schedules Requirements (including, if applicable, any impact of a Pandemic and Epidemic Change in Law, including as a result of any disruptions to Project Co’s supply chain);

- (14) a description of the place of work of all members of Project Co’s team delivering the Request for Estimate Work Scope;
 - (15) a description of any office accommodation and facilities proposed by Project Co to deliver the Request for Estimate Work Scope; and
 - (16) if the Estimate is in relation to a Development Variation or DMCA Variation, as applicable, the proposed methods of certification of the Request for Estimate Work Scope if not covered by the provisions of this Agreement;
- (ii) if the Request for Estimate Work Scope is associated with a Development Variation or DMCA Variation, as applicable, or would require a Development Variation or DMCA Variation to be implemented, any amendments to this Agreement required as a consequence of such Development Variation or DMCA Variation;
 - (iii) subject to Part A, Section 2.4(a)(vii), a detailed estimate of the Defined Cost, Corporate Overhead and Profit associated with Project Co developing and finalizing the Estimate, including, if applicable, an update of any estimate provided by Project Co to Contracting Authority pursuant to Part A, Section 2.1(c);
 - (iv) subject to Part A, Section 2.4(a)(vii), a detailed estimate of the Defined Cost, Corporate Overhead and Profit that would be payable by Contracting Authority in accordance with this Agreement if Project Co and the Subcontractors were to perform the Request for Estimate Work Scope;
 - (v) if requested by Contracting Authority in the Request for Estimate in accordance with Part A, Section 2.1(b)(iv)(B), a Maximum Price in respect of the performance of the Request for Estimate Work Scope;
 - (vi) if the Estimate is in relation to a Development Variation to reduce the Development Works, the Defined Cost, Corporate Overhead and Profit related to expenditures that have been or will be reduced or avoided as a result of the Development Variation, including all applicable amounts for overhead and profit that were anticipated to be incurred but for the Development Variation;
 - (vii) if the Estimate is in relation to a DMCA Variation to reduce the DMCA Construction Works, the Defined Cost, Corporate Overhead and Profit related to expenditures that have been or will be reduced or avoided as a result of the DMCA Variation, including all applicable amounts for overhead and profit that were anticipated to be incurred but for the DMCA Variation; and
 - (viii) if the Estimate is in relation to a Development Variation or a DMCA Variation, as applicable, that is the result of a Pandemic and Epidemic Change in Law, a detailed

estimate of the amount of Pandemic and Epidemic Change in Law Compensation that would be payable by Contracting Authority in accordance with this Agreement,

in each case, together with such supporting information, details, calculations and justifications as is reasonably required by Contracting Authority.

- (b) Each Estimate shall:
- (i) be undertaken using Good Industry Practice and, where applicable, comply with the provisions of this Agreement;
 - (ii) contain granular details (such as estimated hours, prices and costs obtained through competitive open market testing with actual and potential Subcontractors and internal pricing data);
 - (iii) with regards to the Development Works or DMCA Construction Works, as applicable, that are to be self-performed by Project Co or any existing Subcontractor, be undertaken using first principles (including man hours, production outputs, trade and labor rates, unitized costs of materials, sundries, plant and equipment); and
 - (iv) set out any allowances for waste, delivery charges, special premiums and levies.
- (c) With respect to each Estimate and the performance of the Request for Estimate Work Scope, Project Co shall:
- (i) use and oblige each Subcontractor to use commercially reasonable efforts to minimize any increase in costs and to optimize any reduction in costs;
 - (ii) ensure that all costs of performing the Request for Estimate Work Scope reflect labour and material rates that comply with this Agreement and otherwise apply in the open market to providers of services similar to those required by the Request for Estimate Work Scope;
 - (iii) mitigate and cause each relevant Subcontractor to mitigate the Defined Cost to be incurred; and
 - (iv) provide sufficient information to Contracting Authority with its Estimate to demonstrate to Contracting Authority's satisfaction, acting reasonably, that it has complied with the provisions of this Part A, Section 2.4, including, if applicable, that any Pandemic and Epidemic Change in Law Compensation has been calculated in accordance with this Agreement.

2.5 Estimate Review and Discussion

- (a) Upon receipt of any Estimate submitted by Project Co in accordance with this Part A of Schedule 22:

- (i) if requested by Contracting Authority, Project Co and Contracting Authority shall, as soon as practicable, meet to discuss the Estimate, including any revisions to the Estimate agreed by the Parties; and
- (ii) subject to Project Co implementing any such revisions or to Part A, Section 2.5(d), the Contracting Authority Representative shall, as soon as practicable, provide Notice to the Project Co Representative as to whether such Estimate is:
 - (A) approved or approved with minor revisions, corrections or changes (an “**Estimate Approval**”); or
 - (B) rejected in writing, together with reasons (an “**Estimate Rejection**”).

Contracting Authority’s approval or rejection of each Estimate shall be in the sole discretion of Contracting Authority.

- (b) Unless Project Co is otherwise directed in writing by Contracting Authority, Project Co shall not commence the Request for Estimate Work Scope (other than the preparation of any Estimate in accordance with this Part A of Schedule 22) until Contracting Authority has provided an Estimate Approval.
- (c) Except as set out in Part A, Section 3.5, following any Estimate Approval, Project Co shall perform the approved Request for Estimate Work Scope in accordance with the Estimate Approval, including the Work Plan, and the other applicable provisions of this Agreement.
- (d) Contracting Authority may modify a Request for Estimate and, if applicable, any related Development Variation Enquiry or DMCA Variation Enquiry, as applicable, 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 five Business Days after receipt of such modification (or such longer period as the Parties agree acting reasonably), provide Notice to the Contracting Authority Representative in writing of any resulting changes to the Estimate or the applicable Development Variation Enquiry or DMCA Variation Enquiry.
- (e) Without limiting any other right of Contracting Authority under this Agreement, Contracting Authority may, in its sole discretion and at any time before an Estimate Approval or an Estimate Rejection is provided to Project Co, withdraw any Request for Estimate and, if applicable, any related Development Variation Enquiry or DMCA Variation Enquiry, as applicable, or the requirement for Project Co to provide an Estimate in relation to a Request for Estimate Work Scope.
- (f) Unless otherwise agreed by the Parties in writing, Project Co shall not be entitled to recover from Contracting Authority or otherwise be paid by Contracting Authority any Defined Cost, Corporate Overhead or Profit under this Agreement in respect of the development or finalization of an Estimate that exceeds any Maximum Price described in Part A, Section 2.1(b)(iv).

2.6 Rejection of Estimate

- (a) If an Estimate Rejection is delivered by Contracting Authority to Project Co, the related Request for Estimate and, if applicable, Development Variation Enquiry or DMCA Variation Enquiry, as

applicable, shall be deemed to be withdrawn by Contracting Authority and Project Co shall not commence the performance of any of the Request for Estimate Work Scope in relation to such Request for Estimate, unless Project Co is otherwise directed in writing by Contracting Authority or until Contracting Authority exercises any other right under this Agreement in respect of the Request for Estimate Work Scope, including for Contracting Authority to:

- (i) submit or re-issue a Request for Estimate and, if applicable, Development Variation Enquiry or DMCA Variation Enquiry, as applicable, in identical or similar terms, and, in such an event, the procedure in this Part A, Section 2 will apply to such identical or similar Request for Estimate; or
- (ii) issue a Development Variation or DMCA Variation, as applicable, related to the Request for Estimate Work Scope pursuant to this Part A of Schedule 22.

2.7 Compensation Relating to Estimate

- (a) Contracting Authority shall, subject to and in accordance with this Agreement, pay Project Co's Defined Cost, Corporate Overhead and Profit in respect of Project Co's development and, if applicable, finalization of (i) each Estimate (notwithstanding any Estimate Rejection delivered by Contracting Authority to Project Co pursuant to Part A, Section 2.6) and (ii) each estimate provided by Project Co in accordance with Part A, Section 2.1(c).
- (b) Unless otherwise agreed by the Parties in writing or as a result of a Development Variation Directive or DMCA Variation Directive, as applicable, Project Co has no entitlement to recover from Contracting Authority or otherwise be paid by Contracting Authority any Defined Cost, Corporate Overhead or Profit under this Agreement in respect of any estimate for the Project provided to Contracting Authority which is not the subject of a Request for Estimate other than as set out in Part A, Section 2.1(c) or in Schedule 2 – Development Works Submissions and Project Development Process.
- (c) Without prejudice to the requirements of this Agreement, any approved amount stated in an Estimate for the performance of the Request for Estimate Work Scope is an estimate of the anticipated Defined Cost, Corporate Overhead and Profit likely to be incurred by Project Co in respect of the Request for Estimate Work Scope in accordance with this Agreement:
 - (i) it is not intended to be a fixed or lump sum price for the Request for Estimate Work Scope, unless otherwise agreed by the Parties in writing; and
 - (ii) the Defined Cost, Corporate Overhead and Profit for the delivery of the Request for Estimate Work Scope may be less, the same or more than the corresponding amounts in the Estimate;

subject to any agreed Maximum Price set forth in the Estimate Approval and Part A, Section 3.1(e).

- (d) In the event that Project Co anticipates that the Defined Cost, Corporate Overhead and Profit likely to be incurred by Project Co in respect of the Request for Estimate Work Scope (including with respect to the implementation of any Development Variation or DMCA Variation, as applicable) will materially exceed the relevant Estimate, the Project Co Representative shall promptly provide

the Contracting Authority Representative with advance Notice of same, which Notice shall include recommendations to Contracting Authority of any proposed adjustments to the approved Estimate (including to reflect any proposed cost mitigation strategies). Without limiting any right of Contracting Authority in this Agreement, following receipt of such Notice, the Contracting Authority Representative may, in its sole discretion

- (i) request the revision and resubmission of the Estimate reflecting the recommendations for Contracting Authority’s approval, and in such an event the provisions of Part A, Sections 2.5 to 2.6 shall apply in respect of such revised Estimate; or
- (ii) reject the recommendations, in which event Project Co must consider the reasons provided and resubmit a revised Notice to Contracting Authority for approval or otherwise.

3. VARIATIONS

3.1 General

- (a) Contracting Authority has the right from time to time to propose and require Project Co to carry out and implement a Development Variation or DMCA Variation, as applicable, including in respect of any Project Work Proposal, and any such Development Variation or DMCA Variation shall be subject to the provisions of Part A of this Schedule 22.
- (b) Contracting Authority shall be obligated to proceed with a Development Variation or DMCA Variation, as applicable, in certain circumstances specified in this Agreement or as required by Applicable Law, and any such Development Variation or DMCA Variation shall be subject to the provisions of Part A of this Schedule 22.
- (c) Project Co shall attend and shall cause any relevant Subcontractors to attend any meetings requested by Contracting Authority from time to time to discuss and collaborate in respect of the implementation of any particular Development Variation or Development Variations generally, any particular DMCA Variation or DMCA Variations generally, including Project Work Proposals or the administration and pricing of Development Variations or DMCA Variations, as applicable.
- (d) Project Co acknowledges that, in accordance with Section 28.4(b) (*Pandemic and Epidemic Change in Law*) of this Agreement, any Development Variation or DMCA Variation, as applicable, that is the result of a Pandemic and Epidemic Change in Law is intended to compensate either Party for an increase or decrease (as the case may be) in the net cost to Project Co of performing the Development Works or DMCA Construction Works, as applicable, and such compensation shall be calculated in accordance with Section 28.4(b) (*Pandemic and Epidemic Change in Law*) of this Agreement and Part A of this Schedule 22 (including Part A, Section 3.1(e)).
- (e) Notwithstanding anything to the contrary in this Agreement, in the event that a Development Variation or DMCA Variation, as applicable, is the result of a Pandemic and Epidemic Change in Law, the Pandemic and Epidemic Change in Law Compensation in respect of such Development Variation or DMCA Variation (including with respect to the development and finalization of any related estimate provided by Project Co to Contracting Authority pursuant to Part A, Section 2.1(c) and the related Estimate) shall be the sum of the following amounts:

- (i) up to [REDACTED] per cent of the Defined Cost; and
- (ii) the Pandemic CIL Overhead.

For clarity, (A) no Profit or other profit margin shall be payable to Project Co or a Subcontractor where a Development Variation or DMCA Variation, as applicable, is the result of a Pandemic and Epidemic Change in Law; and (B) the Pandemic and Epidemic Change in Law Compensation shall be the only payment or compensation payable by Contracting Authority to Project Co in connection with the development, finalization and implementation of such Development Variation or DMCA Variation.

3.2 Variation Enquiry

- (a) Subject to Part A, Section 3.6(b)(i), if Contracting Authority proposes, requires or is obligated pursuant to the terms of this Agreement to initiate a Development Variation or DMCA Variation, as applicable, it shall deliver to the Project Co Representative a Notice of such Development Variation (a “**Development Variation Enquiry**”) or a Notice of such DMCA Variation (a “**DMCA Variation Enquiry**”), as applicable.
- (b) Except as otherwise agreed by the Parties in writing, a Development Variation Enquiry or DMCA Variation Enquiry, as applicable, shall:
 - (i) describe the potential applicable Development Variation or DMCA Variation in reasonable detail;
 - (ii) include a Request for Estimate related to the proposed Development Variation or DMCA Variation, as applicable, unless Contracting Authority determines an Estimate is not required in respect of such Development Variation or DMCA Variation in its sole discretion, in which case the Development Variation Enquiry or DMCA Variation Enquiry shall set out that an Estimate is not required; and
 - (iii) provide an indication of any provisions of this Agreement that will be affected by the proposed Development Variation or DMCA Variation, as applicable, and any amendments to this Agreement that may be desired or necessary to accommodate such Development Variation or DMCA Variation.

3.3 Delivery of Estimate

- (a) Unless an Estimate is not required in respect of a Development Variation or DMCA Variation, as applicable, in accordance with Part A, Section 3.2(b)(ii), upon receipt of a Development Variation Enquiry or DMCA Variation Enquiry, as applicable, Project Co shall provide an Estimate in respect of the Development Variation or DMCA Variation, as applicable, in accordance with Part A, Section 2.

3.4 Project Co Grounds for Objection

- (a) Project Co may only refuse to implement a Development Variation (including a Development Variation Directive) or DMCA Variation (including a DMCA Variation Directive), as applicable,

if Project Co can promptly and within five Business Days (or such longer period agreed by the Parties in writing, acting reasonably) demonstrate to Contracting Authority’s satisfaction, acting reasonably, that:

- (i) the Development Variation Enquiry or DMCA Variation Enquiry, as applicable, fails to comply with Part A, Section 3.2(b);
 - (ii) the implementation of the Development Variation or DMCA Variation, as applicable, would materially and adversely affect the health and safety of any person;
 - (iii) the implementation of the Development Variation or DMCA Variation, as applicable, would:
 - (A) infringe Applicable Law;
 - (B) cause to be revoked any of the existing Permits, Licences, Approvals and Agreements required by Project Co to perform the Development Works or DMCA Construction Works, as applicable, and any such Permits, Licences, Approvals and Agreements is not, using commercially reasonable efforts, capable of amendment, renewal or replacement; or
 - (C) require any new Permits, Licences, Approvals and Agreements for Project Co to perform the Development Works or DMCA Construction Works, as applicable, any of which will not, using commercially reasonable efforts by Project Co or Contracting Authority, as applicable, be obtainable in a reasonable period of time;
 - (iv) the implementation of the Development Variation or DMCA Variation, as applicable, is not technically feasible or would be a departure from Good Industry Practice;
 - (v) Contracting Authority does not have the legal power or capacity to require the Development Variation or DMCA Variation, as applicable, to be implemented or to do anything envisaged by Part A of this Schedule 22 in respect of or in connection with such Development Variation or DMCA Variation;
 - (vi) subject to Part A, Section 3.4(c), the Development Variation or DMCA Variation, as applicable, would, if implemented, result in a change in the essential nature of the Project;
 - (vii) Project Co is entitled to object to the Request for Estimate pursuant to Part A, Section 2.3; or
 - (viii) if applicable, the Development Variation Directive or DMCA Variation Directive, as applicable, fails to include adequate information therein to enable Project Co to promptly proceed to implement such Development Variation or DMCA Variation.
- (b) If Project Co refuses to implement a Development Variation or DMCA Variation, as applicable, on the grounds set out in Part A, Section 3.4(a), Project Co shall, as soon as possible and before the expiry of the time period set out in Part A, Section 3.4(a), deliver to the Contracting Authority Representative Notice specifying the grounds upon which Project Co, acting reasonably, refuses to

implement such Development Variation or DMCA Variation, and requesting an amendment and resubmission of such Development Variation Enquiry or DMCA Variation Enquiry by Contracting Authority after Contracting Authority takes into account and considers the grounds for such refusal, which in such an event Contracting Authority shall do, acting reasonably. If Project Co fails to provide any such Notice before the expiry of such time period, then Project Co shall be deemed to have not refused to implement the Development Variation or DMCA Variation, as applicable, under this Agreement.

- (c) Project Co acknowledges and agrees that, notwithstanding anything to the contrary in this Agreement, the grounds for which Project Co may refuse to implement a Development Variation (including a Development Variation Directive) or a DMCA Variation (including a DMCA Variation Directive), as applicable, set out in Part A, Section 3.4(a) shall not include, and Project Co shall not refuse to implement such Development Variation or DMCA Variation on the basis that, such Development Variation or DMCA Variation would vary, reduce, delete or remove one or more significant portions of the Development Works or DMCA Construction Works, as applicable, including, in Contracting Authority’s sole discretion, Project Co’s right and obligation to submit a TPA Proposal pursuant to this Agreement or all obligations of Project Co under this Agreement other than its obligations related to the performance of the Development Works and/or the DMCA Construction Works.

3.5 Variation Confirmation

- (a) On or as soon as possible after:
 - (i) the date of the applicable Estimate Approval; or
 - (ii) if an Estimate is not required in respect of a Development Variation or DMCA Variation, as applicable, in accordance with Part A, Section 3.2(b)(ii) and Project Co does not refuse or is deemed to have not refused to implement such Development Variation or DMCA Variation in accordance with Part A, Section 3.4(b), the earlier of the date of the expiry of the time period set out in Part A, Section 3.4(a) or a different date otherwise agreed by the Parties in writing,

Contracting Authority shall issue a written confirmation of the approved Estimate signed by Contracting Authority in respect of the Development Variation (the “**Development Variation Confirmation**”) or the DMCA Variation (the “**DMCA Variation Confirmation**”), as applicable, which shall include all documents, and other information necessary to implement the Development Variation or DMCA Variation, as applicable, including, if and to the extent applicable, to extend any time period set out in or required by this Agreement, or amend this Agreement. For greater certainty, the Development Variation Confirmation or DMCA Variation Confirmation, as applicable, may attach and include the applicable Estimate Approval.

- (b) Within five Business Days following Project Co’s receipt of a Development Variation Confirmation or DMCA Variation Confirmation, as applicable, issued pursuant to this Part A, Section 3.5 (or such longer period agreed by the Parties in writing, acting reasonably), Project Co shall execute and deliver a copy of such executed Development Variation Confirmation or DMCA Variation Confirmation to Contracting Authority.

- (c) Subject to Part A, Section 3.6, upon the Development Variation Confirmation or DMCA Variation Confirmation, as applicable, being issued, Project Co shall implement the Development Variation or DMCA Variation, as applicable, as provided for in such Development Variation Confirmation or DMCA Variation Confirmation, and all provisions of this Agreement applicable to the Development Works shall apply to the Development Works and all provisions of this Agreement applicable to the DMCA Construction Works shall apply to the DMCA Construction Works, as applicable, as thereby changed.
- (d) Except as hereinafter provided, until a Development Variation Confirmation or DMCA Variation Confirmation, as applicable, has been issued:
 - (i) the determination of whether or not to proceed with a Development Variation or DMCA Variation, as applicable, shall at all times be at Contracting Authority's sole discretion, despite any Dispute or any other matter in relation to such Development Variation or DMCA Variation being referred to or determined in accordance with the Dispute Resolution Procedure; and
 - (ii) Contracting Authority may at any time withdraw a Development Variation Enquiry or DMCA Variation Enquiry, as applicable, and Contracting Authority shall not be obligated to Project Co in respect of a Development Variation or DMCA Variation, as applicable, until such time as Contracting Authority in its sole discretion issues a Development Variation Confirmation or DMCA Variation Confirmation, as applicable,

provided that Contracting Authority may not withdraw such Development Variation Enquiry or DMCA Variation Enquiry in circumstances where Contracting Authority is obligated pursuant to the terms of this Agreement to proceed with such Development Variation or DMCA Variation. In such circumstances, the Dispute Resolution Procedure may be employed to finalize any aspects of the Development Variation or DMCA Variation, as applicable, which cannot otherwise be agreed to in accordance with the terms of Part A of this Schedule 22.

3.6 Variation Directive

- (a) In the event that:
 - (i) Contracting Authority, in its sole discretion, requires a Development Variation or DMCA Variation, as applicable, to be implemented prior to the issuance of a Development Variation Enquiry or DMCA Variation Enquiry, as applicable, an Estimate or a Development Variation Confirmation or DMCA Variation Confirmation, as applicable; or
 - (ii) an Estimate or an applicable Development Variation Confirmation or DMCA Variation Confirmation is not promptly provided by Project Co or not promptly agreed upon by Contracting Authority and Project Co or if there is a Dispute in relation thereto,

Contracting Authority may issue a Development Variation Directive or DMCA Variation Directive, as applicable, and, following receipt of such Development Variation Directive or DMCA Variation Directive, Project Co shall, subject to Part A, Section 3.4, promptly proceed to implement such Development Variation or DMCA Variation.

- (b) Without limiting Project Co’s obligation to promptly implement each Development Variation Directive or DMCA Variation Directive, as applicable:
- (i) in the event that Contracting Authority did not deliver a Development Variation Enquiry or DMCA Variation Enquiry, as applicable, in respect of such Development Variation or DMCA Variation before the applicable Development Variation Directive or DMCA Variation was issued, Contracting Authority shall not be required to deliver such Development Variation Enquiry or DMCA Variation Enquiry; and
 - (ii) in the event that Project Co did not deliver an Estimate in respect of such Development Variation or DMCA Variation before the applicable Development Variation Directive or DMCA Variation Directive was issued, then unless Contracting Authority determines, in its sole discretion that an Estimate is not required, Project Co shall deliver such Estimate in accordance with the time period set out in Part A, Section 2.2(b).

4. PROJECT WORK PROPOSALS

4.1 General

- (a) Either Party may discuss and make informal proposals to the other Party in respect of making potential Development Variations or DMCA Variations, as applicable (a “**Project Work Proposal**”), which either Party believes would be beneficial to Contracting Authority or the Project, including for value engineering, cost reduction, schedule acceleration, lifecycle cost improvement or efficiency enhancing purposes or for any other purposes.
- (b) Unless otherwise agreed by the Parties or as expressly set out in this Agreement to the contrary, each Party shall bear its own costs and expenses in respect of each Project Work Proposal, including with respect to negotiating and finalizing the form of any Additional Project Works Agreement.
- (c) In the event that Project Co wishes to formally submit any Project Work Proposal to Contracting Authority for Contracting Authority’s consideration, then the Project Co Representative shall deliver to the Contracting Authority Representative a Notice in accordance with Part A, Section 4.2 proposing a Development Variation, DMCA Variation or that the Parties enter into an Additional Project Works Agreement, in respect of implementing the subject matter of such Project Work Proposal (a “**Project Work Proposal Notice**”).
- (d) Contracting Authority shall be under no obligation whatsoever to accept any Project Work Proposal from Project Co unless such proposal is implemented pursuant to a Development Variation, DMCA Variation or Part A, Section 4.3, and may accept or reject any Project Work Proposal in its sole discretion.
- (e) Contracting Authority may, at any time, proceed with its own Project Work Proposal (notwithstanding any Project Work Proposal Notice received from Project Co on the same or a similar subject matter), either by:
- (i) issuing to Project Co a Development Variation Enquiry or DMCA Variation Enquiry, as applicable, in respect of such Project Work Proposal, and, in such an event, the procedure set out in Part A, Section 3 will apply; or

- (ii) without limiting any right of Contracting Authority pursuant to this Agreement (including Part A of this Schedule 22), proposing in writing that the Parties enter into a separate agreement in respect of the subject matter of the Project Work Proposal (each an “**Additional Project Works Agreement**”).

4.2 Project Work Proposal Notice

- (a) A Project Work Proposal Notice from Project Co shall:
 - (i) set out details of the Project Work Proposal in sufficient detail to enable Contracting Authority to evaluate it in full;
 - (ii) specify Project Co’s reasons for proposing Project Work Proposal;
 - (iii) indicate all reasonably foreseeable implications of the Project Work Proposal, including the anticipated benefits to the Project, an informal estimate of the costs or cost savings and schedule or schedule savings to Contracting Authority, any anticipated impact on the Lands, or any anticipated impact on the Development Works or DMCA Construction Works, as applicable, or any other work carried out by third parties; and
 - (iv) indicate the latest date by which a Development Variation Enquiry or DMCA Variation Enquiry, as applicable, must be issued or an Additional Project Works Agreement must be entered into by the Parties.
- (b) If Contracting Authority, in its sole discretion, elects to consider a Project Work Proposal Notice received from Project Co, Contracting Authority may:
 - (i) issue to Project Co a Development Variation Enquiry or DMCA Variation Enquiry, as applicable, in respect of such Project Work Proposal Notice, and, in such an event, the procedure set out in Part A, Section 3 will apply; or
 - (ii) without limiting any right of Contracting Authority pursuant to this Agreement (including Part A of this Schedule 22), propose in writing to Project Co that the Parties enter into an Additional Project Works Agreement, and in such an event, Part A, Section 4.3 shall apply.

4.3 Additional Project Works Agreement

- (a) In the event that Contracting Authority proposes to implement a Project Work Proposal by way of an Additional Project Works Agreement pursuant to Part A, Sections 4.1(e) or 4.2(b), the Parties agree to use commercially reasonable efforts to negotiate and finalize the form of and enter into such agreement within the period of time reasonably required by each Party.
- (b) The Parties agree that, subject to Part A, Section 4.3(a), no Party is required to enter into an Additional Project Works Agreement.

Project Co acknowledges and agrees that nothing in this Part A, Section 4.3 limits or prejudices any right of Contracting Authority under this Agreement whatsoever, including its right to issue a Development Variation Enquiry or DMCA Variation Enquiry, as applicable, in respect of the applicable Project Work

Proposal in the event that the Parties are unable to negotiate, finalize or enter into any Additional Project Works Agreement pursuant to Part A, Section 4.3(a).

PART B – TPA VARIATIONS

Part B of this Schedule 22 shall apply to TPA Works.

1. VARIATIONS

1.1 Definitions

- (a) In Part B of this Schedule 22, unless the context indicates a contrary intention, terms which are defined in this Agreement (and not otherwise defined in Part A of this Schedule 22) shall have meanings given to them in this Agreement and the following terms shall have the following meanings:
- (i) “**Project Co TPA Variation Notice**” has the meaning given in Part B, Section 2.1(a).
 - (ii) “**Estimate**” has the meaning given in Part B, Section 1.4(a).
 - (iii) “**Pandemic CIL Overhead**” means:
 - (A) in relation to Primary Team Self-Performed Design Work, an amount equal to [REDACTED]% payable in relation to the applicable Design Works;
 - (B) in relation to Primary Team Subcontracted Design Work, an amount equal to [REDACTED]% payable in relation to the applicable Design Works;
 - (C) in relation to Primary Team Self-Performed Development Work and Construction Work, an amount equal to [REDACTED]% payable in relation to the applicable Development Work or Construction Works;
 - (D) in relation to Primary Team Subcontracted Development Work and Construction Work, an amount equal to [REDACTED]% payable in relation to the applicable Development Work or Construction Works; and
 - (E) in relation to Works performed by a Subcontractor (other than a Primary Team Member), an amount equal to [REDACTED]% of the aggregate of the overhead and profit rates payable in relation to the applicable Subcontract (provided such rates have been approved by Contracting Authority (in writing)).
 - (iv) “**TPA Variation**” means a variation, addition, reduction, substitution, omission, modification, deletion, removal or other change to the whole or any part of the TPA Works.
 - (v) “**TPA Variation Confirmation**” has the meaning given in Part B, Section 1.7(a)(ii).
 - (vi) “**TPA Variation Directive**” means a written instruction which is issued on a form designated as a “TPA Variation Directive Form” and signed by the Contracting Authority Representative directing Project Co to immediately proceed with a TPA Variation pending the finalization and issuance of a TPA Variation Confirmation for that TPA Variation.

(vii) “**TPA Variation Enquiry**” has the meaning given in Part B, Section 1.3(a).

1.2 General

- (a) Contracting Authority has the right from time to time to propose and require Project Co to carry out and implement a TPA Variation, and any such TPA Variation shall be subject to the provisions of Part B of this Schedule 22, provided that Contracting Authority shall not be permitted to withdraw a TPA Variation Enquiry (nor will a TPA Variation Enquiry be deemed to have been withdrawn) with respect to those circumstances specified in this Agreement for which Contracting Authority is obligated to proceed with a TPA Variation.
- (b) Contracting Authority shall be obligated to proceed with a TPA Variation in certain circumstances specified in this Agreement, and any such TPA Variation shall be subject to the provisions of Part B of this Schedule 22.
- (c) The only payment or compensation payable by Contracting Authority to Project Co in connection with any TPA Variation shall be the sum of the following amounts:
 - (i) the amount being the change in the applicable Target Price arising from the implementation of such TPA Variation; plus
 - (ii) Corporate Overhead and Profit based on the change in the applicable Target Price arising from the implementation of such TPA Variation, other than in the case of Pandemic and Epidemic Change in Law Compensation for which only Pandemic CIL Overhead (calculated on such change in accordance with Part B of this Schedule 22) shall be included and Profit shall be excluded.
- (d) Project Co will not be entitled to any payment, compensation or extension of time for a TPA Variation except to the extent provided in a TPA Variation Confirmation or TPA Variation Directive in accordance with Part B of this Schedule 22.
- (e) Project Co shall attend and shall cause any relevant Subcontractors to attend any meetings requested by Contracting Authority from time to time to discuss the implementation of any TPA Variation or TPA Variations generally, including with respect to the administration and pricing of TPA Variations.

1.3 TPA Variation Enquiry

- (a) If Contracting Authority proposes or is obligated pursuant to the terms of this Agreement or Applicable Law to initiate a TPA Variation it shall deliver to Project Co a written Notice of the proposed TPA Variation (a “**TPA Variation Enquiry**”).
- (b) A TPA Variation Enquiry shall:
 - (i) describe the proposed TPA Variation with sufficient detail to enable Project Co to prepare a detailed Estimate;

- (ii) state whether Contracting Authority intends to pay for the TPA Variation by way of lump sum payment or payments or a Target Price Adjustment, or a combination thereof; and
- (iii) provide a preliminary indication of any provisions of this Agreement (including the Output Specifications) that will be affected by the proposed TPA Variation, as well as the amendments to this Agreement (including the Output Specifications) that may be necessary to accommodate the TPA Variation.

1.4 Delivery of Estimate

- (a) As soon as practicable and in any event within 15 Business Days after receipt of a TPA 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 Part B, Section 1.6 and in the form prescribed by Contracting Authority, acting reasonably.

1.5 Project Co Grounds for Objection

- (a) Project Co may only refuse to deliver an Estimate if Project Co can demonstrate to Contracting Authority’s satisfaction, acting reasonably, within the period for delivery of an Estimate specified or agreed pursuant to Part B, Section 1.4(a), that:
 - (i) the implementation of the TPA Variation would materially and adversely affect the health and safety of any person;
 - (ii) the implementation of the TPA Variation would:
 - (A) infringe Applicable Law;
 - (B) cause to be revoked any of the existing Permits, Licences, Approvals and Agreements required by Project Co to perform the TPA Works, and any of such Permits, Licences, Approvals and Agreements is not, using commercially reasonable efforts, capable of amendment or renewal; or
 - (C) require any new Permits, Licences, Approvals and Agreements for Project Co to perform the TPA Works, any of which will not, using commercially reasonable efforts by Project Co or Contracting Authority, as applicable, be obtainable;
 - (iii) the proposed TPA Variation would have a material and adverse effect on performance of the TPA Works (except those TPA Works which have been specified as requiring amendment in the TPA Variation Enquiry) in a manner not compensated pursuant to Part B of this Schedule 22;
 - (iv) the implementation of the TPA Variation is not technically feasible or would be a departure from Good Industry Practice;

- (v) Contracting Authority does not have the legal power or capacity to require the TPA Variation to be implemented or to do anything envisaged by Part B of this Schedule 22 in respect of or in connection with the TPA Variation;
 - (vi) the TPA Variation would, if implemented, result in a change in the essential nature of the Project Co Infrastructure and the New Third Party Infrastructure, provided that:
 - (A) for this purpose, the Project Co Infrastructure and the New Third Party Infrastructure shall be deemed to include TOC Developments; and
 - (B) Project Co shall not be permitted to refuse any TPA Variation which Contracting Authority in its sole discretion considers necessary for the integration of the TOC Developments with the Project Co Infrastructure;
 - (vii) the TPA Variation Enquiry does not comply with the requirements of Part B, Section 1.3 (including a failure to include adequate information therein to enable Project Co to prepare an Estimate in respect thereof); or
 - (viii) in the case of a TPA Variation relating to the TPA Works, the time specified for commencement and/or completion of such TPA 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 Part B, Section 1.5(a), Project Co shall, within the period for delivery of an Estimate specified or agreed pursuant to Part B, Section 1.4(a), deliver to Contracting Authority a written Notice specifying the grounds upon which Project Co rejects the TPA Variation and the details thereof.

1.6 Estimate Requirements

- (a) Unless Contracting Authority in a TPA Variation Enquiry requires only specified limited information, each Estimate shall include the following information, sufficient to demonstrate to Contracting Authority's reasonable satisfaction:
- (i) the steps Project Co will take to implement the TPA Variation, in such detail as is reasonable and appropriate in the circumstances, including a schedule, work breakdown structure, contact list, description of roles and responsibilities and an organizational structure chart;
 - (ii) any impact on any TPA Longstop Date, TPA Scheduled Substantial Completion Date, TPA Scheduled Final Completion Date, Critical Works Deadline, Critical Data Deadline, or any other schedule impact on the TPA Works, or the remainder of the Project Co Infrastructure and the New Third Party Infrastructure and the completion of the TPA Works (including for certainty, any impact of the proposed TPA Variation after taking into consideration other TPA Variations). For certainty, Project Co's entitlement to an adjustment to any TPA Longstop Date, TPA Scheduled Substantial Completion Date, TPA Scheduled Final Completion Date, Critical Works Deadline or Critical Data Deadline, as applicable, shall be determined in accordance with Section 2.2 (*Entitlement*) of Schedule 21 – Risk Allocations;

- (iii) any impact on the performance of the TPA Works and any other impact on this Agreement, including for certainty, any impact of the proposed TPA Variation after taking into consideration other TPA Variations and, including if applicable, any impact of a Pandemic and Epidemic Change in Law, including as a result of any disruptions to Project Co's supply chain;
 - (iv) any amendments to this Agreement or any Project Document required as a consequence of the TPA Variation;
 - (v) Project Co's preliminary indication of the potential increase or decrease, if any, to any Target Price, and where there is a change to a Target Price, the Estimate shall include Project Co's estimate of the changes to its:
 - (A) Defined Cost;
 - (B) Corporate Overhead (based on the change to such Defined Cost); and
 - (C) Profit (based on the change to such Defined Cost);
 - (vi) any Permits, Licences, Approvals and Agreements that must be obtained or amended for the TPA Variation to be implemented, and the latest date by which Project Co must receive a TPA Variation Confirmation and Project Co or Contracting Authority, as applicable, must obtain or amend such Permits, Licences, Approvals and Agreements for the Estimate to remain valid; and
 - (vii) the proposed methods of certification of any construction or operational aspect of the TPA Works required by the TPA Variation if not covered by the provisions of this Agreement, in each case, together with such supporting information and justification as is reasonably required.
- (b) In preparing its Estimate, Project Co shall include sufficient information to demonstrate to Contracting Authority's satisfaction, acting reasonably, that:
- (i) subject to Part B, Sections 1.6(c) and 1.6(e), Project Co has used or has obliged each Subcontractor (or will oblige any Subcontractor not yet selected) to use commercially reasonable efforts, including the use of competitive quotes or tenders to minimize any increase in costs and to maximize any reduction in costs;
 - (ii) all costs of Project Co are limited to:
 - (A) the Defined Cost of the proposed TPA Variation;
 - (B) in respect of any Adjustment Events (other than a Pandemic and Epidemic Change in Law, a Relief Event, an event of Force Majeure or a TBM Marine Event), Corporate Overhead and Profit;
 - (C) in respect of a Pandemic and Epidemic Change in Law, Pandemic CIL Overhead provided that in the event that it is confirmed pursuant to Section 28.4 (*Pandemic*

and Epidemic Change in Law) of this Agreement that a TPA Variation is required due to the occurrence of a Pandemic and Epidemic Change in Law, no Profit or other profit margin shall be payable to Project Co or any Subcontractor as part of any Pandemic and Epidemic Change in Law Compensation;

- (D) in respect of a Relief Event or an event of Force Majeure, any corporate overhead costs, as applicable, calculated in accordance with Section 5.3 (*Corporate Overhead for a Relief Event*) or Section 6.4 (*Corporate Overhead for an event of Force Majeure*), as applicable, of Schedule 21 – Risk Allocations; and
 - (E) in respect of a TBM Marine Event, no Corporate Overhead and Profit;
 - (iii) Project Co is entitled to an adjustment to any TPA Longstop Date, TPA Scheduled Substantial Completion Date, TPA Scheduled Final Completion Date, Critical Works Deadline or Critical Data Deadline, as applicable, arising from an Adjustment Event pursuant to Section 3 (*Schedule Adjustments*) of Schedule 21 – Risk Allocations;
 - (iv) the full amount of any and all expenditures that have been reduced or avoided and that all such expenditures have been taken into account and applied in total to reduce the amount of all costs; and
 - (v) Project Co has mitigated or will mitigate the impact of the TPA Variation, including on the Project Works Schedules, the performance of the TPA Works, the expected usage of utilities, and the Defined Cost of the proposed TPA Variation to be incurred.
- (c) Project Co shall use commercially reasonable efforts to obtain the best value for money when procuring and/or delivering any work, services, supplies, materials or equipment required by the TPA Variation, including, at the request of Contracting Authority, applying, using and comparing applicable industry benchmarks or benchmarking data for such purposes, and will comply with all Good Industry Practice in relation to any such procurement, to a standard no less than Project Co would apply if all costs incurred were to its own account without recourse to Contracting Authority, including using commercially reasonable efforts to mitigate such costs. Also, to the extent the procurement or delivery of any work, services, supplies, materials or equipment required by the TPA Variation results in costs or expenses that are in excess of those costs or expenses established by industry benchmarks or benchmarking data, Project Co shall provide Contracting Authority sufficient information and analysis to demonstrate to Contracting Authority’s satisfaction, acting reasonably, that such excess costs or expenses are reasonable and justified in the context of the subject TPA Variation. Without limiting Project Co’s obligations pursuant to this Part B, Section 1.6(c):
- (i) in estimating any Target Price Adjustment in an Estimate, Project Co must:
 - (A) apply a pricing structure that has been approved in writing by Contracting Authority to determine the reasonable and realistic level of resources, rates and prices required to make that adjustment; and
 - (B) if applicable, benchmark any proposed adjustment against all relevant rates (adjusted where appropriate for indexation) to demonstrate that, so far as is

practicable in the circumstances, the proposed adjustment is not materially inconsistent with current market resources, rates and prices;

- (ii) any Actualized Rates for Employed Staff and/or Site Labour used in determining Defined Cost (determined in accordance with Section 5 (*Actualized Rates*) of Schedule 48 – Defined Cost) must include the relevant elements of Defined Cost of Employed Staff and/or Site Labour to ensure that the Defined Cost is a true pre-estimate of the likely Defined Cost to be incurred;
 - (iii) where a change includes the cost of expenses (such as travel, accommodation, subsistence and the like) the rates used for estimating the change must reflect the costs likely to be incurred in the locality of the worksites, and in any event shall not exceed the current expenses policy and limits of Project Co that have been approved in writing by Contracting Authority to which such expenses relate; and
 - (iv) all rates used shall be net of all discounts and HST and must reflect the reasonable costs of the elements to be priced.
- (d) As soon as practicable, and in any event not more than 15 Business Days after Contracting Authority receives an Estimate, Project Co and Contracting Authority shall discuss and seek to agree on the Estimate, including any amendments to the Estimate agreed to by the Parties.
- (e) At the request of Contracting Authority, including if Contracting Authority is required by Applicable Law or any policy applicable to Contracting Authority, to competitively tender any contract in relation to the proposed TPA Variation, Project Co shall seek and evaluate competitive tenders for the proposed TPA Variation, including in accordance with such Applicable Law or policy.
- (f) Contracting Authority may modify a TPA Variation Enquiry in writing at any time for any matter relating to the Estimate or the discussions in relation thereto, in which case Project Co shall, as soon as practicable and in any event not more than 10 Business Days after receipt of such modification, notify Contracting Authority in writing of any consequential changes to the Estimate.
- (g) If the Parties cannot agree on an Estimate pursuant to Part B, Section 1.6(d), then any Dispute will be determined in accordance with Schedule 27 – Dispute Resolution Procedure.

1.7 TPA Variation Confirmation

- (a) As soon as practicable, and in any event within 15 Business Days after the later of the date the Estimate was delivered and the date the Estimate was either agreed to or any Dispute in respect thereof was determined in accordance with Schedule 27 – Dispute Resolution Procedure, Contracting Authority shall either:
- (i) subject to Part B, Sections 1.2(b) and Section 1.7(e), withdraw the TPA Variation Enquiry by written Notice to Project Co; or

- (ii) issue a written confirmation of the Estimate signed by Contracting Authority (the “**TPA Variation Confirmation**”), including any agreed modifications thereto or any modifications resulting for the determination of a Dispute in respect thereof.
- (b) Within five Business Days following Project Co’s receipt of a TPA Variation Confirmation issued pursuant to Part B, Section 1.7(a)(ii), Project Co shall execute and deliver a copy of such executed TPA Variation Confirmation to Contracting Authority.
- (c) If Contracting Authority does not issue a TPA Variation Confirmation within such 15 Business Days, then, subject to Part B, Sections 1.2(b) and Section 1.7(e), the TPA Variation Enquiry shall be deemed to have been withdrawn.
- (d) Upon the TPA Variation Confirmation being issued:
 - (i) the Parties shall as soon as practicable thereafter do all acts and execute all documents to amend this Agreement necessary to implement the TPA Variation, including in respect of any required extension of time and including provision for payment to Project Co as provided in Part B, Section 1.8;
 - (ii) Project Co shall implement the TPA Variation as provided for in the TPA Variation Confirmation, and subject to amendments pursuant to Part B, Section 1.7(d)(i), all provisions of this Agreement applicable to the TPA Works shall apply to the TPA Works as thereby changed and no additional claim with respect to the TPA Variation or TPA Variation Confirmation will be considered; and
 - (iii) payment in relation to the TPA Variation shall be as provided for in Part B, Section 1.8 and pursuant to any amendments pursuant to Part B, Section 1.7(d)(i).
- (e) Except as hereinafter provided, until a TPA Variation Confirmation has been issued:
 - (i) the determination of whether or not to proceed with a TPA Variation shall at all times be at Contracting Authority’s sole discretion, despite any Dispute or any other matter in relation to a TPA Variation being referred to or determined in accordance with Schedule 27 – Dispute Resolution Procedure; and
 - (ii) Contracting Authority may at any time withdraw a TPA Variation Enquiry and, subject to Part B, Section 1.7(d), Contracting Authority shall not be obligated to Project Co in respect of a TPA Variation until such time as Contracting Authority in its sole discretion issues a TPA Variation Confirmation,

provided that Contracting Authority may not withdraw a TPA Variation Enquiry in circumstances where Contracting Authority is obligated pursuant to the terms of this Agreement to proceed with a TPA Variation. In such circumstances Schedule 27 – Dispute Resolution Procedure shall be employed to finalize any aspects of the TPA Variation which cannot otherwise be agreed to in accordance with the terms of Part B of this Schedule 22.

1.8 Payment

- (a) Subject to Part B, Sections 1.9, 1.11 and 1.12, if a TPA Variation Confirmation has been issued, Contracting Authority shall pay the Defined Cost, Corporate Overhead and Profit as set forth in the Estimate and confirmed by the TPA Variation Confirmation in lump sum payments based on a payment schedule agreed by Contracting Authority and Project Co, acting reasonably, to reflect the amount and timing of the Defined Cost to be incurred by Project Co in carrying out the TPA Variation, and where payment for part of the TPA Variation reflects the carrying out of, or specific progress towards, an element within the TPA Variation, Project Co shall provide satisfactory evidence confirming that the part of the TPA Variation corresponding to each occasion when payment is due under the payment schedule has been duly carried out. In the event Contracting Authority and Project Co fail to agree as to the terms of the payment schedule, the payment schedule shall be determined in accordance with Schedule 27 – Dispute Resolution Procedure, provided that, where all or any part of the TPA 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 TPA Variation having been approved by Contracting Authority, the process under Schedule 27 – Dispute Resolution Procedure shall determine a payment schedule which would enable Project Co to be funded by Contracting Authority in time to make payments to that third party in accordance with its contract with Project Co.
- (b) Contracting Authority shall make payment to Project Co in accordance with Schedule 42 – Payment Procedures.
- (c) Upon request by Project Co, Contracting Authority shall provide to Project Co copies of any consent or approval issued by Contracting Authority’s board of directors in connection with a proposed TPA Variation.

1.9 Adjustment to Target Price

- (a) Unless the Parties otherwise agree in writing, Contracting Authority shall address payment of Defined Cost as set forth in the Estimate issued and confirmed by the TPA Variation Confirmation by way of a Target Price Adjustment, together with payment of any Corporate Overhead and Profit relating to such Target Price Adjustment.

1.10 TPA Variation Directive

- (a) If an Estimate is not promptly agreed upon by Contracting Authority and Project Co or if there is a Dispute in relation thereto or if Contracting Authority, in its sole discretion, requires a TPA Variation to be implemented prior to issuing a TPA Variation Confirmation, then Contracting Authority may issue a TPA Variation Directive and, following receipt of the TPA Variation Directive, Project Co shall promptly proceed to implement the TPA Variation.
- (b) Without limiting Project Co’s obligation to promptly implement such TPA Variation:
 - (i) the determination of the valuation and time extensions, if any, required in connection with such TPA Variation, shall be made as soon as reasonably possible after commencement of the implementation of the TPA Variation;
 - (ii) pending final determination of the valuation and time extension, if any, required in connection with such TPA Variation, Contracting Authority, acting reasonably and making

the determination in accordance with this Agreement, shall initially determine the valuation of such TPA Variation, with any Dispute to be determined in accordance with Schedule 27 – Dispute Resolution Procedure; and

- (iii) payment of Defined Cost, Corporate Overhead and Profit with respect to all TPA Variations implemented by way of a TPA Variation Directive shall be as provided for in Part B, Section 1.8.

1.11 TPA Variations issued pursuant to a Works Change in Law, Relevant Change in Law or Pandemic and Epidemic Change in Law

(a) For certainty:

- (i) the provisions of Section 28.2(a)(iii) (*Works Change in Law*) of this Agreement shall apply in the event that it is confirmed pursuant to Section 28.2 (*Works Change in Law*) of this Agreement that a TPA Variation is required due to the occurrence of a Works Change in Law;
- (ii) the provisions of Section 28.3(b)(iii) (*Relevant Change in Law*) of this Agreement shall apply in the event that it is confirmed pursuant to Section 28.3 (*Relevant Change in Law*) of this Agreement that a TPA Variation is required due to the occurrence of a Relevant Change in Law; and
- (iii) the provisions of Section 28.4(b)(iii) (*Pandemic and Epidemic Change in Law*) of this Agreement shall apply in the event that it is confirmed pursuant to Section 28.4 (*Pandemic and Epidemic Change in Law*) of this Agreement that a TPA Variation is required due to the occurrence of a Pandemic and Epidemic Change in Law.

1.12 Pandemic and Epidemic Change in Law Compensation

- (a) Project Co acknowledges that a TPA Variation that is the result of a Pandemic and Epidemic Change in Law provided under this Part B, Section 1.12 is intended to compensate either Party for an increase or decrease (as the case maybe be) in the Target Price and such compensation shall be calculated in accordance with Section 28.4 (*Pandemic and Epidemic Change in Law*) of this Agreement and this Schedule 22. Project Co further acknowledges that no Profit or other profit margin shall be paid on any such TPA Variation that results in an increase to the Target Price.
- (b) In the event that a TPA Variation is the result of a Pandemic and Epidemic Change in Law, the TPA Variation shall be compensated as follows:
 - (i) up to [REDACTED] per cent of the value of the Defined Cost; and
 - (ii) the Pandemic CIL Overhead for the TPA Variation,provided no Profit or other profit margin shall be compensated.
- (c) In relation to the preparation of any Estimate in respect of a Pandemic and Epidemic Change in Law, such Estimate shall be compensated as follows:

- (i) up to [REDACTED] per cent of the value of the Defined Cost for such Estimate; and
 - (ii) the Pandemic CIL Overhead for such Estimate,
- provided no Profit or other profit margin shall be compensated.

2. PROJECT CO TPA VARIATIONS

2.1 General

- (a) Project Co shall deliver to Contracting Authority a written Notice (a “**Project Co TPA Variation Notice**”) for each TPA Variation proposed by Project Co.

2.2 Project Co TPA Variation Notice

- (a) A Project Co TPA Variation Notice shall:
 - (i) set out details of the proposed TPA Variation in sufficient detail to enable Contracting Authority to evaluate it in full;
 - (ii) specify Project Co’s reasons for proposing the TPA Variation;
 - (iii) indicate all reasonably foreseeable implications of the TPA Variation, including whether there are any costs or cost savings to Contracting Authority; and
 - (iv) indicate the latest date by which a TPA Variation Enquiry must be issued.
- (b) If Contracting Authority, in its sole discretion, elects to consider the TPA Variation proposed by Project Co, Contracting Authority may issue to Project Co a TPA Variation Enquiry and the procedure set out in Part B, Section 1 will apply.

SCHEDULE 23

COMPENSATION ON TERMINATION

1. DEFINITIONS

1.1 Definitions

In this Schedule 23, unless the context indicates a contrary intention, terms which are defined in this Agreement (and not otherwise defined in this Schedule 23) shall have meanings given to them in this Agreement and the following terms shall have the following meanings:

- (a) **“Contracting Authority Default/Convenience Termination Sum”** has the meaning given in Section 2.1(b) of this Schedule 23.
- (b) **“Employee Termination Payments”** means termination payments which are required under Applicable Law to be made to employees of Project Co or any Project Co Party pursuant to the terms of this Schedule 23 as a direct result of the termination of this Agreement or any Target Price Agreement then in effect, as applicable.
- (c) **“Invoice Date”** means the date that is the later of:
 - (i) the date on which Contracting Authority receives an invoice from Project Co for the relevant termination sum pursuant to Section 5.1(a) of this Schedule 23; and
 - (ii) the date on which Contracting Authority receives the supporting evidence required pursuant to Section 5.1(b) of this Schedule 23.
- (d) **“Non-Default Termination Sum”** has the meaning given in Section 4.1(b) of this Schedule 23.
- (e) **“Project Co Default Termination Sum”** has the meaning given to it in Section 3.1(b) of this Schedule 23.
- (f) **“Subcontractor Losses”** means, subject to Project Co’s obligations under this Agreement to limit any compensation to Subcontractors, the amount reasonably and properly payable by Project Co to a Subcontractor under the terms of the Subcontract as a direct result of the termination of this Agreement or any Target Price Agreement then in effect, as applicable, but only to the extent that such amount does not exceed the aggregate of the costs that comply with the following:
 - (i) the costs are reasonably and properly incurred in connection with the Project and in respect of the provision of services or the completion of works for the Project and are incurred and payable by such Subcontractor under the terms of applicable Subcontracts; and
 - (ii) the costs are only for the following costs that cannot be avoided:
 - (A) materials or goods ordered prior to the Termination Date by such Subcontractor or its Subcontractors that cannot be cancelled without such costs being incurred;

- (B) an expenditure incurred prior to the Termination Date by such Subcontractor or its Subcontractors in anticipation of the provision of services or the completion of works for the Project in the future;
- (C) the cost of demobilization including the costs of any relocation of equipment used by such Subcontractor in connection with the Project;

and provided that such amount shall be reduced to the extent that Project Co or any Subcontractors fail to take commercially reasonable steps to mitigate such amount and provided that no account shall be taken of any costs for or arising out of:

- (D) any breakage fee charged by any Subcontractors or any loss of overhead or profit of any Subcontractors;
- (E) 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
- (F) agreements or arrangements entered into by Project Co or the Subcontractors other than in the ordinary course of business and on commercial arm's length terms, save to the extent that amounts would have arisen if such agreements or arrangements had been entered into in the ordinary course of business and on commercial arm's length terms.

2. COMPENSATION ON TERMINATION - CONTRACTING AUTHORITY DEFAULT OR CONVENIENCE

2.1 Compensation

- (a) If Project Co terminates this Agreement or any Target Price Agreement then in effect, as applicable, pursuant to Section 32 (*Contracting Authority Default*) of this Agreement or Contracting Authority terminates this Agreement or any Target Price Agreement then in effect, as applicable, pursuant to Section 33.5 (*Termination for Convenience*) of this Agreement, Contracting Authority shall pay to Project Co the Contracting Authority Default/Convenience Termination Sum.
- (b) The "**Contracting Authority Default/Convenience Termination Sum**" shall be an amount equal to the aggregate of the following without duplication:
 - (i) subject to Section 5.5, any Employee Termination Payments;
 - (ii) any Subcontractor Losses; and
 - (iii) commercially reasonable costs properly incurred by Project Co to wind up its operations with respect to the Project provided that Project Co has taken commercially reasonable steps to mitigate such costs, but specifically not including breakage fees, loss of overhead or loss of profit;

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 related to the Project 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 Agreement (save where such insurance proceeds are to be applied in reinstatement, restoration or replacement, or, in the case of third party legal liability, in satisfaction of the claim, demand, proceeding or liability or where Contracting Authority is required to procure insurances and to make proceeds available to Project Co under this Agreement and it has failed to do so) or sums due and payable from third parties other than sums wholly unrelated to the Works, the Project, this Agreement and any Target Price Agreement then in effect, as applicable (but only when received from third parties) but excluding:
 - (A) any claims under any Subcontracts or claims against other third parties which have not been determined or have been determined but not yet paid, provided that, in such case, Project Co shall assign any such rights and claims under the Subcontracts or claims against other third parties (other than claims against other third parties wholly unrelated to the Works, the Project, this Agreement or any Target Price Agreement then in effect, as applicable) to Contracting Authority and, at no additional cost to Project Co, give Contracting Authority reasonable assistance in prosecuting such claims;
 - (B) any Corporate Overhead and Profit; and
 - (C) any amounts for Defined Cost incurred but not yet paid by Project Co or any Project Co Party prior to the Termination Date;
- (v) to the extent realized before the Invoice Date, the market value of any other assets and rights of Project Co related to the Project (other than those transferred to Contracting Authority pursuant to this Agreement) less liabilities of Project Co properly incurred in carrying out its obligations under this Agreement or any Target Price Agreement then in effect, as applicable, 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) without double counting other amounts set off or deducted in accordance with this Section 2.1(b), amounts which Contracting Authority is entitled to set off pursuant to Section 5.4 (*Set-Off*) of this Agreement.

- (c) To the extent that the assets and rights referred to in Section 2.1(b)(v) of this Schedule 23 are not realized and applied pursuant thereto, Project Co shall, on payment of the Contracting Authority Default/Convenience Termination Sum, assign such assets and rights to Contracting Authority.
- (d) Contracting Authority shall pay the Contracting Authority Default/Convenience Termination Sum in accordance with Section 5 of this Schedule 23.

3. COMPENSATION ON TERMINATION FOR PROJECT CO DEFAULT

3.1 Compensation

- (a) If Contracting Authority terminates this Agreement or any Target Price Agreement then in effect, as applicable, pursuant to Section 31.3 (*Right to Termination*) of this Agreement, Project Co shall pay to Contracting Authority the Project Co Default Termination Sum.
- (b) The “**Project Co Default Termination Sum**” shall be an amount equal to the aggregate, without duplication, of each of the following:
 - (i) Contracting Authority’s estimate of all cost to remedy any defective or deficient Works determined on a reasonable basis in consultation with Contracting Authority’s consultants;
 - (ii) Contracting Authority’s estimate of all cost to re-tender the Works or any portion thereof;
 - (iii) the Painshare payable by Project Co to Contracting Authority; and
 - (iv) Contracting Authority’s estimate of the aggregate of all Direct Losses (including all applicable Taxes and all legal or professional services, legal costs being on a full indemnity basis) suffered, sustained or incurred by Contracting Authority as a result of, in respect of, or arising out of the event or events which resulted in the termination of this Agreement or any Target Price Agreement then in effect, as applicable, and arising out of the termination, in each case, together with all costs of entering into a new contract to complete the Works, including any warranty obligations for the Works in place and to be performed, on substantially the same terms and conditions as this Agreement and any applicable Target Price Agreement.
- (c) Project Co shall pay Project Co Default Termination Sum in accordance with Section 5 of this Schedule 23.

4. COMPENSATION ON TERMINATION – NON-DEFAULT TERMINATION AND TERMINATION FOR RELIEF EVENT

4.1 Compensation

- (a) If:
 - (i) either Party terminates this Agreement or any Target Price Agreement then in effect, as applicable, in relation to a Relief Event pursuant to Section 33.1 (*Termination for Relief Event*) of this Agreement;

- (ii) either Party terminates this Agreement or any Target Price Agreement then in effect, as applicable, in relation to an event of Force Majeure pursuant to Section 33.2 (*Termination for Force Majeure*) of this Agreement;
- (iii) Contracting Authority terminates this Agreement or any Target Price Agreement then in effect, as applicable, in relation to a Protest Action pursuant to Section 33.4 (*Termination due to Protest Action*) of this Agreement; or
- (iv) Contracting Authority terminates this Agreement or any Target Price Agreement then in effect, as applicable, in relation to an Uninsurable Risk pursuant to Section 7 of Schedule 25 – Insurance and Bond Requirements of this Agreement,

then, Contracting Authority shall pay to Project Co the Non-Default Termination Sum as calculated in accordance with Section 4.1(b).

- (b) The “**Non-Default Termination Sum**” shall be an amount equal to the aggregate of the following without duplication:
 - (i) subject to Section 5.5, any Employee Termination Payments;
 - (ii) any Subcontractor Losses; and
 - (iii) commercially reasonable costs properly incurred by Project Co to wind up its operations with respect to the Project provided that Project Co has taken commercially reasonable steps to mitigate such costs, but specifically not including breakage fees, loss of overhead or loss of profit;

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 related to the Project 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 Agreement (save where such insurance proceeds are to be applied in reinstatement, restoration or replacement, or, in the case of third party legal liability, in satisfaction of the claim, demand, proceeding or liability or where Contracting Authority is required to procure insurances and to make proceeds available to Project Co under this Agreement and it has failed to do so) or sums due and payable from third parties other than sums wholly unrelated to the Works, the Project, this Agreement and any Target Price Agreement then in effect, as applicable (but only when received from third parties) but excluding:
 - (A) any claims under any Subcontracts or claims against other third parties which have not been determined or have been determined but not yet paid, provided that, in such case, Project Co shall assign any such rights and claims under the Subcontracts or claims against other third parties (other than claims against other third parties wholly unrelated to the Works, the Project, this Agreement and any Target Price Agreement then in effect, as applicable) to Contracting Authority and,

at no additional cost to Project Co, give Contracting Authority reasonable assistance in prosecuting such claims;

- (B) any Corporate Overhead and Profit; and
 - (C) any amounts for Defined Cost incurred but not yet paid by Project Co or any Project Co Party prior to the Termination Date;
- (v) to the extent realized before the Invoice Date, the market value of any other assets and rights of Project Co related to the Project (other than those transferred to Contracting Authority pursuant to this Agreement) less liabilities of Project Co properly incurred in carrying out its obligations under this Agreement and any Target Price Agreement then in effect, as applicable, 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;
- (vi) the Painshare payable by Project Co to Contracting Authority; and
- (vii) without duplication to other amounts set off or deducted in accordance with this Section 4.1(b), amounts which Contracting Authority is entitled to set off pursuant to Section 5.4 (*Set-Off*) of this Agreement.
- (c) To the extent that the assets and rights referred to in Section 4.1(b)(v) of this Schedule 23 are not realized and applied pursuant thereto, Project Co shall, on payment of the Non-Default Termination Sum, assign such assets and rights to Contracting Authority.
- (d) Contracting Authority shall pay the Non-Default Termination Sum in accordance with Section 5 of this Schedule 23.

5. GENERAL

5.1 Payment and Interest Following Termination

(a) Termination Payments to Project Co

- (i) In respect of the termination payments to be made pursuant to either Section 2 or 4 of this Schedule 23, as soon as practicable after, and, in any event, within 30 days after, the Termination Date, Project Co shall give to Contracting Authority an invoice for the relevant termination sum (including amounts under Section 2 or 4, as applicable and,

provided they do not duplicate such amounts, amounts payable under Section 5.4, all subject to Section 5.2) and sufficient supporting evidence, reasonably satisfactory to Contracting Authority, justifying the amount of the relevant termination sum including a detailed breakdown of each of the individual items comprising such sum.

- (ii) Contracting Authority shall pay to Project Co the relevant termination sum pursuant to either Section 2 or 4 of this Schedule 23 within 60 days after the Invoice Date and, if such payment is not made within 60 days after the Invoice Date, an amount equivalent to the Payment Compensation Amount for the period from the date which is 60 days after the Invoice Date until the date of payment, and so long as all of demobilization of the Works has been completed; and
- (iii) If the applicable termination sum is negative, Contracting Authority shall have no obligation to make any payment to Project Co and Project Co shall pay Contracting Authority the negative termination sum within 60 days after the Invoice Date. If Project Co fails to pay such amount within the time prescribed, Project Co shall also thereafter indemnify Contracting Authority as provided in Section 41.1(d) (*Project Co Indemnities to Contracting Authority*) of this Agreement in respect of any damages suffered or incurred by Contracting Authority and pay Contracting Authority an amount equal to the Payment Compensation Amount for the period which is 60 days after the Invoice Date until the date of payment.

(b) Termination Payments to Contracting Authority

- (i) In respect of the termination payments to be made pursuant Section 3 of this Schedule 23, as soon as practicable Contracting Authority shall calculate and notify Project Co of Project Co Default Termination Sum under Section 3.1(b) of this Schedule 23, and shall deliver to Project Co sufficient supporting evidence.
- (ii) Project Co shall pay to Contracting Authority the relevant termination sum pursuant to Section 3 of this Schedule 23 within 60 days after the date of delivery of the Notice described in Section 5.1(b)(i) of this Schedule 23 and, if such payment is not made within such 60 day period, an amount equivalent to the Payment Compensation Amount for the period from the date which is 60 days after the date of delivery of the Notice described in Section 5.1(b)(i) of this Schedule 23 until the date of payment.

5.2 Right of Contracting Authority to Deduct Amounts

- (a) Notwithstanding anything in this Schedule 23, Contracting Authority may deduct (without double counting):
 - (i) any amount that Contracting Authority is entitled to set off pursuant to Section 5.4 (*Set-Off*) of this Agreement; and
 - (ii) any amount payable by Project Co to Contracting Authority in accordance with Schedule 43 – Incentives and Construction Enforcement Regime; and

- (iii) any amount payable by Project Co to Contracting Authority in accordance with Schedule 49 – Target Price Gainshare/Painshare Regime,

from any amounts otherwise payable by Contracting Authority to Project Co pursuant to this Schedule 23 and pay the net amount to Project Co. If Project Co disputes the amount deducted, such Dispute shall be dealt with in accordance with Schedule 27 – Dispute Resolution Procedure.

5.3 Costs

- (a) The costs and expenses to be taken into account in the calculation of any termination sums due pursuant to this Schedule 23 shall only be such costs and expenses to the extent that they are reasonable and proper in quantum and shall have been or will be reasonably and properly incurred.

5.4 Additional Amounts Due on Termination

- (a) On termination of this Agreement or any Target Price Agreement then in effect, as applicable, for any reason and provided it does not duplicate amounts under Sections 2 or 4, as applicable, and subject to Section 5.2, Contracting Authority shall pay Project Co for that portion of the Works for which successful performance is achieved prior to the Termination Date, at amounts calculated in accordance with the terms and conditions of this Agreement.
- (b) On termination of this Agreement pursuant to Sections 31.3(a) (*Project Co Default - Right to Termination*), 32.2(a)(ii) (*Contracting Authority Default - Project Co's Options*), 33.1 (*Termination for Relief Event*), 33.2 (*Termination for Force Majeure*), 33.4 (*Termination due to Protest Action*) or 33.5 (*Termination for Convenience*), and provided it does not duplicate amounts under Sections 2 or 4, as applicable, and subject to Section 5.2, Contracting Authority shall pay Project Co the following (without double counting):
 - (i) any amount payable by Contracting Authority to Project Co in accordance with Schedule 43 – Incentives and Construction Enforcement Regime; and
 - (ii) any amount payable by Contracting Authority to Project Co in accordance with Schedule 49 – Target Price Gainshare/Painshare Regime in the event that:
 - (A) this Agreement is terminated after the TPA Final Completion Date; and
 - (B) it has been agreed to by the Parties, or determined in accordance with Schedule 27 – Dispute Resolution Procedure, that an amount in respect of Gainshare is payable by Contracting Authority to Contactor in accordance with Schedule 49 – Target Price Gainshare/Painshare Regime.

For certainty, any Dispute initiated prior to, on or following the Termination Date as to whether Gainshare is payable by Contracting Authority to Project Co in accordance with Schedule 49 – Target Price Gainshare/Painshare Regime shall be subject to resolution pursuant to the Dispute Resolution Procedure.

- (c) On termination of this Agreement or any Target Price Agreement then in effect, as applicable, pursuant to Sections 31.3(a) (*Project Co Default - Right to Termination*), 32.2(a)(ii) (*Contracting*

Authority Default – Project Co’s Options), 33.1 (*Termination for Relief Event*), 33.2 (*Termination for Force Majeure*), or 33.4 (*Termination due to Protest Action*), and provided it does not duplicate amounts under Section 3, Project Co shall pay Contracting Authority any amount payable by Project Co to Contracting Authority pursuant to Schedule 49 – Target Price Gainshare/Painshare Regime. For certainty, there shall be no Painshare payable by Project Co to Contracting Authority in the event that this Agreement or any Target Price Agreement then in effect, as applicable, is terminated pursuant to Section 33.5 (*Termination for Convenience*).

5.5 Employee Termination Payments

- (a) Contracting Authority’s obligation to make Employee Termination Payments pursuant to Sections 2.1 and 4.1 shall be subject to the following:
- (i) Project Co or the applicable Project Co Party shall take commercially reasonable steps to mitigate its losses with respect to Employee Termination Payments;
 - (ii) in calculating the Employee Termination Payments, account shall be taken of whether terminated employees are offered employment by Contracting Authority or by any person at the request of Contracting Authority; and
 - (iii) no account shall be taken of any liabilities and obligations of Project Co or the applicable Project Co Party arising out of:
 - (A) contracts of employment or other agreements or arrangements entered into by Project Co or the applicable Project Co Party to the extent that such contracts of employment or other agreements or arrangements were not entered into in connection with the Project; or
 - (B) contracts of employment or other agreements or arrangements entered into by Project Co or the applicable 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.
- (b) For clarity, Contracting Authority has no obligation, and will not be liable for any Employee Termination Payments for reasons other than as set out in Sections 2 or 4 of this Schedule 23.

5.6 Undisputed Amounts

- (a) If the calculation of any termination amount is disputed then any undisputed amount shall be paid in accordance with this Section 5 and the disputed amount shall be dealt with in accordance with Schedule 27 – Dispute Resolution Procedure.

5.7 No Other Amounts

- (a) For clarity, except as expressly set out in Sections 2, 4 and 5.4, no amounts are payable by Contracting Authority for termination of this Agreement or any Target Price Agreement then in effect, as applicable, for any reason whatsoever.

SCHEDULE 24

FORM OF PARENT GUARANTEE

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

BETWEEN:

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

(“**Contracting Authority**”)

- AND -

[REDACTED]

(“**Parent Guarantor**”)

WHEREAS:

- A. Contracting Authority and Pape North Connect, [REDACTED] between [REDACTED] (“**Project Co**”) have entered into a development and master construction agreement dated as of January 17, 2024 (which agreement, including the schedules thereto, as the same may be amended, modified, restated, supplemented or replaced, from time to time, is hereinafter called the “**Development and Master Construction Agreement**”).
- B. [REDACTED] is [REDACTED] of Parent Guarantor (the “**Subsidiary**”). The Subsidiary is jointly and severally liable for the obligations of Project Co under the Development and Master Construction Agreement and any Target Price Agreement then in effect.
- C. As an inducement to Contracting Authority to enter into the Development and Master Construction Agreement with Project Co, Parent Guarantor has agreed to absolutely, unconditionally and irrevocably guarantee to Contracting Authority, as a direct obligation, the full and prompt performance and observance by the Subsidiary of each and every covenant, agreement, undertaking and obligation of the Subsidiary contained in the Development and Master Construction Agreement and any Target Price Agreement then in effect with respect to the Design and Construction Work (as such term is defined in Section 1.1(c) of this Guarantee), and in furtherance thereof has agreed to enter into this Guarantee.
- D. Contracting Authority, as Crown agency, intends to enter into this Guarantee in accordance with Applicable Law.

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

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

- (a) Unless otherwise defined herein, all capitalized terms will have the meanings ascribed to them in the Development and Master Construction Agreement.
- (b) Unless otherwise expressly provided herein, this Guarantee shall be interpreted in accordance with Schedule 1 – Definitions and Interpretation of the Development and Master Construction Agreement.
- (c) For the purpose of this Guarantee, the term “**Design and Construction Work**” means:
- (i) subject to Section 1.1(c)(ii), all of (A) Project Co’s and the Subsidiary’s representations and warranties contained in Section 6.1 (*Project Co Representations and Warranties*) of the Development and Master Construction Agreement and (B) the Subsidiary’s covenants, obligations and activities with respect to the Works pursuant to the Development and Master Construction Agreement and any Target Price Agreement then in effect, and including, for certainty, all of the Subsidiary’s covenants, obligations and activities pursuant to Sections 11.15 (*Defective Works*), 11.16 (*Warranty Obligations*), and 11.17 (*Warranty Work and Prompt Repair of Warranty Work*) of the Development and Master Construction Agreement; and
 - (ii) for the purpose of this Section 1.1(c) the term “Design and Construction Work” shall be deemed not to include any of the following covenants, obligations or activities of the Subsidiary under the Development and Master Construction Agreement (including the delivery of any executed originals of the documents referred to below):
 - (A) the recitals to the Development and Master Construction Agreement;
 - (B) Section 2 (*DMCA Effective Date and Completion Documents*);
 - (C) Section 31.1(a)(vi) (*Project Co Events of Default*);
 - (D) Section 46 (*Notices*);
 - (E) Schedule 3 – Form of Assignment of Subcontract;
 - (F) Schedule 23 – Compensation on Termination;
 - (G) Schedule 24 – Form of Parent Guarantee; or
 - (H) Schedule 31 – Project Co Information.
- (d) For the purpose of this Guarantee, the term “**Guaranteed Obligations**” has the meaning given in Section 2.1(a).

- (e) For the purpose of this Guarantee, the term “**Notice**” has the meaning given in Section 4.1.

1.2 Survival

This Guarantee shall survive the termination or other expiry of the Development and Master Construction Agreement.

2. GUARANTEE

2.1 Guarantee

- (a) Parent Guarantor does hereby absolutely, unconditionally and irrevocably guarantee to Contracting Authority, as a direct obligation, the full and prompt performance and observance by the Subsidiary of each and every covenant, agreement, undertaking and obligation of the Subsidiary contained in the Development and Master Construction Agreement and any Target Price Agreement then in effect with respect to the Design and Construction Work (collectively, the “**Guaranteed Obligations**”), and for greater certainty the Guaranteed Obligations do not include any covenants, agreements, undertakings and obligations of the Subsidiary under the Development and Master Construction Agreement or any Target Price Agreement then in effect which are not expressly defined in this Section 2.1(a).
- (b) Notwithstanding any other provision of this Guarantee, Parent Guarantor’s undertakings and obligations are derivative of and not in excess of the Subsidiary’s obligations under the Development and Master Construction Agreement and any Target Price Agreement then in effect and Parent Guarantor retains all rights, claims, defences and limitations of liability possessed by Project Co and the Subsidiary under the terms of the Development and Master Construction Agreement and any Target Price Agreement then in effect or arising from the Parties’ performance or failure to perform thereunder and shall be entitled to assert any contractual defences that would have been available to Project Co and the Subsidiary, including, for greater certainty, that the alleged non-performance or non-observance by the Subsidiary of the Guaranteed Obligations arises out of or is a result of a Contracting Authority Event of Default as set out in Section 32.1(a) (*Contracting Authority Events of Default*) of the Development and Master Construction Agreement.

2.2 General Provisions Relating to the Guarantee

- (a) Each and every default in performance or observance of any of the Guaranteed Obligations by the Subsidiary shall give rise to a separate claim and cause of action hereunder, and separate claims or suits may be made and brought, as the case may be, hereunder as each such default occurs.
- (b) The Guarantee herein provided for shall be a continuing, absolute and unconditional guarantee of performance and observance of the Guaranteed Obligations and shall remain in full force and effect until each and all of the Guaranteed Obligations shall have been fully and satisfactorily discharged in accordance with the terms and provisions of the Development and Master Construction Agreement and any Target Price Agreement then in effect and Parent Guarantor shall have fully and satisfactorily discharged all of its obligations under this Guarantee.

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- (c) The liability of Parent Guarantor hereunder shall remain in full force and effect irrespective of and shall in no way be affected or impaired by (and no Notice to Parent Guarantor shall be required in respect of):
- (i) any compromise, waiver, renewal, extension, indulgence, amendment, addition, deletion, change in, modification of, or release of any security (including any other guarantee, letter of credit or bond) for or in respect of any of the Guaranteed Obligations;
 - (ii) any amalgamation, merger or consolidation of Project Co, the Subsidiary (or the other member comprising Project Co) or Parent Guarantor or any sale, lease or transfer of any of the assets of the Subsidiary (or the other member comprising Project Co) or Parent Guarantor;
 - (iii) any Change in Ownership of Project Co, the Subsidiary (or the other member comprising Project Co) or Parent Guarantor;
 - (iv) the termination or other expiry of the Development and Master Construction Agreement or any Target Price Agreement then in effect;
 - (v) any Adjustment Event (it being acknowledged, however, that the performance of the Guaranteed Obligations shall be extended accordingly);
 - (vi) any change in the financial condition of Project Co, the Subsidiary (or the other member comprising Project Co) or Parent Guarantor;
 - (vii) any Project Co Event of Default described in Section 31.1(a)(i) (*Project Co Events of Default*) of the Development and Master Construction Agreement, or any resulting release, stay or discharge of any Guaranteed Obligation;
 - (viii) any lack or limitation of power, incapacity or disability on the part of Project Co or the Subsidiary, or any other irregularity, defect or informality on the part of Project Co or the Subsidiary with respect to the Guaranteed Obligations;
 - (ix) any provision of any laws, statutes, rules or regulations of general application in relation to suretyship or any other circumstance that might constitute, under law generally applicable to suretyship, a defence available to, or a discharge of, Parent Guarantor in respect of the Guaranteed Obligations or this Guarantee;
 - (x) the assignment by Contracting Authority in accordance with the provisions of Section 44.2 (*Contracting Authority Assignment*) of the Development and Master Construction Agreement; or
 - (xi) any other occurrence or circumstance whatsoever, whether similar or dissimilar to the foregoing that, under law generally applicable to suretyship, might otherwise constitute a legal or equitable defence or discharge of the liabilities of a guarantor or surety that might otherwise limit recourse against Parent Guarantor.

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- (d) The obligations and liabilities of Parent Guarantor hereunder shall not be impaired, diminished, abated or otherwise affected by the commencement by or against Project Co, the Subsidiary (or the other member comprising Project Co) or Parent Guarantor of any proceedings under any bankruptcy or insolvency law or laws relating to the relief of debtors, readjustment of indebtedness, reorganizations, arrangements, compositions or extension or other similar laws.
- (e) Contracting Authority shall not be bound to exhaust its recourse against Project Co, the Subsidiary or others or any securities (including the security described in Schedule 25 – Insurance and Bond Requirements of the Development and Master Construction Agreement) or other guarantees it may at any time hold before being entitled to performance of the Guaranteed Obligations by Parent Guarantor and Parent Guarantor renounces all benefits of discussion and division.
- (f) If Contracting Authority elects to draw down on any DMCA Construction Warranty Security or any TPA Warranty Security, as applicable, in accordance with Section 11.18 (*Warranty Security*) of the Development and Master Construction Agreement, Contracting Authority shall not be entitled to exercise its rights pursuant to this Guarantee to fund, or as reimbursement for, the costs and expenses Contracting Authority has already been compensated for pursuant to Section 11.18 (*Warranty Security*) of the Development and Master Construction Agreement.
- (g) It is the intent and purpose hereof that Parent Guarantor shall not be entitled to and does hereby waive any and all defences which are, under law generally applicable to suretyship, available to a guarantor, sureties and other secondary parties at law or in equity. Without limiting the generality of the foregoing, Parent Guarantor hereby waives Notice of acceptance of this Guarantee and of the non-performance by the Subsidiary, diligence, presentment, protest, dishonour, demand for performance from Contracting Authority and Notice of non-performance or failure to perform on the part of the Subsidiary and all other Notices whatsoever. The Guarantee hereunder is a guarantee of performance and compliance. In order to hold Parent Guarantor liable hereunder, there shall be no obligation on the part of Contracting Authority at any time to demand or resort for performance to the Subsidiary, its properties or assets or to any security, property or other rights or remedies whatsoever, nor shall there be any requirement that the Subsidiary be joined as a party to any proceeding for the enforcement of any provision of this Guarantee and Contracting Authority shall have the right to enforce the provisions of this Guarantee irrespective of whether or not legal proceedings or other enforcement efforts against the Subsidiary are pending, seeking resort to or realization upon or from any of the foregoing. Without limiting the foregoing, it is understood that repeated and successive demands may be made and recoveries may be had hereunder as and when from time to time, the Subsidiary shall default under or with respect to any of the Guaranteed Obligations, and that, notwithstanding recovery hereunder for or in respect of any such default, the Guarantee herein shall remain in full force and effect unamended and shall apply to each and every subsequent default.
- (h) Without prejudice to and without releasing, discharging, limiting or otherwise affecting in whole or in part the obligations and liabilities of Parent Guarantor under this Guarantee and without in any way requiring the consent of or giving Notice to Parent Guarantor, Contracting Authority may grant time, renewals, extensions, indulgences, releases and discharges to and accept compositions from or otherwise deal with Project Co, the Subsidiary and/or Parent Guarantor or others, including any other guarantor, as Contracting Authority may see fit and Contracting Authority may take,

abstain from taking or perfecting, vary, exchange, renew, discharge, give up, realize on or otherwise deal with security and guarantees in such manner as Contracting Authority may see fit.

- (i) Neither an action or proceeding brought under this Guarantee regarding the Guaranteed Obligations nor any judgment or recovery in consequence of that action or proceeding operates as a bar or defence action or defence to any further action that may be brought under this Guarantee. Parent Guarantor acknowledges that, if judgment is granted on an action or proceeding commenced under this Guarantee, the obligations of Parent Guarantor to Contracting Authority do not merge with or end Parent Guarantor's obligations hereunder.
- (j) The liability of Parent Guarantor under this Guarantee shall arise forthwith after demand has been made in writing on Parent Guarantor.
- (k) Parent Guarantor agrees to pay to Contracting Authority any and all reasonable and direct out-of-pocket costs and expenses, including reasonable legal fees (on a substantial indemnity basis) incurred by it in connection with enforcing any of its rights hereunder.

3. REPRESENTATIONS AND WARRANTIES

3.1 Parent Guarantor Representations and Warranties

- (a) Parent Guarantor represents and warrants to Contracting Authority that as of the date of this Guarantee:
 - (i) Parent Guarantor is a corporation incorporated and validly existing under the laws of the jurisdiction of its organization, is in good standing with [REDACTED], and has all the requisite corporate power and authority to own, lease and operate its properties and assets, to carry on its business as it is currently being conducted, to enter into this Guarantee and the Ancillary Documents to which it is a party and to perform its obligations hereunder and thereunder;
 - (ii) Parent Guarantor has the requisite power, authority and capacity to execute and deliver and perform this Guarantee and the Ancillary Documents to which it is a party, and to do all acts and things, and execute, deliver and perform all other agreements, instruments, undertakings and documents as are required by this Guarantee and the Ancillary Documents to which it is a party to be done, executed, delivered or performed;
 - (iii) no steps or proceedings have been taken or are pending to supersede, repeal or amend its constating documents, articles or by-laws or any shareholders agreement in a manner that would materially impair or limit its ability to perform its obligations under this Guarantee or any of the Ancillary Documents to which it is party and such documents and agreements are in full force and effect as of the date hereof;
 - (iv) this Guarantee and any Ancillary Documents (when executed and delivered) to which Parent Guarantor is a party, have been duly authorized, executed, and delivered by Parent Guarantor and constitute legal, valid, and binding obligations of Parent Guarantor,

enforceable against Parent Guarantor in accordance with their respective terms, subject only to:

- (A) limitations with respect to the enforcement of remedies by bankruptcy, insolvency, moratorium, winding-up, arrangement, reorganization, fraudulent preference and conveyance and other laws of general application affecting the enforcement of creditors' rights generally; and
 - (B) general equitable principles and the fact that the availability of equitable remedies is in the discretion of a court and that a court may stay proceedings or the execution of judgments;
- (v) the authorization, execution, delivery and performance by Parent Guarantor of this Guarantee and the Ancillary Documents to which it is a party do not violate or conflict with, or constitute a default under:
- (A) its constating or organizational documents or any unanimous shareholders agreement or similar rights agreement binding on Parent Guarantor;
 - (B) any Applicable Law; or
 - (C) any covenant, contract, instrument, agreement or understanding to which it is a party or by which it or any of its properties or assets is bound or affected;
- (vi) the Subsidiary is a [REDACTED] of Parent Guarantor;
- (vii) there are, to the knowledge of its senior management, no actions, suits, proceedings, or investigations pending or threatened against Parent Guarantor, at law or in equity, before any Governmental Authority or arbitral body (whether or not covered by insurance) that individually or in the aggregate could result in any material adverse effect on the business, properties, or assets, or the condition, financial or otherwise, of Parent Guarantor or in any impairment of its ability to perform its obligations under this Guarantee or any Ancillary Documents to which it is a party, and Parent Guarantor has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any Governmental Authority or arbitral body that would result in any such material adverse effect or impairment; and
- (viii) Parent Guarantor is able to meet its obligations as they generally become due.

4. NOTICES

4.1 Notices to Parties

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

by electronic submission to the Contracting Authority Representative), or by electronic submission as follows:

If to Contracting Authority:

Metrolinx
[REDACTED]

If to Parent Guarantor:

[REDACTED]

4.2 Electronic Submission

Where any Notice is provided or submitted to a party via electronic submission, an original of the Notice sent via electronic submission shall promptly be sent by regular mail or registered mail. For greater certainty, a Notice given via electronic submission shall not be invalid by reason only of a party's failure to comply with this Section 4.2.

4.3 Change of Address

Either party to this Guarantee may, from time to time, change any of its contact information set forth in Section 4.1 by prior Notice to the other party, and such change shall be effective on the Business Day that next follows the recipient party's receipt of such Notice unless a later effective date is given in such Notice.

4.4 Deemed Receipt of Notices

- (a) Subject to Sections 4.4(b), 4.4(c) and 4.4(d):
- (i) a Notice given by registered mail shall be deemed to have been received on the third Business Day after mailing;
 - (ii) a Notice given by hand delivery shall be deemed to have been received on the day it is delivered; and
 - (iii) a Notice given by electronic submission shall be deemed to have been received on the day it is transmitted by electronic submission.
- (b) If the party giving the Notice knows or ought reasonably to know of difficulties with the postal system which might affect negatively the delivery of mail, any such Notice shall not be mailed but shall be made or given by personal delivery or by electronic submission in accordance with this Section 4.
- (c) If any Notice delivered by hand or transmitted by electronic submission is so delivered or transmitted, as the case may be, either on a day that is not a Business Day or on a Business Day

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

- (d) A Notice given by electronic submission shall be deemed to have been received by the recipient on the day it is transmitted only if an electronic submission report (maintained by the sender) indicates that the transmission of such Notice was successful.

4.5 Service on Contracting Authority

Where any Notice is required to be served on Contracting Authority, the obligation to serve such Notice shall be fulfilled by serving it on Contracting Authority in accordance with the provisions of this Section 4.

5. GENERAL

5.1 Amendments

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

5.2 Waiver

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

5.3 Entire Agreement

Except where provided otherwise in this Guarantee, this Guarantee, together with the Development and Master Construction Agreement, the Ancillary Documents and any Target Price Agreement then in effect, constitute the entire agreement between the parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings, whether oral, written, express or implied, concerning the subject matter of this Guarantee, including the Request for Proposals.

5.4 Severability

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

5.5 Enurement

This Guarantee shall enure to the benefit of, and be binding on, Contracting Authority and Parent Guarantor and their respective permitted successors and assigns. This Guarantee may not be assigned by Parent Guarantor.

5.6 Governing Law and Jurisdiction

- (a) This Guarantee shall be governed by and construed in accordance with the laws of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract, without regard to conflict of laws principles.
- (b) Both parties hereby irrevocably attorn to the exclusive jurisdiction of the courts of the Province of Ontario and all courts competent to hear appeals therefrom.
- (c) Nothing in this Guarantee affects the rights, protections and immunities of the Crown under the *Crown Liability and Proceedings Act* (Ontario).

5.7 Contracting Authority Designate

- (a) At any time and from time to time, the Crown may designate any ministry, branch, agency, division, department or office of the Government of Ontario to carry out administrative responsibility for the rights and obligations of Contracting Authority under this Guarantee and Parent Guarantor may deal exclusively with the designated person in respect of all such matters and is entitled to rely on the actions, directions, requests, Notices, consents, approvals, waivers, comments relating to the review of documentation and other administrative matters and decisions determined by such designated person from time to time, until the Crown has notified Parent Guarantor in writing that such designated person is no longer the person designated by the Crown hereunder and such Notice shall have effect on the later of the date of delivery of such Notice and the date specified in the written Notice. The Crown shall advise Parent Guarantor in writing of any designation hereunder. The rights and obligations of the parties to this Guarantee shall be in no way affected by reason of any such designation. Parent Guarantor acknowledges the right of the Crown to delegate administrative responsibilities hereunder as set forth in this Section 5.7.

5.8 Cumulative Remedies

Except as otherwise set forth in this Guarantee, the rights, powers and remedies of each party set forth in this Guarantee are cumulative and are in addition to and without prejudice to any other right, power or remedy that may be available to such party under this Guarantee or the Development and Master Construction Agreement, the Ancillary Documents or any Target Price Agreement then in effect.

5.9 Further Assurance

Each party shall do all reasonable things, from time to time, and execute all reasonable further documents necessary to give full effect to this Guarantee.

5.10 Costs

Each party shall be responsible for paying its own costs and expenses incurred in connection with the negotiation, preparation and execution and delivery of this Guarantee.

5.11 Language of Agreement

- (a) Each of the parties acknowledges having requested and being satisfied that this Guarantee and related documents be drawn in English. [REDACTED]
- (b) For greater certainty, all correspondence, Notices, drawings, test reports, certificates, specifications, information, operating and maintenance instructions, name plates, identification labels, instructions and notices to the public and staff and all other written, printed or electronically readable matter required in accordance with, or for purposes envisaged by, this Guarantee shall be in English.

5.12 Proof of Authority

Contracting Authority and Parent Guarantor each reserve the right to require any person executing this Guarantee on behalf of the other party to provide proof, in a form acceptable to Contracting Authority or Parent Guarantor, as applicable, that they have the requisite authority to execute this Guarantee on behalf of and to bind Contracting Authority or Parent Guarantor, as applicable.

5.13 Counterparts

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

5.14 Copyright Notice

The parties acknowledge that the King’s Printer for Ontario is the exclusive owner of the copyright in the Development and Master Construction Agreement.

[SIGNATURE PAGES IMMEDIATELY FOLLOW]

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

METROLINX

By:

Name: [REDACTED]

Title: [REDACTED]

I have authority to bind the corporation.

[REDACTED]

Per:

Name: [REDACTED]

Title: [REDACTED]

Per:

Name: [REDACTED]

Title: [REDACTED]

I/We have authority to bind the corporation

SCHEDULE 25**INSURANCE AND BOND REQUIREMENTS**

- 1.1 Subject to Section 7, from and after the DMCA Effective Date until the Project Substantial Completion Date, Project Co shall, at its own expense, obtain and maintain, or cause to be obtained and maintained, the following insurances, each as further described in and subject to Appendix A to this Schedule 25:
- 1.1.1 Automobile Liability;
 - 1.1.2 Commercial General Liability and Non-Contracting Authority Automobile Liability with respect to off-Site and off-Lands operations and activities;
 - 1.1.3 Employee Dishonesty (Crime);
 - 1.1.4 WSIB;
 - 1.1.5 Aircraft and Watercraft Liability (if any exposure);
 - 1.1.6 “All Risks” Marine Cargo (if any exposure); and
 - 1.1.7 “All Risks” Contractors’ Equipment (if any exposure).
- 1.2 Subject to Section 7, from and after the DMCA Effective Date until execution of the applicable Target Price Agreement, Project Co shall, at its own expense, obtain and maintain, or cause to be obtained and maintained, the following insurances, each as further described in and subject to Appendix A to this Schedule 25:
- 1.2.1 Professional Liability.
- 1.3 Subject to Section 7, prior to the commencement of DMCA Construction Works until the execution of the applicable Target Price Agreement, 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 and subject to Appendix B to this Schedule 25:
- 1.3.1 “All Risks” Course of Construction Property, including Boiler and Machinery;
 - 1.3.2 “Wrap Up” Commercial General Liability and Non-Owned Automobile Liability; and
 - 1.3.3 Project Specific Pollution Liability (combined Contractors’ Pollution and Pollution Legal Liability – Claims Made).
- 1.4 Subject to Section 7, from and after the execution of the applicable Target Price Agreement until the Project Substantial Completion Date, Project Co shall, at its own expense, obtain and maintain, or cause to be obtained and maintained, exclusively through the Infrastructure Ontario Construction Insurance Program (IOCIP), the following insurances, as further described in and subject to Appendix C to this Schedule 25:

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- 1.4.1 “All Risks” Course of Construction Property, including Boiler and Machinery;
 - 1.4.2 “Wrap Up” Commercial General Liability and Non-Owned Automobile Liability; and
 - 1.4.3 Project Specific Pollution Liability (combined Contractors’ Pollution and Pollution Legal Liability – Claims Made).
- 1.5 Subject to Section 7, from and after execution of the applicable Target Price Agreement until the Project Substantial Completion Date, Project Co shall, at its own expense, obtain and maintain, or cause to be obtained and maintained, the following insurances, each as further described in and subject to Appendix C to this Schedule 25:
- 1.5.1 Project-Specific Professional Liability (the “**PSPL Policy**”).

2. Insurers

- 2.1 All policies of insurance to be obtained (or caused to be obtained) by Project Co in accordance with this Schedule 25 shall be issued by financially sound insurers acceptable to Contracting Authority, acting reasonably, and, where required by statute, be licenced to insure such risk in the Province of Ontario.
- 2.2 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:
 - 2.2.1 a financial strength rating of not lower than “A-” for three out of the previous five (5) years but not lower than “B” at any time during those five (5) years, and a financial size category not lower than VII, such ratings being those established by A.M. Best Company (“**Best**”);
 - 2.2.2 a long-term financial strength rating of not lower than “A-” for three out of the previous five (5) years but not less than “BBB” at any time during those five (5) years, a short-term financial strength rating of not lower than “A-3” for three out of the previous five (5) years and a financial enhancement rating of not lower than “A-” for three out of the previous five (5) years but not less than “BB+” at any time during those five (5) years, such ratings being those established by Standard and Poor’s (“**S&P**”); or
 - 2.2.3 if the insurer is not rated by Best or S&P, an insurer that is acceptable to Contracting Authority, acting reasonably, with respect to the insurances required by this Schedule 25.

3. No Limit on Recovery

- 3.1 Notwithstanding any other provision of this Agreement, the limits of liability specified in this Schedule 25 for insurance policies, whether such policies are required to be obtained (or caused to be obtained) by Contracting Authority or by Project Co, shall in no way limit Project Co’s liability or obligations to Contracting Authority or Contracting Authority’s liability or obligations to Project Co, as applicable, under this Agreement.

4. Additional Coverage

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- 4.1 Without prejudice to the other provisions of this Schedule 25, Contracting Authority and Project Co shall, at all relevant times, 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 In addition to the provisions of this Schedule 25, Contracting Authority reserves the right to require Project Co to purchase such additional insurance coverage as Contracting Authority may reasonably require. Contracting Authority also reserves the right to request such higher or lower limits of insurance or otherwise alter the types of coverage requirements, their minimum amounts and deductibles (taking into consideration such matters as the nature of the Works, the value of the Works, industry standards and the availability of insurance) as Contracting Authority may reasonably require from time to time. Any additional costs of such additional and/or amended insurance shall be borne by Contracting Authority and any cost savings resulting from the implementation of such additional and/or amended insurance shall be for the account of Contracting Authority. Contracting Authority reserves the right to move forward the inception date of the project specific insurance policies outlined in Sections 1.4 and 1.5. Any additional costs of such change to the inception date shall be borne by Contracting Authority.

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 the Party 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.

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 Agreement, then Contracting Authority and Project Co shall, and shall require the Contracting Authority Parties and Project Co Parties to:
- (a) cooperate with the insurer and its consultant, including providing them with such information and documentation as they may reasonably require; and
 - (b) allow the insurer and its consultant to attend meetings between Project Co and Contracting Authority (or, as applicable, and if reasonably required by the insurer, between Project Co and the relevant Project Co Parties).

7. Uninsurable Risk

- 7.1 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, other than the PSPL Policy, and for which, at any time after the DMCA Effective Date, either:

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- (a) the insurance required pursuant to this Schedule 25 (including the terms and conditions specified for such insurance herein), but for clarity excluding the PSPL Policy, is not available in relation to that risk:
 - (i) where Applicable Law requires 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 Law does 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 Agreement; or
 - (b) the insurance premium payable or the terms and conditions for insuring that risk are such that the risk is not generally being insured against in the worldwide insurance market.

Project Co has the onus of demonstrating, to Contracting Authority's reasonable satisfaction that the foregoing definition applies to a particular risk.

- 7.2 Project Co shall provide Notice to Contracting Authority as soon as possible and, in any event, within fifteen (15) Business Days after becoming aware of same, that a risk, or any component of a risk, has become an Uninsurable Risk, and shall provide Contracting Authority with all relevant details in relation to such risk, including a copy of the relevant insurance policy.
- 7.3 Project Co and Contracting Authority shall, acting reasonably and as soon as possible following the provision of the Notice referred to in Section 7.2, meet to discuss the appropriate means by which the Uninsurable Risk should be managed and, if Project Co and Contracting Authority are able to agree to alternative arrangements, the Uninsurable Risk shall be managed in accordance with such alternative arrangements.
- 7.4 In the event that Project Co and Contracting Authority, each acting reasonably, are unable to agree to alternative arrangements with respect to the management of an Uninsurable Risk within 15 Business Days after the expiry of the period referred to in Section 7.2, Contracting Authority, in its sole discretion, shall have the right but not the obligation to 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, in which case this Agreement shall continue in full force and effect; or
 - (b) terminate this Agreement in accordance with Section 33.2 (*Termination for Force Majeure*) of this Agreement as if such termination had occurred as a result of an event of Force Majeure.
- 7.5 On the occurrence of an Uninsurable Risk, Contracting Authority, in its sole discretion, shall have the right but not the obligation to 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 Agreement shall continue in full force and effect; or

- (b) terminate this Agreement in accordance with Section 33.2 (*Termination for Force Majeure*) of this Agreement as if such termination had occurred as a result of an event of Force Majeure.
- 7.6 With respect to any Uninsurable Risk:
- (a) Project Co shall continue to approach the insurance market on a regular basis and, in any event, at intervals of not less than one-hundred and eighty (180) days and use reasonable efforts to obtain (or cause to be obtained) insurance to cover as much or all of the Uninsurable Risk as can be insured in the available insurance market from time to time; and
- (b) subject to Section 7.6(a), Project Co shall be relieved of its obligation to maintain (or cause to be maintained) insurance in respect of the Uninsurable Risk.
- 7.7 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 7 shall no longer apply to such risk.
- 8. Damage or Destruction**
- 8.1 In the event of damage to, or destruction of, all or substantially all of the Works for which there is coverage under an insurance policy, any insurance proceeds received by Project Co shall first be applied so as to ensure the performance by Project Co of its obligations under this Agreement, including, where appropriate, the reinstatement, restoration or replacement of the Works, or any other assets, materials or goods necessary or desirable for the carrying out of the Works.
- 9. Subcontractors**
- 9.1 Project Co shall require that all Subcontractors are covered by, or obtain, the insurance set out in this Schedule 25, provided that Project Co shall determine the applicable limits to be obtained for such insurance. Project Co shall be solely responsible and liable for any damages which Contracting Authority may suffer as a direct result of Project Co's failure to comply with the foregoing.
- 9.2 If Project Co receives notice that any Subcontractor is not covered by any insurance required by this Schedule 25 to be obtained (or caused to be obtained) by Project Co, Project Co shall:
- (a) ensure that such insurance coverage is put in place;
- (b) remove the Subcontractor from the Lands and ensure that such Subcontractor does not perform any further part of the Works until after such insurance coverage is put in place; or
- (c) if the Subcontractor cannot be covered by a particular policy as required by this Schedule 25, replace the Subcontractor with a new Subcontractor who can 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 Agreement regarding new and replaced Subcontractors shall be complied with.

10. Renewal

10.1 Project Co shall provide to Contracting Authority, no later than 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 Contracting Authority.

11. Named and Additional Insureds and Waiver of Subrogation

11.1 All insurance provided by Project Co, shall:

- (a) include Project Co, Project Co Parties, Contracting Authority, the Contracting Authority Parties, IO, MTO, TTC, City of Toronto, Railway Companies and the Utility Companies and any other party specified in Appendix A, Appendix B and Appendix C to this Schedule 25 as Named Insureds to the extent specified in each such Appendix or as required pursuant to any agreement relating to the Project to which either or both of Contracting Authority and Project Co is a party;
- (b) include Contracting Authority, the Contracting Authority Parties, IO, MTO, TTC, City of Toronto, Railway Companies and the Utility Companies, Project Co, Project Co Parties and any other party specified in Appendix A, Appendix B and Appendix C to this Schedule 25 as Additional Insureds, or loss payees (as applicable) to the extent of their respective insurable interests to the extent specified in such Appendix or as required pursuant to any agreement relating to the Project to which Project Co is a party;
- (c) except with respect to the Professional Liability, Project Specific Professional Liability, Automobile Liability, Crime and WSIB specified in Appendix A, Appendix B and Appendix C to this Schedule 25, contain a waiver of subrogation as against Contracting Authority, the Contracting Authority Parties, IO, MTO, TTC, City of Toronto, Railway Companies, the Utility Companies and their respective shareholders, officials, directors, officers, employees, elected officials servants, consultants (other than design consultants) and agents;
- (d) contain a breach of warranty provision whereby a breach of a condition by Project Co or a Project Co Party will not eliminate or reduce coverage for any other insured; and
- (e) be primary insurance with respect to any similar coverage provided by any insurance obtained by or available to Contracting Authority, the Contracting Authority Parties, the City of Toronto and TTC without any right of contribution of any insurance carried by Contracting Authority, the Contracting Authority Parties, the City of Toronto or TTC.

12. Certificates of Insurance and Certified Copies of Policies

12.1 Prior to execution of the applicable Target Price Agreement, Project Co will provide Contracting Authority with certified copies of policies, confirming that the insurances specified in Sections 1.4 and 1.5 have been obtained and are in full force and effect.

- 12.2 Prior to the DMCA Effective Date, Project Co shall provide Contracting Authority with certificates of insurance or certified copies of policies, confirming that the insurances specified in Sections 1.1 and 1.2 have been obtained and are in full force and effect. If certificates of insurance are provided, then, except with respect to any corporate policy of insurance that is not a project-specific policy of insurance, Project Co shall provide to Contracting Authority certified copies of the entire contents of all relevant insurance policies confirming that the insurances specified in Sections 1.1 and 1.2 have been obtained and are in full force and effect by no later than ninety (90) days after the DMCA Effective Date.
- 12.3 Prior to the commencement of DMCA Construction Works, Project Co will provide Contracting Authority with certified copies of policies, confirming that the insurances specified in Section 1.3 have been obtained and are in full force and effect.

13. Failure to Meet Insurance Requirements

- 13.1 If Project Co fails to obtain or maintain, or cause to be obtained and maintained, the insurance required by this Schedule 25, fails to furnish to Contracting Authority a certified copy of each policy required to be obtained by this Schedule 25 or if, after furnishing such certified copy, the policy lapses, is cancelled, or is materially altered, then Contracting Authority shall have the right, but not the obligation, to obtain and maintain such insurance itself in the name of Project Co and the Target Price shall be correspondingly reduced by the cost thereof. The foregoing is in addition to any other right that Contracting Authority has under this Agreement and at law and does not limit, compromise or exclude the exercise of such rights.
- 13.2 If coverage under any insurance policy required to be obtained (or caused to be obtained) by Project Co should lapse, be terminated or be cancelled, then, if directed by Contracting Authority, all work by Project Co shall immediately cease until satisfactory evidence of renewal is produced.

14. Modification of Cancellation of Policies

- 14.1 Except as noted in the Appendices 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 sixty (60) days prior written notice by registered mail, at the address specified, to Contracting Authority. 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.
- 14.2 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 Contracting Authority, the Contracting Authority Parties, IO, the City of Toronto, MTO, TTC and the Utility Companies.

14.3 With respect to the insurance set out in Sections 1.3, 1.4 and 1.5, breach of any of the terms or conditions of the policies required to be provided by Project Co, or any negligence or wilful act or omission or false representation by an Insured under these policies, shall not invalidate the insurance with respect to Contracting Authority, the Contracting Authority Parties, IO, the City of Toronto, TTC or any other Named Insured or Additional Insured, but only to the extent that such breach is not known to these parties.

15. Policy Terms and Conditions

15.1 All policies of insurance to be obtained (or caused to be obtained) by Project Co in accordance with this Schedule 25 shall be in form and substance satisfactory to Contracting Authority and its insurance advisors, acting reasonably.

15.2 To achieve the minimum limits for any type of insurance required under Appendix A, Appendix B and Appendix C to this Schedule 25, it is permissible to arrange the insurance under a single policy, or by a combination of primary, umbrella and/or excess policies.

16. Failure to Comply

Neither failure to comply with nor full compliance by Project Co with the insurance provisions of this Schedule 25 shall relieve Project Co of its liabilities and obligations under this Agreement.

17. Incident Reporting and Claims Settlement

17.1 Project Co shall:

- (a) maintain a written register of all damages, events, losses, circumstances, situations, claims or occurrences, including incidents which might result in a claim under any of the policies of insurance required under this Schedule 25 and of all claims made by third parties involving bodily injury, illness, death, personal injury or property damage in respect of the Project (each such incident, an “**Incident**”). Such register shall indicate the date of the Incident, the date reported to Project Co, the type of Incident, and the circumstances giving rise to the Incident. Such register shall indicate the date of the Incident, and monthly and/or quarterly updates reflecting developments in such Incident until each such Incident is resolved, completed and designated as closed;
- (b) allow Contracting Authority to inspect such register at any time and provide a copy of such register to Contracting Authority monthly and/or quarterly and on Contracting Authority’s reasonable request;
- (c) participate in monthly and/or quarterly update meetings to review developments in such Incidents as may be requested by Contracting Authority;
- (d) in collaboration with Contracting Authority, appoint a claims adjuster (“**Control Adjuster**”) to investigate and adjudicate Incidents falling or likely to fall within the insurance deductibles;

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- (e) arrange and attend quarterly claims meetings with Contracting Authority representatives, Control Adjuster, the Insurance Claims Adjuster and insurers' representatives to review the status of all such Incidents, including any disputed or denied Incidents or claims arising therefrom;
 - (f) meet with Contracting Authority at Contracting Authority's reasonable request to discuss any such Incident;
 - (g) promptly upon becoming aware of an Incident, but in any event no later than five (5) days after Project Co becomes aware of such Incident, notify Contracting Authority's claims and insurance group, Control Adjuster and the insurers' claim representatives assigned to the Project of the full particulars of such Incident. Project Co shall be solely responsible and liable for any claims denied by insurers, or any deductibles and self-insured retentions which Contracting Authority may suffer or become responsible for as a direct result of Project Co's failure to comply with the incident reporting requirements;
 - (h) for all claims below the deductible involving third parties and reported to Project Co (either directly or via Contracting Authority), acknowledge the claim within ten (10) days to the claimant and provide contact details for claimants to follow up on claim status with Project Co;
 - (i) provide reasonable access, support, documents and information to Contracting Authority representatives, including Contracting Authority claims and insurance personnel, and Control Adjuster in respect of any Incident;
 - (j) as soon as practicable but no later than seven (7) days after becoming aware of the Incident, provide reasonable access, support, documents and information to the Control Adjuster and any adjuster assigned by the insurer(s) ("**Insurance Claims Adjuster**") to investigate any Incident;
 - (k) comply with Contracting Authority's reasonable requests regarding the investigation, negotiation and settlement of any such Incident or claim arising therefrom;
 - (l) without prejudice to the provisions of this Agreement, including Schedule 18 – Communication and Public Engagement Protocol, comply with Contracting Authority's reasonable requests regarding communication, including communication with claimant(s) and members of the public, in respect of any such Incident and claim arising therefrom;
 - (m) upon receiving recommendations on liability and quantum from the Control Adjuster or Insurance Claims Adjuster, settle any claims (subject to Contracting Authority's consent, not to be unreasonably withheld) falling within the deductibles, self-insured retentions or waiting periods of the policies of insurance required under this Agreement, using a release on terms reasonably required by Contracting Authority, and including Project Co, Contracting Authority and any parties reasonably required by Contracting Authority, as releases thereunder; and
 - (n) ensure that the Insurance Claims Adjuster or Control Adjuster, as applicable, shall provide recommendations on liability and quantum in respect of such Incidents to Project Co, the

insurers (for losses in excess of the policy deductible) and to the Contracting Authority representatives assigned in accordance with this Section 17.

17.2 Wherever the requirements of this Schedule 25 are at variance with the terms and conditions of the actual insurance policy(ies), the terms and conditions of the actual insurance policy(ies) will prevail.

17.3 The address for provision of notice of Incidents to Contracting Authority’s claims and insurance group is as follows:

Metrolinx Claims and Insurance Dept.,
[REDACTED]

18. DMCA Bonding Requirements

18.1 On or before the commencement of DMCA Construction Works pursuant to a Notice to Proceed, Project Co shall, in accordance with the requirements of the *Construction Act*, obtain and deliver to Contracting Authority and maintain throughout the performance of such DMCA Construction Works the following surety bonds, each in the applicable form prescribed by the *Construction Act*:

- (a) a performance bond in respect of the applicable DMCA Construction Works using Form 32 (Performance Bond under Section 85.1 of the Act); and
- (b) a labour and material payment bond in respect of the applicable DMCA Construction Works using Form 31 (Labour and Material Payment Bond Under Section 85.1 of the Act),

(collectively, the “**DMCA Bonds**”).

18.2 Each of the DMCA Bonds shall:

- (a) be duly executed and issued by a duly licenced surety company authorized to transact a business of suretyship in the Province of Ontario (the “**DMCA Surety**”), and shall be maintained in good standing until the fulfilment of the applicable DMCA Construction Works. At Project Co’s option, each DMCA Bond may be a sealed bond in digital form;
- (b) name Contracting Authority as an obligee; and
- (c) have coverage limits for the DMCA Bonds of at least the amount prescribed in the *Construction Act* (the “**DMCA Bond Amount**”), and, if such amount is fixed by reference to the contract price, for the purposes of this Agreement, the Parties agree that such contract price shall be in the initial amount determined by Contracting Authority, in its sole discretion, at the time it issues the applicable Notice to Proceed with respect to the applicable DMCA Construction Works (the “**Initial DMCA Bond Amount**”), being Contracting Authority’s initial estimate of the anticipated cost of the applicable DMCA Construction Works.

18.3 If any DMCA Bond is executed by an agent or an attorney in fact for the DMCA Surety, Project Co shall submit with such DMCA Bond a power of attorney executed by the DMCA Surety in a

form satisfactory to Contracting Authority to evidence the authority of the agent or the attorney in fact, as applicable.

- 18.4 If, following the issuance of a Notice to Proceed, Contracting Authority, in its sole discretion, determines that the anticipated cost of performing the applicable DMCA Construction Works under this Agreement has increased relative to the anticipated cost of performing the applicable DMCA Construction Works under this Agreement used to determine the Initial DMCA Bond Amount, then Contracting Authority may, in its sole discretion:
- (a) determine an increased DMCA Bond Amount on the basis of such increased anticipated cost of performing the applicable DMCA Construction Works; and
 - (b) provide Notice to the Project Co Representative setting out such increased DMCA Bond Amount and requiring that Project Co:
 - (i) cause the existing DMCA Bonds to be amended, with such amendments only being made to incorporate such increased DMCA Bond Amount, and deliver such amended DMCA Bonds to Contracting Authority; or
 - (ii) deliver replacement DMCA Bonds to Contracting Authority, each of which shall be in an amount equal to such increased DMCA Bond Amount and shall otherwise satisfy the requirements of Sections 18.1 to 18.3.
- 18.5 Project Co shall promptly comply with any Notice provided by Contracting Authority in accordance with Section 18.4(b).
- 18.6 On or before the DMCA Effective Date, Project Co shall obtain and maintain throughout the Project Term any other performance security which may be required under the *Construction Act* or Applicable Law.
- 18.7 If the *Construction Act* is amended after the DMCA Bonds have been issued so as to allow for a reduced coverage limit, and if such amendment allows for amended or replacement DMCA Bonds at such reduced coverage limit, Project Co may deliver either amended or replacement DMCA Bonds to Contracting Authority reflecting this reduced coverage limit and, on the delivery of the same, Contracting Authority will release the previous DMCA Bonds to Project Co.

19. TPA Bonding Requirements

- 19.1 On or before each applicable TPA Effective Date, Project Co shall, in accordance with the requirements of the *Construction Act*, obtain and deliver to Contracting Authority and maintain throughout the applicable TPA Term the following surety bonds, each in the applicable form prescribed by the *Construction Act*:
- (a) a performance bond in respect of the applicable TPA Works as required by the applicable Target Price Agreement using Form 32 (Performance Bond under Section 85.1 of the Act); and

- (b) a labour and material payment bond in respect of the applicable TPA Works as required by the applicable Target Price Agreement using Form 31 (Labour and Material Payment Bond Under Section 85.1 of the Act),
- (collectively, the “**TPA Bonds**”).
- 19.2 Each of the TPA Bonds shall:
- (a) be duly executed and issued by a duly licenced surety company authorized to transact a business of suretyship in the Province of Ontario (the “**TPA Surety**”), and shall be maintained in good standing until the fulfilment of the applicable Target Price Agreement. At Project Co’s option, each TPA Bond may be a sealed bond in digital form;
- (b) name Contracting Authority as an obligee; and
- (c) have coverage limits for the TPA Bonds of at least the amount prescribed in the *Construction Act*, and, if such amount is fixed by reference to the contract price, for the purposes of this Agreement, the Parties agree that such contract price shall be in the amount of the aggregate applicable Target Price and Estimated Fee.
- 19.3 If any TPA Bond is executed by an agent or an attorney in fact for the TPA Surety, Project Co shall submit with such TPA Bond a power of attorney executed by the TPA Surety in a form satisfactory to Contracting Authority to evidence the authority of the agent or the attorney in fact, as applicable.
- 19.4 If the *Construction Act* is amended after the TPA Bonds have been issued so as to allow for a reduced coverage limit, and if such amendment allows for amended or replacement TPA Bonds at such reduced coverage limit, Project Co may deliver either amended or replacement TPA Bonds to Contracting Authority reflecting this reduced coverage limit and, on the delivery of the same, Contracting Authority will release the previous TPA Bonds to Project Co.
- 20. Surety’s Consent**
- 20.1 Project Co acknowledges that in respect of (i) DMCA Construction Works, prior to the commencement of the applicable DMCA Construction Works and (ii) the TPA Scope, prior to the execution of the applicable Target Price Agreement by the Parties, it must, in each case, submit a surety’s consent as set out in Appendix D to this Schedule 25 (A) with respect to the applicable DMCA Construction Works and (B) as part of its TPA Proposal pursuant to Appendix 2 (*TPA Proposal Content and Requirements*) of Schedule 2 – Development Works Submissions and Project Development Process (a “**Surety’s Consent**”) in order to secure the issuance of a performance bond and a labour and material payment bond for, in each case, the applicable DMCA Construction Works and the applicable TPA Work as required by the applicable Target Price Agreement.
- 20.2 Project Co is advised that, in submitting a Surety’s Consent, it may submit either:
- (a) a Surety’s Consent duly completed and executed by the DMCA Surety or the TPA Surety, as applicable, substantially in the same form and content as set out in Appendix D to this

Schedule 25 and with respect to the forms of performance bond and labour and material payment bond described in Appendix D to this Schedule 25; or

- (b) a Surety’s Consent duly completed and executed by the DMCA Surety or the TPA Surety, as applicable, substantially in the form set out in Appendix D to this Schedule 25 and attaching forms of performance bond and labour and material payment bond that (A) are different from the forms of performance bond and labour and material payment bond described in Appendix D to this Schedule 25, (B) will comply with Applicable Law, and (C), having regard to the intended purpose of the applicable DMCA Construction Works or the applicable TPA Works, as applicable, Project Co can demonstrate will result in value for money to Contracting Authority.
- 20.3 If Project Co wishes to submit a Surety’s Consent pursuant to Section 20.2(b), then Project Co shall, by no later than (i) fifteen (15) Business Days prior to the commencement of the applicable DMCA Construction Works or (ii) ten (10) Business Days of the commencement of the applicable TPA Development Checkpoint Date, as applicable, submit such form of Surety’s Consent to Contracting Authority.
- 20.4 Contracting Authority may, in its sole discretion, accept or reject a form of Surety’s Consent submitted pursuant to Section 20.3, including the proposed form of performance and labour and material payment bonds attached to such Surety’s Consent, submitted by Project Co (the “**Bonding Submission**”).
- 20.5 If Contracting Authority rejects Project Co’s Bonding Submission pursuant to Section 20.4, Contracting Authority may, in its sole discretion, advise Project Co as to any changes that Contracting Authority may require to the Bonding Submission and, without limiting the right of Contracting Authority to reject the Bonding Submission if those requirements are not met in Contracting Authority’s sole discretion, negotiate the form of the applicable Surety’s Consent with Project Co to meet those requirements, including by requiring the resubmission of:
- (a) the proposed form of performance and labour and material payment bonds attached to such Surety’s Consent; and
 - (b) any ancillary amendments to this Agreement that may be required by Contracting Authority.
- 20.6 Without limiting any right of Contracting Authority to reject any Bonding Submission in accordance with Sections 20.4 and 20.5, the Parties (i) agree that the form of any Bonding Submission negotiated by the Parties pursuant to Section 20.5 with respect to DMCA Construction Works is to be finalized prior to the commencement of the applicable DMCA Construction Works and (ii) acknowledge the provisions of Section 2.6(c) (*TPA Development Phase Applicable to each TPA Scope*) of Schedule 2 – Development Works Submissions and Project Development Process providing that the form of any Bonding Submission negotiated by the Parties pursuant to Section 20.5 with respect to the applicable TPA Works is to be finalized prior to the applicable TPA Development Checkpoint.

21. Insurance Claims and Pandemic and Epidemic Financial Relief Information

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- 21.1 Without limiting any obligation or liability of Project Co under this Agreement, Project Co shall promptly give a detailed notice to Contracting Authority if and each time that Project Co or a Project Co Party:
- (a) commences a claim under any insurance policy in connection with the Project and (A) any impact of an actual or alleged Pandemic and Epidemic Change in Law or (B) any other impact of a pandemic or epidemic (including COVID-19) on Project Co, the applicable Project Co Party or the performance of the Works, other than with respect to a Pandemic and Epidemic Supply Chain Delay for which notice shall be provided pursuant to Section 21.1(e);
 - (b) recovers any of its losses under any insurance policy described in Section 21.1(a);
 - (c) applies for financial relief or support from a Governmental Authority in connection with (A) any impact of an actual or alleged Pandemic and Epidemic Change in Law or (B) any other impact of a pandemic or epidemic (including COVID-19) on Project Co, the applicable Project Co Party or the performance of the Works;
 - (d) receives any financial relief or support from a Governmental Authority described in Section 21.1(c);
 - (e) except where a notice is required to be given by Project Co pursuant to Section 21.1(a), commences a claim under any insurance policy in connection with the Project and the impact of (A) an actual or alleged Adjustment Event, Relief Event or event of Force Majeure or (B) any event or circumstance that could constitute or relate to an Adjustment Event, Relief Event or event of Force Majeure under this Agreement; and
 - (f) recovers any of its losses under any insurance policy described in Section 21.1(e).
- 21.2 Project Co shall, acting reasonably, include relevant details of and supporting documentation relating to, as applicable, the underlying claim or application for financial relief or support within any notice given by Project Co pursuant to Section 21.1, including a copy of the underlying claim documentation or application for financial relief or support and any documents evidencing the outcome of such claim or application.
- 21.3 At the request of Contracting Authority, Project Co shall provide status updates to Contracting Authority on the matters set out in Section 21.1.
- 21.4 For clarity, a notice given to Contracting Authority pursuant to this Section 21 shall not constitute a Notice under any other section of this Agreement, unless otherwise expressly stated in such notice; provided, however, that the contents of any notice or other document given to Contracting Authority pursuant to this Section 21 may be relied upon in evaluating claims under this Agreement for an extension of time, relief or compensation.

APPENDIX A TO SCHEDULE 25

DMCA EFFECTIVE DATE INSURANCE REQUIREMENTS

[REDACTED]

APPENDIX B TO SCHEDULE 25

DMCA CONSTRUCTION WORKS INSURANCE REQUIREMENTS

[REDACTED]

APPENDIX CTO SCHEDULE 25

TPA EFFECTIVE DATE INSURANCE REQUIREMENTS

[REDACTED]

APPENDIX D TO SCHEDULE 25

FORM OF SURETY'S CONSENT

[REDACTED]

SCHEDULE 26

RECORD PROVISIONS

1. General Requirements

- 1.1 Project Co shall prepare, retain and maintain all the records (including superseded records) referred to in Section 2.1, as follows:
- (a) in accordance with this Section 1;
 - (b) in accordance with this Agreement or any Target Price 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 normal business practices;
 - (f) in accordance with Canadian GAAP;
 - (g) in chronological order;
 - (h) in electronic format in accordance with Contracting Authority's designated record keeping system, to be accessible at all times to Contracting Authority for collaboration;
 - (i) in sufficient detail, in appropriate categories and generally in such a manner as to enable Project Co to comply with Project Co's obligations under Section 26 (*Records, Information, Audit and Claims Management*) of this Agreement; and
 - (j) in a form that is capable of audit.
- 1.2 Project Co shall retain and maintain all records at the Project Co Infrastructure or otherwise on the Metrolinx Lands, in addition to retaining and maintaining records referred to in Section 2.1 in electronic format on Contracting Authority's designated record keeping system.
- 1.3 Wherever practical, original records shall be retained and maintained in a hard copy and electronic form. Project Co may retain true copies of original records where it is not practical to retain original records.
- 1.4 Any drawings (including the As-Built Drawings and the Record Drawings) required to be made or supplied pursuant to this Agreement or any Target Price Agreement shall be on the most updated version of the applicable software and editable in updated base software format, and when printed, be of a size appropriate to show the detail to be depicted clearly without magnifying aids, shall be consistent in size and format to drawings previously submitted by Project Co to Contracting Authority, and shall conform to the Output Specifications and Construction Technical Requirements, as applicable, Good Industry Practice, and the Canadian and Industry Standards. All

drawings are to be submitted via Contracting Authority's electronic control management system, with one hard copy provided to Contracting Authority. Project Co shall make or supply drawings and other documents in such form as has been agreed by the Parties and shall include secure back up facilities. Contracting Authority shall provide Project Co access to Contracting Authority's electronic control management system.

- 1.5 Records shall be stored in electronic format within Contracting Authority's electronic control management system where Project Co shall have access thereto and will continue to have access thereto, such that Contracting Authority will be able to read, copy, download, and search same without licence or payment.
- 1.6 Subject to Sections 1.7 and 1.8, Project Co shall retain and maintain in safe storage all records referred to in Section 2.1 for a minimum period of at least seven (7) years or such longer period as required by Applicable Law.
- 1.7 Project Co shall provide Notice to Contracting Authority if Project Co wishes to destroy any records referred to in this Schedule 26, or in respect of which the required period under Section 1.6 or under Applicable Law for their retention has expired. The Parties agree that:
 - (a) within sixty (60) days following such Notice, Contracting Authority may elect to require Project Co to deliver such records to Contracting Authority, in which case Project Co shall, deliver such records (with the exception of Sensitive Information) to Contracting Authority in the manner and to the location as Contracting Authority shall specify; or
 - (b) if Contracting Authority fails to notify Project Co of its election pursuant to Section 1.7(a) within such sixty (60) day period, Project Co may destroy such records.
- 1.8 In the event of termination of this Agreement in accordance with its terms, Project Co shall deliver all records that Project Co retains and maintains pursuant to this Schedule 26 to Contracting Authority in the manner and to the location that Contracting Authority shall reasonably specify. Contracting Authority shall make available to Project Co all the records Project Co delivers pursuant to this Section 1.8 subject to prior reasonable Notice. Project Co may deliver true copies of original records required by:
 - (a) statute to remain with Project Co; or
 - (b) Project Co in connection with its fulfilment of any outstanding obligations under this Agreement or any Target Price Agreement.
- 1.9 Where the termination of this Agreement arises:
 - (a) as a result of a Contracting Authority Event of Default or pursuant to Section 33.5 (*Termination for Convenience*) of this Agreement, then the costs of delivering the records and the costs for retaining such records in safe storage will be borne by Contracting Authority; or

- (b) for any other cause, then the costs of delivering the records and the costs for retaining such records in safe storage for a period of at least six (6) years following the Termination Date (unless a longer period is required by Applicable Law), shall be borne by Project Co.
- 1.10 Within thirty (30) days after the end of each year or partial year of the Project Term, Project Co shall deliver to Contracting Authority a report, as reasonably requested by Contracting Authority in connection with Contracting Authority’s financial reporting, detailing to the best of Project Co’s knowledge at the time of any such report any and all liabilities, claims and demands, including contingent liabilities, claims and demands, that Project Co has or may have against Contracting Authority or that may be owing by Contracting Authority to Project Co. The Parties acknowledge and agree that the contents of any such report or the failure to mention any matter in any such report shall not limit either Party’s rights or remedies against the other Party as contemplated by this Agreement or any Target Price Agreement.
- 1.11 Project Co shall provide to Contracting Authority:
- (a) not later than forty-five (45) days after the end of the first three fiscal quarters of Project Co in each fiscal year, part or all of which falls in a year of the Project Term, a copy of Project Co’s unaudited management financial statements in respect of that period prepared in accordance with Canadian GAAP, and
- (b) not later than one-hundred and twenty (120) days after the end of each fiscal year, a copy of Project Co’s annual audited financial statements, in respect of that period, prepared in accordance with Applicable Law and Canadian GAAP, together with a certificate of the auditors of Project Co setting forth that they have examined such statements and have conducted a general review of accounting procedures and such tests of accounting records and other supporting evidence as they consider necessary or advisable and confirming that in their opinion such statements present fairly the financial position of Project Co and the results of its operations for the fiscal year reported on and have been defined in accordance with Canadian GAAP,
- all of which documents, whether or not marked or identified as confidential or proprietary but subject to the exceptions contained in Section 37 (*Confidentiality*) of this Agreement, shall be treated by Contracting Authority as Confidential Information of Project Co.

2. Records To Be Kept

- 2.1 Without limiting any other requirement of this Agreement or any Target Price Agreement, Project Co shall prepare, retain and maintain:
- (a) this Agreement or any Target Price Agreement, its Schedules and the Project Documents, including all amendments to such agreements;
- (b) all records relating to the appointment and replacement of the Contracting Authority Representative and the Project Co Representative;
- (c) any documents, drawings (including the As-Built Drawings and the Record Drawings) or submissions in accordance with Schedule 10 – Review Procedure;

-
- (d) any documents relating to Development Approvals and other Project Co Permits, Licences, Approvals and Agreements, including any refusals and appeals relating to any applications;
 - (e) a complete record of construction, recorded as geospatially accurate data, linked to specific components within the BIM model where appropriate, including:
 - (i) all records generated by the Geotechnical Instrumentation and Monitoring Plan (as described in the Output Specifications), instrument locations, baseline readings, routine monitoring records, and Tunnel construction monitoring records;
 - (ii) records of all Tunnel Boring Machine data and its integration with movement monitoring data in real time (as described in the Output Specifications);
 - (iii) all records of precast Tunnel liner manufacturing and installation;
 - (iv) all records of Tunnel alignment periodic surveys (as described in the Output Specifications);
 - (v) as-built locational surveys of the Tunnel alignment, Facilities, Civil Structures, Tunnel Ventilation System, Substations and Emergency Egress Buildings;
 - (vi) records of all Support of Excavation performed by Project Co (as described in the Output Specifications), including (but not limited to) records pertaining to the strength of the structural elements and verticality control during installation;
 - (vii) records of water ingress testing;
 - (viii) records of all dewatering pumped volumes and timing;
 - (ix) records of all pre-construction condition surveys and post-construction condition surveys (as described in the Output Specifications), including a log identifying corrective actions;
 - (x) records of all geotechnical and environmental investigations performed by Project Co (as described in the Output Specifications), including records pertaining to the decommissioning of any monitoring wells and the location of any well casings;
 - (xi) records in connection with the Stations, Substations and the Emergency Egress Buildings;
 - (xii) Works progress photography;
 - (xiii) construction notices or other communications with adjacent businesses, property owners or tenants;
 - (xiv) planned and unplanned interruptions of Utility Infrastructure;

- (xv) a complaints log including responses and any corrective action; and
- (xvi) any other items as requested by Contracting Authority from time to time.
- (f) all records relating to any statutory inspections of the Project Co Infrastructure, the New Third Party Infrastructure, or the Metrolinx Lands, including any roadways and tracks, recorded as data referenced within the BIM model;
- (g) any notices, reports, results and certificates relating to any Section Substantial Completion, Project Substantial Completion, DMCA Construction Works Substantial Completion, DMCA Construction Works Final Completion, TPA Substantial Completion, TPA Final Completion, Project Final Completion and Commissioning;
- (h) all operation and maintenance manuals, recorded as data referenced within the BIM model;
- (i) any documents relating to events of Force Majeure, Adjustment Events and Relief Events;
- (j) all documents submitted in accordance with Schedule 22 – Estimates, Variations and Proposals;
- (k) any documents related to decisions resulting from the Dispute Resolution Procedure;
- (l) any documents related to a Project Co Change in Ownership or Change in Control;
- (m) 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;
- (n) the financial accounts of Project Co referred to in Section 1.11;
- (o) all records required by Applicable Law (including in relation to health and safety matters) to be maintained by Project Co with respect to the Works;
- (p) any documents relating to insurance and insurance claims;
- (q) all Jointly Developed Materials; and

- (r) all other records, documents, information, notices or certificates expressly required to be produced or maintained by Project Co pursuant to this Agreement or any Target Price Agreement recorded as data referenced within the BIM model.
- 2.2 Either Party may review the documents required to be prepared, retained and maintained by Project Co pursuant to Section 2.1.

SCHEDULE 27

DISPUTE RESOLUTION PROCEDURE

1. General

1.1 Definitions

- (a) In this Schedule 27, unless the context otherwise requires:
- (i) “**Adjudication**” has the meaning given in Section 3.1(a).
 - (ii) “**Adjudication Dispute**” has the meaning given in Section 3.1(a)(ii).
 - (iii) “**Adjudicator**” has the meaning given in Section 3.1(a).
 - (iv) “**Arbitration Act, 1991**” means the *Arbitration Act, 1991*, S.O. 1991, c. 17, as amended from time to time.
 - (v) “**Arbitration Referral Period**” has the meaning given in Section 4.13(a).
 - (vi) “**CDB**” has the meaning given in Section 4.1(a).
 - (vii) “**CDB Chair**” has the meaning given in Section 4.1(c)(ii).
 - (viii) “**CDB Expiry Date**” means the later of the Project Final Completion Date and the date that is three years following the Project Substantial Completion Date, as may be extended pursuant to Section 4.1(b).
 - (ix) “**CDB Member Agreement**” has the meaning given in Section 4.1(a).
 - (x) “**CDB Member Statement**” has the meaning given in Section 4.3(a).
 - (xi) “**Claimant**” has the meaning given in Section 4.6(a).
 - (xii) “**Construction Dispute**” means any Dispute relating in any way, in whole or in part, to the TPA Works or the DMCA Construction Works, as applicable.
 - (xiii) “**Date of Commencement**” has the meaning given in Section 4.6(b).
 - (xiv) “**Development and Master Construction Agreement Arbitration**” has the meaning given in Section 7(a).
 - (xv) “**Development Dispute**” means any Dispute, other than a Construction Dispute, relating to the Development Works.
 - (xvi) “**Dispute**” means all disagreements, disputes, or controversies arising during or following the Project Term in relation to or arising out of the interpretation, enforceability, performance, breach, or validity of this Agreement or any Target Price Agreement, or any provision of this Agreement or any Target Price

Agreement, the rights or obligations of the Parties under this Agreement or any Target Price Agreement, or the exercise or failure to exercise a discretion or power given to a Party under this Agreement or any Target Price Agreement.

- (xvii) “**Dispute Notice Supporting Documents**” has the meaning given in Section 1.6(b)(v).
- (xviii) “**Event of Default Dispute**” has the meaning given in Section 1.2(b).
- (xix) “**Member**” has the meaning given in Section 4.1(a).
- (xx) “**Notice of Adjudication**” has the meaning given in Section 3.1(c).
- (xxi) “**Notice of Dispute**” has the meaning given in Section 1.6(a).
- (xxii) “**Notice of Request to Arbitrate**” has the meaning given in Section 5(c).
- (xxiii) “**Party Executive DRP Termination Notice**” has the meaning given in Section 2(f).
- (xxiv) “**Party Executive**” has the meaning given in Section 2(a).
- (xxv) “**Party Representative**” means the Contracting Authority Representative or the Project Co Representative, as the context requires.
- (xxvi) “**Public Safety Dispute**” means any Dispute which Contracting Authority or Project Co, acting reasonably, determines involves an alleged breach of this Agreement or any Target Price Agreement by the other Party or any act or omission on the part of the other Party or any person with whom the other Party is legally affiliated or for whom the other Party is legally responsible (including a Project Co Party or a Contracting Authority Party, as applicable), which creates or can reasonably be expected to create a serious threat to the health, safety or security of any person, including any user of any part of or the whole of the Project or the Lands, or to the environment.
- (xxvii) “**Reply Period**” has the meaning given in Section 4.7(a).
- (xxviii) “**Respondent**” has the meaning given in Section 4.6(a).
- (xxix) “**Rules of Civil Procedure**” means R.R.O. 1990, Reg. 194: Rules of Civil Procedure under the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended from time to time.
- (xxx) “**Schedule 27 Procedural Dispute**” means a procedural Dispute arising following the establishment of the CDB in accordance with Section 4 regarding the interpretation of, or compliance with, this Schedule 27 (including any Dispute in respect of whether or not a Notice of Dispute complies with the requirements of Section 1.6(b)), other than with respect to any Dispute that has been or must be referred for resolution to Adjudication, arbitration or litigation

in accordance with this Schedule 27, which shall be resolved as part of the underlying Adjudication, arbitration or litigation proceedings.

- (xxxix) “**Statement of Case**” has the meaning given in Section 4.6(a).
- (xxxixii) “**Statement of Reply**” has the meaning given in Section 4.7(a).
- (xxxixiii) “**Technical Member**” has the meaning given in Section 4.1(c)(i).
- (xxxixiv) “**Third Party Arbitration**” has the meaning given in Section 7(a).
- (xxxixv) “**Third Party Litigation**” has the meaning given in Section 7(b).

1.2 Applicability of this Schedule 27

- (a) Except as otherwise provided in this Agreement or any applicable Target Price Agreement, all Disputes shall be resolved in accordance with this Schedule 27, as follows:
 - (i) Sections 1, 2, 3, 5, 6, 7, 8 and 9 of this Schedule 27 shall apply to Development Disputes; and
 - (ii) Sections 1, 2, 3, 4, 5, 6, 7, 8 and 9 of this Schedule 27 shall apply to Construction Disputes.
- (b) Notwithstanding anything set forth in this Schedule 27, and without limiting or prejudice to a Party’s rights pursuant to Section 6 or Contracting Authority’s right to terminate this Agreement or any Target Price Agreement pursuant to Section 31.3(b) (*Right to Termination*) of this Agreement, either Party may, by the delivery of Notice to the other Party, require that any Dispute in respect of whether a Project Co Event of Default or a Contracting Authority Event of Default has occurred under this Agreement or any Target Price Agreement or any Dispute in respect of or related to Contracting Authority’s right to terminate this Agreement or any Target Price Agreement pursuant to Section 31.3(a) (*Right to Termination*) or Section 31.4 (*Remedy Provisions*) of this Agreement, or Project Co’s right to terminate this Agreement or any Target Price Agreement pursuant to Section 32.2 (*Project Co’s Options*) of this Agreement that arises at any time during the Project Term (an “**Event of Default Dispute**”) be resolved in accordance with Section 5. Sections 1.7, 2 and 4 shall not apply to any such Event of Default Dispute.

1.3 Independent Commissioning Agent Determinations and Decisions

- (a) Save and except as set out in Section 23.3(k) (*Section Substantial Completion Certificates and Substantial Completion Certificates*) of this Agreement and Section 3, (i) no determination or decision of the Independent Commissioning Agent made pursuant to this Agreement shall be binding upon the Parties, and (ii) any Party may refer a Dispute in respect of any such determination or decision of the Independent Commissioning Agent for resolution pursuant to this Schedule 27.
- (b) If a Party refers a Dispute in respect of a determination or decision of the Independent Commissioning Agent made pursuant to this Agreement for resolution by the CDB

pursuant to Section 4, the Independent Commissioning Agent shall not be permitted to provide its opinion as an expert to the CDB pursuant to Section 4.9(c).

1.4 Continued Performance During Disputes

- (a) Project Co and Contracting Authority shall diligently carry out their respective obligations under this Agreement and any applicable Target Price Agreement during the pendency of any Dispute. If during the pendency of any Dispute it is considered necessary by either Party to proceed in respect of a matter that is in Dispute, then subject to Section 1.4(b), either Party may proceed without prejudice to either Party's rights under this Agreement and any applicable Target Price Agreement in respect of the Dispute (including in respect of any entitlement of Project Co to an Adjustment Event and/or Variation).
- (b) While a Dispute is pending (including any Schedule 27 Procedural Dispute), Contracting Authority may give such written instructions as in Contracting Authority's opinion are necessary in respect of the matter that is in Dispute, including for Project Co to proceed with the Works which are the subject of the Dispute in accordance with the position of Contracting Authority, and Project Co shall comply with such written instructions forthwith.
- (c) Project Co acknowledges and agrees that (i) a pending Dispute will not justify Project Co's failure or refusal to comply with any written instructions given by Contracting Authority pursuant to Section 1.4(b), including in the event that complying with such written instructions would prevent Project Co from achieving DMCA Construction Works by the applicable DMCA Construction Works Scheduled Substantial Completion Date or TPA Substantial Completion by the applicable TPA Scheduled Substantial Completion Date, and (ii) Project Co has no right to require a determination pursuant to this Schedule 27 of whether or not Contracting Authority is entitled to give such written instructions or whether or not Project Co is required to comply with such written instructions, before complying with such written instructions. Only concurrently with or after complying with Contracting Authority's written instructions shall Project Co be entitled to refer any such Dispute for resolution in accordance with this Schedule 27. For clarity, no Schedule 27 Procedural Dispute may be initiated in respect of any of the written instructions given by Contracting Authority issued pursuant to Section 1.4(b).
- (d) Any claims for time and/or cost consequences of complying with this Section 1.4(d) shall be addressed as part of the resolution of the applicable Dispute, provided that, in the event the matter in Dispute is determined in favour of Project Co, proceeding in accordance with Contracting Authority's written instructions pursuant to Section 1.4(b) shall be treated as an Adjustment Event in accordance with Schedule 21 – Risk Allocations.

1.5 Mutual Resolution Efforts

- (a) The Parties agree that at all times each of them will make reasonable and *bona fide* efforts to resolve any Dispute arising between them through amicable, full, frank, candid and without prejudice negotiations, which are to be carried out in accordance with the agreements and principles set out in Section 3.3(a) (*Parties to Collaborate and Cooperate*) of this Agreement and the provisions of Schedule 19 – Governance, Meetings and Progress Reporting:

- (i) between the Project team where the Dispute initially arose and the applicable overseeing Management Team;
 - (ii) if and to the extent either Party determines and notifies the other Party that the Project team and the applicable overseeing Management Team cannot resolve the Dispute, then by the Leadership Team; and
 - (iii) if and to the extent either Party determines and notifies the other Party that the Leadership Team cannot resolve the Dispute, then by the Senior Executives Team.
- (b) Each Party shall provide full, frank, candid and timely disclosure of relevant facts, information and documents (subject to legal privilege) as may be required by this Agreement and any applicable Target Price Agreement or reasonably requested by the other Party to facilitate the resolution of any Dispute.
- (c) The communication of facts, documents, or information by a Party on a without prejudice basis does not relieve that Party of any obligation to deliver any facts, documents or information required under this Agreement and any applicable Target Price Agreement.

1.6 Notice of Dispute

- (a) If the Parties are unable to resolve a Dispute pursuant to Section 1.5(a), either Party may deliver to the Party Representative of the other Party a written notice of dispute (the “**Notice of Dispute**”) in accordance with Section 1.6(b).
- (b) The Notice of Dispute must:
- (i) expressly state that it is a “Notice of Dispute” pursuant to this Section 1.6;
 - (ii) to the extent available at the time the Notice of Dispute is delivered and following reasonable due diligence, provide particulars of the matters in Dispute sufficient to allow the Party who will receive the Notice of Dispute to understand and meaningfully respond to the Notice of Dispute;
 - (iii) describe any relief sought, including:
 - 1. the amount claimed, if any, or, if the amount claimed is not available, the approximate value of the claim; and
 - 2. any extension of time sought, or if that is not available, any anticipated extension of time sought;
 - (iv) identify whether the Dispute is a Public Safety Dispute;
 - (v) to the extent available at the time the Notice of Dispute is delivered, attach all key documents relevant to the Dispute on which the Party intends to rely for the purposes of resolving the Dispute pursuant to this Schedule 27 in the possession or control of such Party following reasonable due diligence (collectively, the “**Dispute Notice Supporting Documents**”); and

- (vi) be signed by the Party Representative for the Party delivering the Notice of Dispute.
- (c) A Notice of Dispute must be delivered as a precondition to the Parties proceeding with any further steps contemplated in Sections 1.7 or 2 to 5.
- (d) The requirements of this Section 1.6 cannot be waived or amended except as expressly agreed by the Parties pursuant to Section 9(a).

1.7 Schedule 27 Procedural Disputes

- (a) This Section 1.7 shall apply to:
 - (i) Construction Disputes;
 - (ii) any Dispute relating to whether a Development Dispute should be considered a Construction Dispute; and
 - (iii) any Dispute relating to whether:
 - 1. a Construction Dispute should be considered or consolidated with, or heard at the same time as or immediately before or after, a Development Dispute or another Construction Dispute; or
 - 2. the claims made in a Construction Dispute should be asserted by way of counterclaim, crossclaim or third party claim, or stayed until after the determination of claims made, in a Development Dispute or another Construction Dispute.
- (b) Either Party may give Notice of a Schedule 27 Procedural Dispute requesting the relief set out in Section 1.7(a)(iii) where it appears that, as a result of, in respect of, or arising out of the same matter or occurrence or series of matters or occurrences (including common issues of damages or compensation), there is any one or more of the following:
 - (i) a common question of fact;
 - (ii) a common question of law, including the determination of rights that depends upon the interpretation of this Agreement or any Target Price Agreement, as applicable, or the interpretation of Applicable Law; or
 - (iii) the Parties agree that the relief requested may promote or secure the most expeditious and least expensive determination of each Dispute on its merits.
- (c) Prior to the CDB Expiry Date, either Party may refer a Schedule 27 Procedural Dispute to the CDB for resolution in accordance with this Section 1.7 following the delivery of a Notice of Dispute in respect of the subject matter of the Schedule 27 Procedural Dispute pursuant to Section 1.6(a).

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- (d) Notwithstanding anything to the contrary in this Schedule 27, no Schedule 27 Procedural Dispute shall be required to be escalated for amicable resolution by the Party Executives pursuant to Section 2.
 - (e) Except as otherwise expressly set out in this Section 1.7, Sections 4.5 to 4.13 shall not apply to any Schedule 27 Procedural Dispute.
 - (f) Subject to Sections 1.7(g), 1.7(h) and 4.12, the CDB shall establish the process for the resolution of any Schedule 27 Procedural Dispute, and may make such orders or give such directions as the CDB considers appropriate.
 - (g) Each Party shall provide the CDB with a brief submission in writing in support of its case with regards to each Schedule 27 Procedural Dispute. The responding Party shall provide the CDB with its brief submission within five (5) Business Days of the delivery of the referring Party’s brief submission or such longer period as agreed by the Parties in writing or ordered by the CDB.
 - (h) The CDB shall render its decision as soon as possible and within five (5) Business Days after receiving the Parties’ brief submissions with regards to a Schedule 27 Procedural Dispute, unless the CDB considers an oral hearing to be necessary, in which case the provisions of Sections 4.10(b) to 4.10(d) shall apply and the CDB shall render its decision as soon as possible and within five (5) Business Days after the conduct of the oral hearing.
 - (i) The CDB may, acting reasonably and taking into account the complexity of and the prevailing circumstances related to the Schedule 27 Procedural Dispute, extend any such period by delivering written notice to the Parties.
 - (j) The CDB’s decision on a Schedule 27 Procedural Dispute shall be:
 - (i) made in accordance with the provisions of Sections 4.11(a) to 4.11(c) and 4.11(e); and
 - (ii) final and binding.
 - (k) The Parties agree that no decision of the CDB on a Schedule 27 Procedural Dispute shall be subject to appeal, arbitration, litigation or any other dispute resolution process, and expressly waive any and all such rights in respect of each Schedule 27 Procedural Dispute resolved by the CDB.

2. Disputes

- (a) After delivery of a Notice of Dispute, the Parties:
 - (i) may, if it is a Construction Dispute; and
 - (ii) shall, if it is a Development Dispute,refer the Dispute for amicable resolution by an executive of each Party (each a “**Party Executive**”).

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- (b) With respect to a Construction Dispute only, if the Parties have not agreed to amicable resolution by Party Executives within five (5) Business Days after delivery of the Notice of Dispute, either Party may in writing refer the Dispute for Adjudication in accordance with Section 3 or to the CDB for resolution.
- (c) For each Party, the selected Party Executive for amicable resolution by Party Executives shall be:
- (i) in a position of authority above that of the Party Representative and that of the Senior Executives Team identified in Appendix A (*Team Representatives*) to Schedule 19 – Governance, Meetings and Progress Reporting; and
 - (ii) shall have or be delegated full authority to resolve the Dispute subject only to approval of the Chief Executive Officer and board of directors or similar governing or regulatory body of the Party (as applicable).
- (d) The Party Executives shall promptly, and by no later than fifteen (15) Business Days (or such longer period agreed by the Parties in writing) from the date of the receiving Party’s receipt of the applicable Notice of Dispute, meet at a mutually convenient location and make reasonable and *bona fide* efforts to resolve the Dispute through amicable, full, frank, candid and without prejudice negotiations.
- (e) All discussions and negotiations held, and all communications exchanged, between the Parties in connection with the Party Executive negotiations shall be on a without prejudice basis to facilitate the resolution of the Dispute.
- (f) Either Party may terminate the process of amicable resolution by the Party Executives by providing Notice of termination of such process (each a “**Party Executive DRP Termination Notice**”) at any time:
- (i) if the initial Party Executive meeting does not occur by the expiry of the period set out in Section 2(d); or
 - (ii) ten (10) Business Days after the initial Party Executive meeting described in Section 2(d).
- (g) The requirements of this Section 2 cannot be waived or amended except as expressly agreed by the Parties pursuant to Section 9(a).

3. Adjudication

3.1 Referral to Adjudication

- (a) Subject to Section 1.3(b), either Party may refer a (i) Construction Dispute or (ii) Development Dispute which has not been resolved by the Party Executives, to a qualified and independent adjudicator listed by the “Authorized Nominating Authority” designated pursuant to the *Construction Act*, (in either case, the “**Adjudicator**”) in accordance with this Section 3 (“**Adjudication**”) and the *Construction Act* (Ontario), provided that the Dispute:

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- (i) relates to the Works and arises prior to Project Final Completion; and
 - (ii) is a matter pursuant to which there is a statutory right to submit such matter to adjudication in accordance with and to the extent set out in the *Construction Act* (Ontario) (each an “**Adjudication Dispute**”).
- (b) The Parties confirm that they have reviewed sections 13.5(1)1. to 13.5(1)6. (inclusive) of the *Construction Act* (Ontario), and agree that:
- (i) their interpretation of such provisions is that such provisions do not apply to any claim for delay, disruption or acceleration, or any claim for:
 - 1. an Adjustment Event;
 - 2. determination of any entitlement under this Agreement or any Target Price Agreement to an Adjustment Event; or
 - 3. determination as to whether:
 - a. a Party is obligated pursuant to this Agreement or any Target Price Agreement to proceed with a Variation; or
 - b. any works subject to a Dispute are Works under this Agreement or any Target Price Agreement or whether Project Co is entitled to a Variation in respect of such works; and
 - (ii) they shall not refer to Adjudication, and do not agree to adjudicate pursuant to section 13.5(1)7 of the *Construction Act* (Ontario), any matter described in Section 3.1(b)(i).
- (c) The Party referring an Adjudication Dispute for Adjudication by the Adjudicator shall deliver to the Adjudicator and the other Party a written notice of Adjudication (each, a “**Notice of Adjudication**”) in accordance with the requirements of the *Construction Act* (Ontario).
- (d) The responding Party may deliver to the Adjudicator and the other Party a response to the Notice of Adjudication. The Parties agree that the responding Party shall have at least twenty-one (21) days within which to deliver its response, or such further time specified by the Adjudicator, giving consideration to the Notice of Adjudication, the amount in dispute, and the principles of fairness, including ensuring that the responding Party has a reasonable amount of time to review and respond to any documents the referring Party intends to rely on during the Adjudication included in the Notice of Adjudication (including any Dispute Notice Supporting Document that was not previously disclosed in the Notice(s) of Dispute (if available)).
- (e) The Parties shall consent to any request by the Adjudicator to extend the deadline for the Adjudicator’s determination in accordance with section 13.13(2)(a) of the *Construction Act* (Ontario), and shall agree to any extension reasonably requested by a Party to extend the deadline for the Adjudicator’s determination pursuant to section 13.13(2)(b) of the *Construction Act* (Ontario).

3.2 Powers of the Adjudicator During Adjudication

- (a) In conducting an Adjudication, the Adjudicator shall have the powers granted to adjudicators by the *Construction Act* (Ontario), and:
 - (i) shall act impartially;
 - (ii) may conduct the Adjudication in the manner the Adjudicator determines appropriate in the circumstances, subject to the obligation to conduct the Adjudication in an impartial manner and subject to any joint procedural directions delivered jointly by Project Co and Contracting Authority;
 - (iii) may issue directions respecting the disclosure of documents which a party intends to rely on or that a party has requested from another party in the Adjudication in a manner that ensures that each party to the Adjudication has an opportunity to review such documents, and with regard to principles of proportionality and the desire of the parties for a cost-effective process;
 - (iv) may refuse to hear the Adjudication if the preconditions to bringing an Adjudication Dispute to Adjudication have not yet been met; and
 - (v) shall make a determination of the matter that is the subject of an Adjudication on the basis of applicable laws and this Agreement.

3.3 Review of Adjudicator's Determination

- (a) Any Party that is dissatisfied with a determination of the Adjudicator may, within thirty (30) days of the release of the Adjudicator's determination (or such longer period agreed by the Parties, acting reasonably), deliver a Notice of Request to Arbitrate the Dispute pursuant to Section 5(c). In such an event, the determination of the Adjudicator shall be reviewed *de novo* by an arbitration tribunal in accordance with Section 5. If neither Party delivers a Notice of Request to Arbitrate the Dispute pursuant to Section 5(c) before the expiry of such period, or if any arbitration that is commenced pursuant to Section 5 is subsequently abandoned in writing by the Parties before an arbitral award is made pursuant to Section 5, then the determination of the Adjudicator shall be final and binding on the Parties.
- (b) The Parties agree that any determination of the Adjudicator that becomes final and binding on the Parties in accordance with Section 3.3(a) shall not be subject to appeal, arbitration, litigation or any other dispute resolution process and expressly waive any and all such rights in respect of the Dispute resolved by the Adjudicator.

4. Combined Dispute Board

4.1 Appointment of the CDB

- (a) The Combined Dispute Board (“CDB”) shall be a standing body composed of three members appointed in accordance with this Schedule 27 (each a “Member”). On or before the earlier of the commencement of any DMCA Construction Works and the execution of the first Target Price Agreement, the CDB shall be constituted by a written

agreement between the Parties and each of the Members substantially in the form set out in Appendix B to this Schedule 27 and executed and delivered in accordance with this Agreement (each a “**CDB Member Agreement**”).

- (b) The CDB shall remain constituted until the CDB Expiry Date. The Parties may agree in writing to extend the term of the CDB, and shall agree in writing to any extensions necessary in order to obtain CDB decisions in relation to Disputes referred to that form of CDB (i.e. one member or three member) which remain outstanding upon the scheduled reduction of the number of CDB members or the end of the CDB term, as applicable.
- (c) Unless otherwise agreed by the Parties in writing:
 - (i) two Members shall have technical and/or senior managerial expertise relevant to the Project (each a “**Technical Member**”); and
 - (ii) the third Member, who shall be the chair of the CDB, shall have significant experience in construction law and shall be either: (A) a lawyer who is licensed to practice law in Ontario or another province of Canada other than Quebec; or (B) an ex-judge or master of a superior court in Ontario or another province of Canada other than Quebec providing adjudication, arbitration and/or mediation services in Ontario or another province of Canada (the “**CDB Chair**”).
- (d) Each Member shall be independent, impartial and, unless otherwise agreed by the Parties in writing, experienced in resolving and deciding disputes of a type, complexity and value commensurate with the potential Disputes that could be referred to the CDB.
- (e) Each Party shall appoint a Technical Member of its choice on or prior to the earlier of the commencement of any DMCA Construction Works and the execution of the first Target Price Agreement, and shall deliver to the other Party a CDB Member Statement for that Member upon appointment in accordance with this Agreement.
- (f) The Parties shall jointly appoint the CDB Chair on or prior to the earlier of the commencement of any DMCA Construction Works and the execution of the first Target Price Agreement, and deliver a CDB Member Statement for the CDB Chair upon appointment in accordance with this Agreement.
- (g) Before commencing CDB activities, each Member shall sign with the Parties a CDB Member Agreement. The CDB Member Agreement may be terminated in accordance with the CDB Member Agreement.

4.2 Replacement of a Member

- (a) When a Member must be replaced due to death, incapacity, resignation, termination or removal, a new Member shall be appointed within thirty (30) days of the need for replacement arising, in the same manner as the Member being replaced was originally selected in accordance with this Schedule 27, unless otherwise agreed by the Parties in writing. All actions taken by the CDB prior to the replacement of a Member shall remain valid. When one Member is to be replaced, the other Members shall continue to be Members, but shall not hold hearings or issue CDB decisions without the agreement of the Parties in writing prior to the replacement of the Member.

- (b) If a Party fails to appoint a replacement Technical Member and the Parties cannot agree on an alternative Technical Member within the period of time set out in Section 4.2(a), either Party may refer the appointment of that Technical Member or the alternative Technical Member for a court determination pursuant to Section 6(c).
- (c) If the Parties are unable to appoint a replacement CDB Chair within the period of time set out in Section 4.2(a), either Party may refer the appointment of the replacement CDB Chair for a court determination pursuant to Section 6(c).

4.3 Impartiality of the Members

- (a) Every prospective Member shall sign a statement of acceptance, availability, impartiality and independence and disclose in writing to the Parties and the other Members, any facts or circumstances which might call into question the Member's independence in the eyes of the Parties or give rise to reasonable doubts as to the prospective Member's impartiality, substantially in the form set out in Appendix A to this Schedule 27 (the "**CDB Member Statement**").
- (b) A Member shall immediately disclose in writing to the Parties any facts or circumstances concerning the Member's impartiality or independence which may arise in the course of such Member's tenure.
- (c) Should any Party wish to challenge a prospective or current Member on the basis of an alleged lack of impartiality, independence or qualifications, it may, as soon as practicable after learning of the facts upon which the challenge is based, submit to the CDB and the other Party a request for a decision upon the challenge including a written statement of such facts.
- (d) If the challenged prospective or current Member does not withdraw, and the other Party does not agree to the challenge, either Party may refer the matter for a court determination pursuant to Section 6(c).
- (e) No Party shall challenge a current Member on the basis of an alleged lack of impartiality or independence as a result of the Member carrying out its duties under the CDB Member Agreement, including the provision of without prejudice dispute resolution assistance.
- (f) If a prospective or current Member is successfully challenged, the prospective Member shall not be appointed, or the current Member shall be removed forthwith from the CDB and the CDB Member Agreement, if any, between that Member and the Parties shall be automatically terminated.

4.4 Ongoing Project Monitoring by the CDB

- (a) The Parties shall fully cooperate with the CDB and communicate information to it in a timely manner.
- (b) The Parties shall ensure that the CDB is kept informed of the performance of the Parties' obligations under this Agreement and any Target Price Agreement and of any Disputes arising in the course thereof by such means as reports or Notices issued by the Parties in

respect of the Works, and meetings and participation in site visits. In particular, the CDB shall receive copies of any and all:

- (i) amendments to this Agreement and any Target Price Agreement and Variation Confirmations;
- (ii) Notices of Dispute;
- (iii) Works Reports;
- (iv) Notices delivered to Project Co by Contracting Authority pursuant to Section 16.1(a) (*Failure to Maintain Schedule for the Works*) of Schedule 12 – Works Schedule Requirements;
- (v) Notices of, and responses to Notices of, Adjustment Events;
- (vi) any Section Substantial Completion Certificate, any DMCA Construction Works Substantial Completion Certificate, any DMCA Construction Works Final Completion Certificate, any TPA Substantial Completion Certificate, any TPA Final Completion Certificate and the other Notices and documents provided by each of the Parties and the Independent Commissioning Agent pursuant to Sections 23.3 (*Section Substantial Completion Certificates and Substantial Completion Certificates*), 23.5 (*Countdown Notice, Section Substantial Completion Deliverables and Substantial Completion Deliverables*), 23.6(e) (*Section Minor Deficiencies and Minor Deficiencies*), 23.8(a) (*Failure To Rectify Section Minor Deficiencies and Minor Deficiencies*), 23.9 (*Final Completion Countdown Notice*) and 23.10 (*Final Completion Certificate*) of this Agreement; and
- (vii) such other Project documentation, Notices, and communications that either Party reasonably believes will assist to keep the CDB informed of the performance of this Agreement and any Target Price Agreement and of any Disputes arising in the course thereof,

at the same time they are delivered in accordance with this Agreement or Target Price Agreement, from the Party that is delivering the document.

- (c) The CDB shall, in consultation with the Parties, establish a schedule of meetings and site visits (which may be conducted via teleconference or videoconference). The frequency of scheduled meetings and site visits shall be sufficient to keep the CDB informed of the performance of this Agreement and any Target Price Agreement and of any Disputes, but shall be at least monthly beginning as of the month prior to the TPA Effective Date unless otherwise agreed by the Parties and the CDB in writing. The Parties and the CDB shall attend all such meetings and site visits. In the event that a Party fails to attend, the CDB and the other Party may nevertheless decide to proceed, provided that the CDB and the other Party shall not be permitted to discuss any Dispute referred to the CDB for resolution pursuant to Section 4.5(a) at such meeting or site visit.

- (d) The CDB shall, after consultation with the Parties, inform them in writing of the nature, format and frequency of any further documents delivered pursuant to this Agreement and any applicable Target Price Agreement that shall be sent by the Parties to the CDB.
- (e) During scheduled meetings and site visits, the CDB shall review the performance of the Parties' obligations under this Agreement and any applicable Target Price Agreement with the Parties. The Parties may at any time by agreement in writing request that the CDB (i) provide informal assistance to the Parties with regards to avoiding or addressing Disputes; or (ii) mediate any Dispute. All such reviews by the CDB and any informal assistance or mediation provided by the CDB pursuant to this Section 4.4(e) is provided on a without prejudice basis and shall not be considered or referred to if a Dispute is submitted for resolution in any subsequent dispute resolution processes or proceedings.
- (f) Each Party is required to copy the other Party in all written communications in respect of the Project it provides to a Member. Unless otherwise agreed by the Parties in writing or as provided in Sections 4.4(c) and 4.10(d), no Party shall have any conversation or any meeting with any Member in respect of the Project without the other Party being included in such conversation or being present at such meeting.

4.5 CDB to Resolve Disputes

- (a) If the Parties do not agree to amicable resolution by the Party Executives or are unable to resolve a Construction Dispute other than a Schedule 27 Procedural Dispute prior to the CDB Expiry Date through amicable resolution by the Party Executives pursuant to Section 2 and a Party delivers a Party Executive DRP Termination Notice to the other Party, then subject to Section 3, either Party may in writing refer the Construction Dispute to the CDB for resolution.

4.6 Statement of Case

- (a) The Party referring a Dispute to the CDB pursuant to Section 4.5(a) (the “**Claimant**”) shall submit a concise written statement of its case (the “**Statement of Case**”) to the responding Party (the “**Respondent**”) and the CDB within thirty (30) days (or such longer period agreed by the Parties in writing, acting reasonably) of a Party's referral of the Dispute to the CDB for resolution. The Statement of Case shall only include:
 - (i) the Notice of Dispute, including the Dispute Notice Supporting Documents;
 - (ii) the issues submitted to the CDB for decision;
 - (iii) a statement of the Claimant's position, including a statement of relevant facts and law; and
 - (iv) any amendments, updates, additions to, or deletions from the Notice of Dispute or the Dispute Notice Supporting Documents.
- (b) The date on which the Statement of Case is received by the CDB Chair shall be deemed to be the date of the commencement of the CDB proceeding (the “**Date of Commencement**”).

- (c) If the Claimant provides any material amendment, update, addition to, or deletion from the Notice of Dispute or the Dispute Notice Supporting Documents pursuant to Section 4.6(a)(iv), then the CDB shall permit the Respondent a reasonable amount of time to review and respond to such material amendment, update, addition to, or deletion from the Notice of Dispute or the Dispute Notice Supporting Documents, and shall extend the Reply Period accordingly pursuant to Section 4.7(b)(i).
- (d) Unless the CDB orders otherwise, the Claimant shall not be entitled to rely upon any documents other than the documents contained in its Statement of Case. In the event that the CDB permits the Claimant to rely on any additional documents, the CDB shall permit the Respondent a reasonable amount of time to review and respond to such additional documents.

4.7 Statement of Reply

- (a) Subject to Section 4.7(b), within thirty (30) days of the Date of Commencement (the “**Reply Period**”), the Respondent shall deliver to the Claimant and the CDB a concise written statement of its reply to the Statement of Case (the “**Statement of Reply**”). The Statement of Reply shall only include:
 - (i) a statement of the Respondent’s position, including a statement of relevant facts and law;
 - (ii) the issues submitted to the CDB for a decision; and
 - (iii) any documents not contained in the Statement of Case on which the Respondent intends to rely.
- (b) The Reply Period may be extended to permit the Respondent additional time to provide its Statement of Case by:
 - (i) order of the CDB (including pursuant to Section 4.6(c) or Section 4.6(d)); or
 - (ii) agreement of the Parties, acting reasonably.

4.8 Additional Documents Required by the CDB

- (a) The CDB may at any time request a Party to submit additional written statements or documentation within a reasonable amount of time to assist the CDB in preparing its decision. Each such request shall be communicated in writing by the CDB to the Parties, and any additional written statements or documentation submitted in response to the CDB’s request shall be submitted to the CDB and the other Party. The CDB shall permit the other Party a reasonable amount of time to review and respond to such additional written statements or documentation.

4.9 Evidence and Powers of the CDB

- (a) Subject to Section 4.9(b), the CDB shall decide Disputes based on the Parties’ Statement of Case and Statement of Reply and any additional documents and responses delivered pursuant to any of Sections 4.6(c), 4.6(d) or 4.8(a).

- (b) If there are any material factual disputes between the Parties or other issues arising from the Parties' Statement of Case or Statement of Reply, the CDB may order such additional procedural steps or give such directions as the CDB considers appropriate to address such disputes or other issues, with a view to proportionality and the Parties' desire to resolve Disputes in a cost-effective and expeditious manner.
- (c) Without limiting Section 4.9(b), the CDB may, if necessary, appoint one or more experts after considering the positions of the Parties or, subject to Section 1.3(b), obtain and consider the opinion of the Independent Commissioning Agent, as an expert.

4.10 Hearings

- (a) The CDB shall order that a hearing in respect of the Dispute take place unless the Parties and CDB agree in writing that a hearing is not required.
- (b) The hearing shall be conducted in Toronto, Ontario or by teleconference or videoconference on written agreement of the Parties and the CDB.
- (c) The Parties shall appear through duly authorized representatives. In addition, the Parties may be assisted or represented by advisers and legal counsel.
- (d) If any Party refuses or fails to take part in the CDB hearing or in any preceding steps, the CDB may proceed notwithstanding such refusal or failure.
- (e) The CDB may request that the Parties provide and exchange summaries of their argument in advance of the hearing.
- (f) Subject to the discretion of the CDB, the hearing shall proceed as follows:
 - (i) the Claimant shall present its case;
 - (ii) the Respondent shall present its case; and
 - (iii) the Claimant shall have an opportunity to reply.

4.11 Basis for Decision

- (a) The CDB shall make decisions based on this Agreement, any applicable Target Price Agreement and the law applicable to the Dispute.
- (b) The CDB may take into account:
 - (i) any failure of a Party to comply with this Agreement and any applicable Target Price Agreement, including any of its mitigation obligations or its procedural obligations under this Schedule 27; and
 - (ii) any unreasonable delay of the Claimant in bringing its claim, including any unreasonable delay that prevented or prejudiced the Respondent's proper investigation of, opportunity for mitigation of, or ability to respond to the claim.

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- (c) A decision of the CDB shall be in writing and state the findings, reasons, and determination of the CDB and include:
- (i) a summary of the Dispute, the positions of the Parties and the decision requested; and
 - (ii) a summary of the relevant provisions of this Agreement and any applicable Target Price Agreement and the relevant facts and law considered by the CDB.
- (d) The CDB shall issue its decision promptly and, in any event, within thirty (30) days after the hearing unless the Parties consent in writing to an extension, which consent shall not be unreasonably withheld. Failure to issue a decision of the CDB within the time allowed does not invalidate the decision.
- (e) The CDB shall make its decision by a majority of the Members. Any Member who disagrees with the decision shall give the reasons for such disagreement in a separate written document that shall form part of the decision but which shall not be binding on the Parties.

4.12 Costs

- (a) All Member fees and expenses and any other costs associated with the establishment and activities of the CDB (including in relation to obtaining CDB decisions and the cost of any experts appointed pursuant to Section 4.9(c)) shall be [REDACTED] and paid by the Parties in accordance with each CDB Member Agreement, unless otherwise agreed by the Parties in writing or ordered by the CDB.
- (b) Each Party shall bear its own costs associated with Disputes referred to the CDB for a decision.

4.13 Subsequent Dispute Resolution Procedure to the CDB

- (a) Any Party that is dissatisfied with a decision of the CDB other than a decision on a Schedule 27 Procedural Dispute may, within thirty (30) days of the release of the CDB's decision (or such longer period agreed by the Parties, acting reasonably) (the “**Arbitration Referral Period**”), deliver a Notice of Request to Arbitrate the Dispute pursuant to Section 5(c). The decision of the CDB shall be stayed during the Arbitration Referral Period. If the Dispute is arbitrated pursuant to Section 5, the arbitration tribunal shall conduct the arbitration *de novo* and the decision of the CDB shall not, subject to the following sentence, be binding on the Parties. If neither Party delivers a Notice of Request to Arbitrate the Dispute pursuant to Section 5(c) before the expiry of the Arbitration Referral Period, or if any arbitration that is commenced pursuant to Section 5 is subsequently abandoned by the Parties in writing before an arbitral award is made pursuant to Section 5, then the decision of the CDB shall be final and binding on the Parties.
- (b) The Parties agree that any decision of the CDB that becomes final and binding on the Parties in accordance with Section 4.13(a) shall not be subject to appeal, arbitration, litigation or any other dispute resolution process and expressly waive any and all such rights in respect of the Dispute resolved by the CDB.

5. Arbitration

- (a) If the Parties fail to resolve a Dispute:
- (i) in the case of a Development Dispute, through the processes set out in Sections 2 or 3 (if and as applicable); or
 - (ii) in the case of a Construction Dispute, prior to the CDB Expiry Date, through the processes set out in Sections 2 and 3 or Sections 2 and 4 (if and as applicable), and
- where no final and binding Adjudication determination or final and binding CDB decision exists in respect of the Dispute, then, subject to Section 1.2(b), the Dispute shall be resolved by *de novo* arbitration in accordance with this Section 5.
- (b) At any time during the Project Term, if either Party delivers a Notice to the other Party pursuant to Section 1.2(b), then such Dispute shall be resolved by arbitration in accordance with this Section 5, and pursuant to an expedited process and timetable to be agreed to by the Parties in writing, or as ordered by the arbitral tribunal with regard to the prevailing circumstances.
- (c) Either Party may deliver a Notice of request to arbitrate a Dispute eligible to be referred to arbitration in accordance with this Schedule 27 (each a “**Notice of Request to Arbitrate**”).
- (d) A Notice of Request to Arbitrate will not be effective unless it:
- (i) is signed by the Party Representative;
 - (ii) if applicable, is delivered to the other Party Representative within the period of time set out in Section 3.3(a) or Section 4.13(a) following the release of any applicable Adjudication decision or CDB decision;
 - (iii) indicates it is a Notice of Request to Arbitrate pursuant to Section 5(c); and
 - (iv) expressly identifies the Dispute to be arbitrated.
- (e) The *Arbitration Act, 1991* shall apply to an arbitration pursuant to this Section 5.
- (f) A Dispute referred to arbitration shall be resolved by a single arbitrator unless:
- (i) the Parties otherwise agree in writing; or
 - (ii) one of the Parties, by Notice delivered to the other Party within seven (7) days after delivery of a Notice of Request to Arbitrate, requires the Dispute to be resolved by a three person arbitral tribunal, in which case the Dispute shall be resolved by a three person arbitral tribunal.
- (g) If the arbitral tribunal is comprised of a single arbitrator:
- (i) the Parties shall jointly appoint the arbitrator; and

- (ii) if the Parties are unable to agree on the arbitrator within thirty (30) days after delivery of the Notice of Request to Arbitrate, either Party may apply to the Ontario Superior Court of Justice to appoint the arbitrator pursuant to the *Arbitration Act, 1991*.
- (h) If the arbitral tribunal is comprised of three arbitrators:
 - (i) each Party shall appoint one arbitrator and the first two arbitrators shall jointly appoint the third arbitrator, who shall act as the chair; and
 - (ii) if the Parties have not appointed an arbitrator or arbitrators pursuant to Section 5(h)(i) or if the Parties or the arbitrators are unable to agree on the third arbitrator within thirty (30) days after delivery of the Notice of Request to Arbitrate, either Party may apply to the Ontario Superior Court of Justice to appoint the remaining arbitrator(s) pursuant to the *Arbitration Act, 1991*.
- (i) All arbitrators must have qualifications and experience relevant to the issues in the Dispute commensurate with the nature, complexity and value of the Dispute(s) to be arbitrated.
- (j) No one shall be nominated or appointed to act as an arbitrator who is or was within the past five years in any way interested, financially or otherwise, in the conduct of the Works or in the business affairs of Contracting Authority, Project Co, or any consultant, subconsultant or subcontractor of any of them who may be involved or implicated in the Dispute.
- (k) Unless otherwise agreed by the Parties, the seat and venue of the arbitration shall be Toronto, Ontario. The language of the arbitration shall be English.
- (l) The arbitral tribunal shall render its award as soon as possible and no later than sixty (60) days after the date of the closure of the hearing, or such other period of time as agreed to by the Parties in writing and accepted by the arbitral tribunal.
- (m) The costs of the arbitration are within the discretion of the arbitral tribunal. In exercising discretion to award costs, the arbitrator(s) will take into account the desire of the Parties that costs should generally be awarded to each Party in proportion to the relative success that each Party has in the arbitration.
- (n) The award of the arbitral tribunal shall be final and binding upon the Parties and not subject to appeal.

6. Litigation

- (a) Except as set out in this Section 6, the Parties shall not be permitted to resolve any Development Dispute by litigation.
- (b) If necessary to prevent irreparable harm to a Party, including in connection with a Public Safety Dispute, nothing contained in this Schedule 27 will prevent the Parties from seeking interim protection from the Ontario Superior Court of Justice, including seeking an interlocutory injunction. However, the Parties agree that no irreparable harm shall occur if this Agreement or any Target Price Agreement is terminated by Contracting Authority

pursuant to Section 31.3(b) (*Right to Termination*) of this Agreement and that any such termination by Contracting Authority, would be adequately compensated for by an award of damages to Project Co if it is subsequently determined in accordance with this Schedule 27 that Contracting Authority was not entitled to do so in accordance with this Agreement or any applicable Target Price Agreement.

- (c) Either Party may bring an application or motion directly to the Ontario Superior Court of Justice for a determination regarding appointment of the challenged or a proposed alternative Member or arbitrator.
- (d) All litigation permitted pursuant this Schedule 27 shall be resolved in the Ontario Superior Court of Justice. Both Parties irrevocably attorn to the exclusive jurisdiction of the courts of the Province of Ontario in respect of any Disputes or matters which arise under this Agreement or in connection with the Project and which are to be resolved by litigation.

7. Stay and Consolidation with Third Party Disputes

- (a) Subject to Section 7(c), if either Party is involved in an arbitration in the Province of Ontario with a third party (“**Third Party Arbitration**”), and if such Third Party Arbitration involves common factual or legal issues (including common issues of damages) which are also the subject of a Dispute between the Parties for which a Notice of Dispute has been given, then any arbitration of the Dispute between the Parties which includes those common factual, legal or damages issues (“**Development and Master Construction Agreement Arbitration**”) shall be stayed, consolidated or joined with the Third Party Arbitration(s) but only if each of Contracting Authority, Project Co, and the other parties all agree in writing.
- (b) Subject to Section 7(c), if either Party is involved in litigation in the Province of Ontario with a third party (“**Third Party Litigation**”) and if:
 - (i) such Third Party Litigation involves common factual or legal issues (including common issues of damages) which are the subject of a Development and Master Construction Agreement Arbitration; and
 - (ii) the other Party is brought directly into the Third Party Litigation as a party to that litigation,

then on the application of either Party to the court in the Province of Ontario having jurisdiction the court may, if it determines that it is just and convenient in all the circumstances, order a stay of the Third Party Litigation.

- (c) Sections 7(a) and 7(b) only apply:
 - (i) if the Dispute between the Parties includes a claim by one Party against the other for contribution or indemnity for that Party’s liability or potential liability to the third party where such liability results or will result from an award in the Third Party Arbitration or a judgment in the Third Party Litigation; and
 - (ii) to those specific issues that are common issues in Development and Master Construction 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 Development and Master Construction Agreement Arbitration and shall not be consolidated with the Third Party Arbitration or Third Party Litigation.

8. Confidentiality

- (a) Unless otherwise agreed by the Parties in writing or required by law, no Party shall rely on or introduce as evidence in any subsequent proceeding or investigation, and shall treat as confidential and inadmissible in any arbitration or litigation proceeding or other investigation or proceeding, any information, data, statements, submissions, admissions, settlement proposals, recommendations, discussions, opinions, or any other documents within the meaning of the *Rules of Civil Procedure*, other than documents which would otherwise be admissible pursuant to the *Rules of Civil Procedure*, which were obtained, exchanged or delivered:
- (i) on a without prejudice basis, including through the process for the amicable resolution of the Dispute by the Party Executives set out in Section 2;
 - (ii) through the Adjudication process by any party or the Adjudicator, except in relation to the determination and reasons of the Adjudicator, which may be introduced in any subsequent dispute resolution processes or proceedings regarding the same Dispute(s); or
 - (iii) through the decision process by any Party or the CDB or any Member, except for a decision and reasons of the CDB, which may be introduced in any subsequent dispute resolution processes or proceedings regarding the same Dispute(s).
- (b) Any Member or arbitrator appointed pursuant this Schedule 27 shall keep all information about any Dispute(s) referred to the CDB or for arbitration confidential and shall not disclose such information to anyone other than the Parties.
- (c) Any Adjudicator or arbitrator shall execute non-disclosure agreements in a form satisfactory to the Parties, providing that, among other things, material delivered by a Party in connection with Adjudication or arbitration shall not be disclosed to any person or used for any other purpose, in accordance with this Section 8, and all such material shall remain the property of the Party disclosing or delivering same.
- (d) An Adjudicator, Member of the CDB or arbitrator shall not be compelled to give evidence in any proceeding in respect of a Dispute that was referred to the Adjudicator, CDB or arbitrator for a decision.

9. Miscellaneous

- (a) The Parties can, by written agreement on a Dispute by Dispute basis:
- (i) extend any or all timelines set out in this Schedule 27;

- (ii) agree to waive or by-pass any one or more of the Dispute resolution processes in Sections 1.7, 2, 3 and 4 (to the extent permitted by law) and, instead, proceed directly to resolution of the Dispute by arbitration pursuant to Section 5;
 - (iii) agree to a different process for arbitration than the one contemplated in this Schedule 27; or
 - (iv) agree to refer any Dispute to mediation by a neutral third party mediator.
- (b) The provisions of this Schedule 27 are subject to the provisions of the Integration Dispute Resolution Procedure in the form attached as Appendix A to Schedule 39 – Form of RSSOM Interface Agreement, which apply and shall govern in respect of all Integration Disputes.

APPENDIX A

**FORM OF CDB MEMBER STATEMENT OF ACCEPTANCE, AVAILABILITY,
IMPARTIALITY AND INDEPENDENCE**

- TO:** METROLINX, a non-share capital corporation continued under the *Metrolinx Act, 2006*, S.O. 2006, c. 16 and a Crown agency in accordance with the *Crown Agency Act*, R.S.O. 1990, c. 48
 (“Contracting Authority”)
- AND TO:** THE MINISTER OF INFRASTRUCTURE
- AND TO:** PAPE NORTH CONNECT, [REDACTED] (“Project Co”)
- RE:** Development and master construction agreement (as amended, supplemented or modified from time to time, the “**Development and Master Construction Agreement**”) dated the January 17, 2024 between Contracting Authority and Project Co in respect of the Ontario Line – Pape Tunnel and Underground Stations Project

1. GENERAL**1.1 Name and Position**

- (a) **Family Name(s):**
- (b) **Given Name(s):**
- (c) **Member Position (circle one):** **Technical Chair**
- (d) Please attach a current copy of your CV.

1.2 Definitions, Interpretation and Governing Law

- (a) This statement (the “**Statement**”) shall be interpreted in accordance with Schedule 27 – Dispute Resolution Procedure to the Development and Master Construction Agreement, and governed by the laws of Ontario, without regard to conflict of laws provisions. Please initial below all relevant statements.

1.3 Acceptance

- (a) I accept to serve as a Member in accordance with the Development and Master Construction Agreement.

Initial: _____

- (b) I decline to serve as a Member in accordance with the Development and Master Construction Agreement. *(If you tick here, simply date and sign the form without completing any other sections).*

Initial: _____

1.4 Availability

(a) I confirm, on the basis of the information presently available to me that I have received and reviewed a copy of Schedule 27 – Dispute Resolution Procedure to the Development and Master Construction Agreement and can devote the time necessary to discharge the duties of a Member throughout the entire duration of the CDB’s anticipated activities as diligently, efficiently and expeditiously as possible in accordance with the timelines and procedures set out in Schedule 27 – Dispute Resolution Procedure to the Development and Master Construction Agreement.

Initial: _____

(b) I understand that it is important to discharge the duties of a Member set out in Schedule 27 – Dispute Resolution Procedure to the Development and Master Construction Agreement as promptly as reasonably practicable. My current and anticipated professional roles and significant engagements are set out below for the information of the Parties (anonymized as necessary to remain compliant with my professional obligations).

Initial: _____

Number of currently pending matters or roles in which I am involved (*i.e. arbitrations and dispute board activities pending now, not previous experience; additional details you wish to make known to the Parties in relation to these matters can be provided on a separate sheet*):

	As tribunal or dispute board chair / sole arbitrator / sole DB member	As co-arbitrator / co-dispute board member	As counsel	As other
Standing dispute boards				
Ad-hoc dispute boards				
Arbitrations				
Court litigation (e.g. international commercial courts)				
Other (attach separate sheet if necessary)				

I have attached a calendar showing for the next twenty-four (24) months all currently scheduled hearings and other existing commitments (anonymized as necessary) that would prevent me from attending meetings or sitting in a hearing on this Project.

I have further marked in the box below or on a separate sheet any other relevant information regarding my availability.

- (c) I shall make best efforts to maintain the availability necessary to discharge the duties of a Member throughout the entire duration of the CDB’s anticipated activities which require my involvement, and shall immediately disclose in writing to the Parties and the other Members any additional significant matters that I may become involved in and any other relevant information regarding my availability which may arise in the course of my tenure as a Member and which may materially affect my ability to discharge my duties as a Member.

Initial: _____

1.5 Independence and Impartiality

- (a) In deciding which disclosure method applies to you, you should take into account, whether there exists any past, present or future, anticipated or planned relationship, direct or indirect, whether financial, professional or of any other kind, between you and any of the Parties, their lawyers or other representatives, or related entities and individuals. You are also required to disclose all recent, professional or personal, relationships with all key members of all Parties. Any doubt must be resolved in favour of disclosure. Any disclosure should be complete and specific, identifying inter alia relevant dates (both start and end dates), financial arrangements, details of companies and individuals, and all other relevant information.

- (i) **Nothing to disclose:** I am impartial and independent of the Parties and intend to remain so. To the best of my knowledge, and having made due enquiry, there are no facts or circumstances, past or present, that I should disclose because they might be of such a nature as to call into question my independence in the eyes of any of the Parties and no circumstances that could give rise to reasonable doubts as to my impartiality.

Initial: _____

- (ii) **Acceptance with disclosure:** I am impartial and independent and intend to remain so. However, mindful of my obligation to disclose any facts or circumstances which might be of such a nature as to call into question my independence in the eyes of any of the Parties or that could give rise to reasonable doubts as to my impartiality, I draw attention to the matters below and/or on the attached sheet.

I confirm that the matters disclosed above represent full and complete disclosure with respect to any facts or circumstances which might be of such a nature as to call into question

my independence in the eyes of any of the Parties or that could give rise to reasonable doubts as to my impartiality.

Initial: _____

- (b) I shall make best efforts to maintain the independence and impartiality necessary to discharge the duties of a Member throughout the entire duration of the CDB’s anticipated activities, but shall immediately disclose in writing to the Parties and the other Members any facts or circumstances concerning my impartiality or independence which may arise in the course of my tenure as a Member.

Initial: _____

- (c) In accordance with Schedule 27 – Dispute Resolution Procedure of the Development and Master Construction Agreement, I understand that the Parties may exercise their right to challenge me on the basis of an alleged lack of impartiality, independence or qualifications. In the event that I do not withdraw and the other Party does not agree to the challenge, I understand that the challenge shall be determined in accordance with Schedule 27 – Dispute Resolution Procedure of the Development and Master Construction Agreement.

Initial: _____

- (d) In the event that I am successfully challenged, I understand that I will be removed from the CDB forthwith and that my CDB Member Agreement shall be terminated.

Initial: _____

1.6 Delivery

- (a) This Statement may be delivered by sending a fully executed copy by electronic mail or other electronic transmission to the Parties, and such delivery shall be as effective as the manual delivery of this executed Statement.

[SIGNATURE PAGE FOLLOWS IMMEDIATELY]

Date:

Signature:

APPENDIX B

FORM OF CDB MEMBER AGREEMENT

This CDB Member Agreement (this “**Agreement**”) is entered into between:

- (a) **CDB Member: [●]** [*Note: Full name and title (sole Member, Technical Member or CDB Chair).*] (the “**Member**”);
- (b) **Party 1: METROLINX** (“**Contracting Authority**”); and
- (c) **Party 2: PAPE NORTH CONNECT, [REDACTED]** (“**Project Co**”)

(collectively, the “**Undersigned Parties**”).

WHEREAS:

- A. Contracting Authority and Project Co have entered into an agreement dated January 17, 2024 (the “**Development and Master Construction Agreement**”) for the Ontario Line – Pape Tunnel and Underground Stations Project (the “**Project**”);
- B. Schedule 27 – Dispute Resolution Procedure of the Development and Master Construction Agreement provides for the appointment of a Combined Dispute Board (the “**CDB**”), and that the CDB shall, *inter alia*, establish a schedule of meetings and site visits, issue decisions, review the performance of Project Co and Contracting Authority under the Development and Master Construction Agreement and any Target Price Agreement, and perform other tasks in accordance with Schedule 27 – Dispute Resolution Procedure to the Development and Master Construction Agreement (the “**CDB Services**”);
- C. Certain Disputes may be referred to the CDB for determination in accordance with Schedule 27 – Dispute Resolution Procedure of the Development and Master Construction Agreement; and
- D. The undersigned individual has been appointed to serve on the CDB as a Member.

The Member and the Parties therefore agree as follows:

1.1 Definitions and Interpretation

- (a) This Agreement shall be interpreted in accordance with Schedule 27 – Dispute Resolution Procedure to the Development and Master Construction Agreement and defined terms shall have the same meaning as in the Development and Master Construction Agreement, unless otherwise specified here.
- (b) If there is any conflict between this Agreement and Schedule 27 – Dispute Resolution Procedure to the Development and Master Construction Agreement, this Agreement will take precedence to the extent of the conflict.

1.2 Undertaking

- (a) The Member shall act as **[a sole Member/Technical Member/the CDB Chair]** and hereby agrees to perform the duties of a Member and provide the CDB Services in accordance with the terms of the Development and Master Construction Agreement, any applicable Target Price Agreement and the terms of this Agreement.
- (b) The Member confirms that he or she is and shall remain impartial and independent of the Parties.
- (c) The Member further confirms that he or she has executed and will comply with the terms of the CDB Member Statement.

1.3 Composition of the CDB and Contact Details

- (a) Subject to Section 4 of Schedule 27 – Dispute Resolution Procedure to the Development and Master Construction Agreement, the CDB shall be composed of three independent and impartial Members.

- (b) The Member can be contacted as follows:

Member: *[Note: Include name, address, telephone, email and any other contact details.]*

- (c) The **[CDB Chair]** (if applicable) is listed below and can be contacted as follows:

CDB Chair: *[Note: Include name, address, telephone, email and any other contact details.]*

- (d) The **[other Technical Member]** (if applicable) is listed below and can be contacted as follows:

Technical Member: *[Note: Include name, address, telephone, email and any other contact details.]*

- (e) The Parties to the Development and Master Construction Agreement are those indicated above with the following contact details:

- (i) **Party 1:**

[REDACTED]

- (ii) **Party 2:**

Pape North Connect
[REDACTED]

- (f) Any changes in these contact details shall be immediately communicated to all other Undersigned Parties.

1.4 Qualifications

- (a) The Parties recognise that the Member is a **[●]**, in accordance with Section 4.1(c) of Schedule 27 – Dispute Resolution Procedure to the Development and Master Construction Agreement.

- (b) The Parties recognise that the Member is independent, impartial and skilled in resolving and deciding disputes of a type, complexity and value commensurate with the Dispute(s) likely to be referred to the CDB, in accordance with Section 4.1(d) of Schedule 27 – Dispute Resolution Procedure to the Development and Master Construction Agreement.

1.5 Fees and Disbursements

- (a) In consideration of the Member performing the CDB activities in accordance with this Agreement and Schedule 27 – Dispute Resolution Procedure of the Development and Master Construction Agreement, the Member shall be entitled to be paid the monthly management fee (the “**Monthly Management Fee**”) and the ad-hoc hourly fee (the “**Ad-hoc Hourly Fee**”) described in this Section 1.5.
- (b) The Monthly Management Fee shall be [CAD \$[●]] per month and shall be payable beginning as of [date] until the end of the Member’s involvement on the CDB.
- (c) The Member’s Monthly Management Fee shall cover:
- (i) reviewing and becoming and remaining familiar with the Development and Master Construction Agreement and any Target Price Agreement, including without limitation, the Output Specifications and Schedule 27 – Dispute Resolution Procedure to the Development and Master Construction Agreement;
 - (ii) reviewing any amendments to the Development and Master Construction Agreement, any Target Price Agreement and Variation Confirmations;
 - (iii) reviewing progress reports, correspondence from the Parties, and other documents which the CDB is required to review pursuant to Schedule 27 – Dispute Resolution Procedure to the Development and Master Construction Agreement;
 - (iv) reviewing specific documents which the CDB requests for its review;
 - (v) attending internal CDB meetings;
 - (vi) attending ordinary course scheduled meetings and/or site visits (monthly unless otherwise agreed by the Parties in writing);
 - (vii) providing informal assistance with Disputes or potential Disputes;
 - (viii) managing and coordinating the operation of the CDB; and
 - (ix) any overhead and office expenses.
- (d) The Member’s Ad-hoc Hourly Fee shall be [CAD \$[●] per hour], and shall be billed in hourly increments for certain work performed. The Ad-hoc Hourly Fee shall cover:
- (i) preparation for and attendance at ad-hoc meetings/site visits with the Parties (excluding the ordinary course scheduled meetings and/or site visits described in Section 1.5(c)(vi)); and

- (ii) any work carried out in connection with referrals for a CDB decision, including preparation, attendance at hearings, review of the Parties' submissions, delivery of the CDB decision, and revisions to same.
- (e) Intentionally deleted.
- (f) Reasonable Member expenses and disbursements relating to (i) flights (at economy class rates), (ii) hotel (to a maximum of CAD \$[REDACTED] per night), and (iii) the cost of retaining any experts shall be reimbursed at cost, with the prior approval of the Parties. All other costs and disbursements are and shall be deemed to be included in the Monthly Management Fee and the Ad-hoc Hourly Fee. The Member shall retain all receipts and proof of payment of claimed disbursements and expenses, and shall provide them to the Parties or either Party upon request. The Parties shall have no obligation to reimburse the Member if the Member fails to produce receipts and proof of payment upon request.

1.6 Payment of Fees and Expenses

- (a) Unless otherwise agreed by the Parties and the Member in writing, all fees, expenses and disbursements payable under this Agreement shall be invoiced by the Member to the Parties on a monthly basis beginning as of [date], which invoice shall reflect the performance of the CDB activities performed in the previous month and be in form and substance reasonably satisfactory to the Parties.
- (b) Project Co and Contracting Authority shall each pay one half of such fees, expenses and disbursements to the Member. While each Party is responsible for paying one half of the Member's fees, expenses and disbursements, this obligation is several and not joint. If one Party fails to make payment, the other Party may make payment of the amounts owed by the non-paying Party and recover the costs of doing so from the non-paying Party, but has no obligation to do so.
- (c) All payments to the Member shall be made to the following account: [name of bank, account number, SWIFT code, etc.].
- (d) All payments to the Member under this Agreement shall be payable by the Parties monthly in arrears, and by no later than the date that is thirty (30) days of the receipt by the Parties of an invoice provided by the Member in accordance with this Agreement.
- (e) The Monthly Management Fee payable to the Member under this Agreement shall accrue from day to day, and if for any reason it shall become necessary to calculate any Monthly Management Fee for a period of less than one calendar month, an appropriate pro-rata adjustment shall be made on a daily basis.

1.7 Duration and Termination of this Agreement

- (a) Subject to Section 4 of Schedule 27 – Dispute Resolution Procedure to the Development and Master Construction Agreement, the Member agrees to serve for the duration of the CDB to the extent reasonably possible.
- (b) The Parties may at any time, without cause and with immediate effect, jointly terminate this Agreement but shall pay the Monthly Management Fee to the Member for a period of one month following the termination, unless otherwise agreed by the Parties and the Member in writing.

-
- (c) The Member may terminate this Agreement at any time by giving a minimum of three months' written notice to the Parties, unless otherwise agreed by the Parties and the Member in writing.
 - (d) If the Member is successfully challenged in accordance with Section 4.3 of Schedule 27 – Dispute Resolution Procedure to the Development and Master Construction Agreement, the Member shall be removed forthwith from the CDB and this Agreement shall be terminated.
 - (e) The Member shall be entitled to claim payment for work performed to the date of termination of this Agreement in accordance with this Agreement, but shall not be entitled to claim any further payment.

1.8 Indemnity

- (a) The Parties shall jointly and severally indemnify and hold harmless the Member from any claims of third parties for anything done or omitted to be done in the discharge of the Member's activities under this Agreement.
- (b) The indemnity provided in Section 1.8(a) shall not extend to:
 - (i) any act or omission of the Member that is shown to have been in bad faith;
 - (ii) any breach of this Agreement by the Member,
 - (iii) any negligent or unlawful act or omission or willful misconduct of the Member;
 - (iv) any action taken by the Member outside the scope of authority set forth in this Agreement;
or
 - (v) any debt, cost, expense, claim or demand for which insurance proceeds are recoverable by the Member.
- (c) The indemnity provided in Section 1.8(a) shall survive the termination of this Agreement.

1.9 Confidentiality

- (a) The Member and all of the member's affiliates, employees, servants and agents shall keep all information about the Project, the Member's involvement on the Project, any CDB Services performed by the CDB, and any Dispute(s) referred for a CDB decision strictly confidential and shall not disclose such information to anyone other than the Parties.
- (b) The Member shall treat as confidential any information, data, statements, submissions, admissions, settlement proposals, recommendations, discussions, opinions, or any other documents within the meaning of the *Rules of Civil Procedure*, other than documents which would otherwise be admissible pursuant to the *Rules of Civil Procedure*, which were obtained, exchanged or delivered on a without prejudice basis or through the CDB decision process by any other Party or the CDB or any Member, except as set out in Section 8(a)(iii) of Schedule 27 – Dispute Resolution Procedure to the Development and Master Construction Agreement.
- (c) Material delivered by a Party in connection with a CDB decision shall not be disclosed to any person or used, copied, supplied or reproduced for any other purpose other than for the performance

of the CDB Services, and all such material shall remain the property of the Party disclosing or delivering same.

- (d) The Member shall be bound by and shall comply with the confidentiality and communication provisions set out in Section 37 (*Confidentiality*) of the Development and Master Construction Agreement.
- (e) The Parties may at any time require the Member to give and to arrange for its officers, directors, members, employees, servants and agents engaged in the performance of the CDB Services to give written undertakings, in the form of confidentiality agreements on terms required by the Parties, relating to the non disclosure of confidential information, in which case the Member must promptly arrange for such agreements to be made.

1.10 Disputes and Applicable Law

- (a) All disputes arising out of this Agreement which are not subject to resolution pursuant to Section 6(c) of Schedule 27 – Dispute Resolution Procedure to the Development and Master Construction Agreement shall be finally settled by arbitration by one arbitrator agreed by the Undersigned Parties in writing or appointed in accordance with the *Arbitration Act, 1991*. This Agreement shall be governed by the laws of Ontario, without regard to conflict of laws provisions. The place of arbitration shall be Toronto, Ontario. The language of the arbitration shall be English.

1.11 Counterparts

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

[Remainder of page intentionally left blank]

This Agreement is entered into on [specify date] at [specify place].

METROLINX

By:

Name: [REDACTED]

Title: [REDACTED]

I have authority to bind the corporation.

[CDB MEMBER]

By:

Name: [REDACTED]

Title: [REDACTED]

By:

Name: [REDACTED]

Title: [REDACTED]

I/We have the authority to bind the corporation.

PAPE NORTH CONNECT, [REDACTED]:

[REDACTED]

By:

Name: [REDACTED]

Title: [REDACTED]

Name: [REDACTED]

Title: [REDACTED]

I/We have authority to bind the corporation.

[REDACTED]

By:

Name: [REDACTED]

Title: [REDACTED]

Name: [REDACTED]

Title: [REDACTED]

I/We have authority to bind the corporation.

SCHEDULE 28**VALUE FOR MONEY STATEMENT****1. DEFINITIONS**

- (a) In this Value for Money Statement, unless the context indicates a contrary intention, terms which are defined in this Agreement (and not otherwise defined in this Value for Money Statement) shall have the meanings given to them in this Agreement.

2. PURPOSE

- (a) The purpose of this Value for Money Statement is to:
- (i) set out Contracting Authority’s requirements and expectations with respect to achieving value for money in the planning and delivery of the Project; and
 - (ii) serve as a point of reference for the ongoing measurement of value for money throughout the duration of the Project Term.

3. KEY RESULT AREAS

- (a) The following are the key result areas for this Value of Money Statement (“**Key Result Areas**”) for the purpose of demonstrating value for money and the associated outcomes:

Table 1: Key Result Areas	
1. Cost	<ul style="list-style-type: none"> • Project Co shall demonstrate value for money in delivering the Works; • Project Co shall maintain an open-book approach and transparency in cost; and • Project Co shall continually seek innovative means of delivering the Project, more efficiently, safely and quickly.
2. Schedule	<ul style="list-style-type: none"> • the Project shall meet all key milestone dates.
3. Safety	<ul style="list-style-type: none"> • the Project shall result in zero harm to workers and the public, and shall achieve zero traffic and transit related incidents; and • the Project shall meet safety and system assurance obligations set out in Schedule 29 – Safety, System Assurance and Security during all phases of the Project.
4. Stakeholders	<ul style="list-style-type: none"> • Project Co shall establish, create and maintain strong, lasting relationships with Project stakeholders; and • the Project shall minimize disruptions to the community.

Table 1: Key Result Areas	
	<ul style="list-style-type: none"> • the Project shall achieve the identified community benefits; • the Project shall engage proactively, positively and collaboratively with community; and • the Project shall meet or exceed the TOC revenue generation potential contemplated by the TOC concepts outlined in the Output Specifications including effective collaboration with the TOC Contractor, the TOC Contractor Parties and Contracting Authority's TOC team.
5. Environment	<ul style="list-style-type: none"> • the Project shall minimize environmental impacts; and • the Project designs shall be compliant with all environmental and sustainability requirements set out in this Agreement.
6. Operations	<ul style="list-style-type: none"> • the Project shall result in no unplanned disruptions to transportation network operations, including: <ul style="list-style-type: none"> ○ efficiently and effectively using planned TTC closures; and ○ ensuring lane closures do not exceed baselines established in the Output Specifications; and • Project Co shall demonstrate that the Project achieves optimization of life cycle and capital costs.
7. Quality	<ul style="list-style-type: none"> • Project designs and other Project requirements shall be compliant with this Agreement; and • Project Co shall demonstrate traceability of systems and subsystems to requirements across the full life cycle of the Project.

SCHEDULE 29

SAFETY, SYSTEM ASSURANCE AND SECURITY

1. INTRODUCTION

1.1 DOCUMENTS COMPRISING SCHEDULE 29

- (a) This Schedule 29 is comprised of the following:
 - (i) the general provisions of this Schedule 29;
 - (ii) Appendix A – Schedule of Safety Deliverables for System Assurance Submissions;
 - (iii) Appendix B – System Assurance Deliverable Requirements;
 - (iv) Appendix C – Construction Safety and Project Co Site Specific Safety Manual Requirements; and
 - (v) Appendix D – Technical Specifications for Project Co SMS Software Solution.

1.2 PURPOSE

- (a) The purpose of Schedule 29 is to define the principles, processes, standards, and interfacing committees Project Co shall follow to ensure that the Works are assured safe and wholly integrated with the RSSOM Project and South Civil Project. In addition, this Schedule 29 defines the requirements for developing and implementing a safety management system for the Works.

1.3 KEY CONCEPTS

- (a) **System:** In the context of this Schedule 29, a “**System**” is a set of interconnected or interdependent elements or components that work together to achieve a common goal or purpose, and is further defined in the CMREA in the context of a railway application. A System can be physical, such as a civil structure, machine, or computer, or it can be conceptual, such as a business or social system.
- (b) **System Assurance:** In the context of this Schedule 29, the purpose of system assurance is to provide justified confidence that the system functions as intended and is free of exploitable vulnerabilities, either intentionally or unintentionally designed or inserted as part of the system at any time during the life cycle. Systems Assurance is critical for complex systems that have significant consequences if they fail, such as rail transportation, aircraft, nuclear power plants, and medical devices. In these cases, systems assurance uses rigorous processes, including requirements analysis, design and development, testing, verification, and validation, all according to codes and standards.

1.4 OVERVIEW OF KEY SECTIONS

- (a) Section 3: Safety and Security Governance

- (i) Section 3 describes the roles and responsibilities of the Contracting Authority (Metrolinx), System Safety Review Panel (SSRP), Project Co, RSSOM Project Co and South Civil Project Co, and EGS Project Co, including Project Co's obligations for governance and participation in committees. In addition, this section describes the purpose of safety and security coordination meetings and committees.
- (b) Section 4: Project Co Obligations for Safety, Systems Assurance, and Security
 - (i) Section 4 describes Project Co's obligations to participate with others in safety, systems assurance, and security. The role of RSSOM as the integrator, the tools, management arrangements, and the Independent Safety Assessor for Ontario Line subway safety and security are also described.
- (c) Section 5: Safety Management System
 - (i) Section 5 describes the requirements for managing safety within Project Co's operations. In addition, it lays out reporting and statistical requirements used to measure the performance of the safety management system.
- (d) Section 6: Safety and System Assurance
 - (i) Section 6 outlines Project Co's obligations to demonstrate that the Works have been thoroughly examined at all levels and can be operated and maintained safely as an integrated system. In addition, the section defines the foundational planning, processes, standards, management, and coordination with others that are required to ensure that the Works are integrated and demonstrably safe. Finally, this section defines the deliverables necessary to demonstrate safety.
- (e) Section 7: Occupational Health and Safety and Construction Safety Requirements
 - (i) Section 7 sets out the general and specific requirements for ensuring occupational health and safety and construction safety. It defines occupational health and safety standards, guidance documents, emergency safety plans, and site-specific safety manuals. In addition, this section specifies occupational health and safety certification, health and safety inspections, personal protective equipment, training, and incident reporting.
- (f) Section 8: Security Requirements
 - (i) Section 8 lays out Project Co's obligations to provide a fully integrated and secure system capable of being operated and maintained. In addition, this section defines the submissions and the submission stages required to fulfil Project Co's obligations. Finally, this section describes the roles and responsibilities of staff needed to achieve Project Co's obligations.

2. DEFINITIONS

- (a) In this Schedule 29, unless the context indicates a contrary intention, terms that are defined in this Agreement including in Schedule 1 – Definitions and Interpretation (and not otherwise defined in this Schedule 29) shall have meanings given to them elsewhere in this Agreement, and the following terms shall have the following meaning:
- (1) “**Acceptable Products Register**” has the meaning given in Section 6.9(a);
 - (2) “**Additional Safety Performance Indicators**” has the meaning given in Section 5.9.4(a);
 - (3) “**Adjacent Railway Systems**” means those railways that are directly impacted by the development, or operation, of the Works;
 - (4) “**Annual Safety Culture Survey**” has the meaning given in Section 5.14.1(b);
 - (5) “**Annual Safety Culture Survey Report**” has the meaning given in Section 5.14.1(f);
 - (6) “**Approval in Principle Safety Submission**” has the meaning given in Section 6.5.2(b)(i);
 - (7) “**Approval in Principle Security Submission**” has the meaning given in Section 8.5.2(b)(i);
 - (8) “**Baseline Safety Culture Survey**” has the meaning given in Section 5.14.1(c);
 - (9) “**Canadian Methods for Risk Evaluation and Assessment Standard for Railway Systems**” or “**CMREA**” means *CSA R114:22 – Canadian method for risk evaluation and assessment for railway systems* by the Canadian Standards Association, as amended from time to time;
 - (10) “**Canadian Rail Operating Rules**” or “**CROR**” means the Transport Canada Canadian Rail Operating Rules, as amended from time to time;
 - (11) “**Certified Health and Safety Inspector**” means an individual who has the necessary credentials recognized by ISO 45001 for the purpose of such individual performing any inspections as may be required to be performed in accordance with Section 7.4(a);
 - (12) “**Chief Safety Officer**” means the RSSOM Project Co individual who shall be responsible for the overall safety of the Ontario Line Subway System and be responsible for the delivery of all aspects of safety management and system assurance, including safety assessment, RAMS and SIL;
 - (13) “**Chief Security Officer**” means the RSSOM Project Co individual who shall be responsible for the overall security of the Ontario Line Subway System and be responsible for the delivery of all aspects of security management for the Ontario Line Subway System, including Security Risk Assessment;

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- (14) “**Commercial-off-the-Shelf Software**” means software that is purchased from a third party vendor available for purchase in the commercial market with limited customization required;
- (15) “**Common Safety Indicators**” has the meaning given in Section 5.9.1(a);
- (16) “**Consent to Construct Safety Submission**” has the meaning given in Section 6.5.2(b)(iii);
- (17) “**Consent to Construct Security Submission**” has the meaning given in Section 8.5.2(a)(iii);
- (18) “**Consent to Operate Revenue Service**” has the meaning given in Section 4.4(a)(iv)(G);
- (19) “**Consent to Operate System Safety Submission**” has the meaning given in Section 6.5.2(b)(v);
- (20) “**Consent to Operate System Security Submission**” has the meaning given in Section 8.5.2(a)(v); “**Consent to Test Safety Submission**” has the meaning given in Section 6.5.2(b)(iv);
- (21) “**Consent to Test Security Submission**” has the meaning given in Section 8.5.2(a)(iv);
- (22) “**Construction Director**” means the Project Co Party listed in Schedule 9 – Key Individuals;
- (23) “**Constructor**” has the meaning given in the OHSA;
- (24) “**Contracting Authority ISA**” means an Independent Safety Assessor retained by the Contracting Authority;
- (25) “**Contracting Authority ISA ESAC Verification Report**” has the meaning given in Section 6.8(j);
- (26) “**Contracting Authority ISA Security Submission Verification Report**” has the meaning given in Section 8.5.2(e);
- (27) “**CPP**” means Certified Protection Professional;
- (28) “**CPTED**” means Crime Prevention Through Environmental Design;
- (29) “**Critical Injury**” shall have the corresponding meaning to “**Critically Injured**” as given under R.R.O. 1990, Regulation 834 to the OHSA, as amended from time to time;
- (30) “**EN 50126-1**” has the meaning given in Section 6.3(b)(i);
- (31) “**EN 50126-2**” has the meaning given in Section 6.3(b)(ii);

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- (32) “**EN 50128**” has the meaning given in Section 6.3(b)(iii);
- (33) “**EN 50129**” has the meaning given in Section 6.3(b)(iv);
- (34) “**EN 50155**” has the meaning given in Section 6.3(b)(vi);
- (35) “**EN 50657**” has the meaning given in Section 6.3(b)(v);
- (36) “**Engineering Safety and Assurance Case**” or “**ESAC**” has the meaning given in Section 6.8(a);
- (37) “**Facility Fire Safety Plan**” has the meaning given in Section 6.10(f);
- (38) “**Failure Reporting and Corrective Action System**” or “**FRACAS**” means the system of reporting faults and corresponding Corrective Actions as set out in EN 50126-1;
- (39) “**Final Incident Report**” has the meaning given in Section 7.10(b)(iii);
- (40) “**Final Rail Transportation Occurrence Incident Report**” has the meaning given in Section 5.5.2(d);
- (41) “**Fire/Life Safety Committee**” has the meaning given in Section 3.4(e);
- (42) “**Fire/Life Safety Management Plan**” has the meaning given in Section 6.10(a);
- (43) “**Fire/Life Safety Standards**” has the meaning given in Section 6.3(d);
- (44) “**FRACAS Report**” has the meaning given in Section 6.8(g)(iii)(D);
- (45) “**Functional Safety**” has the meaning given in the IEC 61508 Electronic Functional Safety Package;
- (46) “**Guideway and Tunnel Security Plan**” has the meaning given in Section B.1.5 of Appendix B to this Schedule 29;
- (47) “**Hazard**” has the meaning given in the EN 50126-1;
- (48) “**Hazard Analysis**” has the meaning given in EN 50126-1;
- (49) “**Hazard Analysis Report**” has the meaning given in Section 6.8(c)(iv);
- (50) “**Hazard Identification**” has the meaning given in the CMREA;
- (51) “**Hazard Record/Log**” has the meaning given in the CMREA for “Hazard Record” and the meaning given in EN 50126 for “Hazard Log”;
- (52) “**IEC 15288**” has the meaning given in Section 8.4(b);
- (53) “**Independent Safety Assessment Plan**” has the meaning given in Section 6.8(c)(vii);

- (54) “**Independent Safety Assessor**” or “**ISA**” means an Independent Safety Assessor accredited by the Standards Council of Canada, pursuant to the Independent Safety Assessor for Railway Systems Accreditation Program developed and administered by the Standards Council of Canada;
- (55) “**Independent SMS Audit**” has the meaning given in Section 5.13.1(c);
- (56) “**Initial Rail Transportation Occurrence Incident Report**” has the meaning given in Section 5.5.2(b);
- (57) “**Interim Rail Transportation Occurrence Incident Report**” has the meaning given in Section 5.5.2(c);
- (58) “**Internal Safety Reporting Procedure**” has the meaning given in Section 5.10(a);
- (59) “**ISO 22341**” has the meaning given in Section 8.4(a);
- (60) “**ISO 31000**” has the meaning given in Section 8.4(a);
- (61) “**ISO 45001**” has the meaning given in Section 7.1(b)(v);
- (62) “**ISO 45001 Certification**” has the meaning given in Section 7.3(a);
- (63) “**Life Saving Rules**” means a set of mandatory rules applicable to individuals to prevent serious injuries and fatalities, covering the most critical safety hazards that are known to cause loss of life or Serious Injury;
- (64) “**Maintenance Vehicles**” has the meaning given in the Output Specifications;
- (65) “**Mental Health First Aid**” means the mental health first aid program established by the Mental Health Commission of Canada and its successors, as at the Technical Reference Date, unless instructed by Contracting Authority;
- (66) “**Metrolinx Beacon Safety Performance Standard**” means the Metrolinx Vehicle Beacon Safety Standard, Document ID EHS-TP001-02, as at the Technical Reference Date, unless instructed by Contracting Authority;
- (67) “**Metrolinx Construction Safety Management Program**” means the Metrolinx Construction Safety Management Program, Document ID CSMP-05, as at the Technical Reference Date, unless instructed by Contracting Authority;
- (68) “**Metrolinx Emergency Management Plan**” means the Metrolinx Emergency Management Plan document prepared by the Emergency Management Unit Security Division, as at the Technical Reference Date, unless instructed by Contracting Authority;
- (69) “**Metrolinx Fitness for Duty Policy**” means the Metrolinx Corporate Human Resources, Employee Relations Fitness for Duty Policy, as at the Technical Reference Date, unless instructed by Contracting Authority;

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- (70) “**Metrolinx Personal Protective Equipment Standard**” means the Metrolinx Personal Protective Equipment Standard, Document ID EHS-PPE-2020, as at the Technical Reference Date, unless instructed by Contracting Authority;
- (71) “**Metrolinx Personal Track Safety Program**” means the Metrolinx training program covering the hazards and risks of working in a rail environment that all individuals working on the Metrolinx owned rail network must complete before they begin work;
- (72) “**Metrolinx Railway Risk Assessment Standard**” means the Metrolinx Safety Department Risk Assessment Standard, Document ID MXSD-SSA-L1-STD-0001, as at the Technical Reference Date, unless instructed by Contracting Authority;
- (73) “**Metrolinx Territory**” means Metrolinx owned rail corridors and yards, including the Ontario Line Subway;
- (74) “**Monthly Construction Safety Report**” has the meaning given in Section 7.11(a);
- (75) “**Monthly Safety and Security Report**” has the meaning given in Section 3.4(d);
- (76) “**Near Miss**” means a condition, unsafe act or unplanned event that did not result in injury to personnel or damage to equipment or property but had the potential to do so;
- (77) “**Occupational Health and Safety Risk**” means a combination of the likelihood of occurrence of a work-related hazardous event(s) or exposure(s) and the severity of injury and ill health that can be caused by the event(s) or exposure(s);
- (78) “**Occupational Health and Safety Standards**” has the meaning given in Section 7.1(b);
- (79) “**Operational Readiness Report**” has the meaning given in Section 6.8(f)(ii);
- (80) “**Passenger**” has the meaning given in the Output Specifications;
- (81) “**Passenger Interface Provider**” means an Additional Contractor providing customer facing services and fare enforcement related to the Ontario Line Subway System. The TTC will fulfil this function for the operations and maintenance period of the Ontario Line Subway System.
- (82) “**Passenger Station Security Plan**” has the meaning given in Section B.1.4 of Appendix B to this Schedule 29;
- (83) “**Person In Charge**” means in respect of a Rail Transportation Occurrence, the person designated by Project Co to manage the on-site response to the occurrence, including liaising with Contracting Authority, Adjacent Railway Systems and the emergency services;

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- (84) “**Platform**” has the meaning given in the Output Specifications;
- (85) “**Product**” means,
- (a) an individual element that forms part of a System, a Subsystem or an equipment; or
 - (b) a collection of elements that is interconnected to form a System, a Subsystem or an equipment;
- (86) “**Product Acceptance Process**” has the meaning given in Section 6.9(b);
- (87) “**Project Co Declaration**” means a written declaration produced by Project Co in accordance with section 9 of the CMREA;
- (88) “**Project Co Fatigue Management Plan**” has the meaning given in Section 5.12(b);
- (89) “**Project Co Fitness for Duty Policy**” has the meaning given in Section 7.8(b);
- (90) “**Project Co Internal Audit**” has the meaning given in Section 5.13.1(b);
- (91) “**Project Co Internal Audit Report**” has the meaning given in Section 5.13.1(b);
- (92) “**Project Co Investigator**” means a person appointed by Project Co as an investigator of Safety Incidents;
- (93) “**Project Co Personal Protective Equipment Standard**” has the meaning given in Section 7.5(a);
- (94) “**Project Co Safety Incident Management and Investigation Plan**” has the meaning given in Section 5.5.1(b);
- (95) “**Project Co Safety Management System**” or “**Project Co SMS**” has the meaning given in Section 5.1.1(a);
- (96) “**Project Co Safety Management System Component**” has the meaning given in Section 5.1.1(a)(ii);
- (97) “**Project Co Safety Training Program**” has the meaning given in Section 5.11.3(f);
- (98) “**Project Co Site Specific Safety Manual**” has the meaning given in Section 7.2(a);
- (99) “**Project Co SMS Software Solution**” has the meaning given in Section 5.1.2(a);
- (100) “**Project Safety Requirements**” has the meaning given in Section 4.1(a);

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- (101) “**Project Security Requirements**” has the meaning given in Section 4.2(a);
- (102) “**Rail Transportation Occurrence**” has the meaning given in Section 5.5.1(a);
- (103) “**Rail Transportation Occurrence Summary**” has the meaning given in Section 5.5.2(a);
- (104) “**Railway System**” has the meaning given in the CMREA;
- (105) “**RAM Plan**” has the meaning given in Section 6.8(c)(x);
- (106) “**RAM Policy**” has the meaning given in Section 6.8(c)(ix);
- (107) “**RAM Subsystem Requirements**” has the meaning given in Section 6.8(d)(v)(G);
- (108) “**RAM Test Specification**” has the meaning given in Section 6.8(f)(iv);
- (109) “**RAM Validation Plan**” has the meaning given in Section 6.8(d)(v)(H);
- (110) “**RAM Validation Report**” has the meaning given in Section 6.8(g)(iii)(C);
- (111) “**RAMS**” has the meaning given in Section 6.3(f);
- (112) “**Register of Project Safety Requirements**” has the meaning given in Section 5.4.1(a);
- (113) “**Remedial Action**” means action to eliminate the cause(s) of a nonconformity or a Safety Incident and to prevent recurrence;
- (114) “**Remedial Action Plan**” has the meaning given in Section B.8 of Appendix B to this Schedule 29;
- (115) “**Revenue Service**” has the meaning given in the Output Specifications;
- (116) “**Risk**” means the likelihood or frequency of occurrence of an event, including Accidents as defined in the CMREA, resulting in an adverse consequence and the degree of severity of that consequence;
- (117) “**Risk Acceptance Criteria**” has the meaning given in the CMREA;
- (118) “**Risk Acceptance Principle**” has the meaning given in the CMREA;
- (119) “**Risk Analysis**” has the meaning given in the CMREA;
- (120) “**Risk Assessment**” means the overall process comprising a Risk Analysis and a Risk Evaluation, including application of a Risk ranking matrix;
- (121) “**Risk Evaluation**” has the meaning given in the CMREA;
- (122) “**Risk Management**” has the meaning given in the CMREA:

- (123) “**RSSOM Project Co Independent Safety Assessor**” or “**RSSOM Project Co ISA**” means an Independent Safety Assessor retained by RSSOM Project Co;
- (124) “**RSSOM Project Co ISA ESAC Report**” has the meaning given in Section 6.8(h);
- (125) “**RSSOM Project Co ISA Security Submission Report**” has the meaning given in Section 8.5.2(c);
- (126) “**Safety and Security Coordination Meeting**” or “**SSCM**” has the meaning given in Section 3.3(c);
- (127) “**Safety and Security Critical Items List**” has the meaning given in Section 6.7(i);
- (128) “**Safety and Security Interface Framework**” or “**SSIF**” has the meaning given in Section 3.4(b);
- (129) “**Safety and System Assurance Standards**” has the meaning given in Section 6.3(b);
- (130) “**Safety Confirmation**” has the meaning given in Section 6.8(k);
- (131) “**Safety Culture Survey Remedial Plan**” has the meaning given in Section 5.14.1(g);
- (132) “**Safety Function**” has the meaning given in EN 50126-1;
- (133) “**Safety Governing Body**” has the meaning given in Section 3.2(a);
- (134) “**Safety Improvement Plan**” has the meaning given in Section 3.3(l);
- (135) “**Safety Incident**” means an occurrence arising out of or in the course of work that could or does result in adverse effect (including occupational disease, illness and death) on the physical, mental or cognitive condition of a person;
- (136) “**Safety Induction Briefing**” has the meaning given in Section 5.11.4(a);
- (137) “**Safety Integrity**” has the meaning given in EN 51026-1;
- (138) “**Safety Integrity Level**” has the meaning given in EN 51026-1;
- (139) “**Safety Measures**” has the meaning given in the CMREA;
- (140) “**Safety Performance Review Body**” has the meaning given in Section 3.3(a);
- (141) “**Safety Policy**” has the meaning given in Section 5.3.1(a);
- (142) “**Safety Requirements**” has the meaning given in the CMREA;

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- (143) “**Safety Requirements Specification**” has the meaning given in Section 6.8(c)(vi);
- (144) “**Safety Stand Down Meeting**” has the meaning given in Section 7.13(a);
- (145) “**Safety Validation Report**” has the meaning given in Section 6.8(g)(iii)(B);
- (146) “**Safety Work Plan**” has the meaning given in Section 7.12(a);
- (147) “**Security Log**” has the meaning given in Section B.2 of Appendix B to this Schedule 29;
- (148) “**Security Plan**” has the meaning given in Section 8.6(a);
- (149) “**Security Provider**” means an Additional Contractor providing security services for the Ontario Line Subway System. The TTC will fulfil this function for the operations and maintenance period of the Ontario Line Subway System.
- (150) “**Security Risk Assessment**” has the meaning given in Section B.5 of Appendix B to this Schedule 29;
- (151) “**Security Risk Assessment Report**” has the meaning given in Section B.6 of Appendix B to this Schedule 29;
- (152) “**Security Risk Assessment Review Report**” has the meaning given in Section B.7 of Appendix B to this Schedule 29;
- (153) “**Serious Injury**” has the meaning given in the Transportation Safety Board Regulations;
- (154) “**Shared Infrastructure Security Plan**” has the meaning given in Section B.1.6 of Appendix B to this Schedule 29;
- (155) “**Significant Change**” means a change to the existing Ontario Line Subway System found to be significant under the CMREA;
- (156) “**SIL**” means the safety integrity level;
- (157) “**SIL Apportionment Report**” has the meaning given in Section 6.7(h);
- (158) “**SMS Action Plan Report**” has the meaning given in Section 5.13.2(d);
- (159) “**SMS Audit**” has the meaning given in Section 5.13.2(a);
- (160) “**SMS Audit Plan**” has the meaning given in Section 5.13.1(a);
- (161) “**SMS Audit Report**” has the meaning given in Section 5.13.2(a);
- (162) “**SMS Contracting Authority Audit**” has the meaning given in Section 5.13.1(e);

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- (163) “**SMS Independent Audit Report**” has the meaning given in Section 5.13.1(d);
- (164) “**SOR/2020-222**” has the meaning given in Section 8.4(a);
- (165) “**SSDM Summary Report**” has the meaning given in Section 7.13(g);
- (166) “**Standards Council of Canada**” means the Standards Council of Canada and its successors;
- (167) “**Station**” has the meaning given in the Output Specifications;
- (168) “**Subsystem**” has the meaning given in EN 50126-1 and further defined in the CMREA;
- (169) “**Supporting Standards**” has the meaning given in Section 6.3(e);
- (170) “**System**” has the meaning given in Section 1.3(a);
- (171) “**System Assurance Submission**” has the meaning given in Section 6.5.2(a);
- (172) “**System Assurance Submissions Plan**” has the meaning given in Section 6.5.1(b);
- (173) “**System Definition**” means the establishment of boundaries and functions of the System under consideration as set out in EN 50126-1;
- (174) “**System Definition Document**” has the meaning given in Section A.2 of Appendix B to this Schedule 29;
- (175) “**System Design Safety Submission**” has the meaning given in Section 6.5.2(b)(ii);
- (176) “**System Design Security Submission**” has the meaning given in Section 8.5.2(b)(ii);
- (177) “**System Performance Status Report**” has the meaning given in Section 6.8(g)(ii);
- (178) “**System RAM Status Report**” has the meaning given in Section 6.8(d)(iv);
- (179) “**System Safety and Security Interface Committee**” or “**SSSIC**” has the meaning given in Section 3.4(a);
- (180) “**System Safety Case**” has the meaning given in Section 6.8(d)(iii);
- (181) “**System Safety Officer**” means the Project Co individual who shall be responsible for the overall safety of the Project Co Infrastructure and be responsible for the delivery of all aspects of safety management and system assurance for the Project Co Infrastructure, including safety assessment, RAMS and SIL;

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- (182) “**System Safety Plan**” has the meaning given in Section A.1 of Appendix B to this Schedule 29;
- (183) “**System Safety Review Panel**” has the meaning given in Section 3.7(a);
- (184) “**System Security Officer**” means the Project Co individual who shall be responsible for the overall security of the Project Co Infrastructure and be responsible for the delivery of all aspects of security management for the Project Co Infrastructure, including Security Risk Assessment;
- (185) “**System Security Plan**” has the meaning given in Section B.1.3 of Appendix B to this Schedule 29;
- (186) “**System Security Standards**” means the standards listed in Section 8.4;
- (187) “**System Security Submission**” has the meaning given in Section 8.5.2(b);
- (188) “**System Security Submissions Plan**” has the meaning given in Section 8.5.1(b);
- (189) “**Tolerable Functional Failure Rate**” has the meaning given in EN 50126-2;
- (190) “**Tolerable Hazard Rate**” has the meaning given in EN 50126-1;
- (191) “**Transportation Safety Board Regulations**” means the *Transportation Safety Board Regulations (SOR/2014-34)*, as amended from time to time; and

3. SAFETY AND SECURITY GOVERNANCE

3.1 Contracting Authority

- (a) Contracting Authority shall rely on the following Metrolinx bodies;
 - (i) Safety Certification Committee as the overall Safety Governing Body for the Ontario Line Subway System, and
 - (ii) Safety Performance Review Committee as the Safety Performance Review Body for the Ontario Line Subway System.

3.2 Safety Governing Body

- (a) Contracting Authority shall establish a safety governing board that shall have oversight on the following matters for the Ontario Line Subway System:
 - (i) matters related to the Risk Evaluation and Risk Assessments as set out in this Schedule 29;
 - (ii) matters related to system assurance, and Engineering Safety and Assurance Cases as set out in this Schedule 29 for all elements of the Project;
 - (iii) matters related to Product Acceptance Process, as set out in this Schedule 29, for all elements of the Project affecting existing railways;
 - (iv) matters related to security assurance and System Security Submissions as set out in this Schedule 29 of the Project;
 - (v) matters related to the acceptance of the Ontario Line Subway System as safe and secure for entry into, and remaining in, Revenue Service;
 - (vi) all other safety, system assurance and security matters as they relate to the Ontario Line Subway, including the development of new infrastructure and equipment and the modification of existing infrastructure and equipment; and
 - (vii) any other matters with respect to safety, system assurance and security as may be set out in the terms of reference that are developed from time to time by the board.(the “**Safety Governing Body**”).
- (b) The composition of the membership of the Safety Governing Body shall be determined by Contracting Authority in its sole discretion.
- (c) The Safety Governing Body shall receive, and review submissions related to the items set out in Section 3.2(a) including:
 - (i) the System Safety Plan, the Ontario Line Subway System Definition Document, and the RAM Plan produced by RSSOM Project Co in accordance with Section 6.4;

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- (ii) with respect to any Risk Evaluation or Risk Assessment performed in accordance with Section 6.5 and the Project Co Declaration;
 - (iii) the System Assurance Submissions Plan in accordance with Section 6.5.1;
 - (iv) the System Assurance Submissions in accordance with Section 6.5.2, including all Engineering Safety and Assurance Cases and RSSOM Project Co ISA ESAC Reports in accordance with Section 6.8;
 - (v) the Product Acceptance Process and new or modified Project applications in accordance with Section 6.9;
 - (vi) the System Security Submissions Plan in accordance with Section 8.5.1;
 - (vii) the System Security Submission in accordance with Section 8.5.2;
 - (viii) the submissions from the System Safety Review Panels over which the Safety Governing Body has authority; and
 - (ix) the submissions from the Contracting Authority ISA with respect to matters over which the Safety Governing Body has authority.
- (d) Unless otherwise determined by the Contracting Authority, in its sole discretion, the Safety Governing Body shall operate throughout the Project Term.
- (e) The Safety Governing Body shall, in its sole discretion,
- (i) approve or reject any submission, plan or report received pursuant to Section 3.2(c) or
 - (ii) provide comments or revisions to any submission, plan or report.
- (f) If instructed by Contracting Authority, and subject to Schedule 22 – Estimates, Variations and Proposals, Project Co shall incorporate and implement any comments provided by the Safety Governing Body pursuant to Section 3.2(e) into Project Co’s submissions, plans and reports.
- (g) Decisions of the Safety Governing Body shall be made in its sole discretion and shall be final and binding on Project Co.
- (h) The Safety Governing Body may, in its sole discretion:
- (i) adopt such procedures and practices for the conduct of the activities of the Safety Governing Body as it considers appropriate from time to time;
 - (ii) invite to any meeting of the Safety Governing Body such other persons as the Safety Governing Body, with reason, determines;
 - (iii) exclude from any meeting of the Safety Governing Body such persons as the Safety Governing Body, with reason, determines; and

- (iv) receive and review any person or organization agreed to by the Safety Governing Body.
- (i) The Safety Governing Body shall, in its sole discretion:
 - (i) issue the Consent to Operate Revenue Service for the Ontario Line Subway System to RSSOM Project Co following full review of RSSOM Project Co’s safety certificate and supporting documents.

3.3 Safety Performance Review Body

- (a) Contracting Authority shall establish a safety performance governing board that shall have oversight on the following matters for the Ontario Line Subway System:
 - (i) the Project Co Safety Management System, including:
 - (A) Project Safety Requirements, excluding those covered by the Safety Governing Body but including all other matters related to safety Risks or Hazards, and any non-conformances with the Project Safety Requirements;
 - (B) Common Safety Indicators; and
 - (C) the audits conducted in accordance with this Schedule 29;
 - (ii) safety-related performance requirements; and
 - (iii) any other matters with respect to safety, other than undertaken by the Safety Governing Body, as may be set out in the terms of reference that are developed from time to time by the board,

(the “**Safety Performance Review Body**”).
- (b) The composition of the Safety Performance Review Body shall be determined by the Contracting Authority in its sole discretion.
- (c) The Safety Performance Review Body shall meet with Project Co, along with RSSOM Project Co, EGS Project Co and South Civil Project Co each month (the “**Safety and Security Coordination Meeting**” or “**SSCM**”) to discuss and agree on the following:
 - (i) statistics and trend analysis of Hazards and Risks;
 - (ii) statistics and trend analysis of safety accidents, security incidents, and their precursors (near misses);
 - (iii) tests, simulations, and exercises of emergency preparedness;
 - (iv) training, communication, and promotion of an appropriate safety and security culture;
 - (v) investigation of safety accidents and security incidents, if any;

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- (vi) joint investigation of safety accidents and security incidents, if any; and
 - (vii) report on Remedial Actions, if any.
- (d) The Safety Performance Review Body shall receive and review the Monthly Safety and Security Report (see Section 3.4(d)) prior to the Safety and Security Coordination Meeting.
- (e) The Safety Performance Review Body shall receive and review the submissions related to the items set out in Section 3.3(a) including the following:
- (i) Safety Improvement Plans, as set out in Section 3.5;
 - (ii) The Project Co Safety Management System, and any changes thereto, as set out in Section 5.1;
 - (iii) Additional and new Project Safety Requirements identified by Project Co and the associated reports, as set out in Section 5.4.1(c);
 - (iv) Initial Rail Transportation Occurrence Incident Reports, Interim Rail Transportation Occurrence Incident Reports and Final Rail Transportation Occurrence Incident Reports, as set out in Section 5.5.2;
 - (v) monthly reports on Common Safety Indicators, as set out in Section 5.9;
 - (vi) reports relating to Risks, Hazards, opportunities for safety improvements and any non-conformances with the Project Safety Requirements, as set out in Section 5.10;
 - (vii) the Project Co Fatigue Management Plan, as set out in section 5.12(b);
 - (viii) Project Co Internal Audit Reports, SMS Independent Audit Reports, and SMS Action Plan Reports, as set out in Sections 5.13.1(a) and 5.13.1(b)
 - (ix) the methodology, format and questions in the Baseline Safety Culture Survey and each Annual Safety Culture Survey, the Annual Safety Culture Survey Reports and the Safety Culture Survey Remedial Plans, as set out in Section 5.14.1;
 - (x) Project Co Site Specific Safety Manual, as set out in Section 7.2;
 - (xi) the health and safety inspection and re-inspection reports, as set out in Section 7.4;
 - (xii) the Project Co Personal Protective Equipment Standard, as set out in Section 7.5;
 - (xiii) the Project Co Fitness for Duty Policy, as set out in Section 7.8;
 - (xiv) submissions from the Contracting Authority ISA with respect to matters over which the Safety Performance Review Body has authority in accordance with its terms of reference and this Schedule 29; and
 - (xv) such other reports as the Safety Performance Review Body requires in its sole discretion.

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- (f) The Safety Performance Review Body may, in its sole discretion,
 - (i) approve or reject any submission, plan or report; or
 - (ii) provide comments or suggested revisions to any submission, plan or report.
 - (g) If instructed by Contracting Authority, Project Co shall incorporate and implement any comments provided by the Safety Performance Review Body into Project Co's submissions, plans and reports.
 - (h) Decisions of the Safety Performance Review Body shall be made in its sole discretion and shall be final and binding on Project Co.
 - (i) The Safety Performance Review Body may, in its sole discretion:
 - (i) adopt such procedures and practices for the conduct of the activities of the Safety Performance Review Body as it considers appropriate from time to time;
 - (ii) invite to any meeting of the Safety Performance Review Body such other persons as the Safety Performance Review Body determines;
 - (iii) exclude from any meeting of the Safety Performance Review Body such persons as the Safety Performance Review Body determines; and
 - (iv) receive and review reports from any person or organization agreed to by the Safety Performance Review Body.
 - (j) The Safety Performance Review Body may, in its sole discretion, conduct one or more audits through Contracting Authority ISA, or a third party of the Works or the Project Co Safety Management System to assess whether:
 - (i) Project Co is complying with the Project Safety Requirements; and
 - (ii) an acceptable level of safety, as determined by the Safety Performance Review Body in its sole discretion, is being maintained by Project Co.
 - (k) The Safety Performance Review Body may, acting reasonably, deem Project Co to be performing at an “unacceptable level of safety”, if an audit conducted in accordance with Section 3.3(j) determines that:
 - (i) ongoing non-compliance with the Project Co Safety Management System or the Project Safety Requirements has occurred or is occurring;
 - (ii) severe Safety Incidents or accidents have occurred; or
 - (iii) that Safety Incidents or accidents are occurring at a high frequency.
 - (l) If the Safety Performance Review Body makes a determination of “unacceptable level of safety” pursuant to Section 3.3(k), Contracting Authority, on the basis of a recommendation of the Safety Performance Review Body may require Project Co to develop a safety improvement plan (the “**Safety Improvement Plan**”).

3.4 Project Co Obligations for Governance and Committees

- (a) Within sixty (60) days of the DMCA Effective Date, RSSOM Project Co shall establish, chair, maintain, and support a committee through which RSSOM Project Co shall coordinate all aspects of safety and security management and certification with Project Co, South Civil Project Co and EGS Project Co (“**System Safety and Security Interface Committee**” or “**SSSIC**”). The SSSIC shall:
- (i) exist for the duration of the Project Term;
 - (ii) include Project Co, RSSOM Project Co, South Civil Project Co, EGS Project Co, the RSSOM Project Co ISA, and Contracting Authority (by standing invitation); and
 - (iii) develop a safety and security interface framework.
- (b) Within thirty (30) days of its establishment, the SSSIC shall develop a framework, agreed amongst Project Co, RSSOM Project Co, South Civil Project Co and EGS Project Co that identifies the goals of the SSSIC, the procedures, key deliverables, and milestone dates (the “**Safety and Security Interface Framework**” or “**SSIF**”).
- (i) The Safety and Security Interface Framework shall detail the mechanisms that allow Project Co, RSSOM Project Co, South Civil Project Co and EGS Project Co to work collaboratively on all safety and security matters and to resolve any scope or contractual issues.
 - (ii) The SSIF shall detail how documentation is shared between Project Co, RSSOM Project Co, South Civil Project Co, and EGS Project Co.
 - (iii) The SSIF shall detail how safety and security documentation is developed by Project Co, RSSOM Project Co, South Civil Project Co and EGS Project Co and incorporated into the safety and security submission to Contracting Authority to meet the requirements of this Schedule 29.
 - (iv) The SSIF shall be reviewed by the SSSIC on a monthly basis for the duration of the Project Term.
- (c) Project Co shall take part in the Safety and Security Coordination Meeting pursuant to Section 3.3(c).
- (d) RSSOM Project Co shall prepare and submit a monthly report to Contracting Authority, three (3) days in advance of each Safety and Security Coordination Meeting, containing data, trends, analysis, and commentary on the topics to be discussed at a Safety and Security Coordination Meeting (the “**Monthly Safety and Security Report**”).
- (i) Two (2) days prior to RSSOM Project Co’s submission to Contracting Authority, as outlined in Section 3.4(d), Project Co shall provide, to RSSOM Project Co, a monthly report containing data, trends, analysis, and commentary on their topics to be discussed at a Safety and Security Coordination Meeting for inclusion in the overall Monthly Safety and Security Report.

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- (e) Within sixty (60) days of the DMCA Effective Date, RSSOM Project Co shall establish, chair, maintain and support a committee to coordinate fire/life safety activities (the “**Fire/Life Safety Committee**”)
- (i) The Fire/Life Safety Committee shall:
- (A) review fire/life safety risks;
 - (B) provide a forum for Emergency Service Providers to raise issues related to emergency protocols;
 - (C) provide a forum for participants to raise issues of compliance to fire/life safety requirement; and
 - (D) reach consensus on the implementation of fire/life safety issues that are not explicitly covered by code.
- (ii) Project Co shall attend all Fire/Life Safety Committee meetings to address:
- (A) relevant matters arising in delivery of the Works; and
 - (B) relevant matters related to the delivery of the Ontario Line Subway.
- (iii) The Fire/Life Safety Committee shall be comprised of representatives from:
- (A) Project Co (during the Project Term only);
 - (B) RSSOM Project Co;
 - (C) South Civil Project Co (during their project term only);
 - (D) EGS Project Co (during their project term only);
 - (E) the RSSOM Project Co ISA;
 - (F) the Contracting Authority’s Safety Governing Body;
 - (G) Emergency Service Providers;
 - (H) Governmental Authorities;
 - (I) Ontario Fire Marshal (by invitation);
 - (J) representatives of TTC; and
 - (K) representatives of GO Transit.
- (f) The Fire/Life Safety Committee shall be the first level of resolution on matters of fire/life safety that are not dealt with at the SSCM.

- (g) The Fire/Life Safety Committee participants shall reach a consensus within the Fire/Life Safety Committee and implement the result of their mutual agreement to support ESAC development. If consensus is not achieved the dispute resolution will follow the requirements as set out in this Agreement.
- (h) Project Co, RSSOM Project Co, South Civil Project Co and EGS Project Co shall incorporate requirements and decisions arising from the Fire/Life Safety Committee into the Ontario Line Subway System and obtain all necessary permits accordingly.
- (i) During the Project Term, the Fire/Life Safety Committee shall:
- (i) ensure Project Co, RSSOM Project Co, South Civil Project Co and EGS Project Co meet the fire/life safety requirements of the Ontario Line Subway System through execution of their Fire/Life Safety Management Plan;
 - (ii) ensure each party has coordinated with the other parties as necessary to identify and mitigate interface risks between themselves;
 - (iii) monitor fire/life safety performance; and
 - (iv) monitor implementation of any corrective actions.
- (j) Where no other Governmental Authority exists, the Fire/Life Safety Committee shall be the Governmental Authority for compliance with NFPA Codes and Standards, the Canadian National Fire Code, and the Ontario Fire Code.
- (k) Project Co shall attend the following meetings and committees during the Project Term:

Meeting Name	Schedule 29 Reference	Schedule
Safety Governing Body	Section 3.2(a)	Monthly
Safety Performance Review Body	Section 3.3(a)	Monthly
Systems Safety & Security Interface Committee	Section 3.4(a)	Monthly
Safety and Security Coordination Meeting	Section 3.4(c)	Monthly
Fire/Life Safety Committee	Section 3.4(e)	Monthly
Safety Stand Down	Section 7.13	Quarterly

3.5 Project Co Safety Improvement Plan

- (a) The Safety Improvement Plan shall include a detailed description of,
 - (i) the Remedial Actions that Project Co intends to implement to rectify the issues uncovered by the audit to ensure compliance with the Project Co Safety Management System and the Project Safety Requirements;
 - (ii) the Project Co individuals who shall be responsible for the implementation of each Remedial Action;
 - (iii) the timeline for Project Co’s implementation of each Remedial Action;
 - (iv) the mechanism by which Project Co shall monitor the successful implementation of a Remedial Action; and
 - (v) the timeline for Project Co’s submission of reports to the Safety Performance Review Body on the implementation of Remedial Action.
- (b) Project Co shall submit each Safety Improvement Plan to the Safety Performance Review Body, for review and approval, no later than twenty (20) Business Days following the request by the Safety Performance Review Body for the Safety Improvement Plan (or such longer period of time as the Parties may agree).

3.6 Submissions to Contracting Authority

- (a) For the purposes of this Schedule 29, any submission, plan, report or other deliverable that Project Co is required to provide to Contracting Authority’s Safety Governing Body or the Safety Performance Review Body pursuant to this Schedule 29 shall be,
 - (i) transmitted by Project Co to Contracting Authority for transmission to RSSOM Project Co for review and comment by the RSSOM Project Co ISA prior to formal submission to Contracting Authority,
 - (A) comments arising from the RSSOM Project Co ISA’s review of Project Co’s submission shall be transmitted back to Project Co via Contracting Authority; and
 - (ii) updated by Project Co in line with RSSOM Project Co ISA’s comments, as agreed amongst the RSSOM Project Co ISA, RSSOM Project Co and the Contracting Authority at the SSSIC, before being submitted to Contracting Authority for transmission to the Contracting Authority ISA;
 - (A) the Contracting Authority ISA shall review and action in accordance with Sections 6.8(j) and 6.8(k) prior to review by the Safety Governing Body or the Safety Performance Review Body.
- (b) Project Co shall submit each System Assurance Submission for approval in accordance with the requirements of Section 6.5.
- (c) Project Co shall submit each System Security Submission for approval in accordance with the requirements of Section 8.5.1.

- (d) All other submissions required within this Schedule 29 shall be submitted to Contracting Authority in accordance with the requirements of Schedule 10 – Review Procedure.
- (e) Project Co shall implement each submission, plan or other deliverable that Project Co is required to submit to the Contracting Authority’s Safety Governing Body or the Safety Performance Review Body pursuant to this Schedule 29 following receipt of an approval by the Safety Governing Body or the Safety Performance Review Body, as applicable.

3.7 System Safety Review Panels

- (a) No later than thirty (30) days following the DMCA Effective Date, Contracting Authority shall establish one or more separate and distinct system safety review panels (each, a “**System Safety Review Panel**”) comprised of technical representatives of the Contracting Authority.
 - (i) For clarity, the role of these panels is only to review the safety aspect of a distinct system, or integrated system design.
- (b) Contracting Authority shall assign subject matter experts to each System Safety Review Panel based on the Systems set out in RSSOM Project Co’s Ontario Line Subway System Definition Document.
- (c) Project Co shall meet with each System Safety Review Panel related to the Project Co Infrastructure on a monthly basis, and each meeting shall include:
 - (i) an update by Project Co on the status of the System Assurance Submissions related to the System being discussed;
 - (ii) an update from the RSSOM Project Co ISA on the progress of the System Assurance Submissions, and any general observations or concerns that the RSSOM Project Co ISA may have with respect to safety or system assurance related to the System being discussed;
 - (iii) discussion, including any feedback or clarification by the System Safety Review Panel on the draft versions of System Assurance Submissions, provided that the drafts have been submitted by Project Co to the applicable System Safety Review Panel no later than ten (10) Business Days in advance of the meeting; and
 - (iv) any matter related to System Assurance Submissions for the applicable System that Project Co or Contracting Authority may elect to discuss.
- (d) Contracting Authority shall document minutes from each meeting set out in Section 3.7(c), and such minutes shall be distributed to Project Co no later than five (5) Business Days after the applicable meeting.
- (e) The Safety Governing Body and the Safety Performance Review Body may, each in its sole discretion, delegate tasks to any System Safety Review Panel or require that information or submissions be reviewed by any System Safety Review Panel prior to such submissions being made to the Safety Governing Body or the Safety Performance Review Body, as applicable.

4. PROJECT CO OBLIGATIONS FOR SAFETY, SYSTEM ASSURANCE AND SECURITY

4.1 Safety Requirements

- (a) Project Co shall carry out the Works in accordance with the following, each as may be amended from time to time:
 - (i) Applicable Law;
 - (ii) Good Industry Practice as it relates to passenger rail transportation safety and system assurance; and
 - (iii) the Safety and System Assurance Standards,
(collectively, the “**Project Safety Requirements**”).
- (b) Project Co and all Project Co Parties shall comply with the Project Safety Requirements at all times during the Project Term.
- (c) Project Co shall comply with the standards set out in this Schedule 29, as such standards are amended from time to time.

4.2 Security Requirements

- (a) Project Co shall carry out the Works in accordance with the following, each as may be amended from time to time:
 - (i) Applicable Law;
 - (ii) Good Industry Practice as it relates to passenger rail transportation security; and
 - (iii) the System Security Standards,
(collectively, the “**Project Security Requirements**”).
- (b) Project Co and all Project Co Parties shall comply with the Project Security Requirements at all times during the Project Term.
- (c) Project Co shall comply with the standards set out in this Schedule 29, as such standards are amended from time to time.

4.3 RSSOM Project Co Independent Safety Assessor

- (a) Contracting Authority shall cause RSSOM Project Co to appoint the RSSOM Project Co ISA to independently assess the safety and security work being delivered by Project Co, RSSOM Project Co, EGS Project Co, and South Civil Project Co.
- (b) The terms of reference of the RSSOM Project Co ISA shall be based upon, and include, the requirements provided in the Standard Council of Canada’s Requirements and Guidance – Independent Safety Assessor for Railway Systems Accreditation Program.

- (c) The RSSOM Project Co ISA shall evaluate the compliance of Project Co's, RSSOM Project Co's, EGS Project Co's, and South Civil Project Co's work with the System Safety Plan and System Security Plan during the Project Term through review and comment of the releases of the System Assurance Submissions and the System Security Submissions and produce an independent assessment report for each submission
- (d) The scope of the work performed by the RSSOM Project Co ISA shall be as specified in this Schedule 29.
- (e) The RSSOM Project Co ISA shall present the status of its assessment, findings, and any safety conditions at SSCM meetings.

4.4 General Project Co Obligations for Ontario Line Subway Safety and Security

- (a) Project Co acknowledges and agrees that during the Project Term,
 - (i) the management of construction and personnel health and safety for the Ontario Line Subway is a shared responsibility amongst Project Co, RSSOM Project Co, South Civil Project Co and EGS Project Co, and Additional Contractors;
 - (ii) notwithstanding the shared responsibility as described in Section 4.4(a)(i), RSSOM Project Co shall be responsible for achieving Consent to Operate Revenue Service in accordance with the requirements of this Schedule 29 for the Ontario Line Subway System, which includes the Ontario Line Subway.
 - (A) RSSOM Project Co shall provide evidence of safe system integration for all Systems and Subsystems comprising the Ontario Line Subway System in accordance with the requirements of the Safety and System Assurance Standards;
 - (B) RSSOM Project Co shall provide evidence of secure integration for all Systems and Subsystems comprising the Ontario Line Subway System in accordance with the requirements of the System Security Standards; and
 - (C) Project Co shall be responsible for all aspects of the Works that are impacted by, or that impact, safety and security of the Works as agreed at the SSSIC;
 - (iii) Project Co shall be responsible and accountable for:
 - (A) obtaining approvals alongside RSSOM Project Co, from Contracting Authority for the System Security Submissions for the Project Co Infrastructure in accordance with the requirements of this Schedule 29 and in accordance with Project Co's obligations under this Agreement, whilst recognising and agreeing that the final security solution is a product of the work of both Project Co and RSSOM Project Co.
 - (iv) Project Co shall provide input to safety and security matters, as required, and agreed at the SSSIC, to RSSOM Project Co who is responsible and accountable for:

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- (A) ESAC development and submission, together with demonstration of reliability, availability and maintainability of Trains, other rail-borne equipment;
 - (B) ESAC development and submission, together with demonstration of reliability, availability, and maintainability of the signaling and train control system; and
 - (C) ESAC development and submission, together with demonstration of reliability, availability and maintainability of the other RSSOM Project Co rail systems for the Ontario Line Subway System, including:
 - (I) Traction Power System (as defined in the Output Specifications);
 - (II) Overhead Contact System (as defined in the Output Specifications);
 - (III) Supervisory Control and Data Acquisition (as defined in the Output Specifications);
 - (IV) Communications System (as defined in the Output Specifications);
 - (V) Platform Screen Doors (as defined in the Output Specifications);
 - (VI) Guideway Intrusion Detection System; and
 - (VII) Tunnel Ventilation Control System (as defined in the Output Specifications);
 - (D) providing input to RSSOM Project Co in ESAC development;
 - (E) obtaining approvals, from Contracting Authority, for the System Assurance Submissions for the overall Ontario Line Subway System and all Systems and Subsystems in RSSOM Project Co’s scope of work in accordance with the requirements of this Schedule 29;
 - (F) obtaining approvals, from the Contracting Authority, for the System Security Submissions for the overall Ontario Line Subway System in accordance with the requirements of this Schedule 29; and
 - (G) obtaining approvals for carrying passengers on, and the Revenue Service of, the Ontario Line Subway System (the “**Consent to Operate Revenue Service**”).
- (b) Project Co acknowledges and agrees that if Contracting Authority believes, in its sole discretion, that a suspension of the Works is required for any Emergency, Contracting

Authority may, without limiting Section 25 (*Contracting Authority's Remedial Rights*) of this Agreement, order Project Co to suspend all or any part of the Works and Project Co shall immediately comply with such an order.

- (i) Project Co shall comply, and shall ensure that all Project Co Parties comply, with all safety-related directives or instructions that may be issued by Contracting Authority from time to time.
- (c) If instructed by Contracting Authority, Project Co shall comply, incorporate and implement any changes to standards, codes and regulations used or referenced in this Schedule 29, subject to and in accordance with Section 11.22 (*Change in Standards*) of this Agreement.

5. SAFETY MANAGEMENT SYSTEM

5.1 Project Co Safety Management System

5.1.1 Project Co Safety Management System

- (a) Project Co shall develop and implement a safety management system for the Works (the “**Project Co Safety Management System**” or “**Project Co SMS**”) that,
 - (i) complies with requirements set out in this Schedule 29; and
 - (ii) includes the following:
 - (A) a process for ensuring accountability within Project Co and among Project Co Parties that meets the requirements set out in Section 5.2;
 - (B) a Safety Policy that meets the requirements of Section 5.3;
 - (C) a process for ensuring compliance with the Project Safety Requirements in accordance with Section 5.4;
 - (D) a process for managing Safety Incidents that includes,
 - (I) a means of recording meaningful data regarding Safety Incidents such that the data informs the determination of the root cause of Safety Incidents; and
 - (II) the requirements of Section 5.5;
 - (E) a process for identifying safety concerns and safety improvements, as set out in Section 5.6;
 - (F) a Risk Assessment process that meets the requirements of Section 5.7 and that is compliant with the CMREA;

- (G) a process that meets the requirements of Section 5.8 for selecting, implementing and evaluating remedial action for Risks identified during the Risk Assessment process as requiring remedial action;
- (H) a process that meets the requirements of Section 5.9 for establishing targets to manage and continuously improve the safety of the Works and for developing initiatives to achieve each target;
- (I) a process for reporting Rail Transportation Occurrences, Safety Incidents, Risks, Hazards, opportunities for safety improvements, and any non-conformances with the Project Safety Requirements, that meets the requirements of Section 5.10;
- (J) a process for managing knowledge that meets the requirements of Section 5.11;
- (K) a process with respect to scheduling that meets the requirements of Section 5.12;
- (L) a process for continual improvement of the Project Co Safety Management System that meets the requirements of Section 5.13; and
- (M) a process for meeting the safety and systems assurance requirements that are set out in Section 6,

(each, a “**Project Co Safety Management System Component**”).

- (b) Project Co shall ensure that the Project Co Safety Management System as a whole, and each Project Co Safety Management System Component, applies to the Works and to all activities of Project Co and the Project Co Parties.
- (c) Project Co shall ensure that the Project Co Safety Management System includes a requirement to acquire and maintain ISO 45001 certification in accordance with Section 7.3.
- (d) Project Co shall submit updated versions of the Project Co Safety Management System to the Contracting Authority for approval during the Project Term no later than thirty (30) days following the DMCA Effective Date and on or before a number of key milestones in accordance with the following:
 - (i) As part of the process for safety and system assurance set out in Section 6, Project Co shall submit an updated version of the Project Co Safety Management System to the Contracting Authority no later than each of the following:
 - (A) the date of Project Co’s submission of each Approval in Principle Safety Submission to the Safety Governing Body;

- (B) the date of Project Co’s submission of each System Design Safety Submission to the Contracting Authority;
 - (C) the date of Project Co’s submission of each Consent to Construct Safety Submission to the Contracting Authority;
 - (D) the date of Project Co’s submission of each Consent to Test Safety Submission to the Contracting Authority; and
 - (E) the date of Project Co’s submission of each Consent to Operate System Safety Submission to the Contracting Authority.
- (ii) Each updated version of the Project Co Safety Management System submitted in accordance with Section 5.1.1(d)(i) shall, for each Project Co Safety Management System Component, reflect the progression of the Works based on what is included in the applicable System Assurance Submission.
 - (iii) In addition to the submissions set out in Section 5.1.1(d)(i), Project Co shall submit an updated version of the Project Co Safety Management System no later than six months following each of the following changes in circumstance:
 - (A) a change in the System Safety Officer; and
 - (B) an amendment to any one component of the Project Safety Requirements.
- (e) Until such time as an updated Project Co Safety Management System is approved by the Contracting Authority, in its sole discretion, the then current Project Co Safety Management System shall continue in force.
 - (f) Once the updated Project Co Safety Management System is approved by the Contracting Authority, in its sole discretion, the updated Project Co Safety Management System (subject to any revisions implemented as a result of comments from the Contracting Authority) shall replace the then current Project Co Safety Management System (and become the finalized Project Co Safety Management System that is in force).
 - (g) The first finalized Project Co Safety Management System that is approved by the Contracting Authority shall be the “Project Co Safety Management System – Version 1 – [Date]”. Thereafter each updated Project Co Safety Management System that is approved by the Contracting Authority shall become the next version number and shall be dated as of the applicable date of completion of the review procedure and shall replace the then current Project Co Safety Management System.
 - (h) Project Co may propose changes to the Project Co Safety Management System by submitting an updated Project Co Safety Management System to the Contracting Authority for review and approval. Sections 5.1.1(e), 5.1.1(f) and 5.1.1(g) shall apply to each updated Project Co Safety Management System submitted by Project Co in accordance with this Section 5.1.1(h).

5.1.2 Project Co SMS Software Solution

- (a) No later than sixty (60) days following the DMCA Effective Date, Project Co shall provide a software solution for the administration of the Project Co Safety Management System (the “**Project Co SMS Software Solution**”). The Project Co SMS Software Solution shall meet the minimum requirements set out in Appendix D to this Schedule 29.

5.2 Safety Accountability

5.2.1 System of Safety Accountability

- (a) As part of the Project Co Safety Management System, Project Co shall establish a system of accountability that meets the following requirements:
- (i) The System Safety Officer shall ensure that the Project Co Safety Management System provides safety governance for all Project Co responsibilities and that is at all times in compliance with the Project Co Safety Management System;
 - (ii) For clarity, the Construction Health and Safety Manager (as identified in Schedule 9 – Key Individuals), shall be responsible for all activities required to satisfy Project Co’s obligation to construction safety in this Schedule 29.
 - (iii) The System Safety Officer may designate one or more staff members of Project Co to develop and implement one or more of the processes required as part of the Project Co Safety Management System, provided that formal records of designation are maintained by Project Co. However, the System Safety Officer shall at all times be accountable for the extent to which the Project Safety Requirements are met;
 - (iv) Project Co shall ensure that all safety-related responsibilities, accountabilities and authorities of each Project Co Party that has a safety-related role (including management of other staff involved in safety-related tasks) are,
 - (A) clearly defined and documented at all levels of Project Co and the Project Co Parties;
 - (B) clearly delegated, assigned and communicated to the applicable Project Co Parties; and
 - (C) understood and accepted by the applicable Project Co Parties; and
 - (v) The System Safety Officer shall establish Project Co’s own internal safety governance structure, processes and committees and shall document such structures, processes, and committees in the Project Co Safety Management System.

5.3 Safety Policy

5.3.1 Safety Policy

- (a) As part of the Project Co Safety Management System, Project Co shall establish, implement and maintain a safety policy for the Works (the “**Safety Policy**”) that:

- (i) includes a commitment to provide a positive health and safety culture and environment for the prevention of injuries and ill health;
 - (ii) is appropriate to the purpose, size and context of the Project Co Infrastructure, and the specific nature of the Risks, Hazards and opportunities for safety performance improvements;
 - (iii) provides a framework for setting safety objectives and evaluating Project Co's performance against these safety objectives;
 - (iv) includes a commitment to fulfill legal and regulatory requirements and to comply with Project Safety Requirements;
 - (v) includes a commitment to identify Hazards and to seek to eliminate, isolate, contain or reduce the Risk of such Hazards;
 - (vi) includes a commitment to continual improvement of the Project Co Safety Management System and of safety performance;
 - (vii) includes a commitment to provide mechanisms for identifying, reporting and resolving safety concerns;
 - (viii) includes a commitment to consult with and enable participation of the public and Project Co Parties;
 - (ix) includes protection from reprisals for reporting of safety concerns as set out in Section 5.10(c) and a mechanism for confidential reporting of safety concerns as described in Section 5.10(d); and
 - (x) is approved and signed by the System Safety Officer.
- (b) Project Co shall ensure that the Safety Policy is reviewed annually as part of the Project Co Internal SMS Audit.

5.3.2 Communication of Safety Policy

- (a) Project Co shall ensure that the Safety Policy is,
- (i) available to Contracting Authority as documented information;
 - (ii) communicated to RSSOM Project Co;
 - (iii) communicated to all Project Co Parties;
 - (iv) communicated to all key stakeholders; and
 - (v) available to interested parties:
 - (A) any release to a party external to Project Co shall be subject to sensitive information protocols and securely protected.

- (b) Project Co shall ensure that any change to the Safety Policy is communicated to all Project Co Parties no later than seven (7) days after a change is made.
- (c) Project Co shall require that each Project Co Party that is a subcontractor of any tier provide written confirmation that is signed by such organization’s safety director (or an equivalent role), that states that such Project Co Party has received and reviewed the Safety Policy and accepts the Safety Policy.
- (d) Project Co shall ensure that copies of the signed confirmations are forwarded to Contracting Authority upon request and that originals are available during any audit by Contracting Authority.

5.4 Compliance with Safety Requirements

5.4.1 Process for Ensuring Compliance

- (a) Project Co shall include, in the Project Co Safety Management System, a list of the regulations, rules, and other instruments comprising the Project Safety Requirements that are applicable to the Project (the “**Register of Project Safety Requirements**”).
- (b) Project Co shall ensure that the Register of Project Safety Requirements is kept up to date and includes, for each regulation, rule and other instrument, the date upon which the regulation, rule or other instrument was approved or established, and the date of its last revision.
- (c) Project Co shall, at all times during the Project Term,
 - (i) identify all additional and new Project Safety Requirements and incorporate them into the Project Co Safety Management System to ensure continued compliance with the Project Safety Requirements at all times;
 - (ii) notify the Contracting Authority of all additional and new Project Safety Requirements; and
 - (iii) report to the Contracting Authority what changes Project Co will implement in response to the additional and new Project Safety Requirements and how such changes will satisfy the Project Safety Requirements.
- (d) Project Co shall include in the Project Co Safety Management System a procedure for verifying compliance with the requirements of this Schedule 29 and the associated Project Safety Requirements.

5.5 Rail Transportation Occurrences and Safety Incidents

5.5.1 Rail Transportation Occurrences and Safety Incident Management and Investigation Plan

- (a) Project Co shall comply with all investigation and reporting requirements set out in this Section 5.5 for any occurrence on, or with the Project Co Infrastructure in which:

- (i) a person is killed or sustains a serious injury as a result of coming into contact with live electrical traction power distribution equipment or system;
 - (ii) a Train,
 - (A) is involved in a collision or derailment,
 - (B) sustains damage that affects the safe operation of the Train, or
 - (C) causes or sustains a fire or explosion,
- (a “**Rail Transportation Occurrence**”).
- (b) The Project Co Safety Management System shall include a Safety Incident management and investigation plan (the “**Project Co Safety Incident Management and Investigation Plan**”). The Project Co Safety Incident Management and Investigation Plan shall:
 - (i) require that all Rail Transportation Occurrences be reported to the System Safety Officer, the Chief Safety Officer, and formally recorded, including the information set out in Section 5.5.2(a), by Project Co;
 - (ii) require that all Rail Transportation Occurrences be reported to the Contracting Authority in accordance with Section 5.5.2;
 - (iii) facilitate the involvement of TTC with respect to Rail Transportation Occurrences in accordance with Section 5.5.3;
 - (iv) set out a process for how each category of Rail Transportation Occurrence shall be investigated and reviewed;
 - (v) set out the process for how each type of Safety Incident other than a Rail Transportation Occurrence shall be investigated and reviewed;
 - (vi) identify how the outcome of the investigations or reviews of Rail Transportation Occurrences and Safety Incidents shall be communicated to all Project Co Parties;
 - (vii) identify if a different approach to any of the items set out in Sections 5.5.1(b)(i) to 5.5.1(b)(vi) is required for any Safety Incidents occurring on Adjacent Railway Systems territories as compared to Safety Incidents occurring on the Metrolinx Territory.

5.5.2 Reporting of Rail Transportation Occurrences

- (a) No later than four hours following each Rail Transportation Occurrence, Project Co shall submit to the Contracting Authority a high level written description of the immediate facts of the Rail Transportation Occurrence (each, a “**Rail Transportation Occurrence Summary**”), including,
 - (i) the date, the exact time and the location of the Rail Transportation Occurrence;

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- (ii) a description of the sequence of events and the accident site, including the efforts and involvement of Emergency Service Providers;
 - (iii) the name and contact details of the Person In Charge of the site of the Rail Transportation Occurrence; and
 - (iv) the plan for the establishment of an investigation, the composition of the team of investigators, and the conduct of the investigation.
- (b) No later than 24 hours following each Rail Transportation Occurrence, Project Co shall submit to the Contracting Authority an initial written report describing the Rail Transportation Occurrence in a form that is prescribed by the Contracting Authority, in its sole discretion (each, an “**Initial Rail Transportation Occurrence Incident Report**”). Each Initial Rail Transportation Occurrence Incident Report shall include, at a minimum,
- (i) an up-to-date version of the information set out in the Rail Transportation Occurrence Summary;
 - (ii) a detailed summary and analysis of the Rail Transportation Occurrence, including,
 - (A) an estimate of the number of Project Co staff, and the number of other persons on board any Train involved in the Rail Transportation Occurrence;
 - (B) the names and roles of Project Co Parties involved and, to the extent ascertainable by Project Co, of other persons involved and witnesses;
 - (C) a description of the Trains or Maintenance Vehicles involved in the Rail Transportation Occurrence, identified by type and identification numbers;
 - (D) a description of the fixed infrastructure involved in the Rail Transportation Occurrence, including track types, switches, and guideway type
 - (E) a description of the means of communication that was used before, during and after the Rail Transportation Occurrence by Project Co and other persons involved in the Rail Transportation Occurrence;
 - (F) a description of the Works being carried out at or in the vicinity of the site, if applicable;
 - (G) a description of the trigger of the Emergency Response Plan and the chain of events following the trigger; and
 - (H) a description of the trigger of the involvement of the Emergency Service Providers and a description of the involvement and actions taken by the Emergency Service Providers;

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- (iii) the estimated number of fatalities, Serious Injuries, and injuries other than Serious Injuries to Project Co Parties, Contracting Authority Parties and third parties;
 - (iv) a description of the estimated material damage, including to vehicles, fixed infrastructure, and the environment;
 - (v) external circumstances relevant to the Rail Transportation Occurrence, including,
 - (A) weather conditions at the time of the Rail Transportation Occurrence and any climatic conditions, including snow, ice, wind, fog, dust and severe heat; and
 - (B) geographical references, including chainages and proximity to Adjacent Railway Systems;
 - (vi) a record of evidence collected, and investigations and inquiries initiated or completed by Project Co and Project Co Parties with respect to the Rail Transportation Occurrence, including,
 - (A) summary of testimonies (subject to the protection of the identity of persons) of Project Co Parties and any other witnesses to the Rail Transportation Occurrence;
 - (B) electronic, photographic, audio, video, or other records or documentation related to the Rail Transportation Occurrence;
 - (C) medical records and/or toxicology results in accordance with the Project Co Fitness for Duty Policy of any employees or contractors of Contracting Authority, Project Co, or Project Co Parties involved in the Rail Transportation Occurrence; and
 - (D) any other evidence that the Project Co Investigator, or Contracting Authority safety personnel, identifies as being relevant to the investigation;
 - (vii) an initial analysis and conclusions with respect to the Rail Transportation Occurrence, including,
 - (A) initial conclusions regarding all known direct and immediate causes of the Rail Transportation Occurrence, including contributory factors relating to actions taken by persons involved or the condition of Trains or Maintenance Vehicles or technical installations;
 - (B) initial conclusions regarding all known direct, immediate and/or root causes relating to the Project Safety Requirements and the Project Co Safety Management System;

- (C) initial conclusions and observations on safety issues (for example, deficiencies, Risks, or Hazards) that were present, but may not necessarily have contributed to the Rail Transportation Occurrence; and
 - (D) measures that have already been taken or that are being initiated as a consequence of the Rail Transportation Occurrence in order to mitigate Risk; and
- (viii) any other information relating to the Rail Transportation Occurrence that Contracting Authority safety personnel requests or any other information that may be reportable under the Transportation Safety Board Regulations.
- (c) No later than 72 hours following each Rail Transportation Occurrence, Project Co shall submit to the Contracting Authority an updated version of the Initial Rail Transportation Occurrence Incident Report that includes the up-to-date version of all information set out in Sections 5.5.2(b)(i) to 5.5.2(b)(viii) (each, an “**Interim Rail Transportation Occurrence Incident Report**”).
 - (d) No later than sixty (60) days following each Rail Transportation Occurrence, Project Co shall submit to the Contracting Authority an updated version of the Interim Rail Transportation Occurrence Incident Report that includes the current, up-to-date version of all information set out in Sections 5.5.2(b)(i) to 5.5.2(b)(viii) and, in addition, the following information (each, a “**Final Rail Transportation Occurrence Incident Report**”):
 - (i) a detailed estimate of material damage, including to property, Trains, Maintenance Vehicles, fixed infrastructure and the environment, including a dollar amount that represents the estimate of total material damage, and a dollar amount breakdown by type of damage;
 - (ii) the record of evidence collected, and investigations and inquiries completed on the following:
 - (A) the Project Co Safety Management System, including,
 - (I) the framework organization and how orders are given and carried out;
 - (II) requirements on Project Co Parties and how they are enforced;
 - (III) routines for internal checks and audits and their results; and
 - (IV) the interface between different actors involved with the infrastructure;
 - (B) the Applicable Law, rules, regulations and standards applicable to the Rail Transportation Occurrence, including,
 - (I) federal and provincial rules and regulations; and
 - (II) Project Safety Requirements;

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- (C) the functioning of Trains and Maintenance Vehicles and technical installations as a result of the Rail Transportation Occurrence, including,
 - (I) infrastructure;
 - (II) communications equipment; and
 - (III) Trains and Maintenance Vehicles, including information from automatic data recorders;
 - (D) documentation on the operating systems involved in the Rail Transportation Occurrence, including,
 - (I) measures taken by staff for traffic control and signalling;
 - (II) exchange of verbal messages in connection with the occurrence, including documentation from recordings; and
 - (III) measures taken to protect and safeguard the site of the Rail Transportation Occurrence;
 - (E) human-machine-organization interface, including,
 - (I) working time applied to the staff involved;
 - (II) medical and personal circumstances with influence on the Rail Transportation Occurrence including existence of physical or psychological stress; and
 - (III) design of equipment with impact on human-machine interface; and
 - (F) previous Rail Transportation Occurrences of a similar character;
- (iii) analysis and conclusions, including,
- (A) final accounting of the event chain of the Rail Transportation Occurrence, establishing the conclusions on the Rail Transportation Occurrence based on the facts;
 - (B) discussion, including analysis of the facts, with the aim of drawing conclusions as to the direct, immediate and/or root causes including contributing factors of the Rail Transportation Occurrence and the performance of the rescue services.
 - (C) conclusions, including,
 - (I) direct and immediate causes of the Rail Transportation Occurrence including contributory factors relating to actions taken by persons

- involved or the condition of Trains and Maintenance Vehicles or technical installations;
- (II) underlying causes and contributing factors relating to skills, procedures and maintenance; and
 - (III) direct, immediate and/or root causes relating to the Project Safety Requirements and the Project Co Safety Management System; and
 - (IV) any additional observations including deficiencies and shortcomings established during the investigation, but without relevance to the conclusions on causes; and
- (iv) measures that have already been taken or adopted, or that have been planned or initiated, as a consequence of the Rail Transportation Occurrence.
- (e) All Safety Incident evidence must be preserved by Project Co in accordance with the Metrolinx Emergency Management Plan, the Project Co Safety Incident Management and Investigation Plan and Applicable Law.

5.5.3 Rail Transportation Occurrence Incident Management and Investigation – Contracting Authority Role

- (a) Contracting Authority may, in its sole discretion, exercise oversight with respect to all Project Co investigations of Rail Transportation Occurrences and the identification and implementation of associated remedial actions. Contracting Authority oversight of investigations of Rail Transportation Occurrences may include:
- (i) a review of whether any changes are needed to the Project Co investigation;
 - (ii) a review of whether any changes are needed to the Project Co Safety Management System, Project Co Safety Incident Management and Investigation Plan, or Project Safety Requirements; and
 - (iii) the identification of new or emerging Hazards or Risks and necessary amendments to the Project Co Safety Management System.
- (b) With respect to a Rail Transportation Occurrence, Contracting Authority may, in its sole discretion,
- (i) require a joint investigation by Project Co and the Contracting Authority;
 - (ii) conduct its own investigation in parallel with Project Co's investigation; or
 - (iii) invite a third party to participate in the investigation or to conduct an independent investigation.
- (c) Other than investigations led by another Governmental Authority, Contracting Authority shall lead and be the primary point of contact for all investigations related to all Rail Transportation Occurrences involving:

- (i) the Transportation Safety Board;
 - (ii) the Adjacent Railway Systems; or
 - (iii) an allegation of criminal activity.
- (d) Project Co acknowledges and agrees that Contracting Authority may, in its sole discretion subject only to Section 37 (*Confidentiality*) of this Agreement, share information, of any kind whatsoever, with respect to any Rail Transportation Occurrence, whether compiled by Project Co, or Contracting Authority, with the Transportation Safety Board or any Third Party Operator.

5.6 Process for Identifying Safety Concerns

- (a) Project Co shall, on an ongoing and regular basis throughout the Project Term, conduct analyses of the Works to identify safety concerns, including any trends, emerging trends regarding Hazards or Risks, or repetitive situations that result in Hazards or Risks.
- (b) The Project Co SMS Software Solution shall serve as a central repository for all information and analyses related to all Rail Transportation Occurrences, safety concerns and any data from safety monitoring technologies.

5.7 Risk Assessment Process

- (a) As part of the Project Co Safety Management System, with respect to the safety concerns identified by Project Co in Section 5.6, Project Co shall identify all Hazards, and analyze and evaluate, through a Risk Assessment process, all technical, operational, and organizational Risks related to the Works, including those arising from human and organizational factors, including workload, job design, fatigue, suitability of procedures, and the activities of third parties.
- (b) The Risk Assessment process shall conform to the CMREA and shall include the following considerations:
 - (i) past similar Safety Incidents, including Emergencies and their causes;
 - (ii) potential Emergency situations;
 - (iii) people, including consideration of the activities of Project Co Parties and members of the public; and
 - (iv) changes in the knowledge of, and information about, Hazards.
- (c) The Project Co Safety Management System shall,
 - (i) identify the conditions and work activities that trigger a Risk Evaluation and Risk Assessment process;
 - (ii) identify and evaluate the potential Hazards, Risks, causes and consequences, supported by a consistent Risk ranking matrix;

- (iii) apply intervention actions (i.e. elimination, reduction, isolation, or containment) to remove the cause of each Hazard and apply controls to minimise the consequence of the Hazard;
 - (iv) establish a suite of generic job safety Risk Evaluation and Risk Assessment forms to support the day-to-day safe undertaking of routine activities in the Works; and
 - (v) identify all tasks and activity-specific Hazards and Risks that require specialist training, certification or personal protective equipment.
- (d) Project Co shall ensure that all Project Co Parties, Third Party Operators and Contracting Authority Parties are provided with access to all Hazard Records/Logs developed in accordance with the CMREA in order to:
- (i) facilitate awareness of Hazards associated with the new or modified assets;
 - (ii) inform relevant personnel of any changes required to worker competency requirements; and
 - (iii) enable review of safe working practices.
- (e) Project Co shall ensure that the Hazard Record/Logs are kept up to date and reflect any changes associated with the Works.

5.8 Process for Remedial Actions

- (a) The Project Co Safety Management System shall include a process for selecting, implementing and evaluating any remedial action to be implemented with respect to Risks and Hazards that are identified as part of the Risk Assessment process undertaken in accordance with Section 5.7.
- (b) Project Co shall follow the hierarchy of controls described in ISO 45001, depending on the type of work requiring remedial action, when selecting and implementing remedial actions in accordance with Section 5.8(a).
- (c) The Project Co Safety Management System shall include a plan for consultation with Project Co Parties and Contracting Authority Parties, in the event that such parties are affected by the Risks and Hazards for which the remedial action is being implemented. The consultation plan shall include the following:
- (i) the mechanisms, time, training and resources necessary for consultation and participation;
 - (ii) identification of obstacles or barriers to participation, and the steps that Project Co and Project Co Parties shall take to remove such obstacles or barriers to participation and to minimize the effect of those obstacles and barriers that cannot be removed; and
 - (iii) the way in which Project Co Parties, Third Party Operators and Contracting Authority Parties can participate in selecting and evaluating remedial actions with respect to

Risks and Hazards and participate in determining their effective implementation and use.

5.9 Process for Establishing Targets and Developing Initiatives

5.9.1 Common Safety Indicators Reporting

- (a) As part of the Project Co Safety Management System, Project Co shall, no later than sixty (60) days following the DMCA Effective Date and thereafter throughout the Project Term on a monthly basis, prepare and submit to the Contracting Authority a monthly report on the common safety indicators described in Sections 5.9.1(a) to 5.9.3 Common Safety Indicators relating to accidents (collectively, the “**Common Safety Indicators**”)
- (b) Project Co shall report on the following types of incidents when related to the Works, or involving the Project Co Infrastructure, in accordance with Section 5.9.1(a):
 - (i) incidents involving fixed and mobile plant;
 - (ii) collisions of Trains and Maintenance Vehicles with Project Co Infrastructure;
 - (iii) incidents involving hot work;
 - (iv) incidents involving material or equipment being moved into, through, or off of the Site;
 - (v) incidents involving people working at heights; and
 - (vi) any other type of incident not covered by Sections 5.9.1(b)(i) to 5.9.1(b)(iv), including any Rail Transportation Occurrence.
- (c) For the incidents set out in Section 5.9.1(b), Project Co shall report on,
 - (i) the total number of incidents;
 - (ii) the total number of incidents relative to appropriate normalization statistics, including the total number of staff hours worked; and
 - (iii) the trend in incidents over time.
- (d) Each significant incident listed in Section 5.9.1(b) shall be reported under the type of the incident that occurs first in time, even if the consequences of a subsequent incident(s) are more severe (for example, a derailment followed by a fire).
- (e) Project Co shall organize the incident report set out in Section 5.9.1(b) into the following categories, as applicable:
 - (i) employee or contractor;
 - (ii) trespasser;
 - (iii) other person at a Platform;

- (iv) other person not at a Platform;
- (v) vehicle at a Platform; and
- (vi) vehicle not at a Platform.

5.9.2 Common Safety Indicators Relating to Precursors of Accidents

- (a) Project Co shall report on the number of precursors to accidents in accordance with this Section 5.9.2, as organized into the following categories:
 - (i) trespassing;
 - (ii) vandalism; and
 - (iii) other precursors to accidents.
- (b) Project Co shall report on all precursors set out in Section 5.9.2(a), whether or not they actually result in accidents.
- (c) For the precursors set out in Section 5.9.2(a), Project Co shall report on the total number of incidents.

5.9.3 Common Safety Indicators Relating to Fatalities and Serious Injuries

- (a) Project Co shall report on total fatalities and Serious Injuries, as organized in the following categories:
 - (i) Fatalities,
 - (A) caused by,
 - (I) contact with object or person;
 - (II) slips, trips and falls;
 - (III) electric shocks;
 - (IV) natural causes; and
 - (B) occurring,
 - (I) on the guideway;
 - (II) in Station;
 - (III) in any other location on one of the Project Co sites;
 - (ii) Serious Injuries.

- (A) With the same breakdown as in 5.9.3(a)(i).
- (iii) other assaults and abuses;
- (iv) slips, trips and falls occurring on,
 - (A) escalators;
 - (B) stairs;
 - (C) flat surfaces;
- (v) electric shocks; and
- (b) For the fatalities and Serious Injuries set out in Section 5.9.3(a), Project Co shall report on the total number of accidents.

5.9.4 **Additional Safety Performance Reporting**

- (a) In addition to the Common Safety Indicators, Project Co shall develop and record, in the Project Co Safety Management System, additional safety performance indicators as required to meet Project Co’s own objectives and requirements and to demonstrate improvements to items tracked in RSSOM Project Co’s annual safety performance plan (the “**Additional Safety Performance Indicators**”).
- (b) Project Co shall ensure that the Additional Safety Performance Indicators take into account Applicable Law and the Project Safety Requirements and are,
 - (i) consistent with the Safety Policy;
 - (ii) consistent with Good Industry Practice;
 - (iii) linked to priority Risks that influence Project Co’s safety performance;
 - (iv) measurable;
 - (v) reviewed with respect to their achievement and revised as appropriate; and
 - (vi) communicated across Project Co including to employees and contractors of Project Co and Project Co Parties.

5.9.5 **Establishing Targets and Continuous Improvement Initiatives**

- (a) Project Co shall report on and establish safety targets for the Common Safety Indicators, taking into account the results of previous years’ analyses of Common Safety Indicators.
- (b) Project Co shall develop initiatives to achieve each safety target and shall include in the Project Co Safety Management System a detailed description of each initiative to be implemented to achieve each safety target.

- (c) Project Co shall ensure that the safety targets for the Common Safety Indicators and the initiatives to achieve them are communicated to all Project Co Parties.

5.10 Process for Reporting Contraventions and Hazards

- (a) Project Co shall include in the Project Co Safety Management System a procedure for enabling Project Co and Project Co Parties to report to the Contracting Authority any Rail Transportation Occurrences, Risks, Hazards, opportunities for safety improvements, or any non-conformances with the Project Safety Requirements (the “**Internal Safety Reporting Procedure**”).
- (b) Project Co shall ensure that the Internal Safety Reporting Procedure has been developed in consultation with Project Co Parties, meets or exceeds Good Industry Practice, and has been communicated to all Project Co Parties.
- (c) Project Co shall ensure that the Safety Policy includes provisions to protect Project Co and Project Co Parties from reprisals when reporting any Rail Transportation Occurrences, Risks, Hazards, opportunities for safety improvements, or any non-conformance with the Project Safety Requirements.
- (d) The Safety Policy shall include provisions to allow for confidential reporting of safety concerns including Hazards, Risks, opportunities for safety improvements, or any non-conformance with Project Safety Requirements.

5.11 Process for Managing Knowledge

5.11.1 List of Duties, Positions, Skills and Qualifications

- (a) Project Co and Project Co Parties shall establish a list of duties, positions and competencies setting out the following:
- (i) the duties that are essential to the safe performance of the Works;
 - (ii) the positions that have responsibility for the performance of each duty; and
 - (iii) the mandatory competencies, including the training, skills, accreditations and certifications, qualifications, and experience required to perform each duty safely.

5.11.2 Competencies, Skills, Qualifications and Experience

- (a) Project Co shall establish processes to demonstrate that all Project Co and Project Co Parties have the mandatory competencies, including the training, skills, accreditations and certifications, qualifications and experience to perform the duties set out in Section 5.11.1(a) safely.
- (b) Project Co shall provide job descriptions to each Project Co Party fulfilling a duty set out in Section 5.11.1(a)(i), which shall as a minimum,
- (i) define the role, responsibilities, and accountabilities for the position; and

- (ii) define the mandatory competencies for the position.

5.11.3 Plan and Methods for Ensuring Competencies, Skills, Qualifications and Experience

- (a) Project Co shall include in the Project Co Safety Management System a plan for ensuring that each Project Co Party performing a duty set out in Section 5.11.1(a) has the requisite competencies, including skills, qualifications and experience to perform the duties, including the method by which Project Co will verify that Project Co Parties have the adequate competencies, including knowledge, skills, qualifications and experience, to fulfill their duties safely and the supervisory or oversight roles for each such duty in accordance with this Section 5.11.3.
- (b) If applicable, Project Co shall take actions to acquire and maintain the necessary competence for the duties set out in Section 5.11.1(a), including provision of training, mentoring, reassignment of personnel, or the hiring or contracting of competent persons, and Project Co shall evaluate the effectiveness of any such actions taken.
- (c) Project Co shall ensure that the competence of each Project Co Party performing a duty set out in Section 5.11.1(a) is maintained by ensuring that each such Project Co Party has sufficient practice in the field, knowledge and skill required to safely perform their duties. Project Co shall arrange for specific training for individual workers fulfilling the duties set out in Section 5.11.1(a) in circumstances where there has been a long absence from work.
- (d) Project Co shall retain reasonable documented information as evidence of competence for each worker performing any of the duties set out in Section 5.11.1(a) for the Project Term.
- (e) The processes set out in Section 5.11.2(a) shall include the control of visitors on the Project Co infrastructure and sites to ensure that all safety procedures for the areas being visited are understood and followed.
- (f) Project Co shall develop and implement a safety training program as part of the Project Co Safety Management System for individuals involved in the performance of any of the duties set out in Section 5.11.1(a)(i) (the “**Project Co Safety Training Program**”). The Project Co Safety Training Program shall,
 - (i) take into account,
 - (A) the requisite skills and knowledge required for an individual to be able to safely perform his or her duties; and
 - (B) the requirement for experiential learning to ensure that an individual is able to safely perform his or her duties;
 - (ii) provide ongoing training and periodic update of existing competencies throughout the Project Term;
 - (iii) provide specific training in parts of the Project Co Safety Management System that are relevant to the individual(s) receiving the training throughout the Project Term; and

- (iv) incorporate the Metrolinx Personal Track Safety Program, as amended from time to time, for all Project Co Parties working on or adjacent to Metrolinx Territory.
- (g) Project Co shall ensure that the Project Co Safety Training Program,
 - (i) is delivered according to the identified competency requirements and individual needs of the staff;
 - (ii) ensures that staff can operate under normal working conditions and respond appropriately to emergency situations, as applicable;
 - (iii) is of a duration and includes refresher training at a frequency that is appropriate for the Project Co Safety Training Program objectives; and
 - (iv) is regularly reviewed, audited and updated as required to reflect changes in duties, Project Safety Requirements, or recommendations resulting from reviews and audits and to meet or exceed Good Industry Practice.
- (h) Project Co shall keep individual worker training records of worker training that is completed under the Project Co Safety Training Program.

5.11.4 Knowledge Communication

- (a) Project Co shall provide all Project Co Party staff and safety management personnel on the Site with an induction briefing to the Project Co Safety Management System (each a “**Safety Induction Briefing**”).
- (b) The Safety Induction Briefing shall be carried out prior to the commencement of work, and a written confirmation shall be signed by the participant in the Safety Induction Briefing to acknowledge receipt of the Safety Induction Briefing and the content therein. The Safety Induction Briefing shall include the following topics:
 - (i) the Safety Policy;
 - (ii) the Project Co Safety Management System, the Project Safety Requirements and any other standards or documents that may affect railway safety and that Project Co Parties need to know in order to carry out their duties safely;
 - (iii) the contribution of Project Co Parties to the effectiveness of the Project Co Safety Management System, including,
 - (A) the relevance, importance and consequences of their activities;
 - (B) how the Project Co Parties contribute to the correct application and effectiveness of the Project Co Safety Management System; and
 - (C) the benefits of improved safety performance;
 - (iv) the implications and potential consequences of not conforming to the Project Co Safety Management System requirements;

- (v) Rail Transportation Occurrences and Safety Incidents and the outcomes of investigations that are relevant to the participants;
 - (vi) Hazards, Risks and actions that are relevant to the participants;
 - (vii) the process for reporting Hazards and Safety Incidents;
 - (viii) the importance of and processes for maintaining and replacing safety equipment and personal protective equipment where required; and
 - (ix) the right of Project Co Parties to be informed of and remove themselves from work situations that they consider present an imminent and serious danger to their life or health, as well as the Project Co arrangements for protecting them from undue consequences for doing so.
- (c) Project Co shall provide all Project Co Parties with the investigation findings of Rail Transportation Occurrences that could impact on the competency and training requirements of any Project Co Party.

5.12 Process with Respect to Scheduling

- (a) The Project Co Safety Management System shall include a process for scheduling work of Project Co Parties that includes the requirement to consider principles of fatigue science, except when scheduling work of Project Co Parties during an Emergency related to the safe execution of the Works.
- (b) Project Co shall develop a fatigue management plan that identifies and manages the risks associated with fatigue and meets or exceeds Good Industry Practice (the “**Project Co Fatigue Management Plan**”).

5.13 Process for Continual Improvement of Project Co Safety Management System

5.13.1 Project Co Safety Management System Audit Requirements

- (a) The Project Co Safety Management System shall include an audit plan that details all audits that shall be undertaken by Project Co to monitor and continuously improve the Project Co Safety Management System (the “**SMS Audit Plan**”). The SMS Audit Plan shall include a description that defines the types of audits to be undertaken, and for each type of audit,
 - (i) the frequency of the audit;
 - (ii) the method to be followed for carrying out the audit;
 - (iii) the responsibilities of Project Co and Project Co Parties for the audit;
 - (iv) the consultation processes that will be used as part of the audit process;
 - (v) planning requirements for the audit;
 - (vi) reporting requirements for the audit;

- (vii) how the results of previous audits shall be considered in the audit process;
 - (viii) the audit criteria and scope, which shall include auditing of compliance with the CMREA;
 - (ix) the selection process for auditors to ensure objectivity and the impartiality of the audit process;
 - (x) the communication process to ensure that results of the audit are reported to relevant managers, workers, and other relevant interested persons as required;
 - (xi) the process to verify the implementation of any Corrective Action or improvement measures taken as a result of the audit process; and
 - (xii) the process to verify the effectiveness of any Corrective Action or improvement measures taken as a result of the audit process.
- (b) Project Co shall audit at least one Project Co Safety Management System Component each month and shall audit the entire Project Co Safety Management System annually throughout the Project Term (each, a “**Project Co Internal Audit**”). Project Co shall submit the results of each Project Co Internal Audit (the “**Project Co Internal Audit Report**”), including any Corrective Actions taken or planned in respect to a Project Co Internal Audit, to the Contracting Authority no later than thirty (30) days following completion of the Project Co Internal Audit.
- (c) Project Co shall engage the RSSOM Project Co ISA to undertake an independent audit of the Project Co Safety Management System annually throughout the Project Term (each, an “**Independent SMS Audit**”). The Independent SMS Audit shall, at a minimum:
- (i) assess the extent to which the processes and procedures in the Project Co Safety Management System are being correctly applied;
 - (ii) evaluate the effectiveness of the processes and procedures in the Project Co Safety Management System;
 - (iii) evaluate the extent to which the Project Co Safety Management System conforms to the requirements of this Schedule 29; and
 - (iv) identify any corrective measures, as appropriate, to address non-conformance or issues identified in the application or effectiveness of the Project Co Safety Management System.
- (d) The results of the Independent SMS Audit shall be submitted to the Contracting Authority no later than thirty (30) days following completion of the Independent SMS Audit in the form of an audit report (each, an “**SMS Independent Audit Report**”). The System Safety Officer shall sign each SMS Independent Audit Report to attest to his or her acceptance of the SMS Independent Audit Report prior to its submission to the Contracting Authority.
- (e) Project Co acknowledges and agrees that Contracting Authority may, from time to time and in its sole discretion, carry out audits of the Project Co Safety Management System

itself or through a third party at any time and without Notice (each, an “**SMS Contracting Authority Audit**”). In the event that Contracting Authority undertakes a SMS Contracting Authority Audit, Project Co shall, in good faith, provide all information and assistance as may be requested by Contracting Authority or by the third party undertaking the SMS Contracting Authority Audit.

5.13.2 Action Plan Following SMS Audits

- (a) Subject to a determination made by the Contracting Authority with respect to a Project Co Internal Audit in accordance with Section 5.13.1(b), Project Co shall,
 - (i) rectify all deficiencies identified in any of the audits set out in Section 5.13.1 (each, an “**SMS Audit**”) or in any audit report set out in Section 5.13.1 (each, an “**SMS Audit Report**”);
 - (ii) address and comply with all results and recommendations arising out of any SMS Audit and any SMS Audit Report; and
 - (iii) update the Project Co Safety Management System to ensure that Project Co complies with this Section 5.13.2(a).
- (b) Project Co may submit a request to the Contracting Authority that,
 - (i) identifies a deficiency, result or recommendation arising out of a Project Co Internal Audit or Project Co Internal Audit Report that Project Co has determined is not necessary for Project Co to address in order for Project Co to comply with its obligations under this Agreement; and
 - (ii) sets out a detailed reason for the Project Co determination set out in Section 5.13.2(b)(i).
- (c) The Contracting Authority shall review the request submitted by Project Co in accordance with Section 5.13.2(b) and shall, in its sole discretion, make a determination as to whether or not Project Co is required to address the Project Co identified deficiency, result or recommendation arising out of a Project Co Internal Audit or Project Co Internal Audit Report. Project Co shall comply with any determination made by the Contracting Authority in accordance with this Section 5.13.2(c).
- (d) Project Co shall prepare a report (the “**SMS Action Plan Report**”) that sets out, in detail, the actions to be taken by Project Co to comply with its obligations as set out in Sections 5.13.2(a) and 5.13.2(c). The SMS Action Plan Report shall be signed by the System Safety Officer to acknowledge approval of the SMS Action Plan Report. The SMS Action Plan Report shall be submitted to the Contracting Authority no later than thirty (30) days after submission of an SMS Audit Report.

5.14 Continual Improvement of Safety Culture

5.14.1 Continual Improvement of Safety Culture

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- (a) Project Co shall ensure a positive safety culture across Project Co and all Project Co Parties, including through proactive measures to achieve the following:
- (i) a shared awareness among Project Co and Project Co Parties of the most important Occupational Health and Safety Risks;
 - (ii) development of a suite of Life Saving Rules to define the safety culture approach for Project Co and Project Co Parties;
 - (iii) an interrogative approach to safety with a shared awareness that Occupational Health and Safety Risk is never completely under control;
 - (iv) an integrated approach to safety that ensures that all Project Co and Project Co Parties are involved;
 - (v) a balanced approach to safety that balances “safety by the rules” and “safety by taking initiative”;
 - (vi) a holistic approach to safety that always considers technical factors, human factors, and organizational factors;
 - (vii) a highly-visible and proactive approach to safety leadership; and
 - (viii) an explicitly transparent, fair and non-retaliatory approach to:
 - (A) enforcing compliance with safety-related principles and requirements;
 - (B) reporting of unsafe situations and all Rail Transportation Occurrences;
 - (C) investigating unsafe situations and all Rail Transportation Occurrences; and
 - (D) auditing of the Project Co Safety Management System.
- (b) Project Co shall engage a third party approved by the Contracting Authority to conduct a survey of its safety culture on an annual basis throughout the Project Term (each, an “**Annual Safety Culture Survey**”). Each Annual Safety Culture Survey shall be administered to all employees and contractors of Project Co and Project Co Parties.
- (c) Project Co shall conduct the first Annual Safety Culture Survey (the “**Baseline Safety Culture Survey**”) no later than six months following the DMCA Effective Date. Project Co shall develop and submit the proposed methodology, format, and questions of the Baseline Safety Culture Survey and the plan for communicating the survey and the results of the survey with employees and contractors of Project Co and Project Co Parties to the Contracting Authority for approval, in its sole discretion, no later than two months in advance of the Baseline Safety Culture Survey being administered.
- (d) Each subsequent Annual Safety Culture Survey shall be conducted annually unless otherwise directed by Contracting Authority to conduct such survey less frequently. The content of the Annual Safety Culture Survey shall be submitted to the Contracting

Authority no later than thirty (30) days prior to the Annual Safety Culture Survey being administered. Project Co shall adjust the methodology and questions of the Annual Safety Culture Survey based on the comments provided by the Contracting Authority and to align with Good Industry Practice.

- (e) The methodology, format, and questions of the Annual Safety Culture Survey shall not change in years subsequent to the Baseline Safety Culture Survey without prior approval from the Contracting Authority, acting reasonably.
- (f) Project Co shall submit the results of the Annual Safety Culture Survey and Project Co's analysis of the results (each, an “**Annual Safety Culture Survey Report**”) to the Contracting Authority. Project Co shall develop and submit the Annual Safety Culture Survey Report to the Contracting Authority no later than thirty (30) days following the completion of the applicable Annual Safety Culture Survey.
- (g) Project Co shall provide a remedial action plan (each, a “**Safety Culture Survey Remedial Plan**”) to the Contracting Authority. The Safety Culture Survey Remedial Plan shall identify and describe all remedial actions that are required in order to address all areas in which the results of the Annual Safety Culture Survey are:
 - (i) below the endorsed acceptable level as defined in the Annual Safety Culture Survey methodology;
 - (ii) below the average of the Baseline Safety Culture Survey, for all surveys following the Baseline Safety Culture Survey;
 - (iii) below the average of the immediately previous Annual Safety Culture Survey; or
 - (iv) determined by the Contracting Authority, acting reasonably, to be of concern.
- (h) Project Co shall develop and submit each Safety Culture Survey Remedial Plan to the Contracting Authority no later than forty-five (45) days following the completion of the applicable Annual Safety Culture Survey Report.

6. SAFETY AND SYSTEM ASSURANCE

6.1 General

- (a) Project Co shall carry out its safety assurance obligations as set out in this Section 6 to demonstrate that,
- (i) the Works have been thoroughly reviewed, demonstrated, safely inspected and tested at all system levels throughout the lifecycle, and are capable of being integrated in accordance with Schedule 45 – Integration with RSSOM Project, operated and maintained safely as a fully integrated system;
 - (ii) the Works has achieved an acceptable level of safety and the Works, as an aggregate, function safely on an integrated basis; and
 - (iii) all elements are able to support vital, safety critical and safety related functions in normal, degraded, abnormal and emergency modes.
- (b) For the purposes of complying with its safety assurance obligations set out in this Section 6 and as an initial matter, Project Co shall establish a System Definition that shall be used by Project Co for the purposes of applying the CMREA (for modifications of existing railways, subways and LRTs) and EN 50126-1 and EN 50126-2 (for the Ontario Line Subway System), and for developing Project Co’s System Assurance Submissions as set out in Section 6.5.
- (c) Project Co shall provide input as required by RSSOM Project Co, in accordance with the System Assurance Submissions Plan and Section 6.5.1(a), to enable RSSOM Project Co to submit to the Contracting Authority a series of System Assurance Submissions for each System that comprises the Works. As further detailed in Section 6.5, the System Assurance Submissions are,
- (i) comprised of the following submission stages that collectively represent the lifecycle of the Project and include the design stage, construction stage, and testing and commission stage of the Project:
 - (A) “Approval in Principle Safety Submissions”;
 - (B) “System Design Safety Submissions”;
 - (C) “Consent to Construct Safety Submissions”;
 - (D) “Consent to Test Safety Submissions”;
 - (E) “Consent to Operate System Safety Submissions”.
 - (ii) for the purpose of demonstrating to Contracting Authority and RSSOM Project Co that Project Co has met the safety assurance obligations and has achieved RAMS in accordance with the requirements of EN 50126-1.

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- (d) As part of each System Assurance Submission, Project Co shall provide input to RSSOM Project Co through Contracting Authority, as required, to enable RSSOM Project Co to submit an Engineering Safety and Assurance Case and RSSOM Project Co ISA ESAC Report for approval by the Contracting Authority, in accordance with Section 6.8.
- (e) Project Co must receive approval from Contracting Authority for all items pertaining to the Works in each System Assurance Submission (including its corresponding Engineering Safety and Assurance Case) before Project Co is permitted to commence the work contemplated in that System Assurance Submission.
- (f) Project Co shall not,
- (i) commence detailed design work for any “System” until the Contracting Authority has received and approved all Approval in Principle Safety Submissions and System Design Safety Submissions related to that “System” as set out in the System Assurance Submissions Plan unless the Contracting Authority has issued a written derogation to the requirements of this Section 6.1(f)(i) setting out alternative arrangements for commencement of detailed design at Project Co’s risk, in parallel with an Approval in Principle Safety Submission or a System Design Safety Submission to the Contracting Authority;
 - (ii) commence construction of any “System” until the Contracting Authority has received and approved all Consent to Construct Safety Submissions related to that “System” as set out in the System Assurance Submissions Plan;
 - (iii) commence commissioning or testing of any “System” until the Contracting Authority has received and approved all Consent to Test Safety Submissions related to that “System” as set out in the System Assurance Submissions Plan; or
 - (iv) commence operations of any “System” until the Contracting Authority has received and approved all Consent to Operate System Safety Submissions related to that “System” as set out in the System Assurance Submissions Plan.
- (g) For clarity,
- (i) Project Co shall not implement any proposed change to Adjacent Railway Systems infrastructure unless and until Project Co has applied the CMREA, in accordance with Section 6.6, to the proposed change and has complied with all other Project Co obligations as set out in Section 6 with respect to the proposed change; and
 - (ii) Project Co shall apply the CMREA in accordance with Section 6.6 to any proposed change that is embedded in any “System” prior to making a System Assurance Submission for that “System”.

6.2 Chief Safety Officer and System Safety Officers

- (a) Project Co shall appoint the System Safety Officer who shall be responsible for the overall safety of the Works and who will be Project Co’s contact for all communications with the Chief Safety Officer, Contracting Authority, System Safety Officers for South Civil Project

Co and EGS Project Co, RSSOM Project Co ISA, Contracting Authority ISA, and others on safety matters related to the Works.

- (b) The System Safety Officer shall,
 - (i) have extensive experience in the field of system safety applied in a metro type rail transit environment in Canada
 - (ii) be responsible for supporting the Chief Safety Officer in the overall safety certification of the Ontario Line Subway; and
 - (iii) be responsible for the delivery of all aspects of the Project Co safety management and system assurance function including safety assessment, RAMS and SIL.
- (c) The System Safety Officer will have experience in the development of a safety management system following all parts of EN 50126, including EN 50126-1 and EN 50126-2.
- (d) RSSOM Project Co shall appoint the Chief Safety Officer who shall be responsible for the overall safety of the Ontario Line Subway System and who will be RSSOM Project Co's contact for all communications with Contracting Authority, the System Safety Officers, RSSOM Project Co ISA, Contracting Authority ISA, and others as necessary on safety matters related to the Ontario Line Subway System.
- (e) EGS Project Co will appoint the EGS Project Co system safety officer who shall be responsible for the safety of the systems and infrastructure within their project delivery and shall be the point of contact for the System Safety Officer, the Chief Safety Officer, Contracting Authority and others as necessary in respect of the safety and security certification activities.
- (f) South Civil Project Co will appoint the South Civil Project Co system safety officer who shall be responsible for the safety of the systems and infrastructure within their project delivery and shall be the point of contact for the System Safety Officer, the Chief Safety Officer, Contracting Authority and others as necessary in respect of the safety and security certification activities.
- (g) Project Co shall provide Contracting Authority with the 24-hour contact information for the System Safety Officer or, in the event that the System Safety Officer is unavailable for reasons for which Contracting Authority has been provided advance in notice, the 24-hour contact information of the individual acting in the stead of the System Safety Officer.

6.3 Safety and System Assurance Standards

- (a) For the purpose of applying the Safety and Systems Assurance Standards, the Contracting Authority shall be the "Safety Authority", and RSSOM Project Co shall be the "Railway Duty Holder", as defined in EN 50126-1,
 - (i) except that RSSOM Project Co shall not be entitled to issue or withhold any "safety approvals" within the meaning of EN 50126-1;

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- (ii) except Contracting Authority shall establish:
 - (A) the initial Tolerable Functional Failure Rate or SIL within the meaning of EN 50126-2 (see the Output Specifications for each “System”), and
 - (B) the initial RAM targets (see the Output Specifications for each “System”); and
 - (iii) except Contracting Authority shall review final RAM figures from RSSOM Project Co.
 - (b) Project Co shall provide input to RSSOM Project Co through Contracting Authority, as required and agreed at the SSSIC, to carry out its safety and system assurance obligations as set out in this Section 6 and in accordance with the following standards:
 - (i) EN 50126-1 Railway Applications - The Specification and Demonstration of Reliability, Availability, Maintainability and Safety (RAMS) Part 1: Generic RAMS process (“EN 50126-1”);
 - (ii) EN 50126-2 Railway Applications - The Specification and Demonstration of Reliability, Availability, Maintainability and Safety (RAMS) Part 2: Systems Approach to Safety (“EN 50126-2”);
 - (iii) EN 50128 Railway applications – Communication, signalling and processing systems – Software for railway control and protection systems (“EN 50128”)
 - (iv) EN 50129 Railway applications – Communication, signalling and processing systems – Safety related electronic systems for signalling (“EN 50129”);
 - (v) EN 50657 Railways Applications. Rolling stock applications. Software on Board Rolling Stock (“EN 50657”); and
 - (vi) EN 50155 Railway applications. Rolling stock. Electronic equipment (“EN 50155”),
(collectively, the “**Safety and System Assurance Standards**”).
 - (c) Project Co shall carry out its safety and system assurance obligations as set out in this Section 6 and in accordance with the following express document:
 - (i) CMREA.
 - (d) Project Co shall comply with most current version of the following standards (collectively, the “**Fire/Life Safety Standards**”) in the development and management of Project Co Infrastructure safety:
 - (i) CAN/ULC-S524 Standard for Installation of Fire Alarm Systems;
 - (ii) CAN/ULC-S561 Standard for Installation and Services for Fire Signal Receiving Centres and Systems;

- (iii) CSA 22.1 Canadian Electrical Code, Part 1, Safety Standard for Electrical Installations;
 - (iv) NFPA 13 Standard for the Installation of Sprinkler Systems;
 - (v) NFPA-14 Standard for the Installation of Standpipe and Hose Systems;
 - (vi) NFPA-130 Standard for Fixed Guideway Transit and Passenger Rail Systems;
 - (vii) NFPA-204 Standard for Smoke and Heat Venting;
 - (viii) NFPA-502 Standard for Road Tunnels, Bridges, and Other Limited Access Highways; and
 - (ix) NFPA-1221 Standard for the Installation, Maintenance and Use of Emergency Services Communications Systems.
- (e) Project Co shall use the following additional standards only in the absence of coverage by the Safety and System Assurance Standards and the Fire/Life Safety Standards (collectively, the “**Supporting Standards**”):
- (i) IEC 61508 Electronic Functional Safety Package;
 - (ii) CLC/TR 50126-3 Railway Applications – The Specification and Demonstration of Reliability, Availability, Maintainability and Safety (RAMS) – Part 3: Guide to the Application of EN 50126-1 for Rolling Stock RAM; and
 - (iii) EN 50121: Railway applications. Electromagnetic compatibility.
- (f) Project Co shall comply with EN 50126-1 and EN 50126-2, each as amended from time to time, for the specification and demonstration of reliability, availability, maintainability and safety (“**RAMS**”) for the purpose of providing input to RSSOM Project Co through Contracting Authority, as required and agreed at the SSSIC, in preparing the System Assurance Submissions and carrying out Project Co’s safety assurance obligations pursuant to this Section 6.
- (i) Project Co shall provide input to RSSOM Project Co, as required, and agreed at the SSSIC, to address each lifecycle stage and all requirements associated with such lifecycle stage as set out in EN 50126-1; and
 - (ii) for System Assurance Submissions and safety assurance obligations related to software, Project Co acknowledges and agrees that EN 50128 does not have the same defined lifecycle stages as EN 50126-1, and that Project Co shall comply with all requirements with all lifecycle stages set out in EN 50128 in an equivalent manner to the stages defined in EN 50126-1.
- (g) Project Co shall use one or more of the accepted Risk Acceptance Principles as defined in EN 50126 to evaluate the acceptability of the estimated Risk for the System under consideration. Accepted methods include code of practice, explicit risk estimation, or use of a reference system in accordance with EN 50126-2.

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- (h) The use of a code of practice to evaluate the acceptability of the estimated Risk for the System under consideration shall meet the following requirements in accordance with EN 50126-2:
- (i) shall be widely recognized in the railway domain. If this is not the case, the codes of practice shall be justified and be acceptable to the Contracting Authority ISA;
 - (ii) shall be relevant for the control of the considered Hazards in the System under assessment; and
 - (iii) shall include formal approval from the applicable regulatory body to demonstrate compliance to the code of practice in the Safety and System Assurance Submissions.
- (i) When applying explicit risk estimation in accordance with any of the Safety and System Assurance Standards, Project Co shall reduce Risks to as low as reasonably practicable (ALARP), such that the costs of implementing additional Risk reduction measures would be grossly disproportionate to the benefits of Risk reduction that would be achieved.
- (i) Project Co shall reduce all risks to no worse than “Tolerable”, as defined in Table C8 of EN 50126-1, when in accordance with this Section 6.3(i).
- (j) Notwithstanding the Risk estimation required by the Safety and System Assurance Standards, for Construction Activities and Systems and equipment installed at GO Transit facilities, bordering on, or with potential to encroach onto, any GO Transit infrastructure, Project Co shall conduct an additional Risk estimation in accordance with the Metrolinx Railway Risk Assessment Standard.
- (k) The use of a reference system in accordance with EN 50126-2 to evaluate the acceptability of the estimated Risk of the System under consideration shall meet the following requirements in accordance with EN 50126-2:
- (i) it has already been proven in-use to have an acceptable safety level and would therefore still qualify for approval;
 - (ii) it has similar functions and interfaces as the System under consideration;
 - (iii) it is used under similar operational conditions as the System under consideration for a sufficient period of time and has given confidence with the range of observed hazards and accidents; and
 - (iv) it is used under similar environmental conditions as the System under consideration.
- (l) When applying the use of a reference system in accordance with EN 50126-2, Project Co shall ensure evidence of compliance with the requirements in Section (k) is provided to Contracting Authority in their Safety and System Assurance Submissions.
- (m) The System Safety Officer shall be responsible and accountable for the correct application of and compliance with the Safety and Systems Assurance Standards and the CMREA.

- (n) Project Co acknowledges and agrees that, while the CMREA and the Safety and System Assurance Standards may overlap in some respects, Project Co shall comply with each of the CMREA and Safety and Systems Assurance Standards on a stand-alone basis, and shall produce evidence as may be required by the standards and the requirements of this Section 6 to demonstrate compliance with each of the CMREA and Safety and System Assurance Standards on a stand-alone basis.
- (o) Project Co acknowledges and agrees that the definition of Products as set out in this Schedule 29 is different from and broader than the definition of “Products” as set out in EN 50126-1.
 - (i) Project Co shall comply with the requirements and standards for “Products” set out in EN 50126-1 for all Products as defined in this Schedule 29.
- (p) In case of any conflicts, the Safety and System Assurance Standards and the Fire/Life Safety Standards shall take precedence over the Supporting Standards.

6.4 Finalization of System Safety Plan, System Definition Document and RAM Plan

- (a) Project Co shall review and provide input to RSSOM Project Co on finalising and updating of each of the System Safety Plan, Ontario Line Subway System Definition Document, and the Ontario Line Subway System RAM Plan produced by RSSOM Project Co as part of their RFP submission no later than each of the following:
 - (i) the date of Project Co’s submission of each Approval in Principle Safety Submission to the Contracting Authority;
 - (ii) the date of Project Co’s submission of each System Design Safety Submission to the Contracting Authority
 - (iii) the date of Project Co’s submission of each Consent to Construct Safety Submission to the Contracting Authority;
 - (iv) the date of Project Co’s submission of each Consent to Test Safety Submission to the Contracting Authority; and
 - (v) the date of Project Co’s submission of each Consent to Operate System Safety Submission to the Contracting Authority.
- (b) Contracting Authority shall cause RSSOM Project Co to ensure that each updated version of the System Safety Plan, System Definition Document, and RAM Plan submitted in accordance with Appendix A to this Schedule 29 shall reflect the progression of the Works based on what is included in the applicable System Assurance Submission.
- (c) In addition to the submissions set out in Appendix A to this Schedule 29, Project Co shall review and provide input to RSSOM Project Co to submit an updated version of each the System Safety Plan, System Definition Document, and RAM Plan no later than six months following each of the following changes in circumstance:
 - (A) a change in the System Safety Officer, or

- (B) an amendment to any one component of the Project Safety Requirements.
- (d) Until such time as an updated System Safety Plan, Ontario Line Subway System Definition Document or RAM Plan is approved by the Contracting Authority, in its sole discretion, the then current System Safety Plan, Ontario Line Subway System Definition Document or RAM Plan, as applicable shall continue in force.
- (e) Once the updated System Safety Plan, Ontario Line Subway System Definition Document or RAM Plan, as applicable is approved by the Contracting Authority, in its sole discretion, the updated System Safety Plan, System Definition Document or RAM Plan, as applicable, (subject to any revisions implemented as a result of comments from the Safety Governing Body) shall replace the then current System Safety Plan, System Definition Document or RAM Plan, as applicable (and become the finalized System Safety Plan, System Definition Document or RAM Plan, as applicable, that is in force).
- (f) Contracting Authority shall cause RSSOM Project Co to propose a revision to the System Safety Plan, System Definition Document or RAM Plan by submitting an updated System Safety Plan, System Definition Document or RAM Plan, as applicable, to the Contracting Authority for review and approval, and Sections 6.4(d) and 6.4(e), shall apply to each updated Project Co Safety Management System submitted by RSSOM Project Co, in accordance with this Section 6.4.

6.5 System Assurance Submissions Plan and System Assurance Submissions

6.5.1 System Assurance Submissions Plan

- (a) No later than thirty (30) days following the DMCA Effective Date, Project Co shall provide technical support and schedule development input to RSSOM Project Co to enable RSSOM Project Co to incorporate the Project Co inputs into the RSSOM Project Co system assurance submissions plan.
- (b) No later than thirty (30) days following the DMCA Effective Date, Project Co shall submit to Contracting Authority a detailed plan for System Assurance Submissions that shall include all safety submission documents to be submitted by Project Co (the “**System Assurance Submissions Plan**”). The System Assurance Submissions Plan shall include, at a minimum,
- (i) a detailed description of how Project Co intends to divide the Works in accordance with the requirements of EN 50126-1 and a detailed description of what each “System” includes and the components of each “System”, all of which shall be consistent with the System Definition Document;
- (ii) a detailed explanation of how Project Co intends to meet its obligations as set out in Sections 6.5.1(c) and 6.5.1(d).
- (iii) a detailed conformance check against the requirements of EN 50126-1, EN 50126-2, EN 50128 and EN 50129 that demonstrates how Project Co has met or intends to meet the requirements of these standards;

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- (iv) a detailed explanation of any interfaces with other safety-related activities, including activities associated with the application of the CMREA;
 - (v) a table setting out,
 - (A) how many of each type of System Assurance Submissions (including the Approval in Principle Safety Submissions, the System Design Safety Submissions, the Consent to Construct Safety Submissions, the Consent to Test Safety Submissions, and the Consent to Operate Safety Submissions as described in Section 6.1 Project Co intends to submit during the Project Term;
 - (B) the date on which Project Co intends to submit each System Assurance Submission, taking into account the requirements of 6.5.1(c); and
 - (C) a summary of the content of each System Assurance Submission, with references to the “Systems” established by Project Co; and
 - (vi) an updated version of Table A- 1 of Appendix A to this Schedule 29 that is extrapolated in accordance with the “Systems” established by Project Co, and that is consistent with Project Co’s planned organization, number and sequence of System Assurance Submissions.
- (c) Project Co shall ensure that its planned organization, number and sequencing of System Assurance Submissions, as reflected in the System Assurance Submissions Plan, is consistent with the progression of the Project and takes into account the lifecycle stages described in EN 50126-1, the stages of infrastructure configuration for the Project, and Project Co’s progressive assumption of responsibility.
- (i) Project Co shall provide input to the planning of the System Assurance Submissions to ensure that all matters impacting Project Co, or to be delivered by Project Co, are correctly captured and planned.
- (d) Project Co shall ensure that,
- (i) the totality of the planned Approval in Principle Safety Submissions, as set out in its System Assurance Submissions Plan, covers each component of the Works;
 - (ii) the totality of the planned System Design Safety Submissions, as set out in its System Assurance Submissions Plan, covers each component of the Works;
 - (iii) the totality of the planned Consent to Construct Safety Submissions, as set out in its System Assurance Submissions Plan, covers each component of the Works;
 - (iv) the totality of the planned Consent to Test Safety Submissions, as set out in its System Assurance Submissions Plan, covers each component of the Works; and
 - (v) the totality of the planned Consent to Operate System Safety Submissions, as set out in its System Assurance Submissions Plan, covers each component of the Works.

6.5.2 System Assurance Submissions

- (a) Project Co shall provide input, as required and agreed at the SSSIC to RSSOM Project Co for the development of the RSSOM Project Co system assurance submissions as set out in the RSSOM Project Co system assurance submissions plan described in Section 6.5.1(a).
- (b) Project Co shall, in accordance with the System Assurance Submissions Plan set out in Section 6.5.1, provide the following submissions (each, a “**System Assurance Submission**”) to Contracting Authority for review and approval:
- (i) one or more submissions for approval in principle, which shall cover all the concept design elements defined in the EN 50126-1 stages 1-3 undertaken by Project Co and include, at minimum, the deliverables noted as Approval in Principle Safety Submissions in Table A- 1 of Appendix A to this Schedule 29, including an Engineering Safety and Assurance Case (each, an “**Approval in Principle Safety Submission**”);
 - (ii) one or more submissions for approval to finalize detailed designs, which shall cover system design elements defined in the EN 50126-1 stages 3-5 undertaken by Project Co and include, at minimum, the deliverables noted as System Design Safety Submissions in Table A- 1 of Appendix A to this Schedule 29, including an Engineering Safety and Assurance Case (each, a “**System Design Safety Submission**”);
 - (iii) one or more submissions for consent to construct, which shall cover all the detailed design elements in the EN 50126-1 stages 4-6 undertaken by Project Co and include, at minimum, the deliverables noted as Consent to Construct Safety Submissions in Table A- 1 of Appendix A to this Schedule 29, including an Engineering Safety and Assurance Case (each, a “**Consent to Construct Safety Submission**”);
 - (iv) one or more submissions for consent to test, which shall cover all the manufacturer and construction elements in the EN 50126-1 stages 6-8 undertaken by Project Co and include, at minimum, the deliverables noted as Consent to Test Safety Submissions in Table A- 1 of Appendix A to this Schedule 29, including an Engineering Safety and Assurance Case (each, a “**Consent to Test Safety Submission**”); and
 - (v) one or more submissions for consent to operate systems, which shall cover all testing and commissioning elements in the EN 50126-1 stages 8-10 undertaken by Project Co and include, at minimum, the deliverables noted as Consent to Operate System Safety Submissions in Table A- 1 of Appendix A to this Schedule 29, including an Engineering Safety and Assurance Case (each, a “**Consent to Operate System Safety Submission**”).
- (c) Each System Assurance Submission shall demonstrate RAMS in accordance with the requirements of EN 50126-1.
- (d) Each System Assurance Submission shall be reviewed by the Contracting Authority ISA prior to being submitted to the Contracting Authority for review and approval. The

Contracting Authority ISA shall, for each System Assurance Submission, make a recommendation to the Contracting Authority as to whether to approve or reject the System Assurance Submission.

- (e) If the Contracting Authority elects, in its sole discretion, to reject a System Assurance Submission, Project Co shall revise the System Assurance Submission to address the comments and concerns of the Contracting Authority, and shall resubmit the System Assurance Submission and any other documentation as may be required by the Contracting Authority in its sole discretion.
- (f) Contracting Authority shall cause RSSOM Project Co to report on performance for activities associated with stage 11 of EN 50126-1 in accordance with the requirements of the Project Co Safety Management System and the requirements of Section 6.8.

6.6 Application of CMREA

- (a) For the purpose of applying the CMREA to the Works, Project Co shall be the proponent.
- (b) Project Co shall apply the CMREA to development of the Project Co Infrastructure where it impacts, or is impacted by, Adjacent Railway Systems, including:
 - (i) technical changes, including:
 - (A) new or modified assets including fixed infrastructure; and
 - (B) introduction, elimination, or a change of technology; and
 - (ii) organizational changes that could impact the Works or that have the potential to affect safety either directly or indirectly, including:
 - (A) changes to the Project Co Safety Management System; and
 - (B) reorganization affecting Project Co Parties in safety critical roles.
- (c) Project Co shall use one or more of the accepted Risk Acceptance Principles as defined in CMREA (as applicable) to evaluate the acceptability of the estimated Risk for the System under assessment. Accepted methods include code of practice, explicit risk estimation, or use of a reference system in accordance with EN 50126-2.
- (d) The use of a code of practice to evaluate the acceptability of the estimated Risk for the System under consideration shall meet the following requirements in accordance with CMREA:
 - (i) shall be widely recognized in the railway domain. If this is not the case, the codes of practice shall be justified and be acceptable to the Contracting Authority ISA;
 - (ii) shall be relevant for the control of the considered Hazards in the System under assessment;

- (iii) upon request, shall be available to the Contracting Authority ISA for them to assess the suitability of both the application of the risk management process and of its results; and
 - (iv) shall include formal approval from the applicable regulatory body to demonstrate compliance to the code of practice in their Safety and System Assurance Submissions.
- (e) When applying explicit risk estimation in accordance with the CMREA, Project Co shall reduce Risks to as low as reasonably practicable (ALARP), such that the costs of implementing additional Risk reduction measures would be grossly disproportionate to the benefits of Risk reduction that would be achieved, following the Metrolinx Railway Risk Assessment Standard.
- (f) The use of a reference system in accordance with EN 50126-2 to evaluate the acceptability of the estimated Risk for the System under consideration shall meet the following requirements in accordance with CMREA:
- (i) it has already been proven in-use to have an acceptable safety level and would therefore still qualify for approval in the jurisdiction where the change is to be introduced;
 - (ii) it has similar functions and interfaces to the System under assessment;
 - (iii) it is used under similar operational conditions as the System under assessment; and
 - (iv) it is used under similar environmental conditions as the System under assessment.
- (g) When applying the use of a reference system in accordance with EN 50126-2, Project Co shall ensure evidence of compliance with the requirements in Section 6.6(f) is provided to Contracting Authority in their Safety and System Assurance Submissions.
- (h) Project Co may implement a change that is not considered to be a Significant Change in accordance with the CMREA, but that has an impact on safety, provided that Project Co manages the Risk associated with the change in accordance with the Project Co Safety Management System and the Metrolinx Railway Risk Assessment Standard. Project Co shall retain and share with Contracting Authority, documentation of the Risk Management measures taken for changes that are not Significant Changes but that may have an impact on safety.
- (i) The Contracting Authority may at any time require a deliverable under this Section 6 or under the CMREA or any Safety and Systems Assurance Standard to be reviewed by the Contracting Authority ISA and RSSOM Project Co ISA, in its sole discretion.
- (j) Prior to the Safety Confirmation of a Significant Change by the Contracting Authority, Project Co shall demonstrate compliance with the safety requirements resulting from the risk assessment in accordance with CMREA.
- (k) Project Co shall not implement a Significant Change without a Safety Confirmation issued by the Contracting Authority.

- (l) If an inadequacy of the safety measures expected to fulfil the safety requirements or if any hazards are discovered during the demonstration of compliance with the safety requirements, Project Co shall reassess and evaluate the associated risks in accordance with CMREA.
- (m) Project Co acknowledges and agrees that the issuance of a Safety Confirmation by the Contracting Authority does not transfer responsibility or accountability for the change from Project Co to the Contracting Authority.
 - (i) For clarity, Project Co at all times shall remain responsible for such a change.
- (n) Project Co shall maintain Hazard Records/Logs during the Project Term in accordance with its Project Co Safety Management System obligations.

6.7 Functional Safety

- (a) Project Co shall identify all electrical/electronic/programmable electronic systems that provide Functional Safety as part of the hazard mitigation and risk acceptance process.
- (b) The Contracting Authority has provided a minimum Tolerable Functional Failure Rate (TFFR) or SIL requirement for Safety Functions performed by Systems identified in the Output Specifications.
- (c) Project Co, working together with RSSOM Project Co, shall assess electrical/electronic/programmable electronic systems identified by Project Co, to identify the safety function they perform or are part of performing.
- (d) The Contracting Authority has provided a minimum Tolerable Functional Failure Rate (TFFR) or SIL requirement for Safety Functions performed by Systems identified in the Output Specifications.
- (e) Tolerable Hazard Rate
 - (i) Project Co shall perform an analysis of Functional Safety and use one or more of the accepted Risk Acceptance Principles to determine the Tolerable Hazard Rate for each system that performs a Safety Function as identified in the hazard mitigation and risk acceptance process.
 - (ii) Project Co shall calculate and determine the final Tolerable Hazard Rate to support their own safety management activities.
- (f) Tolerable Functional Failure Rate
 - (i) Project Co shall perform their own analysis to determine the final Tolerable Functional Failure Rate.
 - (ii) Project Co's final Tolerable Functional Failure Rate shall be at least equal to the Tolerable Hazard Rate associated with the occurrence of the hazard.
- (g) Safety Integrity Level

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- (i) Project Co shall derive the SIL from the requirements of the Safety Function, if applicable, along with the Tolerable Hazard Rate determined for the hazard addressed by the Safety Function.
 - (ii) Project Co shall use the Tolerable Functional Failure Rate to directly address the calculation for SIL for each Safety Function.
 - (iii) Project Co’s SIL for each Safety Function shall be at least equal to the SIL prescribed by Contracting Authority in the Output Specifications.
- (h) SIL Apportionment Report
- (i) RSSOM Project Co, working with Project Co, shall produce a SIL apportionment report covering all functional Systems of the Project Co Infrastructure (the “**SIL Apportionment Report**”) as described in Section A.13 of Appendix B to this Schedule 29.
 - (ii) RSSOM Project Co shall use the SSSIC to ensure that:
 - (A) all program participants are providing required analyses in a timely manner; and
 - (B) SIL allocations for Ontario Line Subway, including integration with Project Co, are handled correctly.
- (i) Safety and Security Critical Items List
- (i) Project Co shall develop and maintain with EGS Project Co, RSSOM Project Co and South Civil Project Co, a safety and security critical items list (the “**Safety and Security Critical Items List**”) as described in Section A.14 of Appendix B to this Schedule 29.
 - (ii) The Safety and Security Critical Items List will feed into the Acceptable Products Register as described in Section 6.9(a).

6.8 Engineering Safety and Assurance Cases

- (a) As part of each System Assurance Submission, Project Co shall submit to the Contracting Authority an engineering safety and assurance case (each, an “**Engineering Safety and Assurance Case** or “**ESAC**”) for each System in the Project Co infrastructure, that integrates all safety activities, system engineering lifecycle stage activities including RAMS analyses, CMREA activities, operational readiness and performance outcomes.
- (b) Notwithstanding Section 6.8(a) and the requirements set out in Appendix B to this Schedule 29, Project Co shall complete all activities and produce all deliverables required in accordance with the CMREA and the Safety and Systems Assurance Standards, irrespective of whether such activities or deliverables are formally submitted to Contracting Authority as part of an Engineering Safety and Assurance Case or any other submission set out in this Schedule 29.

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- (i) Contracting Authority shall have the right to audit Project Co for, or request evidence from Project Co of, the completion of such activities or deliverables.
 - (c) The Engineering Safety and Assurance Case for the Approval in Principle Safety Submissions shall confirm that the proposed concept design for each System conforms to the applicable Safety and Systems Assurance Standards and with the Project Safety Requirements, and shall include:
 - (i) an executive summary;
 - (ii) the System Definition Document produced by Project Co;
 - (iii) the System Safety Plan;
 - (iv) the report of Hazard Analysis activity produced in accordance with the requirements of Section A.6 of Appendix B to this Schedule 29 (the “**Hazard Analysis Report**”);
 - (v) the Hazard Record/Log, produced in accordance with the requirements of Section A.4 of Appendix B to this Schedule 29 (the “**Hazard Record/Log**”);
 - (vi) the safety requirements specification, produced by RSSOM Project Co in accordance with the requirements of Section A.5 of Appendix B to this Schedule 29 (the “**Safety Requirements Specification**”);
 - (vii) the independent safety assessment plan produced by RSSOM Project Co in accordance with the requirements of EN 50126-1 and Section A.6 of Appendix B to this Schedule 29 (the “**Independent Safety Assessment Plan**”);
 - (viii) the report of RAM analysis activity produced in accordance with the requirements of Section A.9 of Appendix B to this Schedule 29 (“**RAM Analysis Report**”);
 - (ix) the RAM policy produced by RSSOM Project Co in accordance with the requirements of EN 50126-1 (the “**RAM Policy**”); and
 - (x) the RAM Plan produced by RSSOM Project Co in accordance with the requirements of EN 50126-1 (the “**RAM Plan**”).
 - (d) Each Engineering Safety and Assurance Case for the System Design Safety Submission, shall include:
 - (i) an executive summary;
 - (ii) an updated version of all components comprising the Approval in Principle Safety Submissions;
 - (iii) the System safety case and, where necessary, any relevant safety justification reports in accordance with EN 50126-1, EN 50126-2, EN 50128 and EN 50129 and reports that evidence compliance with the CMREA (the “**System Safety Case**”);
 - (iv) the System RAM status report detailing:

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- (A) Project Co’s quantified RAM targets together with reference to the RAM Plan,
 - (B) the report of the RAM analysis activity;
 - (C) the report of RAM analysis investigation activity; and
 - (D) details of RAM activities completed to date,
- (collectively, the “**System RAM Status Report**”);
- (v) an appendix comprised of supporting documents, including:
 - (A) the System Definition Document;
 - (B) the System Safety Plan;
 - (C) the Safety Requirements Specification;
 - (D) the Safety and Security Critical Items List;
 - (E) the Reliability Critical Items List, as outlined in Section A.15 of Appendix B to this Schedule 29;
 - (F) the RAM Plan;
 - (G) the RAM subsystem requirements which apportions the overall RAM specifications to individual subsystems and sets out,
 - (I) reliability requirements (for example, failure rates and mean time between failure);
 - (II) maintainability requirements (for example, mean time to repair); and
 - (III) requirements for fault detection and diagnostics and requirements related to the build process (for example, environmental stress screening),
- (collectively, the “**RAM Subsystem Requirements**”); and
- (H) the RAM validation plan produced in accordance with the requirements of EN 50126-1 and the requirements of Section A.10 of Appendix B to this Schedule 29 (the “**RAM Validation Plan**”).
- (e) Each Engineering Safety and Assurance Case for the Consent to Construct Safety Submission shall include:

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- (i) an updated version of all components comprising the Engineering Safety and Assurance Case for the System Design Safety Submission; and
 - (ii) an appendix comprised of supporting documents, including the Hazard Analysis Report.
- (f) Each Engineering Safety and Assurance Case for the Consent to Test Safety Submission shall include:
- (i) an updated version of all components comprising the Engineering Safety and Assurance Case for the Consent to Construct Safety Submission;
 - (ii) an operational readiness report (the “**Operational Readiness Report**”) that includes a summary of,
 - (A) the future operations-related stages associated to the System and commissioning planned; and
 - (B) the status of activities required to ensure operational readiness, including activities related to personnel, training, and equipment; and
 - (iii) an appendix comprised of supporting documents, including the Hazard Record/Log produced in accordance with the requirements of Section A.4 of Appendix B to this Schedule 29; and
 - (iv) the RAM test specification describing the testing that will be carried out to demonstrate system fault detection and diagnosis capabilities, fault injection and testing to eliminate early failures (for example, environmental stress screening, goods inwards inspections and soak testing), maintainability demonstrations, and reliability growth programs (the “**RAM Test Specification**”).
- (g) Each Engineering Safety and Assurance Case for the Consent to Operate System Safety Submission shall include:
- (i) an updated version of all components comprising the Engineering Safety and Assurance Case for the Consent to Test Safety Submission required for the Consent to Operate System Safety Submission as outlined in Table A1 of Appendix A to this Schedule 29;
 - (ii) the system performance status report which shall provide a summary of the evidence that the System will meet its performance requirements, including evidence from simulations and system testing (the “**System Performance Status Report**”); and
 - (iii) an appendix comprised of supporting documents, including:
 - (A) the Hazard Record/Log produced in accordance with the requirements of Section A.4 of Appendix B to this Schedule 29;

- (B) the safety validation report produced in accordance with the requirements of EN 50126-1 and the requirements of Section A.8 of Appendix B to this Schedule 29 (the “**Safety Validation Report**”);
 - (C) the RAM validation report produced in accordance with the requirement of EN 50126-1 and the requirements of Section A.11 of Appendix B to this Schedule 29 (the “**RAM Validation Report**”); and
 - (D) the FRACAS report produced in accordance with the requirement of Section A.12 of Appendix B to this Schedule 29 (the “**FRACAS Report**”).
- (h) Each Engineering Safety and Assurance Case shall be reviewed by the RSSOM Project Co ISA, and the RSSOM Project Co ISA shall produce an independent safety assessment report for each Engineering Safety and Assurance Case documenting its review of the Engineering Safety and Assurance Case (the “**RSSOM Project Co ISA ESAC Report**”).
 - (i) Project Co shall submit the RSSOM Project Co ISA ESAC Report with each Engineering Safety and Assurance Case to Contracting Authority.
 - (i) Upon receipt by Contracting Authority of the Engineering Safety and Assurance Case and the RSSOM Project Co ISA ESAC Report, the Contracting Authority ISA shall conduct a review of the Engineering Safety and Assurance Case and the RSSOM Project Co ISA ESAC Report, and shall submit any requests for clarification to the RSSOM Project Co ISA no later than five (5) Business Days following the date that the Contracting Authority received the Engineering Safety and Assurance Case and the RSSOM Project Co ISA ESAC Report.
 - (i) The RSSOM Project Co ISA shall respond to requests for clarification within five (5) Business Days of receiving a clarification request from the Contracting Authority ISA.
 - (j) The Contracting Authority ISA shall, after reviewing the Engineering Safety and Assurance Case and the RSSOM Project Co ISA ESAC Report and within fifteen (15) Business Days of receiving the RSSOM Project Co ISA’s responses to its requests for clarification as set out Section 6.8(i), recommend to the Contracting Authority, with documented rationale in the form of a report, whether to approve or refuse to approve the Engineering Safety and Assurance Case (the “**Contracting Authority ISA ESAC Verification Report**”).
 - (k) No later than five (5) Business Days after receiving the Contracting Authority ISA ESAC Verification Report, the Contracting Authority shall determine whether to approve or reject the Engineering Safety and Assurance Case.
 - (i) Upon approving the Engineering Safety and Assurance Case, the Contracting Authority shall issue a safety confirmation (“**Safety Confirmation**”) to Project Co.
 - (l) If the Contracting Authority elects, in its sole discretion, to reject an Engineering Safety and Assurance Case, Project Co shall revise the Engineering Safety and Assurance Case to

include changes or additional Safety Measures and shall resubmit the Engineering Safety and Assurance Case and an accompanying RSSOM Project Co ISA ESAC Report and any other documentation as may be required by the Contracting Authority in its sole discretion.

6.9 Product Assurance and Product Acceptance

- (a) No later than ninety (90) days prior to the commencement of Revenue Service, RSSOM Project Co shall, with input from Project Co, build a register of all products that are deployed on Ontario Line Subway that fulfil a vital, safety critical or safety related function (the “**Acceptable Products Register**”) which shall be maintained by RSSOM Project Co throughout the Project Term.
 - (i) Project Co shall provide RSSOM Project Co with information for all products that are deployed in Project Co Infrastructure that fulfil a vital, safety critical or safety related function.
- (b) No later than sixty (60) days prior to the commencement of Revenue Service, RSSOM Project Co shall develop and submit to the Contracting Authority for approval RSSOM Project Co’s proposed process (the “**Product Acceptance Process**”) for introducing new and modified Products to the Ontario Line Subway System during the Project Term.
 - (i) Project Co shall provide input to RSSOM Project Co for them to develop this process for all products that are deployed in Project Co Infrastructure that fulfil a vital, safety critical or safety related function.
- (c) The Product Acceptance Process shall be for the purpose of demonstrating to the Contracting Authority that the Products that Project Co, RSSOM Project Co, South Civil Project Co and EGS Project Co use for the Project are safe, compatible, reliable and fit for purpose, with a documented history of prior use in conditions that are demonstrably similar to the Ontario Line Subway System.

6.10 Fire/Life Safety

- (a) Project Co shall work together with RSSOM Project Co, South Civil Project Co and EGS Project Co, as required and agreed at the SSSIC, to develop a fire/life safety management plan (the “**Fire/Life Safety Management Plan**”), which shall describe in detail how fire/life safety activities will be coordinated and carried out. The Fire/Life Safety Management Plan shall include:
 - (i) management and organisation of the Fire/Life Safety Committee pursuant Section 3.4(d)(i);
 - (ii) review and analysis of codes and standards including the Fire/Life Safety Standards;
 - (iii) approach to fire protection;
 - (iv) inter-connection with Interchange Stations (as defined in the Output Specifications); and
 - (v) fire/life safety protocols.

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- (b) Project Co shall work together with RSSOM Project Co, South Civil Project Co and EGS Project Co, as agreed at the SSSIC, in the development of the Fire/Life Safety Management Plan.
- (i) Project Co shall be obliged to adhere to the Fire/Life Safety Management Plan for execution of their Works.
- (c) RSSOM Project Co shall be responsible for:
- (i) Supporting Project Co as required and agreed at the SSSIC in the obtaining of all permits and approvals required for fire detection, alarm and suppression systems for rooms accommodating RSSOM Project Infrastructure installed in the Project Co Infrastructure.
- (A) For clarity, Project Co shall remain responsible for the achieving of all occupancy permits for their Works.
- (ii) Obtaining all permits and approvals required to operate a Central Fire Alarm Monitoring System (CFAMS) as described in Section 3.1.21.2(h) (*Central Fire Alarm Monitoring System*) of the Output Specifications.
- (d) Project Co shall be responsible for obtaining of all permits and approvals required for fire detection, alarm and suppression systems installed in the Project Co Infrastructure.
- (e) Project Co shall provide input to RSSOM Project Co, as required and agreed at the SSSIC, to document the implementation and execution of the Fire/Life Safety Management Plan in a report (the “**Fire/Life Safety Management Report**”), which shall also document the implementation and execution of the Fire/Life Safety Management Plan as it relates to works undertaken by Project Co.
- (f) Project Co shall be responsible for the preparation of the facility fire safety plan for each Facility in accordance with section 2.8 of the Canadian National Fire Code, including:
- (i) assembly of the overall documents;
- (ii) provision of all drawings and documents showing the type, location and operation of the Facility fire and emergency systems;
- (iii) provision of section on control of fire hazards;
- (iv) provision of maintenance of Facilities for the safety of occupants; and
- (v) provision of section covering alternative methods for the safety of occupants,
- (the “**Facility Fire Safety Plan**”).
- (g) Project Co acknowledges that RSSOM Project Co will provide input, as required and agreed at the SSSIC, which Project Co shall include in the preparation of the Facility Fire Safety Plan, including:

- (i) provision of emergency procedures section;
- (ii) provision of sections on the training and organisation of supervisory staff, and their duties;
- (iii) provision of fire drill section;
- (iv) input to the development of control of fire hazards section;
- (v) input to the development of the section for maintenance of Facilities for the safety of occupants; and
- (vi) input to the development of the section covering alternative methods for the safety of occupants.

7. OCCUPATIONAL HEALTH AND SAFETY AND CONSTRUCTION SAFETY REQUIREMENTS

7.1 General

- (a) Project Co shall:
 - (i) with respect to the Works, perform and cause one or more Project Co Parties to perform, all of the obligations of the “Constructor”, and indemnify Contracting Authority and “Province Persons” against any and all of the liabilities of the “Constructor”, under the OHSA and all regulations thereto;
 - (ii) provide Contracting Authority with a clearance certificate from the WSIB, or any successor thereto, once every ninety (90) days from the DMCA Effective Date until Project Final Completion, at the request of the Contracting Authority; and
 - (iii) cause the Project to be registered with the MOL by way of Notice of Project, pursuant to Applicable Law, with the purpose of designating Project Co (or a member of the joint venture, if Project Co is a joint venture, or partner of the partnership, if Project Co is a partnership) as the “Constructor” for all Works on the Site.
- (b) Project Co shall comply with the following occupational health and safety standards, as amended from time to time:
 - (i) ISO Series 6385:2004 Ergonomic principles in the design of work systems;
 - (ii) ISO Series 11064 Ergonomic design of control centres;
 - (iii) ISO Series 9241 Ergonomics of human-system interaction;
 - (iv) ISO Series 10075 Ergonomic principles related to mental work-load;
 - (v) ISO 45001:2018 Occupational health and safety management systems – Requirements with guidance for use (“ISO 45001”);

- (vi) all requirements as outlined in the Metrolinx Health and Safety Department Guidance Advice document, dated March 2021, with subject Construction/Public Interface; and
 - (vii) all requirements related to an Emergency Safety Plan as outlined in the Metrolinx MX-STS-STD-001 Temporary Construction and Customer Experience Requirements for GO Facilities,
- (collectively, the “**Occupational Health and Safety Standards**”).

7.2 Project Co Site Specific Safety Manual

- (a) As “Constructor” of the Works and the Site under the OHSA and this Agreement, Project Co shall prepare a site-specific safety manual (the “**Project Co Site Specific Safety Manual**”) for the Works during the pre-construction phase and prior to setting up a Site for the Works, including:
 - (i) each Station;
 - (ii) each other Site.
- (b) Project Co shall ensure that each Project Co Site Specific Safety Manual complies, at a minimum, with:
 - (i) all applicable requirements of the OHSA, including all regulations thereto;
 - (ii) Good Industry Practice;
 - (iii) all health and safety requirements of this Agreement;
 - (iv) the Project Co Safety Management System;
 - (v) the requirements of this Schedule 29, including Appendix C to this Schedule 29;
 - (vi) subject to Section 7.2(c), the Metrolinx Construction Safety Management Program, as at the Technical Reference Date, unless instructed by Contracting Authority.
- (c) Project Co acknowledges and agrees that,
 - (i) the Metrolinx Construction Safety Management Program is provided to Project Co solely to allow Project Co to incorporate any relevant requirements into its Project Co Site Specific Safety Manual given Project Co’s role as “Constructor” of the Works and the Site under the OHSA and this Agreement;
 - (ii) provision of the Metrolinx Construction Safety Management Program to Project Co does not constitute provision of a “safety manual” for the Site or control or direction of safety in respect of the Works or at the Site by Contracting Authority;

- (iii) the terms of the Metrolinx Construction Safety Management Program that are applicable to work for which Metrolinx or a third party is responsible for control and direction of safety are not applicable to Project Co under this Agreement; and
 - (iv) Project Co shall consider, in the preparation of the Project Co Site Specific Safety Manual, the applicability of the requirements of the Metrolinx Construction Safety Management Program, including those that apply to access control methods, hazardous operations, health and safety enforcement, and internal incident reporting.
- (d) Project Co shall submit each Project Co Site Specific Safety Manual to the Contracting Authority for approval no later than forty-five (45) days prior to the establishment of a Site.
 - (e) The Construction Director shall assist in preparing each Project Co Site Specific Safety Manual by providing all information that the Construction Director holds that is relevant to the Project Co Site Specific Safety Manual including pre-construction information obtained from Contracting Authority.
 - (f) Throughout the Project Term, Project Co shall ensure that each Project Co Site Specific Safety Manual is appropriately reviewed, updated and revised from time to time, and at a minimum every twelve (12) months or with each material change in Construction Activity, so that it continues to be sufficient to ensure that Works are carried out, so far as is reasonably practicable, without Risks to health or safety. Project Co shall ensure that the updated and revised Project Co Site Specific Safety Manual is consistent with Good Industry Practice at the time that the revisions and updates are made and that the revisions reflect any changes to practices and processes to prevent recurrence of any historic incidents or identified trends in incidents.
 - (g) Project Co shall:
 - (i) comply with the Project Co Site Specific Safety Manual;
 - (ii) take such measures as are reasonable in accordance with Good Industry Practice to maintain and secure the Site and Lands to prevent access of any persons or creatures not entitled to be there once Project Co has been granted access to the Site and Lands, or has commenced Works; and
 - (iii) maintain Sites in accordance with requirements of Schedule 17 – Environmental Obligations.

7.3 Occupational Health and Safety Certification

- (a) Project Co shall obtain and maintain ISO 45001 certification through a body accredited by the Standards Council of Canada or through a body that is a signatory to the International Accreditation Forum Multilateral Recognition Arrangement (“**ISO 45001 Certification**”) in accordance with the requirements in Section 11.24(a) (*COR Certification*) of this Agreement.

- (b) Project Co shall obtain and maintain a Certificate of Recognition through the Infrastructure Health and Safety Association in the Province of Ontario in accordance with the requirements in Section 11.24(a) (*COR Certification*) of this Agreement.

7.4 Health and Safety Inspections

- (a) Project Co shall perform all health and safety inspections of their facilities, health and safety management systems, and construction vehicles in accordance with the requirements in Section 15 (*Quality Management*) of this Agreement.

7.5 Personal Protective Equipment

- (a) Project Co shall prepare and submit to the Contracting Authority, a Project Co personal protective equipment standard (the “**Project Co Personal Protective Equipment Standard**”). The Project Co Personal Protective Equipment Standard shall, at a minimum, comply with the Metrolinx Personal Protective Equipment Standard. Project Co acknowledges and agrees that the Metrolinx Personal Protective Equipment Standard is provided solely for the purpose of incorporating any relevant matters into Project Co’s Project Co Site Specific Safety Manual, and that provision of the Metrolinx Personal Protective Equipment Standard to Project Co does not constitute control or direction of safety of the Works or at the Site by Contracting Authority.
- (b) Project Co shall ensure that any additional requirements for personal protective equipment in the Project Co Personal Protective Equipment Standard is determined by a task-based Risk Assessment.

7.6 Ladders – Elimination/Control of Use

- (a) Project Co shall eliminate the use of ladders as standard practice for both access requirements and as working platforms, wherever practicable.
- (b) Project Co shall ensure that ladders are stored in secure locations where they cannot be used without appropriate authorization by the Project Co’s management team.
- (c) Project Co shall develop and implement a system of authorization that will demonstrate all appropriate and reasonable steps are taken to eliminate the use of ladders before they are allowed to be used.
- (d) Project Co shall utilize a risk-based approach utilizing a hierarchy of controls to eliminate the use of ladders where practicable. Any activity that requires the use of ladders shall be subject to the Project Co’s authorization process.
- (e) Project Co shall develop and implement safe work practices and/or safe job procedures for the use of ladders which will include:
 - (i) active, positive messaging about the importance of ladder safety;
 - (ii) training/certification and competency for controlled eligibility for those select persons able to use ladders;

- (iii) hazard identification and risk assessment;
 - (iv) details of system of authorization by a Project Co site manager or superintendent;
and
 - (v) inspection and maintenance by a competent person, locked storage with a policy of immediate return.
- (f) All ladders shall meet the design, performance, test and marking requirements of a Grade 1, Grade 1A or Grade 1AA ladder in the CSA Standard Z11-12, Portable Ladders. All ladders used will be in good condition, regularly inspected and maintained in accordance with the safe work practice and/or safe job procedure, have maintenance and inspection records held in the vicinity of their storage, and include a tag on each ladder to verify date and signature of the competent person who inspected the ladder.

7.7 Beacons

- (a) With respect to Works performed at a Site within Metrolinx Territory, Project Co shall ensure that all Project Co Parties' vehicles and equipment meet or exceed the requirements of the Metrolinx Beacon Safety Performance Standard. Project Co Parties' vehicles and equipment shall be identifiable with company logo(s). Project Co acknowledges and agrees that the Metrolinx Beacon Safety Performance Standard is provided solely for the purpose of incorporating any relevant matters into its Project Co Site Specific Safety Manual and that provision of the Metrolinx Beacon Safety Performance Standard to Project Co does not constitute control or direction of safety of the Works or at the Site by Contracting Authority.

7.8 Fitness for Duty Policy

- (a) Project Co shall comply with the Metrolinx Fitness for Duty Policy, as at the Technical Reference Date, unless instructed by the Contracting Authority. Obligations and requirements applicable to employees in the Metrolinx Fitness for Duty Policy shall be applicable to employees and contractors of Project Co and Project Co Parties.
- (b) No later than thirty (30) days following the DMCA Effective Date, Project Co shall prepare and submit to the Contracting Authority for approval, a policy regarding fitness for duty that is consistent with the Metrolinx Fitness for Duty Policy and that shall be applicable to all Project Co Parties (the "**Project Co Fitness for Duty Policy**").
- (c) Once approved by the Contracting Authority, the Project Co Fitness for Duty Policy shall be included in the Project Co Safety Management System. The Project Co Fitness for Duty Policy shall be reviewed annually and revised as required to be consistent with the Metrolinx Fitness for Duty Policy, pursuant to Section 7.8(a), and Good Industry Practice.
- (d) The Project Co Fitness for Duty Policy shall define appropriate measures to be undertaken for workers following accidents and incidents to ensure physical and psychological fitness for duty.

- (e) Project Co shall provide, for Project Co employees and employees of Project Co Parties, a medical testing program and medical health services including Mental Health First Aid support in accordance with the Metrolinx Fitness for Duty Policy and access to occupational health services.
- (f) Project Co shall define, within the Project Co Fitness for Duty Policy, a drug and alcohol use control regime consistent with the Metrolinx Fitness for Duty Policy.

7.9 Safety Training Requirements

- (a) Project Co shall ensure that all persons employed or engaged by Project Co, or any Project Co Party receive training and supervision that is necessary to ensure Project Co's performance of this Agreement in accordance with its requirements and in compliance with all Project Safety Requirements.
- (b) Project Co shall ensure that all persons successfully complete and be current in the Project Co Safety Training Program, as amended from time to time, prior to accessing a Site.
- (c) Project Co shall maintain records of personnel who have completed the Project Co Safety Training Program and, upon request by Contracting Authority, Project Co shall produce records and training documents for such personnel.
- (d) Project Co shall maintain an up-to-date list of all persons that have completed the Project Co Safety Training Program at the Site and ensure all such persons wear the prescribed visually recognizable mark (for example, a sticker), issued upon successful completion of the Project Co Safety Training Program on a readily visible location on their hardhats.
- (e) Project Co shall ensure that all persons who operate equipment or undertake inspections or any other activities within Metrolinx Territory must hold current CROR certification and any other applicable Metrolinx training certifications, including site specific training.

7.10 Safety Reporting Requirements

- (a) Project Co, as “Constructor” of the Works and the Site, under the OHSA and this Agreement shall immediately notify Contracting Authority by telephone if any of the following types of events occurs in respect of the Project:
 - (i) any notification of emergency service providers (for example, when 911 is called);
 - (ii) any injury where medical attention is required;
 - (iii) any Critical Injury or death, notifiable under section 51(1) of the OHSA;
 - (iv) any worker's exposure to a hazardous material or designated substance (defined under the OHSA) at any Site;
 - (v) any notification or report to the MOL, MECP, or the WSIB;
 - (vi) any visit to the Site by an inspector or other official from the MOL, MECP, or the WSIB;

- (vii) any Critical Injury to a member of the public;
 - (viii) any event with the potential to affect, or that actually affects, bus operations or adjacent railway systems;
 - (ix) any property damage (including to Metrolinx’s property or to any other existing property, infrastructure, adjacent property, motor vehicles, and/or mobile equipment);
 - (x) any Near Miss with high potential for Critical Injury; and
 - (xi) any tunneling related incidents, including collapse of overburden and structural failure irrespective of whether injury actually occurs.
- (b) Subject to Section 7.10(e), Project Co shall submit reports for incidents listed in Section 7.10(a) (including the identification of all root cause(s) and Corrective Action(s)) to the Contracting Authority Representative as follows:
- (i) no later than one hour following any incident, Project Co shall make an initial phone call to the Contracting Authority Representative advising that an incident has occurred and providing an initial situation report;
 - (ii) no later than 24 hours following the incident, Project Co shall provide a written status update to the Contracting Authority Representative that includes a description of,
 - (A) all details of the incident, including immediate causes, that are known by Project Co;
 - (B) all implemented corrective actions that Project Co has taken or plans to take; and
 - (C) all other relevant and time sensitive information which Project Co can reasonably provide at such time, including names of all persons identified as involved in the incident, witness statements from all persons involved in the incident, video and photographic evidence and toxicology results for employees involved in the incident, as available;
 - (iii) no later than 72 hours following the incident (or such longer period of time as the Parties may agree), Project Co shall provide a written Final Incident Report that includes,
 - (A) all investigative information, including root causes;
 - (B) a corrective action plan;
 - (C) training records;
 - (D) applicable drawings;

- (E) all applicable field level risk assessments and work plans;
- (F) regulatory body documentation;
- (G) inspection reports;
- (H) maintenance records;
- (I) third party reports;
- (J) equipment testing reports; and
- (K) any other relevant documentation or evidence related to the incident (such as witness statements),

(the “**Final Incident Report**”);

- (iv) no later than five (5) Business Days following receipt of the Final Incident Report (or such other time frame as the Parties may agree), Contracting Authority shall provide comments to Project Co;
 - (v) Project Co shall respond to Contracting Authority’s comments on the Final Incident Report no later than five (5) Business Days after receipt of Contracting Authority’s comments (or such other time frame as the Parties may agree); and
 - (vi) following resolution of any comments on the Final Incident Report provided by Contracting Authority, to Contracting Authority’s reasonable satisfaction, the Project Co Representative shall sign-off on the Final Incident Report and provide a final copy to Contracting Authority.
- (c) Each Final Incident Report shall either be in a form satisfactory to Contracting Authority, in its sole discretion, or in a form provided by Contracting Authority to Project Co from time to time.
 - (d) Project Co, as “Constructor” of the Works and the Site under the OHSA and this Agreement, shall at all times remain responsible for the ways and means of any remedial actions in respect of incidents set out in Section 7.10(a) and reports set out in Section 7.10(b), including remedial actions that arise in response to, or resolve, any comments provided by Contracting Authority in accordance with Sections 7.10(b)(v) and 7.10(b)(vi).
 - (e) Unless otherwise directed by Contracting Authority, Section 7.10(b)(iii) to Section 7.10(b)(vi) shall not apply to the visits set out in Section 7.10(a)(vi).

7.11 Monthly Safety Performance Reporting Requirements

- (a) Project Co shall provide a written monthly summary to Contracting Authority no later than eight (8) Business Days after the last day of each month containing the information described in this Section 7.11 (each, a “**Monthly Construction Safety Report**”). Each Monthly Construction Safety Report shall be in a form satisfactory to the Contracting

Authority, in its sole discretion, or in a form provided by Contracting Authority to Project Co from time to time. Project Co, as “Constructor” of the Works and the Site under the OHSA and this Agreement, shall at times remain responsible for any ways and means of any remedial actions included in any such summaries.

- (b) Each Monthly Construction Safety Report shall include the following safety-related performance indicators:

- (i) The Lost Time Injury Frequency Rate, which shall be calculated as follows:

$$LTFIR = \frac{LTI}{Hours\ Worked} \times 200,000$$

where:

LTI = number of lost time injuries amongst Project Co staff in the reporting period;

Hours Worked = total hours worked in the reporting period by all Project Co workers;

- (ii) The Total Recordable Injury Frequency (TRIF), which shall be calculated as follows:

$$TRIF = \frac{LTS}{Hours\ Worked} \times 200,000$$

where:

LTS = number of recordable injuries or illnesses amongst Project Co staff in the reporting period

Hours Worked = total hours worked in the reporting period by all Project Co, Project Co Parties and Project Co Subcontractors staff;

- (iii) The Severity Rate (SR), which shall be calculated as follows:

$$SR = \frac{Total\ numbr\ lot\ work\ days}{Total\ number\ of\ recordable\ incidents}$$

- (iv) Ministry of Labour infractions, if any, for the month.

- (c) Notwithstanding Section 7.11(b), Project Co shall be required to report on safety performance indicators as prescribed by the Contracting Authority in its sole discretion from time to time.

7.12 Safety Work Plans

- (a) If Project Co plans to carry out one or more of the following activities with respect to the Works, then Project Co, as “Constructor” of the Works and the Site under the OHSA and this Agreement, shall prepare and submit separate safety work plan(s) to Contracting

Authority in accordance with this Section 7.12, setting out Project Co’s plan for management and safety of the Works and the Site for each of the following categories of activities:

- (i) mobilization, demobilization or travel through active and in-service operational facilities or spaces available for public use or access;
- (ii) activities that take place outside of Project Co’s enclosed (i.e. hoarded or fenced) space, phase or stage of construction; or
- (iii) activities that occur in the area immediately adjacent to Existing Metrolinx Infrastructure, or any area where the public may use to access, or pass by, Existing Metrolinx Infrastructure or a Metrolinx project site,

(each, a “**Safety Work Plan**”).

- (b) For clarity, Project Co shall submit a separate Safety Work Plan for each category of activities set out in Sections 7.12(a)(i), 7.12(a)(ii), and 7.12(a)(iii).
- (c) Project Co shall submit each Safety Work Plan to Contracting Authority in accordance with Schedule 10 – Review Procedure no later than fifteen (15) Business Days prior to the commencement of any activity set out in Section 7.12(a).
- (d) All Safety Work Plans shall be submitted using the Work Plan Methodology Template as provided to Project Co by Contracting Authority and shall include all details, attachments and other documents contemplated in the Work Plan Methodology Template. A Safety Work Plan shall be returned Project Co with the comment “RE-SUBMIT” if Contracting Authority determines that it is missing any such details, attachments or other documents.
- (e) For clarity, Project Co shall not be entitled to any Delay Event or Compensation Event with respect to the review of the Safety Work Plan if the Safety Work Plan does not comply with any of the requirements set out in this Section 7.12.

7.13 Safety Stand Down Meeting

- (a) No later than ninety (90) days after the DMCA Effective Date, and once every ninety (90) days thereafter until Project Final Completion, or on a date or at a frequency otherwise agreed between Project Co and Contracting Authority until Project Final Completion, Project Co shall convene a safety meeting (the “**Safety Stand Down Meeting**”) with Contracting Authority that will be up to two hours in length and based on an agenda jointly developed by the Parties in accordance with this Section 7.13. Contracting Authority may, acting reasonably, invite additional participants to any Safety Stand Down Meeting.
- (b) Project Co, as “Constructor” of the Works and the Site under the OHSA and this Agreement, shall convene each Safety Stand Down Meeting at a location on the Metrolinx Lands, or at an alternate location approved by Contracting Authority, in its sole discretion.
- (c) Project Co, as “Constructor” of the Works and the Site under the OHSA and this Agreement, shall provide at least thirty (30) days’ Notice to the Contracting Authority Representative for each Safety Stand Down Meeting, which shall include the particulars

for such meeting, including its location, date, time and number of attendees. Upon receiving Notice of any such Safety Stand Down Meeting, Contracting Authority shall have the right to:

- (i) request that one or more safety topics be presented at the Safety Stand Down Meeting and may, in its sole discretion, choose to provide certain presentation materials to be used by Project Co in connection therewith; and
 - (ii) request the attendance of specific representatives of Project Co and any Project Co Party working at the Lands at such meeting and, if requested, Project Co shall use reasonable commercial efforts to ensure all such individuals attend.
- (d) Project Co, as “Constructor” of the Works and the Site under the OHSA and this Agreement, shall prepare for and participate in, and shall cause all relevant Project Co Parties working at the Site to prepare for and participate in, each Safety Stand Down Meeting, including:
- (i) if such preparation for and participation in the Safety Stand Down Meeting requires Project Co or any Project Co Party to demobilize any part of the Construction Activities, delays the starting of any Works or causes or contributes to any other interruption or stoppage of the Works;
 - (ii) preparing and delivering presentations on any safety topics requested by Contracting Authority and, if and as applicable, delivering any presentation materials provided by Contracting Authority in connection therewith; and
 - (iii) preparing and delivering presentations on one or more safety topics if Contracting Authority has not requested that a particular safety topic be presented.
- (e) Project Co shall provide all labour and materials required for each Safety Stand Down Meeting, including all equipment, furnishings and presentation materials.
- (f) Project Co acknowledges that it could experience a delay, interruption or stoppage of the Works as a result of each Safety Stand Down Meeting, and Project Co agrees that it shall not be eligible for a Delay Event, Compensation Event or any other relief or additional compensation under this Agreement as a result of any such meeting.
- (g) No later than five (5) Business Days after the Safety Stand Down Meeting, Project Co, as “constructor” of the Works and the Site under the OHSA and this Agreement, shall provide the written minutes and a summary of the meeting (the “SSDM Summary Report”) to Contracting Authority for review in accordance with Schedule 10 – Review Procedure. The SSDM Summary Report shall include:
- (i) the date of the meeting;
 - (ii) a list of all attendees at the meeting;
 - (iii) topics discussed at the meeting;

- (iv) a copy of any presentations delivered at, or materials distributed as part of, the Safety Stand Down Meeting in both native file formats and .pdf format; and
- (v) a copy of evaluation forms provided by Contracting Authority to Project Co as part of the Safety Stand Down Meeting materials that have been filled out by the meeting participants.

7.14 Right of Contracting Authority to Inspect Site

- (a) The Contracting Authority or its designate may perform inspections of the Site on a weekly basis or at such other frequency as the Contracting Authority may, in its sole discretion, elect. Such inspections are solely for the purpose of the Contracting Authority ensuring that Project Co is meeting its health and safety obligations under this Agreement, and its role as “Constructor” of the Works and the Site under the OHSA and this Agreement, and shall not be for purposes of Contracting Authority controlling the Site, the Works, or health and safety at the Site.

8. SECURITY REQUIREMENTS

8.1 General

- (a) shall carry out its security obligations as set out in this Section 8 in order to demonstrate that:
 - (i) the Works have been thoroughly reviewed, demonstrated, inspected and tested at all system levels throughout the lifecycle, and are capable of being operated and maintained as a fully integrated, secure system;
 - (ii) the Works has achieved an acceptable level of security and the Works, as an aggregate, deliver a secure integrated system; and
 - (iii) all elements are able to support security critical and security related functions in normal, degraded and emergency modes.
- (b) Project Co acknowledges and agrees that:
 - (i) the security of System Users is critical and a shared responsibility amongst Project Co, RSSOM Project Co, EGS Project Co and South Civil Project Co, the Security Provider, the Passenger Interface Provider, and other third parties through their respective responsibilities and activities. For clarity, Project Co is only responsible in respect of the Works;
 - (ii) Project Co is obliged to cooperate with all such parties at all times throughout the Project Term to ensure the security and emergency preparedness of the Ontario Subway Line System and System Users; and
 - (iii) Project Co shall be responsible for security matters related to the Project Co Infrastructure.

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- (c) Project Co shall, in accordance with the System Security Submissions Plan and Section 8.5.1, submit to the Contracting Authority a series of System Security Submissions for each System that comprises the Works. As further detailed in Section 8.5, the System Security Submissions are,
- (i) comprised of the following submission stages that collectively represent the lifecycle of the Project and include the design stage, construction stage, and testing and commissioning stage of the Project:
- (A) “Approval in Principle Security Submissions”;
 - (B) “System Design Security Submissions”;
 - (C) “Consent to Construct Security Submissions”;
 - (D) “Consent to Test Security Submissions”; and
 - (E) “Consent to Operate System Security Submissions”.
- (ii) for the purpose of demonstrating to the Contracting Authority that Project Co has met its security assurance obligations.
- (d) Project Co must receive approval from the Contracting Authority for each System Security Submission before Project Co is permitted to commence the work contemplated in that System Security Submission.
- (e) Project Co shall not,
- (i) commence detailed design work for any “System” or “Infrastructure” until the Contracting Authority has received and approved all Approval in Principle Security Submissions and System Design Security Submissions related to that “System” or “Infrastructure” as set out in the System Security Submissions Plan unless the Contracting Authority has issued a written derogation to the requirements of this Section 8.1(e)(i) setting out alternative arrangements for commencement of detailed design at Project Co’s risk, in parallel with an Approval in Principle Security Submission or a System Design Security Submission to the Contracting Authority;
 - (ii) commence construction of any “System” or “Infrastructure” until the Contracting Authority has received and approved all Consent to Construct Security Submissions related to that “System” or “Infrastructure” as set out in the System Security Submissions Plan; or
 - (iii) commence testing or commissioning of any “System” or “Infrastructure” until the Contracting Authority has received and approved all Consent to Test Security Submissions related to that “System” or “Infrastructure” as set out in the System Security Submissions Plan.

8.2 System Security Officer and Chief Security Officer

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- (a) Project Co shall appoint a System Security Officer who shall be responsible for the overall security of the Works and who will be Project Co's contact for all communications with the Contracting Authority, the Chief Security Officer, South Civil Project Co system security officer, law enforcement and emergency response agencies, and others on security matters related to the Works.
 - (b) The System Security Officer shall be responsible for the delivery of all aspects of security management for the Works, including Security Risk Assessment, CPTED and other threat and vulnerability assessments.
 - (c) Project Co shall provide Contracting Authority with the 24-hour contact information for the System Security Officer or, in the event that the System Security Officer is unavailable for reasons for which Contracting Authority has been provided advance in notice, the 24-hour contact information of the individual acting in the stead of the System Security Officer.
 - (d) RSSOM Project Co shall appoint the Chief Security Officer who shall be responsible for the overall security of the Ontario Line Subway and who will be Project Co's contact for all communications with the Contracting Authority, the Systems Security Officers, law enforcement and emergency response agencies, and others on security matters related to the Ontario Line Subway System.
 - (e) South Civil Project Co shall appoint the South Civil Project Co system security officer who shall be responsible for the security of the systems and infrastructure within their Project delivery and shall be the point of contact for the Chief Security Officer, the Contracting Authority, the other security officers, and others as necessary in respect of the safety and security certification activities.
 - (f) EGS Project Co shall appoint the EGS Project Co system security officer who shall be responsible for the security of the systems and infrastructure within their Project delivery and shall be the point of contact for the Chief Security Officer, the Contracting Authority, the other security officers, and others as necessary in respect of the safety and security certification activities.
 - (g) The System Security Officer shall,
 - (i) be a CPP, or equivalent applicable alternative acceptable to the Contracting Authority, who shall have extensive experience in the field of system security applied in a metro type rail transit environment, in an equivalent position in North America;
 - (ii) be responsible for the delivery of all aspects of the Project Co security management function (as applicable to the System Security Officer), including Security Risk Assessment and CPTED; and
 - (iii) be responsible for supporting the Chief Security Officer in the overall security certification of the Ontario Line Subway System as agreed in the SSSIC.

8.3 Provision of Training to Prescribed Persons

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- (a) Project Co shall ensure that any person employed by, or any person acting on behalf of, Project Co or Project Co Parties and who have any of the following duties, as well as the direct supervisors of those persons, undergo security awareness training:
- (i) operating, maintaining or inspecting equipment or works on the Project Co Infrastructure;
 - (ii) controlling the dispatch or movement of equipment for the Project Co Infrastructure;
 - (iii) ensuring the security of equipment and the Works for the Project Co Infrastructure;
 - (iv) loading or unloading goods to or from Project Co Infrastructure equipment;
 - (v) interacting with the public for the purposes of completing the Works; and
 - (vi) ensuring compliance with its security processes, including those set out in their security plan.
- (b) Pursuant to Section 8.2(a), Project Co shall ensure that security awareness training is provided to the person,
- (i) within ninety (90) days after the day on which the person initially assumed any of the duties referred to in Section 8.2; and
 - (ii) on a recurrent basis at least once every three years after the day on which the person completed their previous training.
- (c) Project Co shall ensure that until a person responsible for any of the duties referred to in Section 8.2(a) has undergone security awareness training, the person performs their duties under the supervision of a person who has undergone security awareness training.
- (d) Project Co shall ensure that training records are kept for each person who has undergone security awareness training and that the record,
- (i) is kept up to date;
 - (ii) includes the person's name and details of their most recent training, including the date, duration and the title of the training, the delivery method and the name of the provider of the training;
 - (iii) includes the title and the date of any previous security awareness training taken by the person;
 - (iv) is retained for at least two years after the day on which the person ceases to be employed by, or ceases to act on behalf of, Project Co; and
 - (v) is available for audit by the Contracting Authority at any time.
- (e) Project Co shall ensure that a copy of the most recent awareness training materials is kept.

8.4 System Security Standards

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- (a) Project Co shall carry out its security obligations as set out in this Section 8 and in accordance with the following standards and regulations:
- (i) ISO 31000 Risk Management – Principles and Guidelines (“**ISO 31000**”);
 - (ii) SOR/2020-222: Passenger Rail Transportation Security Regulations (“**SOR/2020-222**”); and
 - (iii) ISO 22341 Security And Resilience - Protective Security – Guidelines For Crime Prevention Through Environmental Design (“**ISO 22341**”).
- (b) Project Co shall use the following standards for reference in their executing their security obligations as set out in this Section 8:
- (i) IEC 15288: Systems and software engineering — System life cycle processes (“**IEC 15288**”)
- (c) Project Co shall use the following documents as guidance where no other Canadian code or standard exists covering the topics of each of these documents:
- (i) NL/L2/OPS/291:2019 Railway Crime Risk Management; and
 - (ii) NR/L3/OPS/045/4.18:2018 National Operating Procedure (NOP) 4.18: Management of Station Security and Crime.

8.5 System Security Submissions Plan and System Security Submissions

8.5.1 System Security Submissions Plan

- (a) No later than thirty (30) days following the DMCA Effective Date, Project Co shall provide technical support and schedule development input to RSSOM Project Co to enable RSSOM Project Co to incorporate the Project Co contributions into the RSSOM Project Co system security submissions plan.
- (b) No later than thirty (30) days following the DMCA Effective Date, Project Co shall submit to the Contracting Authority, for approval, a detailed plan for System Security Submissions (the “**System Security Submissions Plan**”). The System Security Submissions Plan shall include, at a minimum,
- (i) a detailed description of how Project Co intends to divide the security of the Works into Infrastructure and Systems, a detailed description of what each “System” (fixed infrastructure and rail systems) includes and the components of each piece of Infrastructure item and System, all of which shall be consistent with Project Co’s System Definition Document;
 - (ii) a detailed explanation of how Project Co intends to meet its obligations as set out in Sections 8.5.1(c) and 8.5.1(d);

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- (iii) a detailed conformance check against the requirements of SOR/2020-222 and ISO 22341 that demonstrates how Project Co has met or intends to meet the requirements of these standards;
 - (iv) a table setting out,
 - (A) how many of each type of System Security Submissions (including the Approval in Principle Security Submissions, the System Design Security Submissions, the Consent to Construct Security Submissions the Consent to Test, and the Consent to Operate Security Submissions as described in Section 8.5.2(a) Project Co intends to submit during the Project Term;
 - (B) the date on which Project Co intends to submit each System Security Submission, taking into account the requirements of Section 8.5.1(c); and
 - (C) a summary of the content of each System Security Submission, with references to the “Systems” established by Project Co; and
 - (v) an updated version of Table A- 2 of Appendix A to this Schedule 29 that is extrapolated in accordance with the “Systems” established by Project Co, and that is consistent with Project Co’s planned organization, number and sequence of System Security Submissions.
- (c) Project Co shall ensure that its planned organization, number and sequencing of System Security Submissions, as reflected in the System Security Submissions Plan, is consistent with the progression of the Project and takes into account the lifecycle processes described in IEC 15288, the stages of infrastructure configuration for the Project, and Project Co’s progressive assumption of responsibility.
- (d) Project Co shall ensure that,
- (i) the totality of the planned Approval in Principle Security Submissions, as set out in its System Security Submissions Plan, covers each security, or security impacting component of the Works;
 - (ii) the totality of the planned System Design Security Submissions, as set out in its System Security Submissions Plan, covers each security, or security impacting component of the Works;
 - (iii) the totality of the planned Consent to Construct Security Submissions, as set out in its System Security Submissions Plan, covers each security, or security impacting component of the Works;
 - (iv) the totality of the planned Consent to Test Security Submissions, as set out in its System Security Submissions Plan, covers each security, or security impacting component of the Works; and

- (v) the totality of the planned Consent to Operate System Security Submissions, as set out in its System Security Submissions Plan, covers each security, or security impacting component of the Works.

8.5.2 System Security Submissions

- (a) Project Co shall provide input, as required and agreed at the SSSIC to RSSOM Project Co, for the development of the RSSOM Project Co system security submissions as set out in the RSSOM Project Co system security submissions plan described in Section 8.5.1(a).
- (b) Project Co shall, in accordance with the System Security Submissions Plan set out in Section 8.5.1(b), provide the following submissions (each, a “**System Security Submission**”) to Contracting Authority for review and approval:
- (i) one or more submissions for approval in principle, which shall cover all the system and infrastructure definition phases of Project Co Works as laid out in Clause 6.4.2 of IEC 15288 and undertaken by Project Co and include, at minimum, the deliverables noted as Approval in Principle Safety Submissions in Table A- 2 of Appendix A to this Schedule 29, (each, an “**Approval in Principle Security Submission**”);
- (A) the requirements developed in this process shall form the Security Requirements Specification submission as described in Section B.3 of Appendix B to this Schedule 29.
- (ii) one or more submissions for approval to finalize detailed designs, which shall cover system and infrastructure design activities of Project Co Works as laid out in Clauses 6.4.3, 6.4.4, 6.4.5 and 6.4.6 of IEC 15288 and undertaken by Project Co and include, at minimum, the deliverables noted as System Design Safety Submissions in Table A- 2 of Appendix A to this Schedule 29, (each, a “**System Design Security Submission**”);
- (A) the requirements developed in this process shall form the Security Subsystem Requirements Specification submission as described in Section B.4 of Appendix B to this Schedule 29.
- (iii) one or more submissions for consent to construct, which shall cover system and infrastructure requirements activities of Project Co Works as laid out in Clauses 6.4.7 and 6.4.8 of IEC 15288 and undertaken by Project Co and include, at minimum, the deliverables noted as Consent to Construct Security Submissions in Table A- 2 of Appendix A to this Schedule 29 (each, a “**Consent to Construct Security Submission**”);
- (iv) one or more submissions for consent to test, which shall cover system and infrastructure requirements activities of Project Co Works as laid out in Clauses 6.4.7 and 6.4.8 of IEC 15288 and undertaken by Project Co and include, at minimum, the deliverables noted as Consent to Test Security Submissions in Table A- 2 of Appendix A to this Schedule 29 (each, a “**Consent to Test Security Submission**”); and

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- (v) one or more submissions for consent to operate systems, which shall cover system and infrastructure activities of Project Co Works as laid out in Clauses 6.4.9, 6.4.10 and 6.4.11 of IEC 15288 and undertaken by Project Co and include, at minimum, the deliverables noted as Consent to Operate System Security Submissions in Table A-2 of Appendix A to this Schedule 29 (each, a “**Consent to Operate System Security Submission**”).
 - (c) Each System Security Submission shall be reviewed by the RSSOM Project Co ISA, and the RSSOM Project Co ISA shall produce an independent assessment report for each System Security Submission documenting its review of the System Security Submission (the “**RSSOM Project Co ISA Security Submission Report**”).
 - (i) Project Co shall submit the RSSOM Project Co ISA Security Submission Report with each System Security Submission to Contracting Authority.
 - (d) Upon receipt by Contracting Authority of the System Security Submission and the RSSOM Project Co ISA Security Submission Report, the Contracting Authority ISA shall conduct a review of the System Security Submission and the RSSOM Project Co ISA Security Submission Report, and shall submit any requests for clarification to the RSSOM Project Co ISA no later than five (5) Business Days following the date that Contracting Authority received the System Security Submission and the RSSOM Project Co ISA Security Submission Report.
 - (i) The RSSOM Project Co ISA shall respond to requests for clarification within five (5) Business Days of receiving a clarification request from the Contracting Authority ISA.
 - (e) The Contracting Authority ISA shall, after reviewing the System Security Submission and the RSSOM Project Co ISA Security Submission Report, and within fifteen (15) Business Days of receiving the RSSOM Project Co ISA’s responses to its requests for clarification as set out in Section 8.5.2(d), recommend to Contracting Authority, with documented rationale in the form of a report, whether to approve or refuse to approve the System Security Submission (the “**Contracting Authority ISA Security Submission Verification Report**”).
 - (f) No later than five (5) Business Days after receiving the Contracting Authority ISA Security Submission Verification Report, Contracting Authority shall determine whether to approve or reject the System Security Submission.
 - (i) Upon approving the System Security Submission, Contracting Authority shall issue a security confirmation to Project Co.
 - (g) If Contracting Authority elects, in its sole discretion, to reject a System Security Submission, Project Co shall revise the System Security Submission to include changes or additional security measures and shall resubmit the System Security Submission and an accompanying RSSOM Project Co ISA Security Submission Report and any other documentation as may be required by Contracting Authority, acting reasonably.

8.6 Security Plan

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- (a) Project Co shall, no later than sixty (60) days following the DMCA Effective Date, submit to Contracting Authority a security plan (the “**Security Plan**”) that contains measures to be taken to detect, identify, prevent, mitigate, respond to and recover from acts, or attempted acts, of unlawful interference with the Works.
- (b) The Security Plan shall include a risk management strategy that addresses the risks, prioritized as medium or higher in the most recent Security Risk Assessment, and all other risks that require remedial action and additional safeguards that are intended to mitigate heightened risk conditions in a graduated manner.
- (c) The Security Plan shall be comprised of three (3) parts as described in Appendix B to this Schedule 29:
- (i) the Passenger Station Security Plan;
 - (ii) the Guideway and Tunnel Security Plan; and
 - (iii) the Shared Infrastructure Security Plan.
- (d) Project Co shall:
- (i) make available to each person who is responsible for implementing the Security Plan the portions of the Security Plan that are relevant to the duties of that person;
 - (ii) review the Security Plan at least once every six months;
 - (iii) amend the Security Plan if it does not reflect the most recent Security Risk Assessment;
 - (iv) amend the Security Plan if deficiencies that could adversely impact the security of the Works are identified in the Security Plan;
 - (v) conduct a comprehensive review of the Security Plan within one year after the day on which the current Security Plan was approved by Contracting Authority;
 - (vi) notify the persons referred to in Section 8.6(d)(i) of any amendments to the relevant portions of the Security Plan; and
 - (vii) provide a copy of the updated Security Plan following its review and amendment within fourteen (14) calendar days of completion of a review.
- (e) Project Co shall ensure that persons employed by or acting on behalf of Project Co and who are responsible for the development and implementation of the Security Plan or any portion of it and any other person with security-related duties for whom the training is considered necessary to ensure the effective implementation of the Security Plan is provided with training on the Security Plan,
- (i) within ninety (90) days after the day on which those persons assume their duties; and
 - (ii) on a recurrent basis at least once every three years after the day on which those persons completed their previous training.

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- (f) Project Co shall ensure that on completion of the Security Plan training, participants in the Security Plan training have the knowledge and skills required to carry out their duties.
 - (g) Project Co shall ensure that if the Security Plan is amended in such a way that significantly affects the security duties of a person referred to in Section 8.6(d)(i), within thirty (30) days after the day on which the amendments are implemented, the person is provided with training on the amendments to the Security Plan.
 - (h) Project Co shall keep a training record for each person who has undergone the Security Plan training, and must ensure that the record:
 - (i) is kept up to date;
 - (ii) contains the person’s name and details of the most recent Security Plan training they received, including the date, duration and title of the training and the components of the Security Plan that were covered;
 - (iii) contains the title and the date of any previous Security Plan training taken by the person; and
 - (iv) is retained for at least two years after the day on which the person ceases to be employed by or ceases to act on behalf of Project Co.
 - (i) Project Co shall ensure that a copy of the most recent training materials is provided to Contracting Authority within seven calendar days of such training materials being revised.

8.7 Reporting of threats and security concerns

- (a) Project Co shall report to Contracting Authority by any direct means of communication any threat or security concern that results or may result in interference with the Works. The report shall be made immediately, but not later than five (5) minutes after the occurrence of the threat or other security concern. Threats and security concerns include:
 - (i) any interference with Project Co or Project Co Parties personnel;
 - (ii) any bomb threats, either specific or non-specific;
 - (iii) any report or discovery of a suspicious item;
 - (iv) any suspicious activity observed on, inside or near the Project Co Infrastructure or sites;
 - (v) the discovery, seizure or discharge of a weapon, explosive substance (not explicitly used for maintenance of the Ontario Line Subway) or incendiary device (not explicitly used for maintenance of the Ontario Line Subway) on, inside or near the Project Co Infrastructure or equipment used in the performance of the Works;
 - (vi) any sign of tampering with equipment or Works on, inside or near the Project Co Infrastructure;

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- (vii) any information relating to the possible surveillance of equipment or Works related to the Project Co Infrastructure; and
 - (viii) any suspicious person, circumstance or object that Project Co considers to be a threat or other security concern.
- (b) When reporting a threat or a security concern pursuant to Section 8.4(a), Project Co shall provide the following information to the extent that such information is known:
- (i) the name of the person making the report on behalf of Project Co and the person's title and contact information, including their telephone number and e-mail address;
 - (ii) any information that identifies any Project Co equipment or works that is affected by the threat or other security concern;
 - (iii) a description of the threat or other security concern, including the date and time that Project Co became aware of it;
 - (iv) the names of the persons involved in the threat or other security concern, and any other information related to those persons, if the disclosure of those names and that information is permitted under Applicable Law; and
 - (v) the source of any threat information or other security concern, if its disclosure is permitted under Applicable Law.
- (c) In the event that any information referred to in Section 8.4(b) is not known at the time of initial reporting, Project Co shall ensure that the information is reported to Contracting Authority as soon as it becomes known.
- (d) The Contracting Authority shall, by any direct means of communication, notify Project Co of any threat or security concern that results or may result in interference with the Works.

APPENDIX A TO SCHEDULE 29

SCHEDULE OF SAFETY DELIVERABLES FOR SYSTEM ASSURANCE SUBMISSIONS

A. General Requirements

- (a) The Project Co Site Specific Safety Manual shall, at a minimum, comply in all respects with:
 - (i) the applicable requirements of the OHSA, including all regulations thereto;
 - (ii) industry recognised safe practices;
 - (iii) the health and safety requirements set by Project Co with respect to the Project and the Site;
 - (iv) the health and safety requirements of this Agreement;
 - (v) the Certificate of Recognition requirements.

B. Minimum Categories

- (a) The Project Co Site Specific Safety Manual shall, at a minimum, contain narrative addressing the categories and sub-categories as set out below:

0.0	Overview and Scope The manual shall have an introduction that shall set out an overview and scope of the Project.
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<p>1.0</p>	<p>Health and Safety Policy and Goals</p> <p>The policy shall:</p> <ul style="list-style-type: none"> • state Project Co’s health and safety mandate and occupational health and safety policy; • refer to the safety goals and lifesaving rules of the Project and the culture of safety planned to be implemented by Project Co; • include a “statement of commitment” by an officer of Project Co, which must specifically refer to the manual itself and be executed by an officer of Project Co who has authority to bind Project Co; and • include a statement of commitment with respect to keeping Subcontractors responsible for matters related to health and safety.
<p>2.0</p>	<p>Safety Leadership</p> <p>The manual shall:</p> <ul style="list-style-type: none"> • include Project Co’s approach, actions and continuous improvement regarding the safety leadership of each of its employees and subcontracted workforces; and • include examples of proactive measures and efforts taken in maintaining and improving the safety culture of the organization at all levels, including documented safety inspections.

<p>3.0</p>	<p>Project Health and Safety Objectives and Performance Measurement</p> <p>The manual shall:</p> <ul style="list-style-type: none"> • describe the methodology for measuring health and safety performance, including key performance indicators to assess whether objectives are being met; • indicate how measures of lagging and leading indicators will be used to track health and safety performance and which entity(ies) will be accountable for its implementation and communication to Contracting Authority; and • provide details on Project Co’s proactive safety awards program that supports outstanding safety performance and the health and safety culture of the Project.
<p>4.0</p>	<p>Roles and Responsibilities</p> <p>Describe the specific roles and responsibilities of the following persons in relation to meeting the health and safety objectives and the requirements of this Agreement:</p> <ul style="list-style-type: none"> • Project Co; • Project Director; • Construction Health and Safety Manager; • Construction Manager; • Safety Coordinator; • Joint Occupational Health and Safety Committee/Trades Committee; • Subcontractor; • Subcontractor Supervisor; • Workers; • Visitors; and • External Parties.

<p>5.0</p>	<p>Subcontractor Health and Safety Management Plan Describe how Subcontractors will be managed and measures that will be implemented to ensure competent Subcontractor supervision related to the Project. Include in the plan Project Co’s approach to reviewing the Subcontractor’s health and safety performance history.</p>
<p>6.0</p>	<p>Hazard Assessment, Analysis and Control Describe Project Co’s plan for how work scopes will be assessed and analysed, and how mitigation controls will be put in place to ensure work is performed in a healthy and safe manner. The plan shall include:</p> <ul style="list-style-type: none"> • techniques that focus on scopes of work broken down into steps, identifying potential hazards and potential preventative steps; • daily job and task level Hazard Identification and control; • means to measure workers’ understanding and compliance with safe work practices and safe job procedures through training and correction of unsafe performance; and • how Hazard awareness and mitigation controls are communicated to workers.
	<p>Designated Substances and Hazardous Materials</p>
	<p>Hazard Identification</p>
	<p>Risk Assessment Describe Project Co’s risk assessment methodology and provide a Project-specific health and safety risk register that details any unique safety requirements of the Project that will be provided and maintained over the duration of the Project. A risk register is required to be completed prior to any work commencement.</p>
	<p>Job Hazard Analysis Provide an analysis to detail a technique that focuses on job tasks as a way to identify hazards before they occur. The analysis shall focus on the relationship between the worker, the task, the tools and the work environment. The analysis shall break down the job in smaller steps to examine potential hazards and potential preventative steps.</p>

	<p>Daily Hazard Identification and Control</p>
	<p>Safe Work Practices and Safe Job Procedures</p> <p>Describe the process to develop and implement safe work practices/safe job procedures to address the identification, assessment, control, prevention and communication of hazards specific to individual tasks or jobs.</p> <p>Provide means to ensure employees understand and comply with safe work practices and safe job procedures through training, correction of unsafe performance and, if necessary, enforcement through a clearly communicated disciplinary system.</p>
	<p>Ladders – Elimination/Control of Use</p> <p>Describe the process to develop and implement safe work practices and/or safe job procedures for the use of ladders which will include:</p> <ul style="list-style-type: none"> • secure storage of ladders; and • system of authorization that will demonstrate reasonable steps to eliminate the use of ladders before they are allowed to be used.
7.0	<p>Company Rules – Rules of Conduct and Disciplinary Action</p> <p>Describe the company rules and the disciplinary actions to be taken in the case of health and safety infractions or non-compliance with established procedures and policies.</p>

	<p>Fitness for Duty Policy</p> <p>The policy shall:</p> <ul style="list-style-type: none"> • explain how Project Co will ensure that workers are fit for duty at all times while performing the Works or at the Site; and • meet or exceed the requirements of the Metrolinx Fitness for Duty Policy to ensure that all workers are fit for duty while performing the Works or other activities at the Site. <p>Project Co acknowledges and agrees that Metrolinx Fitness for Duty Policy is provided solely for the purpose of incorporating any relevant matters into its Project Co Site Specific Safety Manual and that provision of the Metrolinx Fitness for Duty Policy to Project Co does not constitute control or direction of safety of the Works or at the Site by Contracting Authority.</p>
	<p>Workplace Violence and Harassment</p>
	<p>Disciplinary Action</p> <p>Describe the company rules and the disciplinary actions to be taken in the case of health and safety infractions or non-compliance with established procedures and policies.</p>
	<p>Worker Rights</p>
<p>8.0</p>	<p>Health and Safety Training and Competency</p> <p>Describe the training program to be implemented to ensure that all persons who will be entering and/or working on the Site are appropriately trained. At a minimum, the training program shall include:</p> <ul style="list-style-type: none"> • demonstration of the individual’s competency for the assigned role; • description and associated documentation of safety and security; and • competency training. <p>The training program should include a description and associated documentation of safety and security competency training programs, either online or in person, for field personnel, including the type of training provided and how it specifically targets health and safety. Training may include task-specific safety training or general awareness training.</p>

	<p>Project Specific Orientation Describe how the health and safety training program will be facilitated with all individuals before they are given access to any areas within the Site or any portion of the Lands. This will include worker education and training on specific Site hazards and controls including safe work practices and safe job procedures.</p>
	<p>Site Specific Orientation If work activities are to be performed on multiple Sites under one project scope, provide a narrative of how a site-specific safety orientation will be created and facilitated to all affected parties to address the hazards specific to the Site. This category is in addition to the Project Specific Orientation.</p>
	<p>Visitor/Short Duration Work Orientation Narrative shall include health and safety training to be provided for all visitors who are not performing work on the Site or any portion of the Lands and will be escorted by a member of Project Co while on the Site or any portion of the Lands before being given authorization to enter the Site or any portion of the Lands.</p>
	<p>Delivery Driver/ Supplier Orientation Narrative shall include health and safety training to be facilitated with all delivery drivers and suppliers before being given authorization to enter the Site or any portion of the Lands, including those who are not performing Construction Activities on the Site or any portion of the Lands but may be granted access to the Site or any portion of the Lands to perform their job functions.</p>
	<p>Worker Training to Specific Site Hazards Including safe work practices and safe job procedures.</p>

	<p>Personal Protective Equipment (“PPE”) Such narrative shall incorporate the requirements of Section 7.5 of this Schedule 29. Identify the minimum PPE that will be required onsite, selection criteria of specialty PPE, and the use and maintenance of PPE.</p>
	<p>Worker/Supervisor Competency Evaluation Describe how the competency of workers and supervisors will be identified, met and evaluated on an ongoing basis.</p>
9.0	<p>Meetings and Communication Plan Describe the frequency of meetings relating to health and safety, how meetings will be documented and how agreed outcomes will be communicated to the appropriate parties.</p>
10.0	<p>Workplace Inspections Describe Project Co’s strategy for implementing an inspection regime in relation to health and safety on the Site.</p>
	<p>Informal Inspections</p>
	<p>Formal Inspections</p>
	<p>Audits</p>
	<p>Inspection and Audit Schedule</p>
	<p>Inspection Follow-up/Corrective Action Plan Describe the development and maintenance of a health and safety issues log, derived from inspections, audits and incidents with follow-up and corrective action plans necessary to mitigate issues.</p>
	<p>Maintenance of Records</p>

<p>11.0</p>	<p>Construction Emergency Response Plan Describe the policies and procedures pertaining to incident and emergency planning, response (including the safety of the workforce/public), mitigation and recovery. Project Co shall establish procedures to achieve, at a minimum, the following:</p> <ul style="list-style-type: none"> • maintain communication for the exchange of information between Project Co, Contracting Authority, the City of Toronto and other involved agencies; • develop coordinated support through interaction with local, provincial and federal governmental entities, as well as other entities, for safe and efficient construction; • coordinate emergency response, traffic control, security and operational issues affecting construction of the Project, and associated system feeders and exits; and • update Emergency Service Providers regarding the status of construction of the Project, and associated system feeders and exits, to ensure safe and timely response to Emergency events. At a minimum, this shall include off-site and on-site traffic routing changes, and changes to job site access, fire suppression system modifications and in-service availability of standpipes or fire suppression water supply, and changes in the Works that may create a greater likelihood of occurrence of a particular type of Emergency.
	<p>Emergency Response Procedure</p>
	<p>Property, Equipment and Environmental Damage Procedure</p>
	<p>Emergency Evacuation Plan</p>
	<p>Emergency Contacts and Roles</p>
	<p>First Aid and CPR Include documentation that indicates that Subcontractors have a proactive injury management system that supports efficient, effective and timely treatment of their employees who become injured on the Site.</p>
	<p>Drills and Exercises</p>

<p>12.0</p>	<p>Incident Reporting and Investigations Procedure</p> <p>Describe the procedures for reporting incidents, performing proactive investigations intended to prevent future incidents, identifying root causes and implementing measures to prevent a reoccurrence.</p> <p>Project Co shall demonstrate that an incident review process has been implemented which involves all levels of management to validate corrective measures to minimize future injuries and incidents on the Site.</p>
<p>13.0</p>	<p>Statistics and Records</p> <p>Describe how safety records are to be maintained to verify conformity to Project Co’s Project Co Site Specific Safety Manual requirements.</p> <p>Describe how the safety records shall be in electronic format, legible, electronically searchable, readily identifiable and retrievable, and available to Contracting Authority upon request.</p> <p>Project Co shall create and maintain a corrective action database. Project Co shall ensure all Subcontractor incidents are recorded in said database. The database shall be kept up to date and made available to Contracting Authority upon request. The database shall be maintained to verify conformity to the Project Co Site Specific Safety Manual requirements.</p>
<p>14.0</p>	<p>Security Plan</p> <p>Provide a plan that details guidelines for implementing security on the Site.</p> <p>Provide a methodology for securing the site and restricting trespassers.</p> <p>Describe how Project Co shall comply with its obligation to take every reasonable precaution to protect the public’s health and safety during the execution of the Works.</p>

<p>15.0</p>	<p>Traffic Management and Control Plan Include how activities performed by Project Co and Project Co Parties will protect workers, the public, passengers, transit infrastructure, transit operations and other parties.</p>
<p>16.0</p>	<p>Security Plan Provide a plan that details guidelines for implementing security on the Site. The plan shall include:</p> <ul style="list-style-type: none"> • a methodology for securing the Site and restricting trespassers; and • a description of how Project Co shall comply with its obligation to take every reasonable precaution to protect the public’s health and safety during the execution of the Works.
<p>17.0</p>	<p>Site Plot Plan Plan shall include an illustration of the overall Site and highlight specific locations where high risk Construction Activities will take place or identify Construction Activities that have the potential to impact transit operations and/or affect members of the public.</p>
<p>18.0</p>	<p>Tunneling Safety Plan Provide a tunneling safety plan that describes the management of tunnel-specific risks, meets or exceeds the regulatory requirements in O.Reg.213/91, as amended from time to time, and encompasses the following requirements, at a minimum:</p> <ul style="list-style-type: none"> • a risk assessment and mitigation of tunnel-specific hazards; • provisions and instructions for accessing shafts and tunnels (i.e. brass tags, photo ID’s etc.); • procedures for the following: <ul style="list-style-type: none"> (a) safe hoisting into shaft; (b) gas monitoring inside shafts and tunnels; (c) lock-out, tag-out inside shafts and tunnels;

	<ul style="list-style-type: none"> (d) tunnel boring machine (TBM) cutter head entry and service; (e) pipe installation, conveyor belt operation; and (f) other procedures related to safe shaft and tunnel operations; • provisions for maintaining optimal air quality inside shafts and tunnels during hot work operations and/or any other work of such nature (i.e., saw cutting, shotcrete, painting, and other such work) that could emit fumes, dust or a noxious gas; • training and orientation specific to shafts and tunnel operation for all personnel entering the shafts and tunnels; and • emergency evacuation plan related to shafts and tunnels (i.e. medical aids, fires, chemical spill, oxygen deficiency, toxic atmospheres, and other emergency circumstances), including, <ul style="list-style-type: none"> (a) use of self-rescuer (such as Draeger Oxy-k or Ocenco systems); (b) use of approved man-basket and/or Davit Arm system (where applicable); (c) notification system for emergencies; (d) use of stretchers inside shafts and tunnels; (e) summoning of the tunnel rescue team (where applicable); (f) provide fire protection plan for shafts and tunnel(s); and (g) provide a communication plan for shafts and tunnel(s).
19.0	Continuous Improvement Plan
20.0	Others

APPENDIX B TO SCHEDULE 29**SYSTEM ASSURANCE DELIVERABLE REQUIREMENTS****B.1 System Safety Plan Requirements**

- (a) Contracting Authority shall cause RSSOM Project Co to produce the System Safety Plan which shall comply with the requirements of all parts of EN 50126 and shall, notwithstanding any other provision of this Schedule 29 include the following minimum requirements:
- (i) a description of the policy and strategy for achieving safety;
 - (ii) a description of the scope the plan applies to (note that reference can be made to the System Definition Document), including all Works;
 - (iii) a description of the proposed organization roles with responsibility for safety management, with summary evidence of the competence of persons holding such roles;
 - (iv) an overview of the planned lifecycle for projects and the related safety activities;
 - (v) a description of the process for the safety approval of Systems being placed into service, including the interface to the Contracting Authority;
 - (vi) a description of the process for the maintenance of safety-related documentation (i.e. document control);
 - (vii) a description of the process for management of the Hazard Record/Log;
 - (viii) a description of arrangements for tracking Hazards and Safety Requirements transferred between Systems or to other entities;
 - (ix) a description of the constraints and assumptions made in the System Safety Plan;
 - (x) a description of Subcontractor management arrangements; and
 - (xi) a description of the process for periodic safety audit, safety assessment, and safety review throughout the lifecycle.

B.2 System Definition Document Requirements

- (a) Contracting Authority shall cause RSSOM Project Co to produce the System Definition Document which shall include the following content, organized into distinct sections:
- (i) an executive summary, which includes the intended purpose of the Project;
 - (ii) an overview of the Ontario Line Subway System, including:

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- (A) geographical scope;
 - (B) technology; and
 - (C) key features;
- (iii) an overview of the interfaces to the Adjacent Railway Systems, including:
- (A) geographical scope;
 - (B) technology; and
 - (C) key features;
- (iv) a description of the scope of the Works of the Ontario Line Subway System;
- (v) a description of the scope and significance of the Works which summarizes the major changes planned to Adjacent Railway Systems;
- (vi) a description of the scope of the services provided by third party agencies;
- (vii) a description of the function and constituent Subsystems, including a description of,
- (A) the Subsystem and Subsystem functions;
 - (B) long-term operating and maintenance strategies and conditions;
 - (C) Subsystem life-time considerations; and
 - (D) any logistic considerations;
- (viii) a description of the System boundaries for the Systems for which individual System Assurance Submissions shall be made, including:
- (A) geographical boundaries;
 - (B) technological Subsystems;
 - (C) interfaces and interactions with the physical environment;
 - (D) interfaces and interactions with other duty-holders; and
 - (E) the alignment of the System to the Works Submittals, as applicable;
- (ix) operational requirements, including:
- (A) modes of operation including external requirements;

- (B) system operating conditions and constraints;
- (C) system maintenance conditions; and
- (D) logistic support conditions;
- (x) a description of how Safety Measures and requirements will be managed by the Project, including:
 - (A) influences on operations and maintenance personnel; and
 - (B) influences on Passengers and the public;
- (xi) for each System described by Project Co in accordance with Section A.2(a)(viii) that impacts existing Adjacent Railway Systems, a summary of the significance of the change under the CMREA and a description of the application of the six CMREA significance criteria, including:
 - (A) a description of whether the change is related (for example, functionally or geographically) to any other change such that they should be considered as a single change;
 - (B) failure consequences, specifically the credible worst-case scenario in the event of a failure of the change introduced to the System (taking into account the existence of safety barriers or controls outside the System);
 - (C) novelty and complexity, specifically what features of the changes to the System would be considered novel and/or complex in the context of the subway infrastructure (including any innovative products, novel product applications, standards deviations, or anything else that affects the System safety risk profile);
 - (D) monitoring and reversibility, specifically if the System can be monitored to give early warning failure and if the System can be practically reverted to the state of the System before the changes (note that most changes on the subway are not reversible); and
 - (E) a conclusion as to whether the change is significant and a summary of the rationale for the conclusion.

B.3 RAM Plan

- (a) Contracting Authority shall cause RSSOM Project Co to produce the RAM Plan which shall include the following minimum requirements:
 - (i) the management of the following:

- (A) the system lifecycle and RAM tasks and processes to be undertaken within the lifecycle;
 - (B) a Failure Reporting and Corrective Action System (FRACAS) to be applied to the various Systems, with records including technical data, maintenance action, and reporting and Corrective Action;
 - (C) all RAM related deliverables from the lifecycle;
 - (D) all RAM acceptance tasks;
 - (E) the constraints and assumptions made in the RAM Plan; and
 - (F) Subcontractor management arrangements;
- (ii) the management of reliability, including:
- (A) reliability analysis and prediction;
 - (B) reliability planning;
 - (C) reliability testing; and
 - (D) reliability data acquisition and assessment;
- (iii) the management of availability, including:
- (A) availability analysis and prediction;
 - (B) availability planning; and
 - (C) availability data acquisition and assessment; and
- (iv) the management of maintainability, including:
- (A) maintainability analysis and prediction;
 - (B) maintainability planning;
 - (C) maintainability data acquisition and assessment; and
 - (D) logistic support evaluation.

B.4 Hazard Record/Log

- (a) The Hazard Record/Log shall be structured such that:
 - (i) all causes are mapped to Hazards;

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- (ii) all Hazards are mapped to consequences;
 - (iii) all mitigation measures are mapped to:
 - (A) causes, if the measure is acting to prevent causes from happening or to minimize the probability of occurrence of causes;
 - (B) Hazards, if acting to prevent Hazards from giving rise to consequences or minimizing the frequency of occurrence of the Hazards; and/or
 - (C) consequence, if acting after the consequences happen to reduce the severity of the consequence;
 - (iv) mitigations measures are recorded in the Hazard Record/Log as part of the analysis; and
 - (v) mitigations measures become Safety Requirements for Project Co to implement.
 - (b) The Hazard Record/Log should include information about the System it relates to and any assumptions or limitations about scope.
 - (c) Each entry in the Hazard Record/Log in respect of Hazards shall include the following:
 - (i) unique reference number;
 - (ii) name or description of the Hazard;
 - (iii) related system elements, interfaces, and/or functions;
 - (iv) location or area of the Hazard;
 - (v) discipline and Hazard owner;
 - (vi) source of identification;
 - (vii) related lifecycle phase;
 - (viii) status for each project lifecycle stage from the following options:
 - (A) “Open” – a newly identified Hazard;
 - (B) “Resolved” – Safety Requirements have been identified for the Hazard;
 - (C) “Managed” – the Safety Requirements have been accepted by the responsible parties;
 - (D) “Transferred” – the responsibility for the Hazard has been transferred to another System or party; or
 - (E) “Cancelled” – the Hazard is no longer applicable;

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- (ix) related consequence(s)
 - (x) related cause(s);
 - (xi) related mitigation measures;
 - (xii) related Safety Requirements;
 - (xiii) related closure assurance evidence; and
 - (xiv) related assumptions.
- (d) Each entry in the Hazard Record/Log in respect of causes shall include the following information:
- (i) unique reference number;
 - (ii) name or description of the cause;
 - (iii) related system elements or interfaces;
 - (iv) location or area of the cause;
 - (v) related Hazard(s);
 - (vi) related mitigation measures;
 - (vii) related Safety Requirements;
 - (viii) related closure assurance evidence; and
 - (ix) related assumptions.
- (e) Each entry in the Hazard Record/Log in respect of consequences shall include the following information:
- (i) unique reference number;
 - (ii) name or description of the consequence;
 - (iii) exposed parties;
 - (iv) where explicit risk estimation has been used as the Risk Acceptance Principle, the outcomes of the qualitative or quantitative assessment, including initial and residual Risk for each related consequence;
 - (v) related Hazards;
 - (vi) related mitigation measures;
 - (vii) related Safety Requirements;

- (viii) related closure assurance evidence; and
 - (ix) related assumptions.
- (f) Each entry in the Hazard Record/Log in respect of mitigation measures shall include the following information:
- (i) which of the three Risk Acceptance Principles, in accordance with the CMREA, is being used;
 - (ii) any related Safety Measures;
 - (iii) any related actions to be implemented;
 - (iv) any related Safety Requirements;
 - (v) any related Hazards, causes, or consequences;
 - (vi) any related assumptions; and
 - (vii) any related assurance evidence.
- (g) Each entry in the Hazard Record/Log in respect of safety measures to be addressed as part of a different System shall include the following information:
- (i) unique reference number;
 - (ii) description of the exported safety constraints;
 - (iii) persons at risk;
 - (iv) possible control measures;
 - (v) constraints;
 - (vi) owner(s); and
 - (vii) Risk transmission.
- (h) Where actions in the Hazard Record/Log are allocated to individuals instructing them to undertake work to either better understand or provide mitigation for the Risk arising from Hazards, each action entry shall include the following information:
- (i) unique reference number;
 - (ii) actionee name;
 - (iii) description of the action required;
 - (iv) deadline date;
 - (v) completion date;

- (vi) status of the action, from among the following:
 - (A) “Open” – if the action has not yet been implemented;
 - (B) “Conditionally Closed” – if it is certain that the action will be implemented;
 - (C) “Closed” – if the action has been implemented;
 - (D) “Transferred” if the responsibility for the action has been transferred and accepted by Contracting Authority, Adjacent Railway Systems, Passenger Interface Providers, Security Provider, Third Party Contractors or Additional Contractors; or
 - (E) “Cancelled” if the action is no longer applicable; and
- (vii) details of the actionee responses and any other supporting information to justify closure of the actions.
- (i) The Hazard Record/Log shall be continually reviewed and updated throughout the project and any changes to the Hazard Record/Log shall be recorded, and include the following information:
 - (i) date;
 - (ii) Hazard Record/Log version number;
 - (iii) author of the change;
 - (iv) the type of review undertaken;
 - (v) reference to any associated minutes from meetings related to the Hazard Record/Log review activity; and
 - (vi) a summary of the nature of the changes made to the Hazard Record/Log.

B.5 Safety Requirements Specification Requirements

- (a) Contracting Authority shall cause RSSOM Project Co to produce the Safety Requirements Specification which shall comply with the requirements of all parts of EN 50126 and include the following:
 - (i) description of functional requirements (i.e. what the System must do to be safe and how effective the System needs to be), including:
 - (A) safety-related function;
 - (B) tolerable Hazard rates or tolerable functional failure rates (for quantitative requirements), considering:
 - (C) definition of safe states;

- (D) definition of maximum permitted time to enter a safe state; and
- (E) failure detection measures of facilities or devices;
- (ii) contextual requirements, including:
 - (A) safety-related assumptions such as effectiveness (for example, probability of failure on demand, per hour, etc.) of mitigation barriers (for example, protection systems and redundancies);
 - (B) environmental conditions;
 - (C) organizational rules;
 - (D) operational rules; and
 - (E) maintenance rules; and
- (iii) technical requirements, including:
 - (A) requirements resulting from the Hazard analysis;
 - (B) any legal Safety Requirements; and
 - (C) adaptation requirements for System interfaces.

B.6 Independent Safety Assessment Plan Requirements

- (a) Contracting Authority shall cause RSSOM Project Co to produce the Independent Safety Assessment Plan which shall comply with the requirements of EN 50126-2 and include the following:
 - (i) the remit, including the objective and scope, of the independent safety assessment activities;
 - (ii) detail of the activities throughout the independent safety assessment process and their link to engineering or operational activities, including activities that,
 - (A) ensure the Independent Safety Assessor has a thorough understanding of the Project, the Works and Project Co deliverables based on the documentation provided by Project Co;
 - (B) involve an assessment of the processes to be used by Project Co for managing safety and quality during the design and implementation of any significance change; and
 - (C) involve an assessment of the application of those safety quality processes during the design and implementation of the Significant Change;

- (iii) statements on pass / fail criteria and how to deal with non-conformance cases;
 - (iv) requirements with regard to content and form of the independent safety assessment documentation, with observations categorized as follows:
 - (A) “Category 1” – must be addressed before the System enters service or before a document is used further;
 - (B) “Category 2” – must be addressed within a reasonable time, but the System can enter service in the meantime (possibly with mitigating measures); or
 - (C) “Category 3” – minor comments such as typographical errors; and
 - (v) arrangements for tracking closure of observations.
- (b) The Independent Safety Assessment Plan shall include the following minimum documents to be assessed:
- (i) System Safety Plan;
 - (ii) documentation related to Hazard Identification;
 - (iii) Hazard Record/Log;
 - (iv) Safety Requirements Specification;
 - (v) System Safety Case; and
 - (vi) Engineering Safety and Assurance Case.
- (c) Notwithstanding Section A.6(b) of this Appendix B to this Schedule 29, the Independent Safety Assessor shall include additional activities (for example, witnessing project activity and performing independent analysis) and document reviews where such activities and document reviews would be beneficial to arriving at a conclusion regarding safety and system assurance.

B.7 Hazard Analysis Report

- (a) The Hazard Analysis Report shall document the outcomes of the Risk Assessment activity that has been undertaken and the results of the various techniques used to assess Hazards, including,
- (i) Hazard identification workshops;
 - (ii) historical event analysis;
 - (iii) Hazard and operability studies;
 - (iv) failure modes effects and criticality analysis (FMECA);

- (v) interface Hazard analysis;
 - (vi) zonal analysis;
 - (vii) operating and support Hazard analysis; and
 - (viii) common cause failure analysis.
- (b) The Hazard Analysis Report shall include the following minimum requirements:
- (i) an introduction that includes the purpose of the Hazard analysis activities, their scope, and details about the participants of such activities and the authors of the report to demonstrate suitable competence;
 - (ii) a summary comprised of an overview of the Hazards and the responsible actors;
 - (iii) the methods used for the Hazard analysis, including:
 - (A) Hazard Identification;
 - (B) Hazard classification;
 - (C) Risk Acceptance Criteria; and
 - (D) Safety Requirements identified; and
 - (iv) any further actions required to ensure closure of all identified Hazards.

B.8 Safety Validation Report

- (a) The Safety Validation Report shall comply with the requirement of EN 50126-1 and include the following minimum content:
- (i) identification and name of:
 - (A) the System under consideration;
 - (B) the documents and other items used for the validation;
 - (C) the processes, technical support tools, and equipment used, along with calibration data; and
 - (D) the simulation models used, if any;
 - (ii) confirmation that the process and activities defined in the Safety Validation Report have been met, with any deviations from the Safety Validation Report recorded and justified;
 - (iii) evaluation of the performance and coverage of requirements tracing in development and verification;

- (iv) confirmation that the development and verification have handled Corrective Actions in accordance with the change management process and procedures with clearly identified deviations;
- (v) evaluation of the coverage of the Safety Requirements for the System under consideration by the tests and/or analyses;
- (vi) identification of the tests defined and executed by the validator, if any;
- (vii) evaluation of the correctness, consistency and adequacy of the qualification according to the required technology-related standards; and
- (viii) conclusion of the validation results and whether the System under consideration fulfills the Safety Requirements for its intended use in the defined environment.

B.9 RAM Analysis Report

- (a) The RAM Analysis Report shall document the outcomes of the RAM assessment activity that has been undertaken and the results of the various techniques used to assess reliability, availability and maintainability, including:
 - (i) an outline of the planning of the specific RAM analysis tasks for each phase of the lifecycle as required in section 7 of EN 50126-1;
 - (ii) reliability analysis activity per system;
 - (iii) availability analysis activity per system;
 - (iv) maintainability analysis per system; and
 - (v) failure modes effects and criticality analysis per system.

B.10 RAM Validation Plan

- (a) The RAM Validation Plan shall:
 - (i) outline the specific validation tasks and deliverables for each phase of the system lifecycle.
 - (ii) provide justification of the validation strategy chosen. The justification should be prepared in conjunction with the business unit and must include the following:
 - (A) Testing strategy;
 - (B) Acceptance of the test strategies by the one(s) conducting the testing;
 - (C) Witness (including extent) of the test strategy.
 - (iii) outline the steps necessary to demonstrate the adequacy of the specification of the system in fulfilling the requirements.

- (iv) define the following for each subsystem and piece of equipment:
 - (A) The techniques and measures to be used.
 - (B) The test and analysis to be used and the reporting required.
 - (C) Management of the deviations between expected and actual results of the analysis.
 - (D) Management of non-compliances and safety constraints arising from any deviations.
 - (E) Management of conditions and constraints that arise from the deviations, and how they will be considered in the next lifecycle tasks.
- (v) ensure the steps necessary for the analysis are both adequate and complete in order to fulfil the RAM requirements.

B.11 RAM Validation Report

- (a) The RAM Validation Report shall comply with the requirement of EN 50126-1 and include the following minimum content:
 - (i) an outline of the planning of the specific validation tasks for each phase of the lifecycle as required in section 7 of EN 50126-1;
 - (ii) identification and name of:
 - (A) the System under consideration;
 - (B) the documents and other items used for the validation;
 - (C) the processes, technical support tools and equipment used, along with calibration data; and
 - (D) the simulation models used if any;
 - (iii) a summary justification of the validation strategy chose, including consideration of:
 - (A) testing and analysis strategy;
 - (B) acceptance of proposed test strategies by the test entity; and
 - (C) witness and coverage of the test strategy;
 - (iv) confirmation that the processes and activities defined in the RAM Validation Plan have been met, with any deviations from the RAM Validation Plan recorded and justified;

- (v) evaluation of the performance and coverage of requirements tracing in development and verification;
- (vi) confirmation that the development and verification have handled Corrective Actions in accordance with the change management process and procedures with clearly identified deviations;
- (vii) evaluation of the coverage of the Safety Requirements for the system under consideration by the tests and/or analyses;
- (viii) identification of the tests defined and executed by the validator, if any;
- (ix) evaluation of the correctness, consistency and adequacy of the qualification according to the required technology-related standards;
- (x) conclusion of the validation results and whether the System under consideration fulfills the Safety Requirements for its intended use in the defined environment; and
- (xi) the steps necessary to demonstrate the adequacy of the specification of the System, Subsystem, and equipment to be validated in fulfilling the requirements for the System, Subsystem, and equipment, respectively, including:
 - (A) the techniques and measures used;
 - (B) the test and/or analyses used and how their results will be reported;
 - (C) management of deviations between expected and actual results of the tests and/or analyses;
 - (D) management of non-compliance and safety constraints arising from the deviations;
 - (E) management of conditions and constraints derived from the deviations, and how they will be considered in the next lifecycle tasks in terms of the impact on the future lifecycle tasks and traceable to the deviations; and
 - (F) the steps necessary to demonstrate the adequacy of the tests and/or analysis as a complete set of tests and/or analyses, with which the fulfillment of the requirements related to a System, Subsystem, and/or component can be demonstrated; and
 - (G) the steps for identification and management of non-fulfillment of requirements and deviations.

B.12 FRACAS Report

- (a) Contracting Authority shall cause RSSOM Project Co to produce the FRACAS Report which shall provide information and feedback regarding failures and defects and their

causes found during operational service, and shall include the following minimum requirements:

- (i) time of failure;
- (ii) cause of failure (this may need to be completed following an investigation);
- (iii) detailed description of the failure;
- (iv) Corrective Action taken;
- (v) safety ranking for the failure;
- (vi) when and how the failures and defects have been detected (for example, in operation or during scheduled maintenance);
- (vii) the effects of the failures and defects up to the Ontario Line Subway System level;
- (viii) the effect, if any, on existing subway and railway systems
- (ix) determination of whether any improvement is required, including to the following:
 - (A) operation and maintenance procedures and manuals;
 - (B) System training documentation;
 - (C) operational Hazard Record/Log;
 - (D) System design; or
 - (E) human factors aspects of operation and maintenance.
- (b) The FRACAS Report shall include a categorization of failures and defects for both safety and reliability for varying levels of severity and criticality.

B.13 SIL Apportionment Report

- (a) Safety requirements shall be expressed in terms of SILs, as described by EN 50126-2 and EN 50129.
- (b) Contracting Authority shall cause RSSOM Project Co to produce the SIL Apportionment Report which shall define system safety requirements that will ensure the safe operation of the Ontario Line Subway System by providing a rigorous methodology for SIL apportionment by:
 - (i) assigning the SIL to safety related functions identified by the Hazard Analysis performed for all PHA hazards; and
 - (ii) providing the apportionment of the SIL to the Ontario Line Subway System.

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- (c) The Report shall include:
 - (i) the process used to determine the Safety Function;
 - (ii) the calculations to determine the Tolerable Hazard Rate and Tolerable Functional Failure Rate; and
 - (iii) the calculations to apportion the required Safety Integrity Level to each System.

B.14 Safety and Security Critical Items List

- (a) The Safety Critical Items List shall contain:
 - (i) all items that have been identified through analysis as performing a safety function or a safety related function; and
 - (ii) all items that have been identified through analysis as being safety certifiable in their own right.
- (b) The Security Critical Items List shall contain:
 - (i) all items that have been identified through analysis as performing a security function or a security related function; and
 - (ii) all items that have been identified through analysis as being security certifiable in their own right.

B.15 Reliability Critical Items List

- (a) The Reliability Critical Items List shall contain:
 - (i) all items that have been identified through analysis as having a significant impact on, or critical to, the reliability of the Ontario Line Subway System;
 - (ii) all items that have been identified through analysis as having a significant impact on, or critical to, the availability of the Ontario Line Subway System; and
 - (iii) all items that have been identified through analysis as having a significant impact on, or critical to, the maintainability of the Ontario Line Subway System.

C. SYSTEM SECURITY DELIVERABLE REQUIREMENTS**C.1 Security Plan Requirements****C.1.1 The Security Plan shall contain the three (3) sections listed below:**

- (a) the Passenger Station Security Plan;
- (b) the Guideway and Tunnel Security Plan; and
- (c) the Shared Infrastructure Security Plan.

C.1.2 The requirements for each section of the Security Plan are described in the following sections.**C.1.3 System Security Plan Requirements**

- (a) Contracting Authority shall cause RSSOM Project Co to produce the System Security Plan which shall comply with the passenger company requirements of SOR/2020-222 and shall, notwithstanding any other provision of this Schedule 29.
- (b) Project Co shall provide technical support and input to RSSOM Project Co in the development of the System Security Plan.
- (c) The System Security Plan shall:
 - (i) identify, by job title, a senior manager responsible for the plan's overall development, approval and implementation;
 - (ii) be signed by the System Security Officer attesting to their knowledge and endorsement of and accountability for the Security Plan;
 - (iii) describe the organizational structure and human resources responsible for implementing the Security Plan and identify each position whose incumbent is responsible for implementing the plan or any portion of it;
 - (iv) describe the security duties of each identified department and position;
 - (v) set out a process for notifying each person who is responsible for implementing the Security Plan or any portion of it when the Security Plan or that portion of it must be implemented;
 - (vi) set out a program for the security awareness training required pursuant to Section 8.3 and the components of the security plan training referred to in Sections 8.6(d), 8.6(e), 8.6(f), 8.6(g) and 8.6(h) including a method to ensure that persons who undergo the security plan training acquire the knowledge and skills required under Section 8.3;
 - (vii) set out a process with respect to required Security Risk Assessments including:
 - (A) a procedure for conducting Security Risk Assessments; and

- (B) a method for assessing and prioritizing the risk;
- (viii) set out a process with respect to Remedial Actions that are part of the risk management strategy, including:
 - (A) a method for identifying security risks that require remedial action; and
 - (B) a method for implementing remedial actions and for evaluation their effectiveness;
- (ix) set out a process for selecting and implementing additional safeguards required;
- (x) set out a process for responding to threats and other security concerns, including procedures for communicating and coordinating with Contracting Authority
- (xi) set out a process for reporting threats and other security concerns;
- (xii) set out a process for reviewing the Security Plan;
- (xiii) include a report on the most recent Security Risk Assessment; and
- (xiv) set out a policy on:
 - (A) limiting access to security-sensitive information, and
 - (B) measures for the sharing, storing and destruction of that information.
- (xv) describe the security policy and strategy for achieving security;
- (xvi) describe the scope the plan applies to (note that reference can be made to the Ontario Line Subway System Definition Document), including all Works
- (xvii) describe the proposed organization roles with responsibility for security management, with summary evidence of the competence of persons holding such roles;
- (xviii) include an overview of the planned lifecycle for projects and the related security activities;
- (xix) describe process for the security approval of Systems being placed into service, including the interface to the Contracting Authority;
- (xx) describe the process for the maintenance of security-related documentation (i.e. document control), including the restriction of access for sensitive documents
- (xxi) describe the process for management of the Security Log;
- (xxii) describe arrangements for tracking security requirements transferred between Systems, Infrastructure or to other entities;
- (xxiii) describe the constraints and assumptions made in the System Security Plan;

- (xxiv) describe Subcontractor management arrangements for security and
 - (xxv) a describe the process for security risk assessment, and security review throughout the lifecycle,
- (the “System Security Plan”).

C.1.4 Passenger Station Security Plan

- (a) The Passenger Station Security Plan shall include the following minimum requirements:
 - (i) a description of Project Co’s approach to passenger and Project Co Parties security within the Stations;
 - (ii) a description of Project Co’s approach to using CPTED both within the Stations and within their immediate external environment;
 - (iii) a description of how physical and other security measures, including CCTV, will be deployed and managed both within the Stations and within their immediate external environment; and
 - (iv) a description of Project Co’s use of permanent signage in the delivery of security within the Stations,
- (the “Passenger Station Security Plan”).

C.1.5 Guideway and Tunnel Security Plan

- (a) The Guideway and Tunnel Security Plan shall include the following minimum requirements:
 - (i) a description of how physical and other security measures, including CCTV and access control will be deployed and managed along the at-grade guideway;
 - (ii) a description of how physical and other security measures, including CCTV and access control will be deployed and managed at tunnel portals;
 - (iii) a description of how physical and other security measures, including CCTV, will be deployed and managed on elevated structures; and
 - (iv) a description of how physical and other security measures, including CCTV, will be deployed and managed for tunnels, including EEBs (as defined in the Output Specifications) and similar points of egress/access,
- (the “Guideway and Tunnel Security Plan”).

C.1.6 Shared Infrastructure Security Plan

- (a) The Shared Infrastructure Security Plan shall include the following minimum requirements:

- (i) A description of the approach to managing security at shared infrastructure facilities, including:
 - (ii) TTC subway interchange stations;
 - (A) GO Transit interchange stations; and
 - (B) all bus loops,
- (the “**Shared Infrastructure Security Plan**”).

C.2 Security Log

- (a) Contracting Authority shall cause RSSOM Project Co to produce the Security Log which shall be structured such that:
 - (i) all causes are mapped to threats or security concerns;
 - (ii) all threats or security concerns are mapped to consequences;
 - (iii) all mitigation measures are mapped to:
 - (A) causes, if the measure is acting to prevent causes from happening or to minimize the probability of occurrence of causes;
 - (B) threats or security concerns, if acting to reduce or prevent threats or security concerns from giving rise to consequences or minimizing the frequency of occurrence of the threats or security concerns; and/or
 - (C) consequence, if acting after the consequences happen to reduce the severity of the consequence;
 - (iv) mitigations measures are recorded in the Security Log as part of the analysis; and
 - (v) mitigations measures become Project Security Requirements for Project Co to implement.
- (b) Project Co shall provide input to RSSOM Project Co as required and agreed at the SSSIC in development of the Security Log.
- (c) The Security Log should include information about the System it relates to and any assumptions or limitations about scope.
- (d) Each entry in the Security Log in respect of threats or security concerns shall include the following:
 - (i) unique reference number;
 - (ii) name or description of the security risk or threat;

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- (iii) related system elements, interfaces, and/or functions;
 - (iv) location or area of the security risk or threat;
 - (v) discipline and security risk or threat owner;
 - (vi) source of identification;
 - (vii) related lifecycle phase;
 - (viii) status for each project lifecycle stage from the following options:
 - (A) “Open” – a newly identified threat or security concern;
 - (B) “Resolved” – Security Requirements have been identified for the threat or security concern;
 - (C) “Managed” – the Security Requirements have been accepted by the responsible parties;
 - (D) “Transferred” – the responsibility for the threat or security risk has been transferred to another System or party; or
 - (E) “Cancelled” – the threat or security is no longer applicable;
 - (ix) related consequence(s)
 - (x) related cause(s);
 - (xi) related mitigation measures;
 - (xii) related Project Security Requirements;
 - (xiii) related closure assurance evidence; and
 - (xiv) related assumptions.
- (e) Each entry in the Security Log in respect of causes shall include the following information:
- (i) unique reference number;
 - (ii) name or description of the cause;
 - (iii) related system elements or interfaces;
 - (iv) location or area of the cause;
 - (v) related threats or security concerns ;
 - (vi) related mitigation measures;

- (vii) related Project Security Requirements;
 - (viii) related closure assurance evidence; and
 - (ix) related assumptions.
- (f) Each entry in the Security Log in respect of consequences shall include the following information:
- (i) unique reference number;
 - (ii) name or description of the consequence;
 - (iii) exposed parties;
 - (iv) where explicit threat estimation has been used as the Security Risk Acceptance Principle, the outcomes of the qualitative or quantitative assessment, including initial and residual Security Risk for each related consequence;
 - (v) related security risk or threats;
 - (vi) related mitigation measures;
 - (vii) related Project Security Requirements;
 - (viii) related closure assurance evidence; and
 - (ix) related assumptions.
- (g) Each entry in the Security Log in respect of mitigation measures shall include the following information:
- (i) which of the three Risk Acceptance Principles, in accordance with the CMREA, is being used;
 - (ii) any related security measures;
 - (iii) any related actions to be implemented;
 - (iv) any related Project Security Requirements;
 - (v) any related security risks or threats, causes, or consequences;
 - (vi) any related assumptions; and
 - (vii) any related assurance evidence.
- (h) Each entry in the Security Log in respect of security measures to be addressed as part of a different System shall include the following information:
- (i) unique reference number;

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- (ii) description of the exported security constraints;
 - (iii) persons at risk;
 - (iv) possible control measures;
 - (v) constraints;
 - (vi) owner(s); and
 - (vii) risk transmission.
- (i) Where actions in the Security Log are allocated to individuals instructing them to undertake work to either better understand or provide mitigation for the risk arising from security concerns of threats, each action entry shall include the following information:
- (i) unique reference number;
 - (ii) actionee name;
 - (iii) description of the action required;
 - (iv) deadline date;
 - (v) completion date;
 - (vi) status of the action, from among the following:
 - (A) “Open” – if the action has not yet been implemented;
 - (B) “Conditionally Closed” – if it is certain that the action will be implemented;
 - (C) “Closed” – if the action has been implemented;
 - (D) “Transferred” if the responsibility for the action has been transferred and accepted by Contracting Authority, Adjacent Railway Systems, Passenger Interface Providers, Security Provider, Third Party Contractors or Additional Contractors; or
 - (E) “Cancelled” if the action is no longer applicable; and
 - (vii) details of the actionee responses and any other supporting information to justify closure of the actions.
- (j) The Security Log shall be continually reviewed and updated throughout the project and any changes to the Security Log shall be recorded, and include the following information:
- (i) date;
 - (ii) Security Log version number;

- (iii) author of the change;
- (iv) the type of review undertaken;
- (v) reference to any associated minutes from meetings related to the Security Log review activity; and
- (vi) a summary of the nature of the changes made to the Security Log.

C.3 Security Requirements Specification

- (a) The Security Requirements Specification shall comply with the requirements of and include the following:
 - (i) description of functional requirements (i.e. what the System must do to provide security and how effective the System needs to be), including:
 - (A) security-related function;
 - (B) security risk assessment;
 - (C) definition of secure state;
 - (D) definition of how security capability is maintained at all times; and
 - (E) failure detection measures of facility or security providing devices;
 - (ii) contextual requirements, including:
 - (A) security-related assumptions such as effectiveness (for example, loss of security provision, etc.) of mitigation barriers (for example, protection systems and redundancies);
 - (B) environmental conditions;
 - (C) organizational rules;
 - (D) operational rules; and
 - (E) maintenance rules; and
 - (iii) technical requirements, including:
 - (A) requirements resulting from the Security Risk Assessment;
 - (B) any legal security requirements; and
 - (C) adaptation requirements for System interfaces.

C.4 Security Subsystem Requirements Specification

- (a) The Security Subsystem Requirements Specification shall develop the requirements delivered in the Security Requirements Specification to a lower level of elicitation to fully define the technical solution.

C.5 Security Risk Assessment

- (a) Contracting Authority shall cause RSSOM Project Co to conduct a security risk assessment (the “**Security Risk Assessment**”) of the Ontario Line Subway System that identifies, describes, assesses, and prioritizes security risks and that:
 - (i) is developed using ISO 31000;
 - (ii) is developed using ISO 22341;
 - (iii) is developed using SOR/2020-222;
 - (iv) is based on the following elements:
 - (A) current and emerging security threats, including security threat information received from Contracting Authority, or the Security Provider, or from a municipal, provincial or federal government department or agency;
 - (B) operations, equipment, Works, and other assets that are deemed critical and that require protection from acts and attempted acts of unlawful interference with Passenger transportation;
 - (C) security vulnerabilities, including those identified during daily operations, in security reports made pursuant to Section 8.7; and
 - (D) potential impacts, including a decrease in public safety and security, loss of life, damage to property or the environment, disruption of rail transportation and financial and economic loss.
 - (v) identifies, for each risk, the likelihood that the risk will occur and the severity of the impact that it could have if it occurs; and
 - (vi) identifies potential safeguards intended to mitigate the risks identified.

C.6 Security Risk Assessment Report

- (a) Contracting Authority shall cause RSSOM Project Co to produce the Security Risk Assessment Report which shall document the outcomes of the Security Risk Assessment activity, including:
 - (i) threat and vulnerability identification workshops;
 - (ii) historical event analysis;

- (iii) security operability studies;
 - (iv) security interface analysis; and
 - (v) zonal analysis.
- (b) Project Co shall provide input to RSSOM Project Co in the development of the Security Risk Assessment Report.
- (c) The Security Risk Assessment Report shall include the following minimum requirements:
- (i) an introduction that includes the purpose of the security assessment activities, their scope, and details about the participants of such activities and the authors of the report to demonstrate suitable competence;
 - (ii) a summary comprised of an overview of the security risks, threats and the responsible actors;
 - (iii) the methods used for the Security Risk Assessment, including:
 - (A) threat identification;
 - (B) threat classification;
 - (C) security risk acceptance criteria; and
 - (D) Project Security Requirements identified;
 - (iv) any further actions required to ensure closure of all identified threats;
 - (v) a description of any updates to the Security Log; and
 - (vi) a description of any updates to the Remedial Action Plan.

C.7 Security Risk Assessment Review Report

- (a) Contracting Authority shall cause RSSOM Project Co to produce the Security Risk Assessment Review Report which shall:
- (i) identify, describe and assess and prioritize any new security risks; and
 - (ii) document the review of the current Security Risk Assessment, including the date of the review, the reason for the review, and any new risks that have been identified, their priority level and the potential security safeguards, if applicable.

C.8 Remedial Action Plan

- (a) RSSOM Project Co shall produce the Remedial Action Plan which shall describe the approach to developing and implementing remedial actions in response to identified security risks and threats.

- (i) The Remedial Action Plan shall include descriptions of:
 - (A) the security risk or threat subject to remediation;
 - (B) the effectiveness of actions in reducing or eliminating the risks, and
 - (C) the additional safeguards that are part of the risk management strategy.
- (b) The Remedial Action Plan shall be updated any time a new security risk or threat is identified through the Security Risk Assessment process, or following review of the effectiveness of remediation attempts.

APPENDIX C TO SCHEDULE 29

**CONSTRUCTION SAFETY AND PROJECT CO SITE SPECIFIC SAFETY MANUAL
 REQUIREMENTS**

D. General Requirements

- (a) The Project Co Site Specific Safety Manual shall, at a minimum, comply in all respects with:
 - (i) the applicable requirements of the OHSA, including all regulations thereto;
 - (ii) industry recognised safe practices;
 - (iii) the health and safety requirements set by Project Co with respect to the Project and the Site;
 - (iv) the health and safety requirements of this Agreement;
 - (v) the Certificate of Recognition requirements.

E. Minimum Categories

- (a) The Project Co Site Specific Safety Manual shall, at a minimum, contain narrative addressing the categories and sub-categories as set out below:

0.0	<p>Overview and Scope</p> <p>The manual shall have an introduction that shall set out an overview and scope of the Project.</p>
1.0	<p>Health and Safety Policy and Goals</p> <p>The policy shall:</p> <ul style="list-style-type: none"> • state Project Co’s health and safety mandate and occupational health and safety policy; • refer to the safety goals and lifesaving rules of the Project and the culture of safety planned to be implemented by Project Co; • include a “statement of commitment” by an officer of Project Co, which must specifically refer to the manual itself and be executed by an officer of Project Co who has authority to bind Project Co; and • include a statement of commitment with respect to keeping Subcontractors responsible for matters related to health and safety.

2.0	<p>Safety Leadership</p> <p>The manual shall:</p> <ul style="list-style-type: none"> • include Project Co’s approach, actions and continuous improvement regarding the safety leadership of each of its employees and subcontracted workforces; and • include examples of proactive measures and efforts taken in maintaining and improving the safety culture of the organization at all levels, including documented safety inspections.
3.0	<p>Project Health and Safety Objectives and Performance Measurement</p> <p>The manual shall:</p> <ul style="list-style-type: none"> • describe the methodology for measuring health and safety performance, including key performance indicators to assess whether objectives are being met; • indicate how measures of lagging and leading indicators will be used to track health and safety performance and which entity(ies) will be accountable for its implementation and communication to Contracting Authority; and • provide details on Project Co’s proactive safety awards program that supports outstanding safety performance and the health and safety culture of the Project.
4.0	<p>Roles and Responsibilities</p> <p>Describe the specific roles and responsibilities of the following persons in relation to meeting the health and safety objectives and the requirements of this Agreement:</p> <ul style="list-style-type: none"> • Project Co; • Project Director; • Construction Health and Safety Manager; • Construction Manager; • Safety Coordinator; • Joint Occupational Health and Safety Committee/Trades Committee; • Subcontractor; • Subcontractor Supervisor; • Workers; • Visitors; and • External Parties.
5.0	<p>Subcontractor Health and Safety Management Plan</p> <p>Describe how Subcontractors will be managed and measures that will be implemented to ensure competent Subcontractor supervision related to the Project. Include in the plan Project Co’s approach to reviewing the Subcontractor’s health and safety performance history.</p>

6.0	<p>Hazard Assessment, Analysis and Control</p> <p>Describe Project Co’s plan for how work scopes will be assessed and analysed, and how mitigation controls will be put in place to ensure work is performed in a healthy and safe manner. The plan shall include:</p> <ul style="list-style-type: none"> • techniques that focus on scopes of work broken down into steps, identifying potential hazards and potential preventative steps; • daily job and task level Hazard Identification and control; • means to measure workers’ understanding and compliance with safe work practices and safe job procedures through training and correction of unsafe performance; and • how Hazard awareness and mitigation controls are communicated to workers.
	<p>Designated Substances and Hazardous Materials</p>
	<p>Hazard Identification</p>
	<p>Risk Assessment</p> <p>Describe Project Co’s risk assessment methodology and provide a Project-specific health and safety risk register that details any unique safety requirements of the Project that will be provided and maintained over the duration of the Project. A risk register is required to be completed prior to any work commencement.</p>
	<p>Job Hazard Analysis</p> <p>Provide an analysis to detail a technique that focuses on job tasks as a way to identify hazards before they occur. The analysis shall focus on the relationship between the worker, the task, the tools and the work environment. The analysis shall break down the job in smaller steps to examine potential hazards and potential preventative steps.</p>
	<p>Daily Hazard Identification and Control</p>
	<p>Safe Work Practices and Safe Job Procedures</p> <p>Describe the process to develop and implement safe work practices/safe job procedures to address the identification, assessment, control, prevention and communication of hazards specific to individual tasks or jobs.</p> <p>Provide means to ensure employees understand and comply with safe work practices and safe job procedures through training, correction of unsafe performance and, if necessary, enforcement through a clearly communicated disciplinary system.</p>
	<p>Ladders – Elimination/Control of Use</p> <p>Describe the process to develop and implement safe work practices and/or safe job procedures for the use of ladders which will include:</p> <ul style="list-style-type: none"> • secure storage of ladders; and • system of authorization that will demonstrate reasonable steps to eliminate the use of ladders before they are allowed to be used.
7.0	<p>Company Rules – Rules of Conduct and Disciplinary Action</p> <p>Describe the company rules and the disciplinary actions to be taken in the case of health and safety infractions or non-compliance with established procedures and policies.</p>

	<p>Fitness for Duty Policy</p> <p>The policy shall:</p> <ul style="list-style-type: none"> • explain how Project Co will ensure that workers are fit for duty at all times while performing the Works or at the Site; and • meet or exceed the requirements of the Metrolinx Fitness for Duty Policy to ensure that all workers are fit for duty while performing the Works or other activities at the Site. <p>Project Co acknowledges and agrees that Metrolinx Fitness for Duty Policy is provided solely for the purpose of incorporating any relevant matters into its Project Co Site Specific Safety Manual and that provision of the Metrolinx Fitness for Duty Policy to Project Co does not constitute control or direction of safety of the Works or at the Site by Contracting Authority.</p>
	<p>Workplace Violence and Harassment</p>
	<p>Disciplinary Action</p> <p>Describe the company rules and the disciplinary actions to be taken in the case of health and safety infractions or non-compliance with established procedures and policies.</p>
	<p>Worker Rights</p>
<p>8.0</p>	<p>Health and Safety Training and Competency</p> <p>Describe the training program to be implemented to ensure that all persons who will be entering and/or working on the Site are appropriately trained. At a minimum, the training program shall include:</p> <ul style="list-style-type: none"> • demonstration of the individual’s competency for the assigned role; • description and associated documentation of safety and security; and • competency training. <p>The training program should include a description and associated documentation of safety and security competency training programs, either online or in person, for field personnel, including the type of training provided and how it specifically targets health and safety. Training may include task-specific safety training or general awareness training.</p>
	<p>Project Specific Orientation</p> <p>Describe how the health and safety training program will be facilitated with all individuals before they are given access to any areas within the Site or any portion of the Lands. This will include worker education and training on specific Site hazards and controls including safe work practices and safe job procedures.</p>
	<p>Site Specific Orientation</p> <p>If work activities are to be performed on multiple Sites under one project scope, provide a narrative of how a site-specific safety orientation will be created and facilitated to all affected parties to address the hazards specific to the Site. This category is in addition to the Project Specific Orientation.</p>

	<p>Visitor/Short Duration Work Orientation</p> <p>Narrative shall include health and safety training to be provided for all visitors who are not performing work on the Site or any portion of the Lands and will be escorted by a member of Project Co while on the Site or any portion of the Lands before being given authorization to enter the Site or any portion of the Lands.</p>
	<p>Delivery Driver/ Supplier Orientation</p> <p>Narrative shall include health and safety training to be facilitated with all delivery drivers and suppliers before being given authorization to enter the Site or any portion of the Lands, including those who are not performing Construction Activities on the Site or any portion of the Lands but may be granted access to the Site or any portion of the Lands to perform their job functions.</p>
	<p>Worker Training to Specific Site Hazards</p> <p>Including safe work practices and safe job procedures.</p>
	<p>Personal Protective Equipment (“PPE”)</p> <p>Such narrative shall incorporate the requirements of Section 7.5 of this Schedule 29. Identify the minimum PPE that will be required onsite, selection criteria of specialty PPE, and the use and maintenance of PPE.</p>
	<p>Worker/Supervisor Competency Evaluation</p> <p>Describe how the competency of workers and supervisors will be identified, met and evaluated on an ongoing basis.</p>
9.0	<p>Meetings and Communication Plan</p> <p>Describe the frequency of meetings relating to health and safety, how meetings will be documented and how agreed outcomes will be communicated to the appropriate parties.</p>
10.0	<p>Workplace Inspections</p> <p>Describe Project Co’s strategy for implementing an inspection regime in relation to health and safety on the Site.</p>
	<p>Informal Inspections</p>
	<p>Formal Inspections</p>
	<p>Audits</p>
	<p>Inspection and Audit Schedule</p>
	<p>Inspection Follow-up/Corrective Action Plan</p> <p>Describe the development and maintenance of a health and safety issues log, derived from inspections, audits and incidents with follow-up and corrective action plans necessary to mitigate issues.</p>

	Maintenance of Records
11.0	<p>Construction Emergency Response Plan</p> <p>Describe the policies and procedures pertaining to incident and emergency planning, response (including the safety of the workforce/public), mitigation and recovery.</p> <p>Project Co shall establish procedures to achieve, at a minimum, the following:</p> <ul style="list-style-type: none"> • maintain communication for the exchange of information between Project Co, Contracting Authority, the City of Toronto and other involved agencies; • develop coordinated support through interaction with local, provincial and federal governmental entities, as well as other entities, for safe and efficient construction; • coordinate emergency response, traffic control, security and operational issues affecting construction of the Project, and associated system feeders and exits; and • update Emergency Service Providers regarding the status of construction of the Project, and associated system feeders and exits, to ensure safe and timely response to Emergency events. At a minimum, this shall include off-site and on-site traffic routing changes, and changes to job site access, fire suppression system modifications and in-service availability of standpipes or fire suppression water supply, and changes in the Works that may create a greater likelihood of occurrence of a particular type of Emergency.
	Emergency Response Procedure
	Property, Equipment and Environmental Damage Procedure
	Emergency Evacuation Plan
	Emergency Contacts and Roles
	<p>First Aid and CPR</p> <p>Include documentation that indicates that Subcontractors have a proactive injury management system that supports efficient, effective and timely treatment of their employees who become injured on the Site.</p>
	Drills and Exercises
12.0	<p>Incident Reporting and Investigations Procedure</p> <p>Describe the procedures for reporting incidents, performing proactive investigations intended to prevent future incidents, identifying root causes and implementing measures to prevent a reoccurrence.</p> <p>Project Co shall demonstrate that an incident review process has been implemented which involves all levels of management to validate corrective measures to minimize future injuries and incidents on the Site.</p>

13.0	<p>Statistics and Records</p> <p>Describe how safety records are to be maintained to verify conformity to Project Co’s Project Co Site Specific Safety Manual requirements.</p> <p>Describe how the safety records shall be in electronic format, legible, electronically searchable, readily identifiable and retrievable, and available to Contracting Authority upon request.</p> <p>Project Co shall create and maintain a corrective action database. Project Co shall ensure all Subcontractor incidents are recorded in said database. The database shall be kept up to date and made available to Contracting Authority upon request. The database shall be maintained to verify conformity to the Project Co Site Specific Safety Manual requirements.</p>
14.0	<p>Security Plan</p> <p>Provide a plan that details guidelines for implementing security on the Site.</p> <p>Provide a methodology for securing the site and restricting trespassers.</p> <p>Describe how Project Co shall comply with its obligation to take every reasonable precaution to protect the public’s health and safety during the execution of the Works.</p>
15.0	<p>Traffic Management and Control Plan</p> <p>Include how activities performed by Project Co and Project Co Parties will protect workers, the public, passengers, transit infrastructure, transit operations and other parties.</p>
16.0	<p>Security Plan</p> <p>Provide a plan that details guidelines for implementing security on the Site. The plan shall include:</p> <ul style="list-style-type: none"> • a methodology for securing the Site and restricting trespassers; and • a description of how Project Co shall comply with its obligation to take every reasonable precaution to protect the public’s health and safety during the execution of the Works.
17.0	<p>Site Plot Plan</p> <p>Plan shall include an illustration of the overall Site and highlight specific locations where high risk Construction Activities will take place or identify Construction Activities that have the potential to impact transit operations and/or affect members of the public.</p>
18.0	<p>Tunneling Safety Plan</p> <p>Provide a tunneling safety plan that describes the management of tunnel-specific risks, meets or exceeds the regulatory requirements in O.Reg.213/91, as amended from time to time, and encompasses the following requirements, at a minimum:</p> <ul style="list-style-type: none"> • a risk assessment and mitigation of tunnel-specific hazards; • provisions and instructions for accessing shafts and tunnels (i.e. brass tags, photo ID’s etc.); • procedures for the following: <ul style="list-style-type: none"> (g) safe hoisting into shaft; (h) gas monitoring inside shafts and tunnels;

	<ul style="list-style-type: none"> (i) lock-out, tag-out inside shafts and tunnels; (j) tunnel boring machine (TBM) cutter head entry and service; (k) pipe installation, conveyor belt operation; and (l) other procedures related to safe shaft and tunnel operations; • provisions for maintaining optimal air quality inside shafts and tunnels during hot work operations and/or any other work of such nature (i.e., saw cutting, shotcrete, painting, and other such work) that could emit fumes, dust or a noxious gas; • training and orientation specific to shafts and tunnel operation for all personnel entering the shafts and tunnels; and • emergency evacuation plan related to shafts and tunnels (i.e. medical aids, fires, chemical spill, oxygen deficiency, toxic atmospheres, and other emergency circumstances), including, <ul style="list-style-type: none"> (h) use of self-rescuer (such as Draeger Oxy-k or Ocenco systems); (i) use of approved man-basket and/or Davit Arm system (where applicable); (j) notification system for emergencies; (k) use of stretchers inside shafts and tunnels; (l) summoning of the tunnel rescue team (where applicable); (m) provide fire protection plan for shafts and tunnel(s); and (n) provide a communication plan for shafts and tunnel(s).
19.0	Continuous Improvement Plan
20.0	Others

APPENDIX D TO SCHEDULE 29**TECHNICAL SPECIFICATIONS FOR PROJECT CO SMS SOFTWARE SOLUTION****A. The Project Co SMS Software Solution shall:**

- (a) be cloud-based;
- (b) the solution shall be subject to, as a minimum, the cybersecurity policies of the Project.
- (c) allow multiple users to remotely log in and access the solution with single sign-on capability, but with individually set access permissions (i.e. read only, read-write and similar permissions);
- (d) allow users to upload user documents against any individual record contained within the database;
- (e) be equipped with document control capabilities that enable users to track versions and revisions and that ensure that the latest revision of documents is being employed by users;
- (f) allow easy access to data, dashboarding features and business analytics features to enable the monitoring and reporting of the Common Safety Indicators determined in accordance with Section 5.9 of this Schedule 29;
- (g) include a central repository for all historical and current versions of the documents required to be managed in the Project Co SMS, organized in a manner that promotes efficient access to the documents;
- (h) include a database that accurately and effectively records and tracks all data required to be managed in accordance with the Project Co SMS; and
- (i) Throughout the Project Term, Project Co shall ensure that,
 - (i) the Project Co SMS Software Solution is, at all times, the most current vendor-supported version of the cloud-based software selected by Project Co; and
 - (ii) the Project Co SMS Software Solution and all data and documents contained therein are electronically accessible to Contracting Authority, at all times, on a real-time basis through the single sign-on capability, and Project Co shall ensure that all Contracting Authority users' permissions include "read" and "download".
- (j) If, at any time during the Project Term, the Project Co SMS Software Solution vendor is no longer in business or otherwise no longer supports the Project Co SMS Software Solution and the Project Co SMS Software Solution is not supported by another vendor, then Project Co shall, subject to the prior written approval of the Contracting Authority, select and implement an alternative cloud-based software solution for the Project Co SMS that meets the requirements of this Schedule 29.

SCHEDULE 30

[INTENTIONALLY DELETED]

SCHEDULE 31

PROJECT CO INFORMATION

[REDACTED]

SCHEDULE 32

[INTENTIONALLY DELETED]

SCHEDULE 33**WORKS REPORT REQUIREMENTS**

1. For purposes of this Schedule 33, unless the context indicates a contrary intention, terms which are defined in this Agreement (and not otherwise defined in this Schedule 33) shall have the meanings given to them in this Agreement and the following terms shall have the following meanings:
 - (a) “**Works Report**” has the meaning given in Section 2.
2. Project Co shall continuously monitor the progress of the Construction Works in relation to the Baseline Works Schedule and, within 5 Business Days after the end of each calendar month from the DMCA Effective Date until the Project Final Completion Date, Project Co shall provide to the Independent Commissioning Agent and submit to the Contracting Authority Representative in accordance with Schedule 10 – Review Procedure a works report (each, a “**Works Report**”).
3. The Works Report prepared by Project Co (or the COR-Certified Project Co Party designated by Project Co pursuant to Section 11.11(a)(v) (*Safety*) of this Agreement), as “constructor” of the Construction Works and Site, under the *Occupational Health and Safety Act* (Ontario) and this Agreement, shall include the following:
 - (a) an executive summary, describing the general status of the Works;
 - (b) a detailed status of the Construction Works, including,
 - (i) a narrative detailing the progress of:
 - (A) the Portals (as defined in the Output Specifications);
 - (B) Pape Station;
 - (C) the Pape Station underpinning;
 - (D) Cosburn Station;
 - (E) the ESBs and EEBs (each as defined in the Output Specifications);
 - (F) Sammon Crossover; and
 - (G) other elements as required by Contracting Authority;
 - (ii) a narrative detailing the progress of design;
 - (iii) the status of Works Submittals pursuant to the requirements of this Agreement, including review status;
 - (iv) a narrative on contemplated innovations, where applicable;
 - (v) a narrative detailing the progress and status of and issues related to:

- (A) communications and public engagement;
- (B) traffic and transit management (including upcoming road closures);
- (C) Utility Work;
- (D) demolitions (including any Demolitions) and removals;
- (E) safety, security and emergency management;
- (F) property access and business management plan updates;
- (G) Permits, Licences, Approvals and Agreements;
- (H) Early Warning Events;
- (I) environmental monitoring and compliance; and
- (J) commissioning activities, including a narrative on:
 - (I) Project Co Infrastructure; and
 - (II) New Third Party Infrastructure;
- (vi) a narrative describing all of the issues relating to Warranty Work and warranties set out in Sections 11.16 (*Warranty Obligations*) and 11.17 (*Warranty Work and Prompt Repair of Warranty Work*) of this Agreement;
- (vii) a narrative detailing the progress of all activities required pursuant to Schedule 45 – Integration with RSSOM Project; and
- (viii) any other information specifically requested by Contracting Authority on the progress of the Construction Works;
- (c) plans for Works scheduled in the forthcoming reporting period;
- (d) overall project performance graphs and tables;
- (e) goals for the next reporting period (e.g. progress on activities and resolution of issues);
- (f) progress photos with narratives;
- (g) outstanding technical and contractual decisions;
- (h) issues log;
- (i) sustainability compliance status;
- (j) quality assurance and quality control articles, including:

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- (i) the status of the Design Quality Management Plan, the Construction Quality Management Plan, Project Co Services Quality Management Plan, the Quality Audit Program Plan, and other Quality Management Plans;
 - (ii) a table setting out and responding to items of Non-Conformance and deficiencies in ongoing Works as identified by Contracting Authority or Project Co or both;
 - (iii) the status of Design Certificates and Construction Certificates;
 - (iv) an update of quality control and quality assurance activities and personnel responsible;
 - (v) the monthly Quality Management System Reports, Project Co Quality Audit Reports, Corrective Action Plans, and summary information from the Non-Conformance Tracking System (all as described in Schedule 11 – Quality Management);
 - (vi) the status of Internal Quality Audits, External Quality Audits and Independent Quality Audits; and
 - (vii) organization and staffing changes, deletions, and additions for Project Co and all Project Co Parties;
- (k) health and safety, including:
- (i) the total number of hours worked for all persons on Site;
 - (ii) the total number of critical injuries (as defined by the *Occupational Health and Safety Act* (Ontario)) or fatalities;
 - (iii) the total number of injuries to any member of the public;
 - (iv) the total number of incidents involving medical aid or health care (as defined by the *Workplace Safety and Insurance Act* (Ontario));
 - (v) the total number of incidents involving first aid (as defined by the *Workplace Safety and Insurance Act* (Ontario));
 - (vi) the total number of incidents involving damage to property, infrastructure and/or mobile equipment owned by Contracting Authority, the City of Toronto, the TTC or other third parties, and adjacent property;
 - (vii) the total number of near misses (no damage to property or persons);
 - (viii) the total number of incidents resulting in lost time;
 - (ix) the total number of incidents with no lost time;

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- (x) the total number of other critical injuries (as defined by the *Occupational Health and Safety Act* (Ontario));
 - (xi) the total number of supervisor (as defined by the *Occupational Health and Safety Act* (Ontario)) weekly jobsite safety inspections;
 - (xii) the total number of weekly safety talks;
 - (xiii) the total number of management field visits;
 - (xiv) the total number of site safety orientations;
 - (xv) all correspondence related to MLTSD or MECP visits; and
 - (xvi) details of MLTSD and MECP enquiries;
- (l) procurement status, including with respect to:
- (i) consultants;
 - (ii) contracts awarded;
 - (iii) Subcontracts awarded;
 - (iv) tenders issued and in development; and
 - (v) small, minority-owned, women-owned and disadvantaged business enterprises;
- (m) financial status, including:
- (i) progress and Variations status;
 - (ii) an insurance summary;
 - (iii) current cash flow status for both actual and projected expenditures (capital cost components) from the DMCA Effective Date, represented monthly, and excluding Variations, to be organized according to a work breakdown structure (WBS) which will be readily relatable to the updates of schedule and progress as described in Schedule 12 – Works Schedule Requirements;
 - (iv) current costs incurred (accrual basis), both actual and projected expenditures for the next 12 months, represented monthly, to be organized according to a work breakdown structure (WBS) which will be readily relatable to the updates of schedule and progress as described in Schedule 12 – Works Schedule Requirements. Variation costs (actual and forecast) to be separately reported on;
 - (v) 12-month (minimum) financial forecast including all Project Co's costs; and

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- (vi) the Construction Period Deduction information (pursuant to Schedule 43 – Incentives and Construction Enforcement Regime);
 - (n) risk management articles, including status updates and summaries on:
 - (i) the full risk register maintained by Project Co, highlighting any changes or updates from the previous month’s Works Report;
 - (o) a narrative describing compliance with Section 11.21 (*Anti-Racism and Anti-Discriminatory Processes, Policies and Procedures*) of this Agreement, as well as reporting on the total number of racism, discrimination and harassment incidents within the work environment related to the Project and the manner in which each incident has been addressed;
 - (p) a narrative detailing the progress of the Land Tracker; and
 - (q) a copy of the current Early Warning Register,
- all in form and substance satisfactory to Contracting Authority, acting reasonably.
4. For all updates and revisions to any of the Project Works Schedules in accordance with Schedule 12, Project Co must provide a revised Critical Path reflecting the updated or revised Project Works Schedule.
 5. Project Co, as “constructor” of the Construction Works and Site, under the *Occupational Health and Safety Act* (Ontario) and this Agreement or the relevant Project Co Party designated pursuant to Section 11.11(a)(v) (*Safety*) of this Agreement, shall address comments from Contracting Authority on each previous month’s reporting in subsequent reports, and will be required to provide a resolution table illustrating how Contracting Authority comments have been addressed. Project Co or such Project Co Party as “constructor” shall remain responsible for determining the way and means of resolution and correction of all matters.

SCHEDULE 34

PERMITS, LICENCES, APPROVALS AND AGREEMENTS

1. DEFINITIONS

In this Schedule 34, unless the context indicates a contrary intention, terms which are defined in this Agreement (and not otherwise defined in this Schedule 34) shall have the meanings given to them in this Agreement and the following terms shall have the following meanings:

- (a) **“Additional Listed PLAA Requirements”** has the meaning given in Section 10.6(c).
- (b) **“Additional PLAA Completion Requirements”** has the meaning given in Section 9.1(b)(ii).
- (c) **“Additional Project Co PLAA Responsibilities”** means the obligations set out in the column titled “Additional Responsibilities” in Appendix B to this Schedule 34.
- (d) **“Completeness Review Timeline”** means the period of time listed in the column titled “Completeness Review Timeline” in Appendix B and Appendix D to this Schedule 34, as applicable.
- (e) **“Contracting Authority Permits, Licences, Approvals and Agreements”** means those Permits, Licences, Approvals and Agreements set out in the column titled “Issuing Authority and Name of Contracting Authority Permit, Licence, Approval or Agreement” in Appendix A to this Schedule 34.
- (f) **“Contracting Authority PLAA Responsibilities and Requirements”** means the responsibilities and requirements of Contracting Authority set out in the column titled “Contracting Authority Responsibilities and Requirements” in Appendix A to this Schedule 34.
- (g) **“Date for Issuance”** means the date set out in the column titled “Date for Issuance” in Appendix A to this Schedule 34.
- (h) **“Determination Delay Period”** means, in respect of Listed Project Co PLAA, the period of time commencing on the Listed Project Co PLAA Deadline and ending on the earlier of (i) the Project Co PLAA Issuance Date and (ii) the Project Co PLAA Refusal Date.
- (i) **“Environmental Manager”** means the Project Co Party listed in Schedule 9 – Key Individuals.
- (j) **“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.

- (k) “**Listed Project Co PLAA**” means those Project Co Permits, Licences, Approvals and Agreements set out in the column titled “Name of Listed Project Co Permit, Licence, Approval or Agreement” in Appendix D to this Schedule 34, but, for certainty, excludes Permits, Licences, Approvals and Agreements that are related to, but not explicitly included as, Listed Project Co PLAAs.
- (l) “**Listed Project Co PLAA Application**” means an application for a Listed Project Co PLAA as submitted to the applicable Issuing Authority, including all documents and information contained therein.
- (m) “**Listed Project Co PLAA Deadline**” means the date that is equal to [REDACTED]% of the time set out in the column titled “Listed Project Co PLAA Timeline” in Appendix D to this Schedule 34.
- (n) “**Master Servicing Agreement**” has the meaning given in Appendix A to this Schedule 34.
- (o) “**Permits, Licences, Approvals and Agreements**” means all permissions, consents, approvals, certificates, permits, licences, agreements and authorizations required to perform the Works in accordance with this Agreement and as required by Applicable Law, and all necessary consents, approvals, certificates, permits, licences, agreements and authorizations from and with any third parties (including, to the extent applicable, all Development Approvals, Railway Approvals and Utility Agreements, and the approval of the Fire Marshal of Ontario), needed to perform the Works in accordance with this Agreement and as required by Applicable Law.
- (p) “**Permits, Licences, Approvals and Agreements Manager**” means the Project Co Party listed in Schedule 9 – Key Individuals.
- (q) “**Permits, Licences, Approvals and Agreements Project Coordinator**” has the meaning given in Section 7.4(a).
- (r) “**PLAA Advisory Committee**” has the meaning given in Section 5(a).
- (s) “**PLAA Plan**” has the meaning given in Section 3.3(a).
- (t) “**PLAA Specialists Qualifications Plan**” means a plan prepared by Project Co which outlines the qualifications of each individual assigned to the role of Permits, Licences, Approvals and Agreements Manager or Permits, Licences, Approvals and Agreements Project Coordinator, as applicable.
- (u) “**Pre-Submission Consultation**” has the meaning given in Section 9.1(a).
- (v) “**Pre-Submission Consultation Notice**” has the meaning given in Section 9.1(b).
- (w) “**Project Co CA PLAA Obligations**” means the obligations set out in the column titled “Project Co Obligations” in Appendix A and Appendix C to this Schedule 34.

- (x) “**Project Co Permits, Licences, Approvals and Agreements**” means all Permits, Licences, Approvals and Agreements, other than the Contracting Authority Permits, Licences, Approvals and Agreements, set out in Appendix B and Appendix D to this Schedule 34, the Project Co CA PLAA Obligations with respect to the applicable Permits, Licences, Approvals and Agreements and any Permits, Licences, Approvals and Agreements as identified under Section 3.1(f).
- (y) “**Project Co PLAA Application**” means an application for a Project Co Permit, Licence, Approval and Agreement (other than a Listed Project Co PLAA) as submitted to the applicable Issuing Authority, including all documents and information contained therein.
- (z) “**Project Co PLAA Completeness Confirmation**” has the meaning given in Section 9.2(a)(ii).
- (aa) “**Project Co PLAA Issuance Date**” has the meaning given in Section 10.6(a)(i).
- (bb) “**Project Co PLAA Refusal Date**” has the meaning given in Section 10.6(a)(ii).
- (cc) “**Project Co PLAA Requirements**” means any written requirements, policies, guidelines or rules of the applicable Issuing Authority in respect of the applicable Project Co Permits, Licences, Approvals and Agreements that are publicly available, included in or consistent with Applicable Law, including any requirements, policies, guidelines or rules set out in any applicable application checklist and any applicable Additional PLAA Completion Requirements.
- (dd) “**Project Co PLAA Timeline**” means the date as set out in the column titled (i) “Project Co PLAA Timeline” in Appendix B and (ii) “Listed Project Co PLAA Timeline” in Appendix D to this Schedule 34, as applicable.
- (ee) “**Project Co PLAA Tracking System**” has the meaning given in Section 6.1(a).
- (ff) “**Project Co PLAA Submission Date**” means the day that a Project Co PLAA Application or a Listed Project Co PLAA Application is submitted by Project Co to the applicable Issuing Authority as may be modified by this Schedule 34.
- (gg) “**Project PLAA Tracker**” has the meaning given in Section 6.2(a).
- (hh) “**Staged Permits Deadline**” means the date set out in the column titled “Staged Permits Deadline” in Appendix C to this Schedule 34 and represents the number of Business Days following submittal of all documentation and materials by Project Co to the Issuing Authority required under the column titled “Project Co Obligations” in Appendix C to this Schedule 34, for the Issuing Authority to make a final determination. The Staged Permits Deadline period begins on the first Business Day following the date of submittal.
- (ii) “**Target Project Co PLAA Submission Date**” has the meaning given in Section 10.1(a).

2. GENERAL CONTRACTING AUTHORITY PLAA OBLIGATIONS

2.1 Contracting Authority Responsible for Contracting Authority Permits, Licences, Approvals and Agreements

- (a) Contracting Authority shall obtain (on or before the applicable Date for Issuance), maintain, and, as applicable, renew all Contracting Authority Permits, Licences, Approvals and Agreements, subject to and in accordance with:
 - (i) any applicable Contracting Authority PLAA Responsibilities and Requirements; and
 - (ii) any other provision expressly set out in this Schedule 34 – Permits, Licences, Approvals and Agreements.
- (b) Contracting Authority shall advance Contracting Authority Permits, Licences, Approvals and Agreements as early and to the extent reasonably possible to support applicable Development Works.
- (c) For greater certainty, where a Contracting Authority Permit, Licence, Approval or Agreement cannot be obtained, maintained or renewed by the Contracting Authority, as applicable, as a result of a Project Co CA PLAA Obligation not having been performed, then Contracting Authority shall be under no obligation to obtain the applicable corresponding Contracting Authority Permit, Licence, Approval or Agreement until Project Co has performed the applicable, corresponding Project Co CA PLAA Obligation.
- (d) Contracting Authority shall perform the obligations and assume the responsibilities under, and otherwise comply with the terms of, the Contracting Authority Permits, Licences, Approvals and Agreements other than:
 - (i) any obligation or responsibility that is expressly set out as a Project Co CA PLAA Obligation; or
 - (ii) any obligations or responsibility that is expressly excluded in this Schedule 34 from being a responsibility or obligation by any applicable Contracting Authority PLAA Responsibilities and Requirements.
- (e) Notwithstanding anything to the contrary in this Agreement, where Contracting Authority is required to obtain, enter into, maintain or renew a Contracting Authority Permit, Licence, Approval or Agreement described in Appendix A to this Schedule 34, such Contracting Authority Permit, Licence or Approval may be obtained, entered into, maintained or renewed by Contracting Authority, as determined by Contracting Authority, in its sole discretion.

2.2 Obligations in Respect of Project Co Permits, Licences, Approvals and Agreements

- (a) Contracting Authority shall provide or cause to be provided such information, documentation, and administrative assistance as Project Co may request and as Contracting

Authority may reasonably be able to provide, and shall execute such applications and documents as are required to be in its name, to enable Project Co or any Project Co Party to obtain, maintain or renew any Project Co Permits, Licences, Approvals and Agreements or to demonstrate compliance with any Permits, Licences, Approvals and Agreements, provided that, nothing in this Section 2.2(a) shall make Contracting Authority responsible, in any way, for obtaining, or for any delay in obtaining, or for the failure of Project Co or any Project Co Party to obtain (other than to the extent caused by a breach of Contracting Authority's obligations under this Section 2.2(a)), any Project Co Permits, Licences, Approvals and Agreements.

- (b) Contracting Authority shall not be obligated to:
- (i) invoke Crown immunity or exercise any other of its legal rights in order to avoid or eliminate the requirement to obtain any Permits, Licences, Approvals and Agreements;
 - (ii) exercise any right or power or perform any duty, obligation or statutory function it may have under any Applicable Law in order to obtain or issue any Permits, Licences, Approvals and Agreements;
 - (iii) except as otherwise expressly provided in this Schedule 34, automatically grant Project Co Permits, Licences, Approvals and Agreements for which it is the authorizing entity and will apply its usual procedures and criteria in considering applications from Project Co or any Project Co Party for such Project Co Permits, Licences, Approvals and Agreements.

2.3 Where Contracting Authority Elects to be Party to Project Co Licences, Permits, Approvals and Agreements

- (a) In the event that Contracting Authority agrees or elects, in its sole discretion, to obtain, become a party to, or be bound by any Project Co Permits, Licences, Approvals and Agreements following a written request in this regard being made by Project Co to Contracting Authority, then with respect to such Project Co Permits, Licences, Approvals and Agreements, the Parties covenant and agree as follows:
- (i) Contracting Authority covenants and agrees to provide to Project Co a copy of such Project Co Permits, Licences, Approvals and Agreements within ten (10) days of Contracting Authority's receipt of the same;
 - (ii) Project Co agrees to and in favour of Contracting Authority:
 - (A) to perform and fulfil the liabilities and obligations (including indemnity obligations) of Contracting Authority under such Project Co Permits, Licences, Approvals and Agreements as if Project Co was an original party thereto in the place and stead of Contracting Authority;

- (B) to pay, as directed by Contracting Authority, any amounts paid, payable, or owing by Contracting Authority arising under, pursuant to, in respect of or in connection with such Project Co Permits, Licences, Approvals and Agreements; and
- (C) to perform, satisfy, discharge and fulfil all obligations (including indemnity obligations), liabilities and indebtedness of or owing by Contracting Authority arising under, pursuant to, in respect of or in connection with such Project Co Permits, Licences, Approvals and Agreements,

provided that all costs incurred in connection with such obligations shall be Defined Costs and reimbursed by Contracting Authority in accordance with this Agreement;

- (iii) [intentionally deleted]; and
- (iv) Project Co acknowledges and agrees that Contracting Authority’s agreement or election to obtain, become a party to, or be bound by such Project Co Permits, Licences, Approvals and Agreements shall not, and shall not be deemed, construed or interpreted to:
 - (A) be an agreement by Contracting Authority that such Project Co Permits, Licences, Approvals and Agreements are, become or constitute Contracting Authority Permits, Licences, Approvals and Agreements;
 - (B) be a waiver by Contracting Authority of full compliance with, or a waiver by Contracting Authority of any breach of, any of the provisions of this Agreement;
 - (C) be any form of forbearance of or to Contracting Authority’s right to seek or enforce strict compliance with any of the provisions of this Agreement, or the exercise by Contracting Authority of any right, power or remedy that may be available to Contracting Authority under this Agreement; or
 - (D) restrict, limit, prejudice or in any other way impair the rights and/or remedies of Contracting Authority under this Agreement.

3. GENERAL PROJECT CO PLAA OBLIGATIONS

3.1 Project Co Responsible for Project Co Permits, Licences, Approvals and Agreements

- (a) Project Co shall obtain, maintain and renew all Project Co Permits, Licences, Approvals and Agreements (as applicable), and perform and comply with any applicable Additional Project Co PLAA Responsibilities.
- (b) Project Co shall advance Project Co Permits, Licences, Approvals and Agreements as early and to the extent reasonably possible during the performance of Development Works.

- (c) All Project Co requirements and obligations applicable to obtaining Project Co Permits, Licences, Approvals and Agreements, and the relief for Listed Project Co PLAAs granted in accordance with Sections 10.2, 10.4, 10.5 and 10.6, shall also apply to the renewal and extension of any Project Co Permits, Licences, Approvals and Agreements and Listed Project Co PLAAs, including the Project Co PLAA Timelines identified in Appendix B and Appendix D to this Schedule 34, as applicable.
- (d) Project Co shall perform the obligations and assume the responsibilities under, and otherwise comply with the terms and conditions of, the Project Co Permits, Licences, Approvals and Agreements (including any obligations and responsibilities expressly set out by an applicable Additional Project Co PLAA Responsibility).
- (e) Project Co shall prepare and submit all supporting materials as required by the applicable Governmental Authorities in connection with all Project Co Permits, Licences, Approvals and Agreements. Project Co shall ensure that all such applications and supporting materials respond to the Governmental Authority’s requirements and comments regarding such supporting materials.
- (f) All Permits, Licences, Approvals and Agreements not expressly described in Appendix A, Appendix B, Appendix C or Appendix D to this Schedule 34, are the responsibility of Project Co under this Agreement.
- (g) Where any Project Co Permits, Licences, Approvals and Agreements have requirements that may impose any conditions, liabilities or obligations on Contracting Authority or any Province Person, Project Co shall not obtain, amend or renew (other than upon the same terms and conditions) such Project Co Permits, Licences, Approvals and Agreements without the prior written consent of Contracting Authority, provided that neither Contracting Authority nor any Province Person shall be responsible for obtaining, or for the failure of Project Co to obtain, any Project Co Permits, Licences, Approvals and Agreements. Contracting Authority shall comply, or shall require compliance, with any conditions, liabilities or obligations as are imposed on Contracting Authority or any Province Person by the requirements of any Project Co Permits, Licences, Approvals and Agreements obtained with Contracting Authority’s consent under this Schedule 34.
- (h) Where any Project Co Permits, Licences, Approvals and Agreements have requirements that may require Contracting Authority to sign or provide information for the completion of the Project Co PLAA Application or Listed Project Co PLAA Application, Project Co shall notify the Contracting Authority a minimum of ten (10) Business Days in advance of the intended submittal of the Project Co PLAA Application or Listed Project Co PLAA Application to the applicable Governmental Authorities.
- (i) Project Co shall maintain and submit to Contracting Authority all documents and records relating to the Project Co Permits, Licences, Approvals and Agreements for the Project. When documents or records are submitted to Contracting Authority in a version other than the original version that was submitted, a blackline version of the document or record showing the revisions made from the previously submitted version shall be provided to Contracting Authority in addition to and concurrently with the revised document or record.

- (j) Unless otherwise specified in this Schedule 34, Project Co shall be the primary liaison with applicable Governmental Authorities regarding Project Co's Permits, Licences, Approvals and Agreements obligations hereunder.
- (k) In the event that Project Co fails to comply with conditions associated with any Project Co Permits, Licences, Approvals and Agreements, Contracting Authority may, in its sole discretion, exercise its rights to increase monitoring of Project Co in accordance with Section 20.2 (*Increased Monitoring*) of this Agreement.
- (l) For the purposes of any site licence under the Master Servicing Agreement as noted in Appendix B to this Schedule 34, Project Co is designated as an agent of Contracting Authority to fulfill any of Contracting Authority's obligations under such site licence for all dealings with the City of Toronto.

3.2 Obligations in Respect of Contracting Authority Permits, Licences, Approvals and Agreements

- (a) Project Co shall perform the Project Co CA PLAA Obligations in accordance with their terms and conditions.
- (b) Project Co shall provide, or cause to be provided, such information, documentation, and administrative assistance as Contracting Authority may request and as Project Co may reasonably be able to provide, and shall execute such applications and documents as are required to be in its name, to enable Contracting Authority to obtain, maintain or renew any Contracting Authority Permits, Licences, Approvals and Agreements or to demonstrate compliance with any Permits, Licences, Approvals and Agreements, provided that, other than to the extent caused by a breach of Project Co's obligations under this Section 3.2(b), nothing in this Section 3.2(b) shall make Project Co responsible, in any way, for obtaining, or for any delay in obtaining, or for the failure of Contracting Authority to obtain any Contracting Authority Permits, Licences, Approvals and Agreements.

3.3 PLAA Plan

- (a) Project Co shall prepare and provide to Contracting Authority, a Permits, Licences, Approvals and Agreements plan (the "**PLAA Plan**"), that sets out the schedule and approach to obtain each Permit, Licence, Approval and Agreement for which Project Co is responsible to obtain, provide or perform in accordance with this Agreement, including Project Co CA PLAA Obligations, Listed Project Co PLAAs, the "Project Co Obligations" set out in the column of the same name in Appendix C to this Schedule 34, alternative approval processes as set out in Section 11 and all other Permits, Licences, Approvals and Agreements not expressly described in Appendix A, Appendix B, Appendix C or Appendix D to this Schedule 34. More specifically, the PLAA Plan shall:
 - (i) provide information in the format set out in Attachment 1 (*Form of Project PLAA Plan*) of Appendix E to this Schedule 34, or in such other format as the Project Co Representative and Contracting Authority Representative may agree, and which would include:

- (A) identification of all relevant Permits, Licences, Approvals and Agreements required for the Works, including identification of those Permits, Licences, Approvals and Agreements that are proposed to be advanced and undertaken during the performance of Development Works and those that would be undertaken throughout the Project Term, application requirements and lead times required for Permits, Licences, Approvals and Agreements acquisition including applicable SPR Submittals (if required in Attachment 1 (*Site Plan Review Checklist*) of Appendix B (*City of Toronto Works Submittals*) to Schedule 10 – Review Procedure), and preparation of the Permits, Licences, Approvals and Agreements submittals;
 - (B) review and confirm process flow charts that clearly articulate the process, and associated time with each step in the process for obtaining the following Permits, Licences, Approvals and Agreements: Site Plan Review and associated Building Permits, Environmental Compliance Approval, Drinking Water Works Permit, Full Stream Cut Permit, and Private Tree Permit;
 - (C) identification of the approach and timing proposed for liaison with Governmental Authorities, third parties and other stakeholders as necessary; and
 - (D) be submitted to the Contracting Authority Representative in accordance with Schedule 10 – Review Procedure no later than sixty (60) Business Days after the DMCA Effective Date.
- (b) The PLAA Plan as submitted shall be subject to review and comment by Contracting Authority and shall be submitted through the PLAA Advisory Committee. Contracting Authority shall provide any comments on the PLAA Plan to Project Co within twenty (20) Business Days of receiving the PLAA Plan. Project Co shall revise the PLAA Plan responding to any commentary received from Contracting Authority and submit a revised PLAA Plan to the PLAA Advisory Committee within twenty (20) Business Days of receipt of Contracting Authority’s comments.
- (c) Updates to the PLAA Plan shall be required, at minimum, as of each TPA Development Checkpoint, and once every year thereafter, and shall be submitted through the PLAA Advisory Committee to the Contracting Authority for review and comment. Contracting Authority shall provide any comments on the updated PLAA Plan to Project Co within ten (10) Business Days of receiving the updated PLAA Plan. Project Co shall revise the updated PLAA Plan responding to any commentary received from Contracting Authority and submit a further revised PLAA Plan to the PLAA Advisory Committee within ten (10) Business Days of receipt of Contracting Authority’s comments.

3.4 Additional Obligations

- (a) Where requested by Contracting Authority, Project Co shall cooperate with and within two (2) Business Days of receipt of Contracting Authority's request, provide Contracting Authority Representative with any written documentation or authorizations required by Contracting Authority for any inquiry of any Governmental Authority relating to Project Co's compliance with this Schedule 34 and any Permits, Licences, Approvals and Agreements relating to the Project. If Contracting Authority requests Project Co to provide any Confidential Information or Sensitive Information, Contracting Authority will, as part of that request, provide Project Co with a copy of relevant portions of the inquiry of the Governmental Authority (to the extent permitted by Applicable Law).
- (b) Project Co shall forward to the Contracting Authority Representative a copy of any report, submission, application or other document relating to Project Co Permits, Licences, Approvals and Agreements, concurrent with the filing or submission by Project Co of such report, submission, application or other document to any Governmental Authority. Within five (5) Business Days of receipt of a Governmental Authority's comments on its review of any such report, submission, application or other document, Project Co shall provide to the Contracting Authority Representative a written description and copy of any comments, terms or conditions from the Governmental Authority.
- (c) Project Co shall copy the Contracting Authority Representative on any correspondence with any Governmental Authority.
- (d) Project Co shall provide Contracting Authority with five (5) Business Days advance Notice of all planned meetings with any Governmental Authority and Project Co acknowledges that Contracting Authority may, in its sole discretion, attend such meetings. Project Co shall minute all such meetings held and distribute all meeting minutes to Contracting Authority and the applicable Governmental Authority.

4. PLAA FINANCIAL OBLIGATIONS

- (a) Project Co shall satisfy and be responsible for all Financial Obligations in connection with the Project Co Permits, Licences, Approvals and Agreements, including all Financial Obligations in respect of Project Co CA PLAA Obligations. If Contracting Authority is able to obtain an exemption from such Financial Obligations on behalf of Project Co and with respect to the Project:
 - (i) upon request by Contracting Authority, Project Co shall provide to Contracting Authority an accurate accounting of the costs and expenses avoided by Project Co as a result of any such exemption;
 - (ii) notwithstanding any other provision of this Agreement, the Target Price shall be reduced by an amount equal to all costs and expenses that were avoided by Project Co as a result of any such exemption; and

- (iii) Project Co or any of its Affiliates shall not be responsible for payment of any development charges, Toronto parkland dedications or cash-in-lieu relating to the Works, Ontario Line Subway, the New Third Party Infrastructure or the Lands.
- (b) Subject to Section 4(a), Contracting Authority shall be responsible for all Financial Obligations under or in respect of all the Contracting Authority Permits, Licences, Approvals and Agreements (other than to the extent such Financial Obligations are identified as a Project Co CA PLAA Obligation in this Schedule 34).
- (c) The Parties agree that any refund, partial rebate or credit granted by Contracting Authority, the City, any applicable Governmental Authority or any other third party relating to the Financial Obligations referred to in Sections 4(a) and 4(b) shall be for the benefit of Contracting Authority to the extent such Financial Obligations were paid by Contracting Authority and shall be Defined Costs to the extent such Financial Obligations were paid by Project Co. Without limiting the generality of the foregoing, to the extent that Contracting Authority enters into any cost sharing arrangements with the City, any Governmental Authority or any third party, Project Co acknowledges and agrees that Contracting Authority shall be the sole beneficiary of any such cost sharing arrangements and Project Co shall have no entitlement whatsoever to any benefit arising from any such cost sharing arrangements.

5. PLAA ADVISORY COMMITTEE

- (a) Project Co shall have qualified representatives, including at a minimum the Permits, Licences, Approvals and Agreements Manager(s), Permits, Licences, Approvals and Agreements Project Coordinator(s), and the Environmental Manager(s), who shall form a PLAA advisory committee for the Project (the “**PLAA Advisory Committee**”). A representative or representatives from the Contracting Authority Permits, Licences, Approvals and Agreements team will also participate in the PLAA Advisory Committee. If invited by either Project Co or Contracting Authority, a representative from any Governmental Authority may attend the PLAA Advisory Committee from time to time. The inviting Party shall provide ten (10) Business Days advance notice to the other Party if it requires a Governmental Authority to attend the PLAA Advisory Committee. The notice should include: the name of the Governmental Authority, the specific division’s name if applicable, a detailed description of the item specific to that Governmental Authority that will be discussed by the PLAA Advisory Committee and any supporting documents. The role of the PLAA Advisory Committee is to provide advice to Project Co on PLAA related matters.
- (b) Project Co shall conduct a minimum of 16 PLAA Advisory Committee meetings annually for the first two years following the DMCA Effective Date and an average of 6 meetings annually through the remainder of the Project Term. Contracting Authority reserves the right to require additional PLAA Advisory Committee meetings.
- (c) Project Co shall commence the first PLAA Advisory Committee meeting no later than forty (40) Business Days following the DMCA Effective Date.

- (d) The PLAA Advisory Committee shall provide teleconference details for those unable to attend in-person.
- (e) At the Contracting Authority Representative’s request, the engineer of record, designers or other subject matter experts shall attend PLAA Advisory Committee meetings to discuss Permits, Licences, Approvals and Agreements submissions, content, comments and responses, submittal lookahead established submission dates and other relevant requirements in compliance with this Agreement and any Applicable Law.
- (f) At PLAA Advisory Committee meetings, Project Co shall report on:
 - (i) the PLAA Plan in accordance with Section 3.3;
 - (ii) the status of all Permits, Licences, Approvals and Agreements;
 - (iii) draft Permit, Licence, Approval and Agreement applications for discussion in order to seek guidance from Contracting Authority on completeness and areas that may need to be revised for clarity;
 - (iv) key Permits, Licences, Approvals and Agreements issues, design activities and Construction Activities undertaken as part of the preparation and processing of Permits, Licences, Approvals and Agreements submissions;
 - (v) the status of Permits, Licences, Approval and Agreements conditions and progress to meet conditions;
 - (vi) the status of renewals for any required Permits, Licences, Approval and Agreements; and
 - (vii) any communications with Governmental Authorities relating to any Permits, Licences, Approvals and Agreements, including any comments received from Governmental Authorities on permit applications and proposed approaches to addressing those comments.
- (g) The PLAA Advisory Committee meetings shall be facilitated by Project Co and Project Co shall prepare and distribute an agenda and presentation to the Contracting Authority Representative at least five (5) Business Days in advance of each PLAA Advisory Committee meeting.
- (h) Project Co shall prepare PLAA Advisory Committee meeting minutes and submit such minutes to the Contracting Authority Representative within five (5) Business Days following the PLAA Advisory Committee meeting.

6. PLAA TRACKING

6.1 Project Co PLAA Tracking System

- (a) Project Co shall provide Contracting Authority with a web-based interface to track the status of:
- (i) each Project Co Permit, Licence, Approval and Agreement;
 - (ii) Project Co CA PLAA Obligations, and
 - (iii) obligations that are described in the column titled “Project Co Obligations” for such Permit, Licence, Approval and Agreement in Appendix C to this Schedule 34 (including information on each stage of preparation, submission, approval and renewal, as applicable),
- (the “**Project Co PLAA Tracking System**”).
- (b) The Project Co PLAA Tracking System shall:
- (i) include functionality to provide automated email alerts to a customizable frequency and list of email addresses, and the system should issue automated email alerts to Contracting Authority each time:
 - (A) an application is submitted;
 - (B) comments are received from Governmental Authorities;
 - (C) Project Co makes a re-submission of a Permit, Licence, Approval and Agreement; and
 - (D) a Permit, Licence, Approval and Agreement (including any amendments, renewal or extension thereof) is issued;
 - (ii) be updated by Project Co each Business Day;
 - (iii) be available to Contracting Authority, and any applicable Governmental Authority in respect of their applicable Project Co Permits, Licences, Approvals and Agreements, in real time each Business Day;
 - (iv) serve as a permanent repository for all applications, comments from any Governmental Authority, and obtained Permits, Licences, Approvals and Agreements for which Project Co is responsible to obtain, provide or perform in accordance with this Agreement. Project Co shall upload all such applications, comments and materials to the Project Co PLAA Tracking System within ten (10) Business Days of receipt;
 - (v) be operational on the earlier of:

- (A) one hundred twenty (120) Business Days from the DMCA Effective Date;
or
 - (B) the date upon which the first Project Co Permits, Licences, Approvals and Agreements application is submitted;
- (vi) include a feature that highlights to Contracting Authority and each applicable Issuing Authority each outstanding applicable Project Co Permit, Licence, Approval and Agreement when it reaches the following milestone triggers:
- (A) **[REDACTED]**% of the number of Business Days designated for a final determination by the applicable Issuing Authority in Appendix B or Appendix D to this Schedule 34 for the applicable Project Co Permit, Licence, Approval and Agreement; and
 - (B) **[REDACTED]**% of the number of Business Days designated for a final determination by the applicable Issuing Authority in Appendix B or Appendix D to this Schedule 34 for the applicable Project Co Permit, Licence, Approval and Agreement;
- (vii) contain accurate information as to the status of the applicable Project Co Permits, Licences, Approvals and Agreements;
- (viii) in addition to tracking progress on obtaining Project Co Permits, Licences, Approvals and Agreements, also track progress in relation to any required renewals of Project Co Permits, Licences, Approvals and Agreements; and
- (ix) include a feature that tracks conditions of approval and progress to meet conditions of approval for Project Co Permits, Licences, Approvals and Agreements.
- (c) Project Co shall submit documentation on the proposed design, functionality, and usage of the Project Co PLAA Tracking System to the Contracting Authority Representative in accordance with Schedule 10 – Review Procedure no later than sixty (60) Business Days after the DMCA Effective Date.
- (d) In addition to the reporting requirements within the Project Co PLAA Tracking System required by this Section 6.1, Project Co shall provide separate written notice to the Contracting Authority Representative with respect to any outstanding Project Co Permits, Licences, Approvals and Agreements when it reaches the milestone triggers outlined in Section 6.1(b)(vi).
- (e) Project Co shall ensure at all times that the Project Co PLAA Tracking System:
- (i) is fully functional and available to Contracting Authority and the applicable Governmental Authority;

- (ii) contains accurate information as to the status of all obligations listed under the column titled “Project Co Obligations” in Appendix A or Appendix C to this Schedule 34; and
- (iii) contains accurate information as to the status of all Project Co Permits, Licences, Approvals and Agreements.

6.2 Project PLAA Tracker

- (a) Project Co shall submit to Contracting Authority information in an excel file with the data fields set out in and in the form set out in Attachment 2 (*Form of Project PLAA Tracker*) to Appendix E to this Schedule 34 (the “**Project PLAA Tracker**”) or in such other format as the Project Co Representative and Contracting Authority Representative may agree.
- (b) The Project PLAA Tracker shall be updated by Project Co each Business Day and submitted to Contracting Authority on a weekly basis and be made available to Contracting Authority and any applicable Governmental Authority in respect of their applicable Project Co Permits, Licences, Approvals and Agreements upon request.
- (c) Project Co shall ensure at all times that the Project PLAA Tracker:
 - (i) is fully functional and available to Contracting Authority and the applicable Governmental Authority;
 - (ii) contains accurate information as to the status of all obligations listed under the column titled “Project Co Obligations” in Appendix A or Appendix C to this Schedule 34; and
 - (iii) contains accurate information as to the status of all Project Co Permits, Licences, Approvals and Agreements, including those in Appendix B and Appendix D to this Schedule 34. For additional clarity, the information as to the status would include the schedule for submission of all Project Co Permits, Licences, Approvals and Agreements.

7. PROJECT CO PLAA TEAM AND POSITIONS

7.1 General

- (a) Project Co shall appoint distinct and qualified individuals to each of the following roles:
 - (i) Permits, Licences, Approvals and Agreements Manager; and,
 - (ii) Permits, Licences, Approvals and Agreements Project Coordinator.
- (b) Project Co shall ensure that no single individual occupies more than one of the roles listed in Section 7.1(a) unless Project Co has obtained the prior written consent of Contracting Authority.

7.2 PLAA Specialists Qualifications Plan

- (a) Within sixty (60) days of the DMCA Effective Date, Project Co shall submit to Contracting Authority for its review the PLAA Specialists Qualifications Plan in accordance with Schedule 10 – Review Procedure to demonstrate that the qualifications of each individual assigned to the role of Permits, Licences, Approvals and Agreements Manager or Permits, Licences, Approvals and Agreements Project Coordinator, as applicable, are sufficient to carry out his or her respective responsibilities as identified in Section 7.3 or Section 7.4, as applicable.
- (b) Project Co’s PLAA Specialists Qualifications Plan shall include a curriculum vitae for each individual appointed to the role of Permits, Licences, Approvals and Agreements Manager and Permits, Licences, Approvals and Agreements Project Coordinator, as applicable, which identifies the number of years of work-related experience, a statement of current credentials, current licenses and any relevant training completed, including dates of completion.
- (c) Any proposal by Project Co to replace the individual performing the role of the Permits, Licences, Approvals and Agreements Manager shall be in accordance with this Agreement. If Project Co proposes a replacement of an individual performing the role of the Permits, Licences, Approvals and Agreements Project Coordinator, Project Co shall update and submit the PLAA Specialists Qualifications Plan to Contracting Authority for review in accordance with Schedule 10 – Review Procedure.
- (d) Project Co shall update the PLAA Specialists Qualifications Plan throughout the Project Term to reflect any modification, addition or removal of individuals assigned to the Permits, Licences, Approvals and Agreements Manager or the Permits, Licences, Approvals and Agreements Project Coordinator position, as applicable, within fifteen (15) Business Days of any such any modification, addition or removal.

7.3 Permits, Licences, Approvals and Agreements Manager

- (a) The Permits, Licences, Approvals and Agreements Manager shall perform all the functions outlined for the position in Schedule 9 – Key Individuals.
- (b) The Permits, Licences, Approvals and Agreements Manager shall have the minimum qualifications outlined in Schedule 9 – Key Individuals.

7.4 Permits, Licences, Approvals and Agreements Project Coordinator

- (a) Within sixty (60) days of the DMCA Effective Date, Project Co shall appoint one or more individuals to the role of project coordinator for Permits, Licences, Approvals and Agreements (each a “**Permits, Licences, Approvals and Agreements Project Coordinator**”) who shall, throughout the Project Term, and under the direction of the Permits, Licences, Approvals and Agreements Manager, be responsible for obtaining and ensuring Project Co’s compliance with its obligations in connection with Permits, Licences, Approvals and Agreements.

- (b) Each Permits, Licences, Approvals and Agreements Project Coordinator shall be dedicated to the Project throughout the Project Term.
- (c) Without limiting the generality of Section 7.4(a), each Permits, Licences, Approvals and Agreements Project Coordinator shall:
 - (i) update and maintain the Project PLAA Tracker;
 - (ii) update and maintain the Project Co PLAA Tracking System, including the permanent repository forming part thereof;
 - (iii) coordinate all Permits, Licences, Approvals and Agreements associated with the Project on a day-to-day basis;
 - (iv) establish and maintain working relationships with relevant Governmental Authorities and Stakeholders through the Contracting Authority Representative; and
 - (v) ensure that all plans and records relating to Permits, Licences, Approvals and Agreements are uploaded into registries as required by Governmental Authorities and Contracting Authority.
- (d) Each Permits, Licences, Approvals and Agreements Project Coordinator shall have the following minimum qualifications:
 - (i) five years of work-related experience;
 - (ii) a bachelor or advanced degree from a recognized post-secondary institution in urban planning, engineering, environmental studies, architecture or a combination of education, training and experience deemed equivalent;
 - (iii) knowledge of and experience acquiring permits, licenses and approval requirements for major infrastructure and transit infrastructure projects;
 - (iv) knowledge of relevant legislation, procedures, and permit requirements, including the *Ontario Water Resources Act*, *Building Code*, *Planning Act* (Ontario), *Metrolinx Act, 2006* (Ontario), *Municipal Act* (Ontario), railway corridor infrastructure and related construction projects;
 - (v) ability to liaise with other specialty consultants, contractors, Governmental Authorities; and
 - (vi) experience with large scale infrastructure projects, preferably in the Province of Ontario.

8. SITE PLAN REVIEW PROCESS

- (a) Project Co shall submit all site plans related to the site plan review process for the Project Co Infrastructure in accordance with Schedule 10 – Review Procedure and any applicable Additional Project Co PLAA Responsibilities.
- (b) Neither Contracting Authority nor Project Co will be required to sign any site plan agreements in respect of site plan review as it relates to Project Co Infrastructure located on lands identified in Schedule 35 – Lands.
- (c) In the event that Project Co is required to construct any New Third Party Infrastructure that would require site plan approval, Project Co shall obtain such site plan approval on behalf of the applicable owner(s) of such New Third Party Infrastructure, and such site plan approval shall be considered a Project Co Permit, Licence, Approval and Agreement.

9. PROJECT CO PLAA REVIEW PROCESS

9.1 Pre-Submission Consultation

- (a) For each Project Co Permit, Licence, Approval and Agreement, prior to submitting the applicable Project Co PLAA Application or Listed Project Co PLAA Application, Project Co shall confirm the Project Co PLAA Requirements with the applicable Issuing Authority including whether or not such Issuing Authority:
 - (i) has modified any of the requirements of an applicable application checklist or other applicable PLAA guidance materials; and/or
 - (ii) requires any documentation or information in addition to the documentation and information set out in an applicable application checklist or other applicable PLAA guidance material in order to review and make a determination on the applicable Project Co PLAA Application or Listed Project Co PLAA Application,(the “**Pre-Submission Consultation**”).
- (b) Project Co shall notify Contracting Authority in writing (the “**Pre-Submission Consultation Notice**”), no later than two (2) Business Days following a Pre-Submission Consultation, as to whether the applicable Issuing Authority has confirmed the Project Co PLAA Requirements including whether or not such Issuing Authority:
 - (i) has modified any of the requirements of an applicable application checklist or other applicable PLAA guidance materials; and/or
 - (ii) requires any documentation or information in addition to the documentation and information set out in any applicable application checklist or other applicable PLAA guidance materials for the applicable Project Co Permit, Licence, Approval and Agreement in order to review and make a determination on the applicable

Project Co PLAA Application or Listed Project Co PLAA Application (together with (i), the “**Additional PLAA Completion Requirements**”),

and Project Co shall set out in such Pre-Submission Consultation Notice the substantive details (including a description of any additional documentation and information required) of any applicable Additional PLAA Completion Requirements.

- (c) If, within twenty (20) Business Days after Project Co’s completion of the Pre-Submission Consultation, the Issuing Authority has not responded to Project Co in respect of the items set out in Section 9.1(a), then:
- (i) Project Co shall be deemed to have completed the applicable Pre-Submission Consultation;
 - (ii) there shall be deemed to be no Additional PLAA Completion Requirements in respect of the applicable Project Co Permit, Licence, Approval and Agreement; and
 - (iii) Project Co shall provide Contracting Authority with a written record which will include a description of the efforts Project Co undertook to complete the applicable Pre-Submission Consultation and any supporting documentation.

9.2 Listed/Project Co PLAA Applications

- (a) In respect of each Project Co PLAA Application and Listed Project Co PLAA Application, as applicable, Project Co shall:
- (i) ensure that such application has been prepared in accordance with Good Industry Practice and includes all documentation and information required by the Project Co PLAA Requirements and satisfies all the requirements contained therein;
 - (ii) no later than two (2) Business Days prior to submitting the Project Co PLAA Application or Listed Project Co PLAA Application, submit to Contracting Authority a written confirmation that (i) the Permits, Licences, Approvals and Agreements Manager has reviewed the Project Co PLAA Application or Listed Project Co PLAA Application and, to the best of their knowledge such Project Co PLAA Application or Listed Project Co PLAA Application includes all documentation and information required by the Project Co PLAA Requirements and satisfies all the requirements contained therein and (ii) where a Project Co PLAA Application or Listed Project Co PLAA Application requires input from an engineer, an engineer of record has reviewed the documentation or information in the Project Co PLAA Application or Listed Project Co PLAA Application which relates to engineering subject matter expertise and, to the best of their knowledge, such documentation and information in the Project Co PLAA Application or Listed Project Co PLAA Application has been prepared in accordance with Good Industry Practice (the “**Project Co PLAA Completeness Confirmation**”).

- (b) Project Co acknowledges and agrees that any Project Co PLAA Application or Listed Project Co PLAA Application for which the Issuing Authority is the City of Toronto shall include a copy of the Project Co PLAA Completeness Confirmation from the Permits, Licences, Approvals and Agreements Manager and, if applicable, the applicable engineer of record.

10. SUBMISSION, REVIEW AND ISSUANCE OF PROJECT CO PLAAS

10.1 Submission of Listed/Project Co PLAA Applications

- (a) Project Co shall be responsible for submitting all Project Co PLAA Applications and Listed Project Co PLAA Applications, as applicable, to the applicable Issuing Authority on or before the date set out for submission of such Project Co PLAA Application or Listed Project Co PLAA Application as set out in:
 - (i) the Baseline Works Schedule or Recovery Works Schedule, as applicable; and
 - (ii) the Three Week Look-Ahead Schedule most recently delivered prior to the submission of the applicable application,(each such date being the “**Target Project Co PLAA Submission Date**”).
- (b) No later than two (2) Business Days following a Project Co PLAA Submission Date, Project Co shall:
 - (i) provide Contracting Authority with a copy of the applicable Project Co PLAA Application or Listed Project Co PLAA Application as submitted to the Issuing Authority; and
 - (ii) cause the applicable Project Co PLAA Submission Date to be entered into the Project Co PLAA Tracking System and the Project PLAA Tracker.
- (c) The first day of the Completeness Review Timeline, as identified in Appendix B or Appendix D to this Schedule 34, shall begin on the first Business Day following the Project Co PLAA Submission Date. The Completeness Review Timeline is the period within which the Issuing Authority will review the Project Co PLAA Application or Listed Project Co PLAA Application to determine if all required information and materials have been provided in the Project Co PLAA Application or Listed Project Co PLAA Application, in accordance with the relevant Project Co PLAA Requirements and Good Industry Practice. An Issuing Authority shall be deemed to have rejected a Project Co PLAA Application or Listed Project Co PLAA Application if Project Co has not fulfilled the Project Co PLAA Requirements or where the Project Co PLAA Application or Listed Project Co PLAA Application is not completed in accordance with Good Industry Practice.
- (d) The Project Co PLAA Timeline, as identified in Appendix B and Appendix D to this Schedule 34, as applicable, shall begin the first Business Day following the end of the Completeness Review Timeline. The Project Co PLAA Timeline is the period within

which the Issuing Authority will review the technical content of the Project Co PLAA Application or Listed Project Co PLAA Application, request clarification as necessary, and make a decision regarding the issuance of the Project Co Permit, Licence, Approval and Agreement. If, during the Project Co PLAA Timeline, the Issuing Authority has made a request for clarification, provision of additional information or documentation from Project Co, the Project Co PLAA Timeline shall be paused until Project Co fulfils that request and responds to such Issuing Authority.

10.2 Rejection by Issuing Authority of Listed/Project Co PLAA Application

- (a) If an Issuing Authority rejects a Project Co PLAA Application or Listed Project Co PLAA Application, then Project Co shall immediately notify Contracting Authority of such rejection and, no later than one (1) Business Day following such rejection shall provide Contracting Authority with a written notice that includes:
 - (i) the name of the applicable Project Co Permit, Licence, Approval and Agreement;
 - (ii) the applicable Target Project Co PLAA Submission Date;
 - (iii) the applicable Project Co PLAA Submission Date; and
 - (iv) the reasons given by the Issuing Authority for such rejection (including copies of any correspondence received from the Issuing Authority).
- (b) Unless otherwise directed by Contracting Authority, Project Co shall take whatever commercially reasonable steps are required, including the provision of additional information or documentation, in order to cause the Issuing Authority to accept and consider the rejected Project Co PLAA Application or Listed Project Co PLAA Application as soon as possible.
- (c) Subject to Section 10.7(a), if an Issuing Authority has rejected a Project Co PLAA Application or Listed Project Co PLAA Application, in whole or in part, due to a failure by Project Co to include all documentation and information required by the Project Co PLAA Requirements or to satisfy all the requirements contained therein, or where the Project Co PLAA Application or Listed Project Co PLAA Application is not completed in accordance with Good Industry Practice, then the Project Co PLAA Submission Date shall be revised to be the date upon which Project Co resubmits the complete Project Co PLAA Application or Listed Project Co PLAA Application for review.
- (d) If an Issuing Authority has rejected a Listed Project Co PLAA Application for any reason other than as set out in Section 10.2(c), then such rejection shall, subject to and in accordance with Schedule 21 – Risk Allocations, be treated as an Adjustment Event, provided that Project Co has:
 - (i) completed or was deemed to have completed the Pre-Submission Consultation;
 - (ii) provided Contracting Authority with the Pre-Submission Consultation Notice in accordance with 9.1(b);

- (iii) prepared the applicable Listed Project Co PLAA Application in accordance with Section 9.2(a);
 - (iv) submitted the applicable Listed Project Co PLAA Application in accordance with Section 10.1(b);
 - (v) complied with its obligations in Section 10.3;
 - (vi) provided Contracting Authority with the notices required pursuant to Section 10.2(a) and complied with its obligations thereunder;
 - (vii) complied with its obligations pursuant to Sections 10.2(b); and
 - (viii) complied with its obligations in Sections 6.1(e) and 6.2(c) (but with respect to Section 6.1(e)(iii) and Section 6.2(c)(iii), only in respect of the applicable Listed Project Co PLAA).
- (e) In the event Project Co has substantially and materially, but not fully complied with its obligations in Sections 6.1(e) and 6.2(c), as determined by the Contracting Authority, and provided that Project Co has updated the Project PLAA Tracker with respect to the elements of the Listed Project Co PLAA Application that is the subject of a claim for relief, then Project Co may be entitled to relief or compensation in accordance with in Section 10.2(d), but Project Co’s failure to fully comply shall be taken into account in determining Project Co’s entitlement to any relief or compensation granted and a proportional adjustment shall be made based on the degree of non-compliance with Sections 6.1(e) and 6.2(c), as determined by the Contracting Authority acting reasonably.

10.3 Obligations During Review of Listed/Project Co PLAA Application

- (a) Project Co shall, at all times prior to and following the Project Co PLAA Submission Date, comply with all Project Co PLAA Requirements.
- (b) At all times following the Project Co PLAA Submission Date, Project Co shall provide timely and thorough responses (including provision of additional information) in accordance with Good Industry Practice to questions (including requests for additional information that are consistent with the Project Co PLAA Requirements) or concerns posed by any Issuing Authority in respect of a Project Co PLAA Application or Listed Project Co PLAA Application and such responses shall be made in accordance with deadlines set out in this Agreement or in the event that no deadlines are set out in this Agreement, within one (1) Business Day of the receipt of questions or concerns posed by the Issuing Authority during the Completeness Review Timeline or within three (3) Business Days of the receipt of questions or concerns posed by the Issuing Authority during the Project Co PLAA Timeline.
- (c) Without limiting its obligations in Section 10.3(b), where Project Co is of the opinion that the questions or concerns raised by the Issuing Authority are not consistent with Project Co PLAA Requirements, within two (2) Business Days of receipt of such questions or

concerns, Project Co shall provide written notice to Contracting Authority setting out the question or concern at issue and detailed reasons upon which Project Co has formed such opinion. Such written notice shall be tabled at the next meeting of the PLAA Advisory Committee and approaches to seeking resolution of the questions or concerns raised by the Issuing Authority, in accordance with Good Industry Practice, shall be discussed. In the event that Project Co has used commercially reasonable efforts to resolve the questions or concerns raised by the Issuing Authority in accordance with Good Industry Practice, and such questions or concerns remain unresolved such that a Listed Project Co PLAA continues to be deemed as rejected, then the provisions of 10.2(d) shall apply.

10.4 Failure to Make a Determination

(a) Subject to Section 10.4(b), if an Issuing Authority fails to:

- (i) issue a Listed Project Co PLAA; or
- (ii) notify Project Co that it refuses to issue a Listed Project Co PLAA,

on or before the Listed Project Co PLAA Deadline then such failure shall, subject to and in accordance with Schedule 21 – Risk Allocations, be treated as an Adjustment Event, but only to the extent of the Determination Delay Period, provided that Project Co has:

- (iii) prepared the applicable Listed Project Co PLAA Application in accordance with Section 9.2(a);
 - (iv) submitted the applicable Listed Project Co PLAA Application in accordance with Section 10.1(b);
 - (v) complied with its obligations in Section 10.3; and
 - (vi) complied with its obligations in Sections 6.1(e) and 6.2(c) (but with respect to Section 6.1(e)(iii) and Section 6.2(c)(iii), only in respect of the applicable Listed Project Co PLAA).
- (b) Without limiting Section 10.4(a), but subject to Section 10.7(a), Project Co shall not be entitled to the relief set out in Section 10.4(a) to the extent that the Issuing Authority's failure to issue a Listed Project Co PLAA is as a result of any failure of Project Co or the Listed Project Co PLAA Application to comply with the applicable Project Co PLAA Requirements.

10.5 Refusal to Issue a Project Co Permit, Licence, Approval and Agreement

(a) If an Issuing Authority has notified Project Co that it refuses to issue a Project Co Permit, Licence, Approval and Agreement, then Project Co shall, no later than two (2) Business Days following the Project Co PLAA Refusal Date, provide Contracting Authority with a written notice that includes:

- (i) the name of the Project Co Permit, Licence, Approval and Agreement;

- (ii) the applicable Target Project Co PLAA Submission Date;
 - (iii) the applicable Project Co PLAA Submission Date; and
 - (iv) the reasons given by the Issuing Authority for its refusal (including copies of any correspondence received from the Issuing Authority).
- (b) Unless otherwise directed by Contracting Authority, Project Co shall take whatever commercially reasonable steps are required, including the provision of additional information or documentation, in order to cause the Issuing Authority to approve Project Co PLAA Application or Listed Project Co PLAA Application as soon as possible.
- (c) Subject to Section 10.7(a), if an Issuing Authority’s refusal to issue Project Co a Project Co Permit, Licence, Approval and Agreement is caused, in whole or in part, due to a failure by Project Co to comply with any Project Co PLAA Requirements or Good Industry Practice then the applicable Project Co PLAA Submission Date shall be revised to be the date upon which Project Co resubmits the complete Project Co PLAA Application or Listed Project Co PLAA Application.
- (d) If an Issuing Authority has refused to issue a Listed Project Co PLAA for any reason other than Project Co failing to comply with the applicable Project Co PLAA Requirements or Good Industry Practice then subject to and in accordance with Schedule 21 – Risk Allocations, such refusal shall be treated as an Adjustment Event, provided that Project Co has:
- (i) prepared the applicable Listed Project Co PLAA Application in accordance with Section 9.2(a);
 - (ii) submitted the applicable Listed Project Co PLAA Application in accordance with Section 10.1(b);
 - (iii) complied with its obligations in Section 10.3;
 - (iv) provided Contracting Authority with the notices required pursuant to Section 10.5(a) and complied with its obligations thereunder;
 - (v) complied with its obligations pursuant to Section 10.5(b); and
 - (vi) complied with its obligations in Sections 6.1(e) and 6.2(c) (but with respect to Section 6.1(e)(iii) and Section 6.2(c)(iii), only in respect of the applicable Listed Project Co PLAA).

10.6 Issuance of Project Co Permits, Licences, Approvals and Agreements

- (a) In respect of each Project Co Permit, Licence, Approval and Agreement, Project Co shall immediately notify Contracting Authority when the applicable Issuing Authority has:

- (i) issued such Project Co Permit, Licence, Approval and Agreement (the “**Project Co PLAA Issuance Date**”); or
 - (ii) notified Project Co that it refuses to issue such Project Co Permit, Licence, Approval and Agreement (the “**Project Co PLAA Refusal Date**”).
- (b) If the Issuing Authority has issued a Project Co Permit, Licence, Approval and Agreement with terms and conditions that, in the opinion of Project Co, are inconsistent with the Project Co PLAA Requirements then Project Co shall, no later than five (5) Business Days following the Project Co PLAA Issuance Date provide Contracting Authority with a written notice that includes:
- (i) the name of the Project Co Permit, Licence, Approval and Agreement;
 - (ii) the applicable Target Project Co PLAA Submission Date;
 - (iii) the applicable Project Co PLAA Submission Date;
 - (iv) the applicable Project Co PLAA Issuance Date;
 - (v) the terms and conditions imposed by the Issuing Authority which, in the opinion of Project Co, are inconsistent with the Project Co PLAA Requirements and the detailed reasons upon which Project Co has formed such opinion; and
 - (vi) all reasons and rationale given by the Issuing Authority for the inclusion of such terms and conditions (including copies of any correspondence received from the Issuing Authority in respect of the same).
- For greater certainty, nothing in this Section 10.6(b) shall relieve Project Co of its obligation to comply with all terms and conditions of a Project Co Permit, Licence, Approval and Agreement (including any terms and conditions which, in its opinion, are inconsistent with the Project Co PLAA Requirements).
- (c) If an Issuing Authority has issued a Listed Project Co PLAA with terms and conditions that are inconsistent with the Project Co PLAA Requirements (such inconsistent terms and conditions being, “**Additional Listed PLAA Requirements**”) such Additional Listed PLAA Requirements shall, subject to and in accordance with Schedule 21 – Risk Allocations, be treated as an Adjustment Event, provided that Project Co has:
- (i) prepared the applicable Listed Project Co PLAA Application in accordance with Section 9.2(a);
 - (ii) submitted the applicable Listed Project Co PLAA Application in accordance with Section 10.1(b);
 - (iii) complied with its obligations in Section 10.2(e);

- (iv) provided Contracting Authority with the notices required pursuant to Section 10.6(b) and complied with its obligations thereunder; and
- (v) complied with its obligations in Sections 6.1(e) and 6.2(c) (but with respect to Section 6.1(e)(iii) and Section 6.2(c)(iii), only in respect of the applicable Listed Project Co PLAA).

10.7 TTC Consent

- (a) For the Project Co Permit, Licence, Approval and Agreement enumerated below, a failure or refusal of the TTC to provide the written consent included in the following relevant application checklist shall not be considered a failure of Project Co to comply with the Project Co PLAA Requirements, nor shall it be considered a failure of Project Co to include all documentation and information required by the following relevant application checklist:
 - (i) Road Cut Permit (Full Stream) and/or Construction/Encroachment (Major) Permit;
 - (ii) Road Cut Permit (Short Stream) and/or Construction/Encroachment (Minor) Permit; or
 - (iii) City of Toronto Street Occupancy Permit,

provided that Project Co has diligently sought to obtain the written consent of the TTC described in such relevant application checklist and has otherwise complied with all obligations and requirements of this Agreement related to these Project Co Permits, Licences, Approvals and Agreements and their associated Works.

- (b) For other Project Co Permit, Licence, Approval and Agreement, where written consent of the TTC is not indicated on the relevant application checklist, but where the need for such consent is confirmed by the Issuing Authority such as where the Works subject to the Project Co Permit, Licence, Approval and Agreement relates to New TTC Infrastructure or where the Works are in proximity to TTC infrastructure, a failure or refusal of the TTC to provide the written consent shall not be considered a failure of Project Co to include all documentation and information required for the Project Co Permits, Licences, Approvals and Agreements submittals, provided that Project Co has diligently sought to obtain the written consent of the TTC, and has otherwise complied with all obligations and requirements of this Agreement related to these Project Co Permits, Licences, Approvals and Agreements and their associated Works.

11. ALTERNATIVE APPROVAL PROCESS BY CONTRACTING AUTHORITY

- (a) At the sole discretion of Contracting Authority, Project Co may be directed to submit a Project Co PLAA Application or Listed Project Co PLAA Application that would typically be submitted to the City of Toronto, Toronto Building (as indicated in the “Issuing Authority” column in Appendix B and Appendix D to this Schedule 34, as applicable), directly to Contracting Authority for review and approval.

- (b) Project Co may identify circumstances where demolition permit and building permit applications may not meet the requirements of Applicable Law as described in the *Ontario Building Code*. Under such circumstances, Project Co shall notify Contracting Authority at least thirty (30) Business Days prior to applying for such Project Co Permits, Licences, Approvals and Agreements, and Contracting Authority may, in its sole discretion, determine that such applications shall be submitted directly to Contracting Authority for approval instead of to the City of Toronto. Project Co shall otherwise meet the requirements of the *Ontario Building Code*.
- (c) All provisions of this Schedule 34, including for greater certainty, all requirements, obligations and entitlements to relief, shall continue to apply in the circumstances described in Sections 11(a) and 11(b) with references to Issuing Authority instead being to Contracting Authority.
- (d) With respect to the application of the alternative approval application process for demolition permits, any subsequent building permit applications related to infrastructure on the applicable location may proceed in accordance with Appendix B to this Schedule 34, or alternatively, circumstances may warrant application of the alternative approval process in accordance with Sections 11(a) and 11(b).
- (e) With respect to application of the alternative approval application process for building permit applications (other than demolition permits), once an application has been submitted to the Contracting Authority for approval, any subsequent building permit applications related to the infrastructure associated with the original application shall be submitted directly to the Contracting Authority for approval.

APPENDIX A TO SCHEDULE 34

CONTRACTING AUTHORITY PERMITS, LICENCES, APPROVALS AND AGREEMENTS

No.	Issuing Authority and Name of Contracting Authority, Permit, Licence, Approval or Agreement	Contracting Authority Responsibilities and Requirements	Project Co Obligations	Date for Issuance
1.	City of Toronto, Transportation Services Permanent Closure of a Public Thoroughfare	Contracting Authority shall obtain all approvals from the City of Toronto that are required for permanent closures of public thoroughfares that are required to carry out the Works.	Project Co shall carry out its obligations with respect to undertaking these permanent closures in accordance with the terms of approval for permanent closures of public thoroughfares.	Prior to commencement of Works associated with this approval
2.	City of Toronto, Transportation Services Approval for Permanent Removal of On-street Parking	Contracting Authority shall obtain all approvals from the City of Toronto that are required for permanent removal of on-street parking that are required to carry out the Works.	Project Co shall carry out its obligations with respect to undertaking these permanent closures in accordance with the terms of approval for permanent removal of on-street parking.	Prior to commencement of Works associated with this approval
3.	City of Toronto, Transportation Services Street Occupation Permit	Contracting Authority is responsible for obtaining City of Toronto council approval for Street Occupation for all street occupancy of greater than one year (>365 days) required for specific locations that are identified in Section 3.2.8.6 (<i>Permitted Lane Closures</i>) of the Output Specifications.	Project Co is responsible for submitting and obtaining the Street Occupation Permits within the zones for which the Contracting Authority has obtained City of Toronto council approval. Project Co will be responsible for submitting and obtaining any renewals or revisions required for these permits and for compliance with the terms of any street occupation permits for occupancy of greater than one year	Prior to commencement of Works associated with this permit

No.	Issuing Authority and Name of Contracting Authority, Permit, Licence, Approval or Agreement	Contracting Authority Responsibilities and Requirements	Project Co Obligations	Date for Issuance
			(>365 days), as it carries out the Works. Project Co is responsible for obtaining City of Toronto council approval for Street Occupation for street occupancy of greater than one year (>365 days) for locations that are not identified in Section 3.2.8.6 (<i>Permitted Lane Closures</i>) of the Output Specifications.	
4.	City of Toronto, Toronto Water Master Servicing Agreement	Contracting Authority is responsible for entering into a master servicing agreement with the City of Toronto (the “ Master Servicing Agreement ”) associated with any relocation, alteration, construction, and/or installation of municipal water and/or sewer infrastructure, and shall be responsible for performance of the following obligations thereunder: <ul style="list-style-type: none"> • Section 19(a) (<i>City’s Fees</i>); and • Section 28(b) (<i>Successors and Assigns</i>). 	Project Co shall comply with the provisions in the Master Servicing Agreement, and shall be responsible for performance of all of Contracting Authority’s obligations, including, but not limited to, Schedule A (<i>Site Licence</i>), Schedule B (<i>Sample Certificate Letter</i>), Schedule C (<i>OHS&A Declaration</i>), Schedule D (<i>City Policies</i>), Schedule E (<i>Toronto Water Wellness Report</i>), Schedule F (<i>City of Toronto C&A Protocol</i>) and Schedule G (<i>Drinking Water Works Permit and Municipal Drinking Water Licence</i>) thereunder except the items identified in the “Contracting Authority Responsibilities and Requirements” column.	Prior to commencement of Works associated with this agreement

No.	Issuing Authority and Name of Contracting Authority, Permit, Licence, Approval or Agreement	Contracting Authority Responsibilities and Requirements	Project Co Obligations	Date for Issuance
5.	City of Toronto, Toronto Water Sewer Discharge Agreement (Permanent / Long Term)	Contracting Authority is responsible for entering into an agreement with Toronto Water for the Permanent/Long Term Sewer Discharge Approval. The process for obtaining the Sewer Discharge Agreement with Toronto Water for the permanent discharge shall be undertaken by Contracting Authority, concurrent with the permit application process undertaken by Project Co.	Project Co shall be responsible for preparing and submitting the permit applications associated with the discharge and obtaining approval for the Permanent/ Long Term sewer discharge.	Prior to connection to the point of discharge
6.	Ministry of the Environment, Conservation and Parks (MECP) Permit under s. 17(1) in accordance with clause 17(2)(d) of the Endangered Species Act, 2007	Contracting Authority is responsible for obtaining permits under the Ontario <i>Endangered Species Act</i> (Ontario) that are required to carry out the Works. A permit under s. 17(1) in accordance with clause 17(2)(d) of the Endangered Species Act, 2007 has been obtained.	Project Co is responsible for compliance with the conditions of any permit under the Ontario <i>Endangered Species Act</i> .	Prior to commencement of Works associated with this permit
7.	Ministry of Citizenship and Multiculturalism (MCM) Archaeological Assessment Clearance	Contracting Authority shall obtain MCM Archaeological Assessment Clearance for all archaeological assessments that have been completed by the Contracting Authority.	None, as it relates to archaeological assessments that have been completed by the Contracting Authority.	Prior to commencement of Works by Project Co, in the locations subject to the archaeological assessments
8.	City of Toronto, City Planning Zoning By-Law Amendment	Contracting Authority shall obtain zoning by-law amendment(s) to address any non-compliances resulting from progression of Project design.	Project Co shall work with the Contracting Authority to prepare and provide any materials required by the City of Toronto for zoning by-law amendment(s).	Prior to commencement of Works by Project Co, in the locations subject to zoning by-law amendment(s)

No.	Issuing Authority and Name of Contracting Authority, Permit, Licence, Approval or Agreement	Contracting Authority Responsibilities and Requirements	Project Co Obligations	Date for Issuance
9.	Toronto and Region Conservation Authority (TRCA) Voluntary Project Review	Contracting Authority will seek to obtain the VPR for the Minton Place Portal during the Project Term.	Project Co shall work with the Contracting Authority to prepare and provide any documentation and materials that the TRCA will require to pursue VPR for the Minton Place Portal.	Prior to commencement of Works by Project Co for the Minton Place Portal

APPENDIX B TO SCHEDULE 34

PROJECT CO PERMITS, LICENCES, APPROVALS AND AGREEMENTS

No.	Name of Project Co Permit, Licence, Approval or Agreement	Issuing Authority	Additional Responsibilities	Known Project Co PLAA Requirements (subject to pre-submission engagement with Issuing Authority)	Completeness Review Timeline (number of Business Days)	Project Co PLAA Timeline (number of Business Days for final determination following the end of the applicable Completeness Review Timeline)
1.	Site Plan Review	City of Toronto, City Planning	<p>Project Co shall prepare and submit all documentation and materials that the City of Toronto will require to complete site plan review of Project Co Infrastructure for which site plan review is applicable.</p> <p>Project Co shall prepare and submit a ‘place holder’ site plan review application, to begin the site plan review process for Project Co Infrastructure. No Completeness Review Timeline or Project Co PLAA Timeline apply to the</p>	City of Toronto – Development Approval – Site Plan Control Final Application Checklist.	[REDACTED]	[REDACTED]

No.	Name of Project Co Permit, Licence, Approval or Agreement	Issuing Authority	Additional Responsibilities	Known Project Co PLAA Requirements (subject to pre-submission engagement with Issuing Authority)	Completeness Review Timeline (number of Business Days)	Project Co PLAA Timeline (number of Business Days for final determination following the end of the applicable Completeness Review Timeline)
			<p>‘placeholder’ site plan review application.</p> <p>The submission of the site plan review place holder application must be in advance of the building permit application and applicable part permit applications.</p> <p>Submission and review of site plan submittals (drawings, plans, reports) for Project Co Infrastructure would be undertaken through the site plan review Works Submittal process as set out in Appendix B (<i>City of Toronto Works Submittals</i>) to</p>			

No.	Name of Project Co Permit, Licence, Approval or Agreement	Issuing Authority	Additional Responsibilities	Known Project Co PLAA Requirements (subject to pre-submission engagement with Issuing Authority)	Completeness Review Timeline (number of Business Days)	Project Co PLAA Timeline (number of Business Days for final determination following the end of the applicable Completeness Review Timeline)
			<p>Schedule 10 – Review Procedure.</p> <p>Once the site plan review Works Submittals process is complete and the plans, drawings, reports are finalized, Project Co shall submit a full and complete final site plan review package in accordance with City of Toronto – Development Approval - Site Plan Control - Final Application Checklist to the City of Toronto. The City of Toronto would then issue a Notice of Completed Review acknowledging approval of the site plans.</p> <p>Conditional upon closure of all design comments through</p>			

No.	Name of Project Co Permit, Licence, Approval or Agreement	Issuing Authority	Additional Responsibilities	Known Project Co PLAA Requirements (subject to pre-submission engagement with Issuing Authority)	Completeness Review Timeline (number of Business Days)	Project Co PLAA Timeline (number of Business Days for final determination following the end of the applicable Completeness Review Timeline)
			<p>Works Submittals Review Procedure, a Project Co PLAA Timeline of twenty (20) Business Days will apply.</p> <p>The City of Toronto’s final review at this time will not include any additional design comments and will be for the purpose of ensuring that the plans which will be itemized in the NOCR are in accordance with the plans that were reviewed and accepted by the City through the Schedule 10 – Review Procedure process.</p> <p>Upon receipt of a Notice of Completed Review from the City of Toronto, Project Co</p>			

No.	Name of Project Co Permit, Licence, Approval or Agreement	Issuing Authority	Additional Responsibilities	Known Project Co PLAA Requirements (subject to pre-submission engagement with Issuing Authority)	Completeness Review Timeline (number of Business Days)	Project Co PLAA Timeline (number of Business Days for final determination following the end of the applicable Completeness Review Timeline)
			shall provide a letter of acknowledgement to the City confirming the accuracy of the list of drawings, plans and reports noted in the Notice of Completed Review and acknowledging any associated site plan advisory notes and comments as its responsibility to address to the extent required by this Agreement and excepting those items that are the responsibility of the Contracting Authority.			
2.	Building Permit	City of Toronto, Toronto Building	None.	City of Toronto – Building Permit Application Checklist.	[REDACTED]	[REDACTED]
3.	Building Permit Alternative Solutions	City of Toronto, Toronto Building	None	NA.	[REDACTED]	[REDACTED]

No.	Name of Project Co Permit, Licence, Approval or Agreement	Issuing Authority	Additional Responsibilities	Known Project Co PLAA Requirements (subject to pre-submission engagement with Issuing Authority)	Completeness Review Timeline (number of Business Days)	Project Co PLAA Timeline (number of Business Days for final determination following the end of the applicable Completeness Review Timeline)
4.	Part Building permit – Shoring	City of Toronto, Toronto Building	None.	City of Toronto – Building Part Permits (Shoring Part Permit) Application Checklist.	[REDACTED]	[REDACTED]
5.	Part Building permit – Foundation	City of Toronto, Toronto Building	None.	City of Toronto – Building Part Permits (Foundation Part Permit) Application Checklist.	[REDACTED]	[REDACTED]
6.	Part Building permit – Superstructure	City of Toronto, Toronto Building	None.	City of Toronto – Building Part Permits (Superstructure Part Permit) Application Checklist.	[REDACTED]	[REDACTED]
7.	Designated Structures Permit	City of Toronto, Toronto Building	None.	City of Toronto – Designated Structures Permit Application Checklist.	[REDACTED]	[REDACTED]
8.	Demolition Permit – Non-Residential	City of Toronto, Toronto Building	Project Co shall obtain all demolition permits – non-residential required for the Works.	City of Toronto – Demolition Permit Application Checklist.	[REDACTED]	[REDACTED]

No.	Name of Project Co Permit, Licence, Approval or Agreement	Issuing Authority	Additional Responsibilities	Known Project Co PLAA Requirements (subject to pre-submission engagement with Issuing Authority)	Completeness Review Timeline (number of Business Days)	Project Co PLAA Timeline (number of Business Days for final determination following the end of the applicable Completeness Review Timeline)
9.	Demolition Approval – Residential <i>Note: This includes locations with mixed commercial/residential use and buildings adjacent to buildings with residential units.</i>	Contracting Authority, pursuant to Section 11 of this Schedule 34	For the following locations with buildings that require demolition: <ul style="list-style-type: none"> • Gerrard Portal: 388, 390, 392, 394, 396, 398, 400 and 402 Pape Ave. and 247 Langley Ave.; • Bain EEB: 495 and 497 Pape Ave, 280 Bain; and • Cosburn Station: 1002, 1004, 1006, 1012, 1014, 1014A, 1016, 1018, 1020, 1022, 1024, 1028, 1030, 1032, 1034, 1036, 1038, 1040, and 1042 Pape Ave. 	City of Toronto – Demolition Permit Application Checklist.	[REDACTED]	[REDACTED]

No.	Name of Project Co Permit, Licence, Approval or Agreement	Issuing Authority	Additional Responsibilities	Known Project Co PLAA Requirements (subject to pre-submission engagement with Issuing Authority)	Completeness Review Timeline (number of Business Days)	Project Co PLAA Timeline (number of Business Days for final determination following the end of the applicable Completeness Review Timeline)
			Contracting Authority advises Project Co that the alternative approval process by Contracting Authority outlined in Section 11 of this Schedule 34 will apply. Project Co shall submit the demolition permit application for such instances to the Contracting Authority in accordance with Section 11 of this Schedule 34.			
10.	Site Services Permit	City of Toronto, Toronto Building	None.	City of Toronto – Building Permit Site Services Permit Application Checklist.	[REDACTED]	[REDACTED]
11.	Heating, Ventilation, Air Conditioning Permit	City of Toronto, Toronto Building	None.	City of Toronto – Building Permit Mechanical (HVAC) Permit Application Checklist.	[REDACTED]	[REDACTED]

No.	Name of Project Co Permit, Licence, Approval or Agreement	Issuing Authority	Additional Responsibilities	Known Project Co PLAA Requirements (subject to pre-submission engagement with Issuing Authority)	Completeness Review Timeline (number of Business Days)	Project Co PLAA Timeline (number of Business Days for final determination following the end of the applicable Completeness Review Timeline)
12.	Plumbing & Drain Permit	City of Toronto, Toronto Building	None.	City of Toronto – Building Permit Plumbing & Drains (Inside) Permit Application Checklist.	[REDACTED]	[REDACTED]
13.	Sign Permit/Sign Variance Permit	City of Toronto, Toronto Building	None.	City of Toronto – Building Permit Sign Permit Application Checklist.	[REDACTED]	[REDACTED]
14.	Back Flow Prevention Device Permit	City of Toronto, Toronto Building	None.	City of Toronto – Building Permit Back Flow Preventor Permit Application Checklist.	[REDACTED]	[REDACTED]
15.	Temporary Structures Permit	City of Toronto, Toronto Building	None.	City of Toronto – Building Permit Temporary Structure Permit Application Checklist.	[REDACTED]	[REDACTED]
16.	Fire/Security Upgrades Permit	City of Toronto, Toronto Building	None.	City of Toronto – Building Permit Fire/Security Upgrades Application Checklist.	[REDACTED]	[REDACTED]

No.	Name of Project Co Permit, Licence, Approval or Agreement	Issuing Authority	Additional Responsibilities	Known Project Co PLAA Requirements (subject to pre-submission engagement with Issuing Authority)	Completeness Review Timeline (number of Business Days)	Project Co PLAA Timeline (number of Business Days for final determination following the end of the applicable Completeness Review Timeline)
17.	Building Permit, Interior Alteration (Non-Residential)	City of Toronto, Toronto Building	None.	City of Toronto – Building Permit Interior Alteration (Non-Residential) Application Checklist.	[REDACTED]	[REDACTED]
18.	Authority to Occupy	City of Toronto, Toronto Building	Project Co shall obtain authority to occupy for those Facilities that are part of the Works, for which authority to occupy is applicable, including Ontario Line Subway stations.	City of Toronto – Authority To Occupy Application Checklist.	[REDACTED]	[REDACTED]
19.	Permit to Injure or Remove Trees: City Owned Street Trees	City of Toronto, Parks, Forestry & Recreation	Project Co shall carry out its obligations with respect to tree and vegetation management in accordance with Schedule 17 – Environmental Obligations. Project Co shall obtain all tree permits and approvals with respect to destruction or	City of Toronto – Street Tree Application Checklist	[REDACTED]	[REDACTED]

No.	Name of Project Co Permit, Licence, Approval or Agreement	Issuing Authority	Additional Responsibilities	Known Project Co PLAA Requirements (subject to pre-submission engagement with Issuing Authority)	Completeness Review Timeline (number of Business Days)	Project Co PLAA Timeline (number of Business Days for final determination following the end of the applicable Completeness Review Timeline)
			injury of city owned street trees that are required to carry out the Works. Project Co shall coordinate the removal of affected trees and determine required compensatory activities in accordance with the provisions of Schedule 17 – Environmental Obligations.			
20.	Permit to Injure or Remove Trees: on Private Property	City of Toronto, Parks, Forestry & Recreation	Project Co shall carry out its obligations with respect to tree and vegetation management in accordance with Schedule 17 – Environmental Obligations. Other than with respect to trees that are located on Metrolinx Lands, that are owned by Metrolinx, Project	City of Toronto – Private Tree Application Checklist.	[REDACTED]	[REDACTED]

No.	Name of Project Co Permit, Licence, Approval or Agreement	Issuing Authority	Additional Responsibilities	Known Project Co PLAA Requirements (subject to pre-submission engagement with Issuing Authority)	Completeness Review Timeline (number of Business Days)	Project Co PLAA Timeline (number of Business Days for final determination following the end of the applicable Completeness Review Timeline)
			Co shall obtain all tree permits and approvals with respect to destruction or injury of private trees that are required to carry out the Works. Project Co shall coordinate the removal of affected trees and determine required compensatory activities in accordance with the provisions of Schedule 17 – Environmental Obligations.			
21.	Permit to Injure or Remove Trees: on Boundaries	City of Toronto, Parks, Forestry & Recreation	Project Co shall carry out its obligations with respect to tree and vegetation management in accordance with Schedule 17 – Environmental Obligations. Other than with respect to	City of Toronto – Boundary Tree Permit Application Checklist.	[REDACTED]	[REDACTED]

No.	Name of Project Co Permit, Licence, Approval or Agreement	Issuing Authority	Additional Responsibilities	Known Project Co PLAA Requirements (subject to pre-submission engagement with Issuing Authority)	Completeness Review Timeline (number of Business Days)	Project Co PLAA Timeline (number of Business Days for final determination following the end of the applicable Completeness Review Timeline)
			trees that are located on Metrolinx Lands, that are owned by Metrolinx, Project Co shall obtain all tree permits and approvals with respect to destruction or injury of boundary/neighbour trees that are required to carry out the Works. Project Co shall coordinate the removal of affected trees and determine required compensatory activities in accordance with Schedule 17 – Environmental Obligations.			
22.	Short Stream Cut Permit / Construction Encroachment (Minor)	City of Toronto, Transportation Services	None.	Road Cut Permit (Short Stream) and/or Construction/Encroachment	[REDACTED]	[REDACTED]

No.	Name of Project Co Permit, Licence, Approval or Agreement	Issuing Authority	Additional Responsibilities	Known Project Co PLAA Requirements (subject to pre-submission engagement with Issuing Authority)	Completeness Review Timeline (number of Business Days)	Project Co PLAA Timeline (number of Business Days for final determination following the end of the applicable Completeness Review Timeline)
				(Minor) Permit City of Toronto Application Checklists.		
23.	Full Stream Cut Permit / Construction Encroachment (Major)	City of Toronto, Transportation Services	None.	Road Cut Permit (Full Stream) and/or Construction/Encroachment (Major) Permit City of Toronto Application Checklist.	[REDACTED]	[REDACTED]
24.	Street Occupation Permit	City of Toronto, Transportation Services	Project Co shall obtain all street occupation permits required for the Works, which would include temporary occupation of on-street parking. Project Co shall be responsible for compliance with the Toronto Parking Authority policy resolution related to cost recovery for street occupancy permits at on-street meter locations, and for other costs that may be	Street Occupation Permit City of Toronto Application Checklist.	[REDACTED]	[REDACTED]

No.	Name of Project Co Permit, Licence, Approval or Agreement	Issuing Authority	Additional Responsibilities	Known Project Co PLAA Requirements (subject to pre-submission engagement with Issuing Authority)	Completeness Review Timeline (number of Business Days)	Project Co PLAA Timeline (number of Business Days for final determination following the end of the applicable Completeness Review Timeline)
			applicable for relocation of paid parking machines and equipment.			
25.	Sewer Discharge Permit (Construction / Short Term)	City of Toronto, Toronto Water	None.	City of Toronto – Sewer Use Permit or Discharge Agreement Application Checklist.	[REDACTED]	[REDACTED]
26.	Sewer Discharge Permit (Permanent/Long Term)	City of Toronto, Toronto Water	None.	City of Toronto – Sewer Use Permit or Discharge Agreement Application Checklist.	[REDACTED]	[REDACTED]
27.	Fire Hydrant Use Permit	City of Toronto, Toronto Water	None.		[REDACTED]	[REDACTED]
28.	Fire Hydrant Flow Test Permit	City of Toronto, Toronto Water	None.		[REDACTED]	[REDACTED]

No.	Name of Project Co Permit, Licence, Approval or Agreement	Issuing Authority	Additional Responsibilities	Known Project Co PLAA Requirements (subject to pre-submission engagement with Issuing Authority)	Completeness Review Timeline (number of Business Days)	Project Co PLAA Timeline (number of Business Days for final determination following the end of the applicable Completeness Review Timeline)
29.	Water and Sewer Connection / Disconnection Permit	City of Toronto, Toronto Water	None.		[REDACTED]	[REDACTED]
30.	Sewage Works Approval (Environmental Compliance Approval (ECA), Transfer of Review Program)	City of Toronto, Toronto Water Ministry of Environment, Conservation and Parks (MECP)	None.	MECP Environmental Compliance Approval (ECA) - Municipal Sewage Works (Types A, B, D) - City of Toronto Application Checklist.	[REDACTED]	[REDACTED]
31.	Drinking Water Works Permit (DWWP), Watermain Approval	City of Toronto, Toronto Water Ministry of Environment, Conservation and Parks (MECP)	None.	Municipal Drinking Water Works Permit (DWWP) – City of Toronto Application Checklist.	[REDACTED]	[REDACTED]

No.	Name of Project Co Permit, Licence, Approval or Agreement	Issuing Authority	Additional Responsibilities	Known Project Co PLAA Requirements (subject to pre-submission engagement with Issuing Authority)	Completeness Review Timeline (number of Business Days)	Project Co PLAA Timeline (number of Business Days for final determination following the end of the applicable Completeness Review Timeline)
32.	Permit to Take Water under the <i>Ontario Water Resources Act</i> (Ontario) and/or Registration under the Environmental Activity Sector Registry (EASR) under the <i>Environmental Protection Act</i> (Ontario)	MECP	None.	Permit to Take Water – MECP Application Checklist.	[REDACTED]	[REDACTED]
33.	Environmental Compliance Approval (ECA), Air and Noise and/or Registration under the Environmental Activity Sector Registry (EASR)	MECP	None.		[REDACTED]	[REDACTED]

No.	Name of Project Co Permit, Licence, Approval or Agreement	Issuing Authority	Additional Responsibilities	Known Project Co PLAA Requirements (subject to pre-submission engagement with Issuing Authority)	Completeness Review Timeline (number of Business Days)	Project Co PLAA Timeline (number of Business Days for final determination following the end of the applicable Completeness Review Timeline)
	under the <i>Environmental Protection Act</i> (Ontario)					
34.	Site Licences	City of Toronto, Toronto Water	Project Co shall obtain all site licences, pursuant to the Master Servicing Agreement, from Toronto Water associated with any relocation, alteration, construction, and/or installation of municipal water and/or sewer infrastructure, including for connection to or disconnection from municipal water and/or sewer infrastructure where Project Co determines the need to use its own contractor and not one	NA.	[REDACTED]	[REDACTED]

No.	Name of Project Co Permit, Licence, Approval or Agreement	Issuing Authority	Additional Responsibilities	Known Project Co PLAA Requirements (subject to pre-submission engagement with Issuing Authority)	Completeness Review Timeline (number of Business Days)	Project Co PLAA Timeline (number of Business Days for final determination following the end of the applicable Completeness Review Timeline)
			<p>provided by the City of Toronto. The applicable site licence is to be finalized and executed by Project Co after the issuance of the related permit and is required prior to construction of the associated works. Project Co shall comply with the conditions in these site licences, and shall be responsible for performance of all obligations in respect of the site licence excluding any Contracting Authority obligations identified in row #4 of Appendix A to this Schedule 34.</p>			
35.	Electrical Safety Authority Plan Review	Electrical Safety Authority	Project Co shall follow Electrical Safety Authority	NA.	[REDACTED]	[REDACTED]

No.	Name of Project Co Permit, Licence, Approval or Agreement	Issuing Authority	Additional Responsibilities	Known Project Co PLAA Requirements (subject to pre-submission engagement with Issuing Authority)	Completeness Review Timeline (number of Business Days)	Project Co PLAA Timeline (number of Business Days for final determination following the end of the applicable Completeness Review Timeline)
			guidance and address applicable requirements as publicly available for the Electrical Plan Review - Electrical Safety Authority (ESA).			
36.	Technical Standards and Safety Authority (TSSA) - Elevating Devices and Fuels (Generators, Fuel Tanks)	Technical Standards and Safety Authority (TSSA)	Project Co shall follow Technical Standards and Safety Authority (TSSA) guidance and address applicable requirements as publicly available for the Technical Standards and Safety Authority (TSSA) – Elevating Devices and Fuels.	NA.	[REDACTED]	[REDACTED]

APPENDIX C TO SCHEDULE 34

PROJECT CO STAGED PERMITS, LICENCES, APPROVALS AND AGREEMENTS

Under the staged process for Sewer Discharge Permits (Construction/Short Term) and for Permits to Take Water, Project Co has the option, should its design align with the assumptions and conditions of any Stage 1 permit in principle that is applied for and received by Contracting Authority, to submit a Stage 2 permit application in accordance with the staged process. Alternatively, Project Co may proceed separately with an application for Sewer Discharge Permits or PTTW outside of this staged process in accordance with Appendix B.

No.	Issuing Authority and Name of Permit, Licence, Approval or Agreement	Stage 1 Permit Conditions	Project Co Obligations	Staged Permits Deadline (number of Business Days)
1.	MECP Permit to Take Water	The Contracting Authority intends to submit a Stage 1 Permit to Take Water (PTTW) application that would address water taking requirements identified by the Contracting Authority within this contract.	<p>Project Co shall prepare and submit all documentation and materials that MECP will require (as per the Permit to Take Water – MECP Application Checklist) to issue the final PTTW.</p> <p>The finalization and issuance of the PTTW will be contingent upon Project Co submitting the following documents and information to, and to the satisfaction of, the PTTW director:</p> <ul style="list-style-type: none"> • A letter signed by a person in authority with the contractor that is undertaking the project stating the contractor’s intention to assume responsibility for the Metrolinx project, or a portion of the Metrolinx project, identified in the draft PTTW and quoting the draft PTTW number; 	[REDACTED]

No.	Issuing Authority and Name of Permit, Licence, Approval or Agreement	Stage 1 Permit Conditions	Project Co Obligations	Staged Permits Deadline (number of Business Days)
			<ul style="list-style-type: none"> • Parts 3, 4, 5 and 6 of the PTTW application form, including proof of the legal name of the contracting firm undertaking the project as required by part 3; • Confirmation of the contractor’s water taking (pumping) rates as indicated in section 9 of the PTTW application form; and, • A completed section 11 of the PTTW application form: the statement of the contractor • For clarity, the PTTW director will only issue a permit to Project Co that authorizes a water-taking rate which is less than or equal to the draft estimate of the water-taking rate set out in the Stage 1 PTTW application. Any request for increased water taking or any change in the management of water taking and return flows that cannot be reconciled against the PTTW director’s technical evaluation of the Contracting Authority submitted Stage 1 application will require a new application. 	

No.	Issuing Authority and Name of Permit, Licence, Approval or Agreement	Stage 1 Permit Conditions	Project Co Obligations	Staged Permits Deadline (number of Business Days)
			<p>In the event that Project Co determines that the requirements of the Stage 1 Permit cannot be met, Project Co will be obliged to proceed with permitting in accordance with Appendix B.</p>	

APPENDIX D TO SCHEDULE 34

LISTED PROJECT CO PERMITS, LICENCES, APPROVALS AND AGREEMENTS

No.	Name of Listed Project Co Permit, Licence, Approval or Agreement	Issuing Authority	Additional Responsibilities	Known Project Co PLAA Requirements (subject to pre-submission engagement with Issuing Authority)	Completeness Review Timeline (number of Business Days)	Listed Project Co PLAA Timeline (number of Business Days for final determination following the end of the applicable Completeness Review Timeline)

APPENDIX E TO SCHEDULE 34

PLAA FORMS

See attached.

ATTACHMENT 1 TO APPENDIX E
FORM OF PROJECT PLAA PLAN

PLAA Plan: Table of Contents

- 1 Introduction
 - 1.1 Purpose and Scope
 - 1.2 Key Parties / Organization Overview
 - 1.3 Reference to Associated Documents
- 2 Planning
 - 2.1 Permits, Licences, Approvals and Agreements Objective and Strategy Development
 - 2.1.1 Strategy to confirm PLAAs to be obtained, associated review timelines, processes and signatories
 - 2.1.2 Strategy to Confirm Municipal Fees/Charges for Applying for and reviewing various approval applications
 - 2.1.3 Strategy to mitigate potential construction conflicts with adjacent development and municipal infrastructure initiatives
 - 2.1.4 Strategy to obtain all Permits, Licences, Approvals and Agreements in a timely manner, and to advance to the extent possible, PLAAs during the performance of Development Works
- 3 Project Team and Responsibilities
 - 3.1.1 Detailed outline on the approach, resources and tools that will contribute to obtaining Permits, Licences, Approvals and Agreements during the Project Term
 - 3.1.2 Detailed outline of the approach to collaboration, including an assessment of an integrated team, roles and responsibilities of Contracting Authority and Project Co for preparing, submitting and obtaining Permits, Licences, Approvals and Agreements for the Works, including

justification for the proposed roles and responsibilities. Include a proposed responsibility assignment matrix (RACI matrix) for Appendices A, B, C and D

- 3.1.3 Proposed allocation of resources and capabilities to support the roles and responsibilities identified pursuant to Section 3.1.2 above within a collaborative framework

4 Permits, Licences, Approvals and Agreements Implementation

4.1 Identification of Permits, Licences, Approvals and Agreements

- 4.1.1 Permits, Licences, Approvals and Agreements Lists

- 4.1.2 Identification and approach to accelerating critical Permits, Licences, Approvals and Agreements during the Project Term, including the proposal for innovation and alternative approaches to successfully obtain Permits, Licences, Approvals and Agreements

4.2 Permits, Licences, Approvals and Agreements Schedule

- 4.2.1 A work-back schedule for the Permits, Licences, Approvals and Agreements including, at a minimum, the following activities: application preparation, application submission, approach to follow-up, and acquiring of the applicable Permits, Licences, Approvals and Agreements during the Project Term
- 4.2.2 A mitigation strategy for Permits, Licences, Approvals and Agreements that cannot be obtained in a timely manner
- 4.2.3 An approach to managing conflicts and obtaining Permits, Licences, Approvals and Agreements while maintaining positive relations with stakeholders and protecting the reputation of Contracting Authority
- 4.2.4 An approach to the timing of submissions of the Permits, Licences, Approvals and Agreements to address Contracting Authority and Governmental Authority workloads

4.3 Communications

- 4.3.1 An approach or description of communications protocol to be implemented between Project Co and Contracting Authority for efficient communication between the Parties, including a process for providing Contracting Authority with necessary information for any Permits, Licences, Approvals and Agreements to be obtained or renewed
- 4.3.2 An approach or description with respect to Project Co's communications with third parties such as the City of Toronto and other Governmental Authorities

- 4.4 AHJ Engagement Strategy
 - 4.4.1 City of Toronto
 - 4.4.2 Other authorities
- 4.5 Documentation Control
- 4.6 PLAA Matrix and Process Flow Charts
 - 4.6.1 A PLAA matrix and process flow charts that reasonably consider the PLAA matrix and process flow charts provided by Contracting Authority in Background Information.
- 5 Permits, Licences, Approvals and Agreements tracking in accordance with the requirements of Section 6 of this Schedule 34

ATTACHMENT 2 TO APPENDIX E
FORM OF PROJECT PLAA TRACKER

[REDACTED]

SCHEDULE 35**LANDS****PART A – DEFINITIONS AND INTERPRETATION**

1. In this Schedule 35, unless the context indicates a contrary intention, terms that are defined in this Agreement (and not otherwise defined in this Schedule 35) shall have the meanings given to them in this Agreement and the following terms shall have the following meanings:
 - (a) **“City Lands”** means the lands owned by the City of Toronto upon which the New City Infrastructure is or will be located.
 - (b) **“City Road Allowance”** means, collectively, but not limited to, the municipal streets and rights of way owned or otherwise controlled by the City of Toronto (or to which the City of Toronto has acquired or will acquire rights) and/or as identified under the City of Toronto Road Classification System – City of Toronto Street Name Index, commonly known as and including:
 - (i) Pape Avenue, and any intersecting municipal streets or rights of ways approximately from Gerrard Street East to Hopedale Avenue;
 - (ii) Carlaw Avenue, and any intersecting municipal streets or rights of ways approximately from Gerrard Street East to Langley Avenue;
 - (iii) Laneway immediately south of Langley Avenue between Carlaw Avenue and Pape Avenue;
 - (iv) Laneway located east of Pape Avenue and west of Jones Avenue, from Hazelwood Avenue to Danforth Avenue;
 - (v) Laneway located east of Pape Avenue and west of Jones Avenue, from Harcourt Avenue to Hazelwood Avenue;
 - (vi) Eaton Avenue, and any intersecting municipal streets or rights of ways approximately from Danforth Avenue to Selkirk Street;
 - (vii) Muriel Avenue from Gertrude Place to Selkirk Street;
 - (viii) Laneway located east of Pape Avenue and west of Woodycrest Avenue, from Aldwych Avenue to Sammon Avenue;
 - (ix) Laneway located east of Logan Avenue and west of Pape Avenue and west of Woodycrest Avenue, from Gowan Avenue to Cosburn Avenue; and
 - (x) Minton Place, and any intersecting municipal streets or rights of ways approximately from Pape Avenue to the Don Valley Parkway.

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- (c) “**Lands**” means the Metrolinx Lands and the Third Party Lands.
- (d) “**Metrolinx Easement Lands**” means the lands located within the City Road Allowance and the required location for the Project Co Infrastructure as set out in the Output Specifications and the Construction Technical Requirements, as applicable.
- (e) “**Metrolinx Lands**” means, collectively, the lands owned or to be acquired by Contracting Authority or lands in respect of which Contracting Authority has acquired or will acquire certain rights, all as set out in the Metrolinx Lands Table and Contracting Authority’s rights of access to the TTC Interchange Stations as set out in Part C of this Schedule 35, and, for clarity, (i) includes the Metrolinx Easement Lands and (ii) excludes the Third Party Lands.
- (f) “**Metrolinx Lands Table**” means the Metrolinx Lands listed in the table in Part B of this Schedule 35.
- (g) “**Permitted Use**” or “**Permitted Uses**” means the use(s) which may be put to each parcel forming part of the Lands as designated in the column marked “Permitted Use” in the Metrolinx Lands Table being one or more of the following:
- (i) “**New Third Party Infrastructure Lands**” means property forming part of the Lands and designated “**NTPI**” in the column marked “Permitted Use” in the Metrolinx Lands Table representing the location where New Third Party Infrastructure is to be constructed or installed in accordance with the Output Specifications and the Construction Technical Requirements, as applicable.
 - (ii) “**Project Co Infrastructure Lands**” means property forming part of the Lands and designated “**PCI**” in the column marked “Permitted Use” in the Metrolinx Lands Table representing the location where Project Co Infrastructure is located or is to be constructed or installed in accordance with the Output Specifications and the Construction Technical Requirements, as applicable.
 - (iii) “**Temporary Access Lands**” means property forming part of the Lands and designated “**TA**” in the column marked “Permitted Use” in the Metrolinx Lands Table which may be used temporarily for the sole purpose of providing non-exclusive pedestrian and/or vehicular access to other property forming part of the Lands.
 - (iv) “**Temporary Mobilization Lands**” means property forming part of the Lands and designated “**TM**” in the column marked “Permitted Use” in the Metrolinx Lands Table which may be used as part of a mobilization site or staging area, being a designated area where personnel, equipment, supplies, site offices and other facilities required to undertake the Construction Activities are established and maintained in accordance with the provisions of the Output Specifications and the Construction Technical Requirements, as applicable, relating to mobilization sites.
 - (v) “**Temporary Construction Lands**” means property forming part of the Lands and designated “**TC**” in the column marked “Permitted Use” in the Metrolinx Lands Table which may be used temporarily in connection with the construction of the

Project Co Infrastructure and New Third Party Infrastructure but which may not be used as part of a mobilization site or staging area other than for short term storage of mobile equipment and material required for construction in close proximity to the relevant parcel of Temporary Construction Lands.

- (h) “**Standard Agreements**” has the meaning given in Section 2(e) of this Part A.
 - (i) “**Third Party Lands**” means, collectively, (A) the City Road Allowance (other than the Metrolinx Easement Lands), (B) the City Lands and (C) the TTC Lands.
 - (j) “**TTC Lands**” means the lands owned by the TTC or the City of Toronto upon which Existing TTC Infrastructure is, or New TTC Infrastructure will be, located.
2. For the purpose of this Schedule 35,
- (a) Subject to Section 2(b) of this Part A, the Metrolinx Lands will be made available to Project Co in accordance with Section 16 (*Lands Access and Investigation*) of this Agreement from the date provided as the “Commencement Date” in the Metrolinx Lands Table until the earlier of,
 - (i) the end of the period or end date in the column marked “Duration” in the Metrolinx Lands Table; and
 - (ii) the Project Final Completion Date.
 - (b) If:
 - (i) Project Co is required to perform Warranty Work on the Metrolinx Lands or portion(s) thereof beyond the end date set out in Section 2(a) of this Part A; or
 - (ii) Project Co is entitled to a Schedule Adjustment subject to and in accordance with Schedule 21 – Risk Allocations and Project Co requires access to, and occupation and use of, the Metrolinx Lands or portion(s) thereof beyond the end date set out in Section 2(a)(i) of this Part A in order to perform the Works in a manner that is consistent with Project Co’s current Progress Works Schedule,then Project Co shall provide Notice to Contracting Authority to identify which Metrolinx Lands or portion(s) thereof Project Co requires access, occupation and use, and the revised “Duration” for such access, occupation and use in order for Project Co to complete the Warranty Work or Works, as applicable. Project Co shall provide such Notice:
 - (iii) at least one-hundred and twenty (120) days prior to the commencement of the Warranty Work;
 - (iv) in relation a Schedule Adjustment, in accordance with Section 3 (*Schedule Adjustments*) of Schedule 21 – Risk Allocations; or

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- (v) in relation to a Variation, in accordance with Section 3.3 (*Delivery of Estimate*) of Part A or Section 1.4 (*Delivery of Estimate*) of Part B of Schedule 22 – Estimates, Variations and Proposals, as applicable.
- (c) If Project Co provides the Notice in Section 2(b) of this Part A to Contracting Authority, then, subject to Section 11.17(f) (*Warranty Work and Prompt Repair of Warranty Work*) of this Agreement with respect to Warranty Work, Contracting Authority shall acquire or grant the rights necessary to extend Project Co’s access to, and occupation and use of the Metrolinx Lands or any portion(s) thereof required to carry out the Warranty Work or the Works, as applicable, provided that:
- (i) in relation to the Warranty Work to be performed on the Metrolinx Lands, the “Duration” noted in the Metrolinx Lands Table shall be deemed to extend to the date identified in the Notice provided by Project Co pursuant to Section 2(b) of this Part A; and
- (ii) in relation to a Schedule Adjustment or a Variation, the relevant “Duration” identified in the Metrolinx Lands Table shall be extended pursuant to the applicable Variation Confirmation.
- (d) Subject to Section 2(b) of this Part A, Project Co shall provide to Contracting Authority a Project Co TPA Variation Notice for any request by Project Co to amend the “Commencement Date” or “Duration” for any Metrolinx Lands identified in the Metrolinx Lands Table and any amendment shall be effected by way of Variation, subject to and in accordance with Schedule 22 – Estimates, Variations and Proposals. Notwithstanding the foregoing and any provision in Schedule 22 – Estimates, Variations and Proposals, Project Co shall provide a Project Co TPA Variation Notice referred to in this Section 2(d) of this Part A not less than fifteen (15) months prior to the “Commencement Date” or “Duration” identified in the Metrolinx Lands Table.
- (e) For certain Metrolinx Lands, Contracting Authority may enter into an easement, licence, or similar agreement(s) after the Technical Reference Date. Contracting Authority intends to enter into such agreement(s) on substantively the same terms and conditions as other existing easement, licence or similar agreements that have been entered into by Contracting Authority for other Metrolinx Lands and that are provided as Background Information prior to the Technical Reference Date or are currently contemplated in the column entitled “Restriction / Requirement” in the Metrolinx Lands Table (the “**Standard Agreements**”). If, after the Technical Reference Date,
- (i) Contracting Authority enters into one or more easement, licence or similar agreement(s) in respect of the Metrolinx Lands; or
- (ii) Contracting Authority acquires Metrolinx Lands that are subject to any easement, licence or similar agreement(s),

and such easement, licence or similar agreement(s) have substantively the same terms and conditions as the Standard Agreements, such easement, licence or similar agreement(s) shall be treated, for the purposes of Section 17 (*Encumbrances*) of this Agreement and for

the purpose of Schedule 16 – Encumbrances, as though Project Co had knowledge of such easement, licence or similar agreement(s) prior to the Technical Reference Date.

For clarity, this Section 2(e) of this Part A shall not apply in circumstances where Contracting Authority enters into an easement, licence or similar agreement after the Technical Reference Date on terms and conditions that substantively differ from the Standard Agreements if such differences cause a delay to Project Co in performing the Works, impose additional obligations on Project Co, or result in a material change to the Works (including an impact to the Target Price), in which case Project Co may be entitled to an Adjustment subject to and in accordance with Schedule 21 – Risk Allocations.

- (f) Without limiting the generality of Section 3 (*General Project Co PLAA Obligations*) of Schedule 34 – Permits, Licences, Approvals and Agreements, Project Co shall comply with all applicable Permits, Licences, Approvals and Agreements during its access, occupation and use of the Lands.
- (g) In addition to Project Co’s obligations in respect of and compliance with all Permits, Licences, Approvals and Agreements and the terms and conditions of this Agreement (including the Output Specifications and the Construction Technical Requirements, as applicable), Project Co’s access to, and occupation and use of the Metrolinx Lands for the purpose of the Works is subject to:
 - (i) the restrictions, qualifications and requirements listed in the column entitled “Restriction / Requirement” in the Metrolinx Lands Table; and
 - (ii) the restrictions, qualifications, requirements and other provisions contained in the applicable easement, licence or similar agreement(s) which grant Project Co access to and use of the applicable Metrolinx Lands.

If there is a conflict among the restrictions, qualifications and requirements (A) listed in the column entitled “Restriction / Requirement” in the Metrolinx Lands Table; (B) contained in the easement, licence or similar agreement(s) relating to the applicable Metrolinx Lands, or (C) contained in this Agreement, then the more stringent restriction, qualification or requirement shall apply.

- (h) The information provided in the column entitled “Address” in the Metrolinx Lands Table is provided for information only. The information provided in the column entitled “PIN” in the Metrolinx Lands Table takes precedence over “Address” information in the identification of exact locations of various properties.
- (i) Access to TTC Lands and Lands located within the TTC Zone of Influence, are subject to Project Co’s obligations with respect to the TTC Zone of Influence.

PART B – METROLINX LANDS

[REDACTED]

APPENDIX A TO PART B OF SCHEDULE 35

CONTRACT / CONTRACT ROLL PLOT(S)

[REDACTED]

PART C – TTC INTERCHANGE STATIONS

[REDACTED]

PART D – LAND HAND BACK**1. DEFINITIONS**

- (a) Unless the context indicates a contrary intention, terms which are defined in this Agreement (and not otherwise defined in this Part D of this Schedule 35) shall have the meanings given to them in this Agreement and the following terms shall have the following meanings:
- (i) “**Land Hand Back Date**” has the meaning given to it in Section 2(f) of this Part D.
 - (ii) “**Land Hand Back Notice**” has the meaning given to it in Section 2(a) of this Part D.
 - (iii) “**Land Hand Back Requirements**” means the responsibilities and requirements of Project Co for each Land Hand Back Site set out in the column titled [REDACTED] in Appendix A to this Part D of this Schedule 35.
 - (iv) “**Land Hand Back Site**” means Lands which Project Co will hand back to Contracting Authority, subject to and in accordance with the provisions of this Part D of this Schedule 35.
 - (v) “**Land Hand Back Submission**” means, in respect of a Land Hand Back Site, any and all items, documents and anything else required or specified by the applicable Land Hand Back Requirements to be submitted to, reviewed or otherwise processed by Contracting Authority in accordance with the provisions of this Part D of this Schedule 35.
 - (vi) “**Land Tracker**” has the meaning given to it in Section 3(a) of this Part D.

2. LAND HAND BACK

- (a) No later than the earlier of ninety (90) days prior to (i) the date on which Project Co anticipates that it will have satisfied all of the Land Hand Back Requirements or (ii) the end date in the column marked “Duration” in the Metrolinx Lands Table, for a Land Hand Back Site, Project Co shall submit written Notice to Contracting Authority (a “**Land Hand Back Notice**”) specifying:
- (i) the Land Hand Back Site that is the subject of the Land Hand Back Notice; and
 - (ii) the anticipated date on which Project Co will satisfy the Land Hand Back Requirements for the subject Land Hand Back Site.
- (b) Project Co shall, within sixty (60) days of delivery of each Land Hand Back Notice, submit the applicable Land Hand Back Submission to Contracting Authority. Each Land Hand Back Submission shall:
- (i) be in a form acceptable to Contracting Authority, acting reasonably;
 - (ii) include the most updated version of the Land Tracker;
 - (iii) identify the Land Hand Back Requirements applicable to the Land Hand Back Site;

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- (iv) contain evidence, which shall include photos of the applicable Land Hand Back Site, that Project Co has satisfied all the applicable Land Hand Back Requirements;
 - (v) include any proposed terms and conditions applicable to the Land Hand Back Site, including any future access requirements of Project Co; and
 - (vi) include any additional information reasonably required by Contracting Authority to verify that the applicable Land Hand Back Requirements have been satisfied.
- (c) For each Land Hand Back Submission, Contracting Authority shall review the Land Hand Back Submission (in concert with the applicable owner of Third Party Lands, as applicable) and, within thirty (30) days of receipt thereof, respond to such Land Hand Back Submission.
- (d) In the event that Contracting Authority determines with the assistance of the applicable owner of Third Party Lands, as applicable, that Project Co has not satisfied the applicable Land Hand Back Requirements that are subject to the applicable Land Hand Back Submission, Contracting Authority shall, within the time period set out in Section 2(c) of this Part D, submit written Notice to Project Co providing the reasons for such determination, and Project Co shall correct and re-submit such Land Hand Back Submission to Contracting Authority:
- (i) no later than fourteen (14) days after such written Notice has been provided to Project Co; or
 - (ii) within such longer time period as Contracting Authority may agree in writing, acting reasonably, upon written request for additional time from Project Co.
- (e) The process contemplated in Sections 2(c)-2(d) of this Part D shall be repeated in respect of a Land Hand Back Submission until such time as Contracting Authority provides its confirmation in accordance with Section 2(f) of this Part D.
- (f) In the event that Contracting Authority determines with the assistance of the applicable owner of Third Party Lands, as applicable, that Project Co has satisfied the applicable Land Hand Back Requirements that are subject to the applicable Land Hand Back Submission, Contracting Authority shall, within the time period set out in Section 2(c) of this Part D, submit written Notice to Project Co confirming that the applicable Land Hand Back Requirements have been satisfied for the applicable Land Hand Back Site, and Project Co shall return the applicable Land Hand Back Site to Contracting Authority, or as Contracting Authority may direct, by the date identified by Contracting Authority in such written Notice, or other period of time as the Parties may otherwise agree (the “**Land Hand Back Date**”).

3. LAND TRACKER

- (a) Project Co shall maintain an excel file tracker of all Lands, including all Land Hand Back Site activities undertaken in accordance with this Part D of this Schedule 35, which tracker shall be in the form set out in Appendix B to this Part D of this Schedule 35, including any data fields set out therein (the “**Land Tracker**”) or in such other format as the Project Co Representative and Contracting Authority Representative may agree.

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- (b) The Land Tracker shall be updated by Project Co each Business Day and submitted to Contracting Authority on a monthly basis and be made available to Contracting Authority who may, in its sole discretion, share with any applicable owner of Third Party Lands excerpts of the Land Tracker in respect of their applicable Lands.
- (c) Project Co shall ensure at all times that the Land Tracker:
- (i) is fully functional and available to Contracting Authority;
 - (ii) contains accurate information as to the status of all Lands, including all Land Hand Back Requirements; and
 - (iii) contains accurate information as to the status of all Land Hand Back Sites identified in Appendix A to this Part D of this Schedule 35. For additional clarity, the information as to the status shall include the approximate schedule for hand back of all Land Hand Back Sites.

4. DISPUTES

- (a) If Project Co disputes Contracting Authority's determination that Project Co has not satisfied the applicable Land Hand Back Requirements that are subject to the applicable Land Hand Back Submission, Project Co shall promptly notify Contracting Authority of the details of such Dispute and shall submit the reasons why Project Co believes it has satisfied all the applicable Land Hand Back Requirements, together with appropriate supporting documentation. Contracting Authority shall review the applicable Land Hand Back Submission, the reasons and supporting documentation and, within five (5) Business Days after receipt thereof, either confirm the original determination or notify Project Co of a revised determination. If Contracting Authority confirms the original determination, Project Co may refer the matter for determination in accordance with Schedule 27 – Dispute Resolution Procedure.
- (b) Notwithstanding the provisions of Section 4(a) of this Part D, Contracting Authority may direct that Project Co revise the applicable Land Hand Back Submission in accordance with the comments of Contracting Authority (and the applicable owner of Third Party Lands). For clarity, Project Co may refer such direction for resolution as a Dispute in accordance with Schedule 27 – Dispute Resolution Procedure.

APPENDIX A TO PART D OF SCHEDULE 35

LAND HAND BACK REQUIREMENTS

[REDACTED]

APPENDIX B TO PART D OF SCHEDULE 35

FORM OF LAND TRACKER

[REDACTED]

SCHEDULE 36

PROPERTY ACCESS MATTERS

1. DEFINITIONS

In this Schedule 36, terms which are defined in this Agreement (and not otherwise defined in this Schedule 36) shall have the meaning given to them in this Agreement and the following terms shall have the following meanings:

1.1 “**Actual Property Access Closures**” or “**APAC**” means all actual Property Access Closures that occur in a given calendar month for a Property Access Area.

1.2 “**Door Closure**” means:

- (a) the closure of pedestrian access to a building door; or
- (b) any of the following circumstances in which business operations associated with a building are disrupted:
 - (i) circumstances in which the Construction Works are taking place within 1.5 metres of a building door;
 - (ii) Utility shutdowns as a result of the Construction Works that preclude the delivery of Utilities to a building; and
 - (iii) circumstances in which pedestrian ingress and egress cannot be provided to a building,

provided that such closure or disruption is as a result of the Construction Works, and provided that such closure or disruption takes place for more than four cumulative hours within any eight hour duration in any day or for more than eight cumulative hours in any day.

1.3 “**Driveway Closure**” means:

- (a) for a property zoned for commercial use:
 - (i) where the width of a driveway as of the DMCA Effective Date is less than 3.75 metres, a reduction of the width of that driveway to less than the width of that driveway as of the DMCA Effective Date; or
 - (ii) where the width of a driveway as of the DMCA Effective Date is greater than or equal to 3.75 metres:
 - (A) a reduction of the width of that driveway to less than 3.75 metres;
 - (B) where the width of a driveway as of the DMCA Effective Date is less than 7.50 metres, a reduction of the width of that driveway to less than

the width of that driveway as of the DMCA Effective Date, unless Project Co provides, at all times during the duration of the reduction, traffic control persons at the location of that driveway; or

- (C) where the width of a driveway as of the DMCA Effective Date is greater than or equal to 7.50 metres, a reduction of the width of that driveway to less than 7.50 metres, unless Project Co provides, at all times during the duration of the reduction, traffic control persons at the location of that driveway; or
- (b) for a property zoned for residential use:
- (i) where the width of a driveway as of the DMCA Effective Date is less than 3.0 metres, a reduction of the width of that driveway to less than the width of that driveway as of the DMCA Effective Date; or
 - (ii) where the width of a driveway as of the DMCA Effective Date is greater than or equal to 3.0 metres:
 - (A) a reduction of the width of that driveway to less than 3.0 metres;
 - (B) where the width of a driveway as of the DMCA Effective Date is less than 6.0 metres, a reduction of the width of that driveway to less than the width of that driveway as of the DMCA Effective Date, unless Project Co provides, at all times during the duration of the reduction, traffic control persons at the location of that driveway; or
 - (C) where the width of a driveway as of the DMCA Effective Date is greater than or equal to 6.0 metres, a reduction of the width of that driveway to less than 6.0 metres, unless Project Co provides, at all times during the duration of the reduction, traffic control persons at the location of that driveway;

provided that, in each case, such reduction is as a result of the Construction Works and takes place for more than four cumulative hours within any eight hour duration in any day or for more than eight cumulative hours in any day.

1.4 “**Property Access Area**” means the defined portions of the Site where Construction Works are to be undertaken. The Property Access Areas are delineated as follows:

- (a) Property Access Area 1 – [REDACTED];
- (b) Property Access Area 2 – [REDACTED];
- (c) Property Access Area 3 – [REDACTED]; and
- (d) Property Access Area 4 – [REDACTED].

- 1.5 “**Property Access Closure**” means a Door Closure, Driveway Closure, or Sidewalk Closure, as applicable, but excludes:
- (a) a Door Closure or Driveway Closure for which there is a Property Access Closure Agreement in full force and effect between the parties thereto; and
 - (b) any Door Closure, Driveway Closure or Sidewalk Closure that is solely the result of a Utility Company carrying out self-performed work that must be carried out by that Utility Company as part of the Construction Works.
- 1.6 “**Property Access Closure Agreement**” means an executed and delivered agreement between Project Co or a Project Co Party and the owner(s) or tenant(s) of a property located in a Property Access Area in respect of Project Co or such Project Co Party, as part of the Construction Works, providing alternative access or other mitigating measures to such owner(s) or tenant(s) in respect of a Door Closure or a Driveway Closure. For the purposes of this Schedule 36, “Property Access Closure Agreement” includes all amendments, other modifications and supplements to, restatements of and any termination of such agreement.
- 1.7 “**Property Access Closure Analysis Report**” has the meaning given to it in Section 2.1.
- 1.8 “**Property Access Closure Measurement and Verification Plan**” or “**PACMVP**” has the meaning given to in Section 3.2.
- 1.9 “**Property Access Matters Review Meeting**” has the meaning given in Section 3.5.
- 1.10 “**Proposed Property Access Closures**” or “**PPAC**” means the total proposed Property Access Closures for a Property Access Area from the DMCA Effective Date to Project Substantial Completion, which:
- (a) shall include and account for all requirements of the Output Specifications, Construction Technical Requirements or Schedule 35 – Lands, as applicable.
- 1.11 “**Sidewalk Closure**” means the closure of a sidewalk that is permitted in the Output Specifications for more than four cumulative hours within any eight hour duration in any day or for more than eight cumulative hours in any day as a result of the Construction Works, except that a closure of a sidewalk shall not constitute a “Sidewalk Closure” if Project Co provides, at all times during the duration of the closure, a continuous passage for pedestrians by means of an accessible temporary or permanent sidewalk of a width that is not less than the minimum sidewalk width specified in the Output Specifications.
- 2. CONTENT AND FORMAT OF THE PROPERTY ACCESS CLOSURE ANALYSIS REPORT**
- 2.1 Project Co shall, on a monthly basis starting no later than thirty (30) days prior to the first Property Access Closures, monitor its Property Access Closures at each Property Access Area and provide a report of such Property Access Closures to Contracting Authority (each, a “**Property Access Closure Analysis Report**”) pursuant to and in accordance with this Section 2.1. Project Co shall

classify and quantify all Property Access Closures in each Property Access Closure Analysis Report in accordance with this Schedule 36.

- 2.2 The Property Access Closure Analysis Report shall, at a minimum, include the following information:
- (a) a summary of Actual Property Access Closures for each Property Access Area, on a Property Access Area by Property Access Area basis, for the previous calendar month, indicating, for each Door Closure, Driveway Closure or Sidewalk Closure:
 - (i) the location (indicating Property Access Area); and
 - (ii) the time, date, and duration;
 - (b) a projection of anticipated Property Access Closures for each Property Access Area for each month from the then current calendar month until the anticipated Project Substantial Completion Date, along with trends and potential risks associated with the anticipated Property Access Closures;
 - (c) accurate and precise data in support of the items described in Sections 2.2(a) and 2.2(b);
 - (d) for each Property Access Area, a calculation of:
 - (i) the sum of all APAC from the DMCA Effective Date up to and including the previous calendar month; and
 - (ii) the variance between the amount described in Section 2.2(d)(i) and all projected Property Access Closures from the DMCA Effective Date up to and including the previous calendar month (as applicable);
 - (e) for each Property Access Area, a calculation of:
 - (i) the sum of all anticipated APAC from the then current calendar month to the anticipated Project Substantial Completion Date based on the projected Property Access Closures described in Section 2.2(b); and
 - (ii) the variance between the amount described in Section 2.2(e)(i) and all anticipated Property Access Closures from the then current calendar month to the anticipated Project Substantial Completion Date;
 - (f) a mitigation plan if there is a forecasted exceedance of Project Co's projected estimate of the APAC from the PPAC for any Property Access Area for any potential impacts as a result;
 - (g) the progress of, and any planned adjustments to, any corrective action plan that was in place from any previous Property Access Closure Analysis Reports;

- (h) the measurement and verification of Property Access Closures in accordance with the Property Access Closure Measurement and Verification Plan;
 - (i) summary tables from all previous Property Access Closure Analysis Reports delivered by Project Co to Contracting Authority; and
 - (j) a full copy of each Property Access Closure Agreement (in un-redacted form) executed and delivered by the parties thereto in the previous month (including, for clarity, any amendment, other modification or supplement to, or restatement or termination of such agreement).
- 2.3 Subject to Section 2.4, Project Co shall prepare and deliver to Contracting Authority a Property Access Closure Analysis Report in respect of each calendar month.
- 2.4 Each Property Access Closure Analysis Report shall be delivered by Project Co to Contracting Authority in accordance with Schedule 10 – Review Procedure within five (5) Business Days after the end of the calendar month that is the subject of the Property Access Closure Analysis Report. Notwithstanding the foregoing, the final Property Access Closure Analysis Report shall be (a) prepared and delivered by Project Co to Contracting Authority twenty (20) Business Days before the anticipated Project Substantial Completion Date.
- 3. PROCEDURES FOR DETERMINING AND REPORTING PROPERTY ACCESS CLOSURES**
- 3.1 Contracting Authority will assess Project Co of Property Access Closures based on the total Property Access Closures that occur per day on a per Property Access Area basis.
- 3.2 No later than ninety (90) days prior to the first Property Access Closure, Project Co shall submit to Contracting Authority, in accordance with Schedule 10 – Review Procedure, a plan describing how Project Co will track all of its Property Access Closures on a monthly basis for each Property Access Area, how Project Co will evaluate its performance on Property Access Closure progress, and the verification process through which Contracting Authority and the City of Toronto may audit Project Co’s Property Access Closure performance (the “**Property Access Closure Measurement and Verification Plan**” or “**PACMVP**”). The Property Access Closure Measurement and Verification Plan should include the PPAC as of the DMCA Effective Date and any amendments thereafter as per Section 4.2. Project Co shall ensure that all subsequent Property Access Closure Analysis Reports are consistent with the Property Access Closure Measurement and Verification Plan.
- 3.3 The PACMVP shall, at a minimum, include the following information:
- (a) a narrative clearly describing the methodology to be used to minimize the number and duration of Property Access Closures;
 - (b) clearly identified objectives and proposed closures;
 - (c) identification of the communication methods, protocols and timing by which notification to property owners of Property Access Closures will be made;

- (d) an anticipated schedule of Property Access Closures organized by Property Access Area;
 - (e) the methods by which Project Co will measure Property Access Closure duration;
 - (f) the methods by which Project Co will compare planned and actual performance in meeting proposed Property Access Closures; and
 - (g) the method by which Property Access Closure records will be recorded, preserved and made available to Contracting Authority for the purposes of verification.
- 3.4 Project Co shall not initiate or proceed with initiation or implementation of Property Access Closures prior to submission and review of the PACMVP by Contracting Authority in accordance with Schedule 10 – Review Procedure.
- 3.5 No later than five (5) Business Days following the submission of each Property Access Closure Analysis Report (or as otherwise agreed to between the Parties), Project Co and Contracting Authority shall convene a review meeting (the “**Property Access Matters Review Meeting**”) to be attended by the Project Co Representative and other relevant Project Co representatives (including the Communications and Public Engagement Lead described in Schedule 9 – Key Individuals) and the Contracting Authority Representative. At the Property Access Matters Review Meeting, Project Co shall present the Property Access Closure Analysis Report to Contracting Authority, and Contracting Authority and Project Co shall discuss the Property Access Closure Analysis Report and the APAC for the preceding period.
- 3.6 Project Co shall assist the Contracting Authority Representative by providing information with respect to Property Access Closures and access to the Property Access Closure records, and by other means as may reasonably be required to confirm the information in the Property Access Closure Analysis Report.
- 3.7 For the purpose of this Schedule 36, Property Access Closures shall be measured on a per day basis.
- 3.8 For clarity, the provisions of this Schedule 36 shall apply to all Property Access Closures, notwithstanding the occurrence of a Municipal Lane Closure that is permitted or contemplated in the Output Specifications, Construction Technical Requirements, Schedule 35 – Lands or Schedule 7 – Mobility Matters, as applicable, and notwithstanding that a Municipal Lane Closure may be proximate or adjacent to a Property Access Closure.
- 4. PROCESS FOR AMENDING THE PROPOSED PROPERTY ACCESS CLOSURE**
- 4.1 In all cases, adjustments or corrections to the PPAC must be consistent with the principles outlined in the PACMVP.
- 4.2 Any amendment to the PACMVP shall include a detailed analysis of the impacts to area businesses and residents, including an analysis of revised Property Access Closure requirements. The amended PACMVP shall include a recommendation regarding amendments to the PPAC. Both Contracting Authority and Project Co shall agree, acting reasonably, to the amended PPAC no later than twenty (20) Business Days following receipt of such analysis.

5. APPLICATION

- 5.1 The Property Access Closure requirements of this Schedule 36 will no longer be in effect once Project Substantial Completion has been achieved.

6. PROPERTY ACCESS CLOSURE AGREEMENTS

- 6.1 Without limitation or prejudice to any of Contracting Authority's rights under this Agreement whatsoever (including, for greater certainty, under Section 41.1 (*Project Co Indemnities to Contracting Authority*) of this Agreement) and subject to Section 6.2, Project Co may, at its risk, cost and expense, enter into or cause a Project Co Party to enter into Property Access Closure Agreements with owners and tenants of properties within Property Access Areas who are affected by Door Closures or Driveway Closures.
- 6.2 Project Co shall ensure that no Property Access Closure Agreement contains confidentiality provisions that would inhibit or prevent such agreement's full and un-redacted disclosure to Contracting Authority pursuant to Section 2.2(j).

SCHEDULE 37

INTELLECTUAL PROPERTY

1. INTERPRETATION

1.1 Definitions: In this Schedule 37, unless the context indicates a contrary intention, terms which are defined in this Agreement (and not otherwise defined in this Schedule 37) shall have meanings given to them in this Agreement and the following terms shall have the following meanings:

- (a) “**Assigned Intellectual Property**” has the meaning given in Section 2.5(a).
- (b) “**Assignee**” has the meaning given in Section 2.5(a).
- (c) “**Assignor**” has the meaning given in Section 2.5(a).
- (d) “**Contracting Authority Intellectual Property**” means:
 - (i) Intellectual Property that is Owned, created, developed or acquired by Contracting Authority or any Contracting Authority Personnel:
 - (A) prior to the Project Term;
 - (B) during the Project Term but outside the Project Scope; or
 - (C) during the Project Term and within the Project Scope, but which is not Project Co Intellectual Property, Contracting Authority Jointly Developed Materials, Subcontractor Intellectual Property or Third Party Intellectual Property;
 - (ii) the Developed Intellectual Property, excluding any Developed Intellectual Property that is specified in a Variation or by separate agreement of Contracting Authority and Project Co to be Owned by Project Co;
 - (iii) any other Project Data that is specified in a Variation or by separate agreement of Contracting Authority and Project Co to be Owned by Contracting Authority; and
 - (iv) subject to Section 36.4 (*Jointly Developed Materials*) of this Agreement, all Modifications to any of the foregoing, whether made by or on behalf of Project Co, Contracting Authority or any Subcontractor alone, jointly with each other or with any other person,

and which is used by Contracting Authority, or required to be used by Project Co or a Subcontractor, in the performance of their respective obligations in respect of the Project or under this Agreement.
- (e) “**Contracting Authority Personnel**” means persons acting on behalf of Contracting Authority or employed, engaged or retained by Contracting Authority in connection with the performance of Contracting Authority’s obligations in connection with the Project, including Contracting Authority’s consultants, contractors and subcontractors and the employees, officers, directors,

volunteers and agents of Contracting Authority and its direct and indirect consultants, contractors and subcontractors, excluding Project Co and any Subcontractor and their respective Personnel.

- (f) **“Contracting Authority Supplied Third Party Intellectual Property”** means Intellectual Property, Owned by a person other than Contracting Authority, Project Co, a Subcontractor or any of their respective Personnel that is delivered, supplied or otherwise provided by Contracting Authority to Project Co under this Agreement for the purpose of performing the Works and the Project, including any Background Information.
- (g) **“Contracting Authority Trademarks”** means the Trademarks Owned by Contracting Authority.
- (h) **“Copyleft Licence”** means any licence that requires, as a condition of use, modification and/or distribution of Copyleft Materials, that such Copyleft Materials, or other software or content incorporated into, derived from, used, or distributed with such Copyleft Materials: (i) in the case of software, be made available or distributed in a form other than binary (for example, source code form), (ii) be licenced for the purpose of preparing derivative works, (iii) be licenced under terms that allow the products or portions thereof or interfaces therefor to be reverse engineered, reverse assembled or disassembled (other than by operation of law), or (iv) be redistributable at no licence fee. Copyleft licences include the GNU General Public Licence, the GNU Lesser General Public Licence, the Mozilla Public Licence, the Common Development and Distribution Licence, the Eclipse Public Licence, and all Creative Commons “sharealike” licences.
- (i) **“Copyleft Materials”** means any software or content subject to a Copyleft Licence.
- (j) **“Deliverable”** means any item required to be supplied or delivered by Project Co to Contracting Authority within the Project Scope, including Equipment, Project Software, Project Data and all other deliverable requirements specified in Schedule 10 – Review Procedure.
- (k) **“Delivered”** means, with respect to any Intellectual Property, that such Intellectual Property is:
- (i) a Deliverable;
 - (ii) incorporated, embedded or otherwise included in any Deliverable, the Project Co Infrastructure or any part of the work delivered as part of the Works;
 - (iii) necessary for the undertaking, completion and performance of the Works or any Equivalent Activity; or
 - (iv) necessary for the Use by Contracting Authority or a subsequent Licensee of any Deliverable, the Project Co Infrastructure, or any part of the work delivered as part of the Works or any Intellectual Property in accordance with the rights granted to Contracting Authority hereunder.
- (l) **“Developed Intellectual Property”** means Intellectual Property that is:
- (i) created or developed, or Ownership of which is acquired, by Project Co, any Subcontractor or any Project Co Personnel, or Subcontractor Personnel, whether alone or together with each other or any other person, during the Project Term and within the Project Scope;

- (ii) created, developed or Ownership of which is acquired for the purposes of the Project, the Works or the Project Co Infrastructure; and
- (iii) created or designed based on functional, design and performance specifications provided by Contracting Authority, or Contracting Authority Personnel, or Contracting Authority Parties,

and, for greater certainty, Developed Intellectual Property does not include any Project Co Intellectual Property used to develop or create the Developed Intellectual Property.

- (m) **“Embedded Software”** means the Project Co Embedded Software, Subcontractor Embedded Software and Third Party Embedded Software.
- (n) **“Equipment”** means all electrical and mechanical equipment, machinery, computer hardware and systems comprising or used in the Project Co Infrastructure.
- (o) **“Equivalent Activity”** means any activity, undertaking or operation relating to the Project Co Infrastructure done by Contracting Authority, any permitted assignee of Contracting Authority pursuant to Section 44.2 (*Contracting Authority Assignment*) of this Agreement and/or any other person acting on behalf of or under the authority of Contracting Authority, which activity, undertaking or operation if done by Project Co would be within the Project Scope, including the Works.
- (p) **“Escrow Agent”** means a recognized provider of escrow services selected by Project Co and approved by Contracting Authority and having a location within the Province of Ontario with whom the Escrow Materials will be deposited in accordance with Section 3.11.
- (q) **“Escrow Agreement”** means an escrow agreement that meets the requirements of Section 3.11 and pursuant to which Escrow Materials are held by the Escrow Agent and Contracting Authority are designated as a beneficiary party.
- (r) **“Escrow Materials”** means:
 - (i) with respect to Software, the Source Materials for that Software;
 - (ii) with respect to Embedded Software, the Source Materials for that Embedded Software; and
 - (iii) with respect to any Equipment, the Source Materials for that Equipment.
- (s) **“Escrow Provider”** means:
 - (i) Project Co in respect of the Project Co Licenced Software;
 - (ii) the applicable Subcontractor in respect of any Subcontractor Licenced Software;
 - (iii) the applicable third party licensor in respect of any Third Party Licenced Software;
 - (iv) Project Co in respect of the Project Co Embedded Software;

- (v) the applicable Subcontractor in respect of any Subcontractor Embedded Software;
 - (vi) the applicable third party licensor in respect of any Third Party Embedded Software; and
 - (vii) in respect of any Equipment, whichever of Project Co and one or more Subcontractors is the supplier of such Equipment.
- (t) **“Expanded Purposes”** means (i) the Permitted Purposes; and (ii) for any other purpose of Metrolinx.
- (u) **“Licence”** means a non-exclusive licence or sub-licence, as applicable, granting the rights and subject to the restrictions and limitations set out in this Schedule 37.
- (v) **“Licenced Intellectual Property”** means, with respect to any Licence, the Intellectual Property that is within the scope of that Licence as provided for in this Schedule 37.
- (w) **“Licensee”** means, in respect of any Licence granted or required to be granted by Project Co pursuant to this Schedule 37, Contracting Authority or any permitted assignee under Section 44.2 (*Contracting Authority Assignment*) of this Agreement that is the holder of that Licence at the relevant time.
- (x) **“Licensor”** means Project Co in respect of the Project Co Licenced Software, the applicable Subcontractor in respect of any Subcontractor Licenced Software, or the applicable third party licensor in respect of any Third Party Licenced Software.
- (y) **“Limited Modification Rights”** in respect of a Software or an Embedded Software, means the right to configure, customize or modify such Software or Embedded Software, without access to the Source Materials thereto, in order to have complete and unrestricted access to, or otherwise Use, all the functionalities within such Software or Embedded Software that is licenced to Contracting Authority under this Schedule 37.
- (z) **“Modification”** means all corrections, modifications, changes, enhancements, improvements, supplements, customizations or derivative works, and includes the Limited Modification Rights, and **“Modify”** means to make a Modification.
- (aa) **“Open Source Licence”** means any licence meeting the Open Source Definition (as promulgated by the Open Source Initiative) or the Free Software Definition (as promulgated by the Free Software Foundation), or any substantially similar licence, including any licence approved by the Open Source Initiative, or any Creative Commons Licence. For the avoidance of doubt, Open Source Licences include Copyleft Licences.
- (bb) **“Open Source Materials”** means any software or content subject to an Open Source Licence.
- (cc) **“OTS Software”** means Software that is commonly considered ‘off the shelf’, meaning Software that is (i) made generally available to the public on a commercial basis through regular distribution channels or pre-installed as a standard part of hardware on a non-exclusive basis, (ii) that can be obtained in the ordinary course of business under standard terms and conditions, (iii) that continues to be generally available for license, and (iv) which has not been modified or customized by Project

Co or any other person for the Project. For clarity, Software provided on a Software-as-a-Service basis (SaaS) that satisfies the above criteria (i) through (iv) may constitute OTS Software, but in no instance shall Open Source Materials be deemed OTS Software.

- (dd) **“Ownership”** means, in respect of any Intellectual Property, ownership of all right, title and interest in and to that Intellectual Property and **“Own”**, **“Owned”** and **“Owner”** shall have corresponding meanings.
- (ee) **“Permitted Purposes”** means:
- (i) during the Project Term, performance of Contracting Authority’s obligations and the exercise of Contracting Authority’s rights under this Agreement and any other agreements relating to the Project;
 - (ii) during the Project Term, Contracting Authority’s participation in the Works and any activity, undertaking or operation within the Project Scope, including its participation in the design, construction, operation, maintenance, repair, correction and renovation of the Project Co Infrastructure;
 - (iii) after the Project Term, any Equivalent Activity;
 - (iv) both during and after the Project Term, the use, integration and interoperation of the Project Co Infrastructure with:
 - (A) any existing or other transit projects undertaken by or on behalf of Contracting Authority or interfacing with Contracting Authority projects; and
 - (B) any existing or after-acquired systems, software, technology or equipment related to the use, operation, maintenance, repair, correction, and renovation of the Project Co Infrastructure,but, for clarity, not any system that is not the Project Co Infrastructure;
 - (v) both during and after the Project Term, the integration and interoperation of the Project Co Infrastructure with any existing or other transit projects undertaken by or on behalf of Contracting Authority or interfacing with Contracting Authority projects; and
 - (vi) both during and after the Project Term, and so long as the Licensee is Contracting Authority or other Governmental Authority:
 - (A) the provision of governmental services and the conduct of operations and activities provided in connection or otherwise associated with the Project Co Infrastructure and the Lands by Contracting Authority or any Governmental Authority or any Emergency Service Provider; and
 - (B) the development of transportation standards, policies and procedures.

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- (ff) **“Personnel”** means (i) in reference to Project Co, the Project Co Personnel, (ii) in reference to Contracting Authority, Contracting Authority Personnel, and (iii) in reference to any Subcontractor, such Subcontractor’s Personnel.
- (gg) **“Project Co Embedded Software”** means computer software that is Owned by Project Co and that:
- (i) is included, embedded or otherwise incorporated in Equipment;
 - (ii) is not licenced separately and apart from that Equipment; and
 - (iii) is not subject to a separate warranty, and is not subject to maintenance and repair separately from, that Equipment.
- (hh) **“Project Co Infrastructure Architecture and Look and Feel”** means any work product, including any Intellectual Property therein, Owned, created, developed, acquired or licenced whether by Project Co or any Subcontractor in respect of any aspect of the architecture or look and feel of the Works, including all designs, design details, drawings, specifications, prototypes, documentation, works and all instruments of architectural service that relate to the design identity, look and feel of any aspect of the architectural and landscape design whether in respect of the tunnel, landscape and urban design elements, fit and finish, or any other aspect of the Works.
- (ii) **“Project Co Intellectual Property”** means:
- (i) Intellectual Property that is Owned, created, developed or acquired by Project Co or any Project Co Personnel:
 - (A) prior to the Project Term; or
 - (B) during the Project Term but outside the Project Scope; or
 - (C) during the Project Term and within the Project Scope, but which is not Contracting Authority Intellectual Property, Contracting Authority Supplied Third Party Intellectual Property, Subcontractor Intellectual Property, or Third Party Intellectual Property;
 - (ii) the Project Co Licenced Software;
 - (iii) the Project Co Embedded Software;
 - (iv) Project Co’s Technical Information;
 - (v) the Project Intellectual Property;
 - (vi) the Project Data, excluding any other Project Data that are specified in a Variation or by separate agreement of Contracting Authority and Project Co to be Owned by Contracting Authority;

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- (vii) any Developed Intellectual Property that is specified in a Variation or by separate agreement of Contracting Authority and Project Co to be Owned by Project Co; and
- (viii) Subject to Section 36.4 (*Jointly Developed Materials*) of this Agreement, all Modifications to any of the foregoing, whether made by or on behalf of Project Co, Contracting Authority, Contracting Authority Parties, or any Subcontractor alone, jointly with each other or with any other person.
- (jj) **“Project Co Licenced Software”** means any computer software that is Owned by Project Co, is not Project Co Embedded Software and is delivered, supplied or otherwise provided by Project Co under this Agreement as or as part of any Deliverable.
- (kk) **“Project Co Personnel”** means persons acting on behalf of Project Co or employed, engaged or retained by Project Co in connection with the performance of Project Co’s obligations under this Agreement, including Project Co’s consultants, contractors and Subcontractors and the employees, officers, directors, volunteers and agents of Project Co and its direct and indirect consultants, contractors and Subcontractors.
- (ll) **“Project Data”** means:
- (i) all Design Data; and
 - (ii) any other materials, documents and/or data prepared by or on behalf of Project Co or Subcontractors in relation to the Works, the Project Co Infrastructure or this Agreement, excluding the Jointly Developed Materials, the Background Information and any Developed Intellectual Property.
- (mm) **“Project Intellectual Property”** means Intellectual Property that is created or developed, or Ownership of which is acquired, by Project Co, any Subcontractor or any Project Co Personnel or Subcontractor Personnel, whether alone or together with each other or any other person, during the Project Term and within the Project Scope, and which is created, developed or acquired for the purposes of the Project or the Project Co Infrastructure, but excluding Project Software, Embedded Software, Project Data, Developed Intellectual Property and Technical Information.
- (nn) **“Project Scope”** means the scope of the Project, including the performance of all Works, as defined by the terms of this Agreement.
- (oo) **“Project Software”** or **“Software”** means any Project Co Licenced Software, Subcontractor Licenced Software and Third Party Licenced Software, but does not include Embedded Software.
- (pp) **“Software Maintenance and Support”** means, with respect to any Software, the software maintenance and support services for that Software that are provided separately under a software maintenance and support agreement with the licensor of that Software.
- (qq) **“Software Tools”** means, with respect to any Software or Embedded Software, any routines, compilers, bootstraps, analyzers, monitors, toolkits and other software tools used by the licensor of such Software or Embedded Software in connection with the programming, compiling,

maintenance, debugging, analysis, configuration, customization, verification or monitoring of such Software or Embedded Software.

(rr) “**Source Materials**” means:

- (i) a complete source code version of the Software or Embedded Software, in machine-readable form which, when compiled, will produce the executable version of the Software or Embedded Software and in human-readable form with annotations in the English language or such other language as is acceptable to Contracting Authority, acting reasonably, in both cases on a storage medium suitable for long term archival storage;
- (ii) a complete copy, in English or such other language as is acceptable to Contracting Authority, acting reasonably, in both electronic and paper form, suitable for long term archival storage, and appropriately labelled to describe the contents thereof, of all applicable documentation and other explanatory materials, including programmer’s notes, technical or otherwise, for the Software or Embedded Software (other than to the extent that the Software or Embedded Software consists of OTS Software) as may be required for a person other than the licensor of the Software or Embedded Software, using a competent computer programmer possessing ordinary skills and experience, to further develop, maintain and operate the Software or Embedded Software without further recourse to the licensor, which will include, to the extent such items have been or are created for such Software or Embedded Software, general flow charts, input and output layouts, field descriptions, volumes and sort sequence, data dictionary, file layouts, processing requirements and calculation formulae, circuit diagrams and the details of all algorithms and which shall be deemed to include those materials, as revised from time to time;
- (iii) all Software Tools for such Software or Embedded Software, to the extent not previously delivered with the Software or Embedded Software; and
- (iv) with respect to any Equipment, a complete copy, in English or another language acceptable to Contracting Authority, acting reasonably, in both electronic and paper form, suitable for long term archival storage, and appropriately labelled to describe the contents thereof, of all applicable documentation and other explanatory materials for the Equipment as may be required for a Person skilled in the applicable technology other than the supplier of the Equipment to specify the performance of the Equipment or replacement parts thereof and to maintain and operate the Equipment without further recourse to the supplier, which will include, to the extent the following items have been or are created or the Equipment and are required to so specify performance or for such maintenance and operation, pseudocode descriptions, flowcharts and state diagrams,

provided that, with respect to (i) and (ii) above, to the extent that the Software or Embedded Software consists of OTS Software, only a complete list of such OTS Software, including the version number and the name of the licensor or the Software as a Service provider shall be required as the Source Materials for such OTS Software.

(ss) “**Subcontractor Embedded Software**” means computer software that is Owned by a Subcontractor and that:

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- (i) is included, embedded or otherwise incorporated in Equipment;
 - (ii) is not licenced separately and apart from that Equipment; and
 - (iii) is not subject to a separate warranty, and is not subject to maintenance and repair separately from, that Equipment.
- (tt) **“Subcontractor Intellectual Property”** means, with respect to each Subcontractor:
- (i) Intellectual Property that is Owned, created, developed or acquired by that Subcontractor:
 - (A) prior to the Project Term;
 - (B) during the Project Term but outside the Project Scope; or
 - (C) during the Project Term and within the Project Scope, but which is not Contracting Authority Intellectual Property, Contracting Authority Supplied Third Party Intellectual Property, Project Co Intellectual Property, or Third Party Intellectual Property;
 - (ii) the Subcontractor Licenced Software;
 - (iii) the Subcontractor Embedded Software;
 - (iv) the Subcontractor’s Technical Information; and
 - (v) subject to Section 36.4 (*Jointly Developed Materials*) of this Agreement, all Modifications to any of the foregoing, whether made by or on behalf of Project Co, Contracting Authority, Contracting Authority Parties, or any Subcontractor alone, jointly with each other or with any other person.
- (uu) **“Subcontractor Licenced Software”** means any computer software that is Owned by a Subcontractor, is not Subcontractor Embedded Software and is delivered, supplied or otherwise provided by the Subcontractor under this Agreement, the Subcontract as or as part of any Deliverable.
- (vv) **“Subcontractor Personnel”** means, with respect to any Subcontractor, persons acting on behalf of that Subcontractor or employed, engaged or retained by that Subcontractor in connection with the performance of that Subcontractor’s obligations under this Agreement or the Subcontract, including the Subcontractor’s consultants, contractors and subcontractors and the employees, officers, directors, volunteers and agents of the Subcontractor and its direct and indirect consultants, contractors and subcontractors.
- (ww) **“Technical Information”** means technical information relating to any Equipment supplied or Intellectual Property licenced under this Agreement, including software documentation, user and operating manuals, maintenance and repair manuals, parts lists and other materials relevant to the use, operation, maintenance or repair of such Equipment or Intellectual Property.

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- (xx) **“Third Party Embedded Software”** means computer software that is not Owned by Contracting Authority, Project Co or a Subcontractor and that:
- (i) is included, embedded or otherwise incorporated in Equipment;
 - (ii) is not licenced separately and apart from that Equipment; and
 - (iii) is not subject to a separate warranty, and is not subject to maintenance and repair separately from, that Equipment.
- (yy) **“Third Party Intellectual Property”** means Intellectual Property Owned by a person other than Contracting Authority, Project Co, a Subcontractor or any of their respective Personnel that is delivered, supplied or otherwise provided by Project Co or a Subcontractor under this Agreement as or as part of any Deliverable, including Third Party Licenced Software and Third Party Embedded Software.
- (zz) **“Third Party Licenced Software”** means any computer software that is not Owned by Contracting Authority, Project Co or a Subcontractor, is not Third Party Embedded Software and is delivered, supplied or otherwise provided by Project Co or a Subcontractor under this Agreement as or as part of any Deliverable.
- (aaa) **“Trademark Licence Agreement”** means the trademark licence agreement entered into between Project Co and Contracting Authority providing for the licence by Contracting Authority of Contracting Authority Trademarks to Project Co, being substantially in the form of Appendix A attached to this Schedule 37.
- (bbb) **“Trust Rights”** has the meaning given in Section 2.5(b).
- (ccc) **“Use”** means, with respect to any Intellectual Property, to do any and all things with that Intellectual Property that the Owner of that Intellectual Property could do, including to load, transmit, access, execute, use, disclose, store, display, copy, adapt, translate, incorporate into other materials, practice, make and have made, but specifically excluding the right to Modify and subject to any limitations in the provision of this Schedule 37 pursuant to which a Licence is granted.

2. OWNERSHIP

2.1 Project Co Intellectual Property: Project Co shall be and remain the sole and exclusive Owner of the Project Co Intellectual Property. For certainty, nothing in this Schedule 37 shall transfer to Project Co any Ownership of, or grant to Project Co any right in respect of, Contracting Authority Intellectual Property used in the creation or development of or that is embodied, incorporated, embedded, otherwise included or illustrated in any Project Co Intellectual Property, except for the Licence granted under Section 3.1.

2.2 Contracting Authority Intellectual Property: Contracting Authority shall be and remain the sole and exclusive Owner of Contracting Authority Intellectual Property. For certainty, nothing in this Schedule 37 shall transfer to Contracting Authority any Ownership of, or grant to Contracting Authority any right in respect of, the Project Co Intellectual Property used in the creation or

development of or that is embodied, incorporated, embedded, otherwise included or illustrated in any Contracting Authority Intellectual Property, except for the Licence granted under Section 3.2.

For greater clarity and without limiting Contracting Authority's Ownership rights, Project Co acknowledges and agrees that Contracting Authority shall be entitled to Use and Modify, and in each case shall be entitled to license other Persons to Use and/or Modify, the Developed Intellectual Property (other than any Developed Intellectual Property that is specified in a Variation or by separate agreement of Contracting Authority and Project Co to be Owned by Project Co) in any manner and for any purpose whatsoever, including in connection with the Expanded Purposes.

2.3 Subcontractor Intellectual Property: As between Contracting Authority and Project Co, but subject to any agreement to the contrary between Project Co and any Subcontractor, each Subcontractor shall be and remain the sole and exclusive Owner of its Subcontractor Intellectual Property.

2.4 Contracting Authority Supplied Third Party Intellectual Property: As between Contracting Authority and Project Co, but subject to any agreement to the contrary between Contracting Authority and the Owner of any Contracting Authority Supplied Third Party Intellectual Property, the Owner of any Contracting Authority Supplied Third Party Intellectual Property shall be and remain the sole and exclusive Owner of any Contracting Authority Supplied Third Party Intellectual Property. For certainty, nothing in this Schedule 37 shall transfer to Project Co or any Subcontractor any Ownership of, or grant to Project Co or any Subcontractor any right in respect of, Contracting Authority Supplied Third Party Intellectual Property used in the creation or development of or that is embodied, incorporated, embedded, otherwise included or illustrated in any Project Co Intellectual Property or any Contracting Authority Intellectual Property or any Subcontractor Intellectual Property, except for the Licence granted under Section 3.1.

2.5 Assignments

- (a) If, notwithstanding Section 2.1, 2.2, 2.3, or 2.4 or Section 36.4 (*Jointly Developed Materials*) of this Agreement, either party (the “**Assignor**”) retains, acquires or owns any right, title or interest in or to any Intellectual Property that is to be Owned by another person (the “**Assignee**”) pursuant to Section 2.1, 2.2, 2.3, or 2.4 or Section 36.4 (*Jointly Developed Materials*) of this Agreement as applicable, (the “**Assigned Intellectual Property**”), then the Assignor will assign, and for no further consideration and without any further act or formality does hereby irrevocably assign, to the Assignee all of the Assignor's worldwide right, title and interest in and to the Assigned Intellectual Property free and clear of all liens, claims, charges or encumbrances, but subject to any Licences granted or required to be granted by the Assignee to the Assignor pursuant to this Schedule 37.
- (b) If and to the extent that the assignment pursuant to Section 2.5(a) is not effective on the date hereof or on any future date, either generally or pursuant to the laws of any jurisdiction, then any and all right, title and interest in and to the Assigned Intellectual Property that is retained, acquired or owned by the Assignor (collectively, the “**Trust Rights**”), will be held by the Assignor in trust for the exclusive benefit and use of the Assignee, except for any Licences granted or required to be granted by the Assignee to the Assignor pursuant to this Schedule 37, and the Assignor will execute and deliver to the Assignee such transfers, assignments, documents and instruments as may be necessary to transfer and assign to the Assignee the Trust Rights, free and clear of all liens, claims,

charges or encumbrances, promptly upon receipt thereof from the Assignee, and will otherwise cooperate with the Assignee to give effect to, record and register the Assignee's ownership of the Trust Rights.

- (c) Project Co will include in each Subcontract provisions equivalent to Sections 2.5(a) or 2.5(b) with respect to: (i) Contracting Authority Intellectual Property, Jointly Developed Materials, Developed Intellectual Property, Project Data and any Modifications thereto, and shall enforce those provisions against each Subcontractor to the extent necessary to ensure that Contracting Authority remains at all times the sole and exclusive Owner of all such property; and (ii) Contracting Authority Supplied Third Party Intellectual Property and any Modifications thereto, and shall enforce those provisions against each Subcontractor to the extent necessary to ensure that the Licensor remains at all times the sole and exclusive Owner of all such property.

2.6 Personnel: Contracting Authority and Project Co shall, and Project Co shall include in each Subcontract an obligation of each Subcontractor to, ensure that their respective Personnel shall:

- (a) by duly executed written agreement or by operation of law, irrevocably and unconditionally sell, assign and transfer to that party all right, title and interest that its Personnel may have in or to any and all Intellectual Property referred to in this Schedule 37 and all Modifications thereto, such that agreements as to Ownership of Intellectual Property pursuant to Sections 2.1, 2.2, 2.3 or 2.4, and Section 36.4 (*Jointly Developed Materials*) of this Agreement and the assignment by that party pursuant to Section 2.5 include all right, title and interest of its Personnel; and
- (b) by duly executed written agreement, irrevocably waive all non-transferable rights, including moral rights, that they have or may have in any Intellectual Property assigned by such Personnel pursuant to Section 2.6(a) in favour of the assignee and its successors, assigns and licensees.

3. LICENCES

3.1 Licence by Contracting Authority to Project Co

- (a) Subject to Section 3.1(d), Contracting Authority hereby grants to Project Co:
- (i) a royalty free, fully paid-up, limited Licence to Use and Modify Contracting Authority Intellectual Property for the sole purpose of and only to the extent necessary for the performance by Project Co of the Project Scope and its obligations under this Agreement; and
- (ii) a limited Licence to Use Contracting Authority Supplied Third Party Intellectual Property for the sole purpose of and only to the extent necessary for the performance by Project Co of the Project Scope and its obligations under this Agreement.
- (b) Subject to Section 3.1(d), Project Co may sublicense its rights under the Licence granted in Section 3.1(a) to any Subcontractor for the sole purpose of and only to the extent necessary for the performance by that Subcontractor of its obligations under its Subcontract.
- (c) Except as provided in Section 3.1(b), Project Co may not transfer, assign, sublicense or otherwise dispose of the Licence granted under Section 3.1(a) without the prior written consent of Contracting

Authority, which consent may be given or refused by Contracting Authority in its absolute and unfettered discretion.

- (d) The Licence of any Contracting Authority Supplied Third Party Intellectual Property pursuant to Section 3.1(a) shall be subject to the terms and conditions of the licence agreement between Contracting Authority and the licensor of Contracting Authority Supplied Third Party Intellectual Property. Contracting Authority will provide to Project Co a copy of any such third party licence agreement (which may be redacted as to financial and other terms not relevant to use of Contracting Authority Supplied Third Party Intellectual Property by Project Co and Subcontractors), or where prohibited from doing so by obligations of confidentiality to the third party licensor, a summary of the obligations, limitations and restrictions applicable to use of Contracting Authority Supplied Third Party Intellectual Property by Project Co and Subcontractors. Project Co will comply, and will require any Subcontractor to comply, with the terms and conditions of such third party licence agreement (as set out in the copy of the third party licence agreement or summary thereof provided by Contracting Authority to Project Co) to the extent applicable to Project Co and any Subcontractor in the performance of their respective obligations under this Agreement and any Subcontract. If requested by Contracting Authority, Project Co will, and will require any Subcontractor to, execute and deliver to Contracting Authority and the third party licensor an agreement that includes reasonable terms for the protection of the confidentiality of Contracting Authority Supplied Third Party Intellectual Property and an acknowledgement of the third party licensor's ownership thereof, unless Project Co disputes such ownership.
- (e) The Licence granted to Project Co under: Section 3.1(a)(i), and any sublicense granted by Project Co to a Subcontractor thereunder, will terminate upon the expiry or termination of Project Co's obligations under this Agreement; Section 3.1(a)(ii) and any sublicense granted by Project Co to a Subcontractor thereunder, will terminate upon the earlier of: (A) expiry or termination of Project Co's other obligations under this Agreement; and (B) the termination of the contract in respect of the applicable Contracting Authority Supplied Third Party Intellectual Property or Contracting Authority's licence or sublicense rights thereunder.
- (f) The Licences granted to Project Co under Section 3 do not include licences to any Contracting Authority Trademarks. The use of any Contracting Authority Trademarks shall be governed by the terms of the Trademark Licence Agreement.

3.2 Licence by Project Co to Contracting Authority

- (a) Project Co hereby grants to Contracting Authority a Licence to:
- (i) Use and Modify the Project Co Intellectual Property (excluding Project Co Licenced Software and Project Co Embedded Software) that is Delivered and the Subcontractor Intellectual Property (excluding the Subcontractor Licenced Software and the Subcontractor Embedded Software) that is Delivered;
 - (ii) Use, and have Limited Modification Rights to, the Project Co Licenced Software that is Delivered and the Subcontractor Licenced Software that is Delivered and only in respect of the modules that are Delivered; and

- (iii) Use, and have Limited Modification Rights to, the Project Co Embedded Software and the Subcontractor Embedded Software as part of and for the Use of the Equipment in which such software is included, embedded or otherwise incorporated,

for the Permitted Purposes. Subject to Section 3.11, the Licences granted pursuant to this Section 3.2 in respect of Project Software and Embedded Software apply to only object code versions thereof and not the source code materials for any such Project Software or Embedded Software. For greater clarity, to the extent that any Licensed Intellectual Property is subject to a License granted in this Section 3.2(a) and such Licensed Intellectual Property is also included within the scope of any Escrow Materials, the License granted herein shall take precedence and Contracting Authority shall have all such rights to Use, Modify, and shall have such Limited Modification Rights to same, as are contemplated in such License.

- (b) In addition and notwithstanding any other provision of this Schedule 37, with respect to such components of Project Co Infrastructure Architecture and Look and Feel that consist of the architecture of the tunnel, landscape and urban design elements, fit and finish, or any other aspect of the Project Co Infrastructure, and/or look and feel of the Project Co Infrastructure, that are not owned by Contracting Authority pursuant to this Schedule 37, Project Co hereby grants to Contracting Authority a Licence to Use and Modify any Project Co Infrastructure Architecture and Look and Feel that is not owned by Contracting Authority pursuant to this Schedule 37, for the Expanded Purposes.
- (c) The Licences granted pursuant to this Section 3.2 will be irrevocable (except as provided in Section 3.2(d)), perpetual, royalty free, fully paid-up (upon payment of the fees specified in this Agreement for the Deliverable which consists of or incorporates the Licenced Intellectual Property in respect of which the Licence is granted), and permit Use by Contracting Authority on an enterprise basis without restriction or limitation as to users (whether by number, identity or otherwise), location, capacity, authorized system or otherwise, as part of or in connection with the Project Co Infrastructure, or in the case of the Project Co Infrastructure Architecture and Look and Feel, in connection with the Expanded Purposes.
- (d) The Licences granted pursuant to this Section 3.2 may be transferred, assigned, sublicensed and otherwise disposed of by Contracting Authority subject to and in accordance with Section 44.2 (*Contracting Authority Assignment*) of this Agreement, provided that the Licence in respect of Project Co Embedded Software and Subcontractor Embedded Software may only be transferred together with the Equipment in which such software is included, embedded or otherwise incorporated.
- (e) The Licence granted pursuant to this Section 3.2 may not be terminated except in the event of the failure of the Licensee to pay the applicable fees as provided for in this Agreement for the specific Deliverable which consists of or incorporates the Licenced Intellectual Property, and such failure is not remedied by the Licensee within sixty (60) days after notice by Project Co to the Licensee demanding that such failure be remedied, provided that any such termination shall apply only to the Licenced Intellectual Property to which such failure applied and not to any other Licenced Intellectual Property. Except as specifically provided in this Section 3.2(d), Project Co shall not be entitled to terminate or rescind the Licence granted under this Section 3.2, and if the Licensee commits any other breach of or default under this Schedule 37 or this Agreement, whether material or not and whether that breach or default is or is not capable of being remedied, Project Co's rights

and remedies in respect of that breach or default shall be limited to such rights and remedies other than termination or rescission of the Licence granted under this Section 3.2 as may exist at law or in equity, it being acknowledged by Project Co that except as provided in this Section 3.2(d) the Licence granted under this Section 3.2 is perpetual and irrevocable. No breach of or default under this Schedule 37 by Contracting Authority shall constitute a repudiation of the Licence granted under this Section 3.2 by Contracting Authority.

- (f) The Licensee may provide and disclose the Licenced Intellectual Property to any employee, contractor, subcontractor, consultant, service provider, outsourcer or other person retained by the Licensee in connection with the Permitted Purposes, except in respect of the Project Co Infrastructure Architecture and Look and Feel in connection with the Expanded Purposes, and any such employee, contractor, subcontractor, service provider, outsourcer or other person may exercise all rights to Use and Modify the Licenced Intellectual Property as may be granted by the Licensee to such person within the scope of the Licence granted by Project Co to the Licensee pursuant to this Schedule 37, provided that the Licensee shall be responsible for anything done or failed to be done by any employee, contractor, subcontractor, service provider, outsourcer or other person to whom the Licensee provides and discloses the Licenced Intellectual Property, including a breach by any such person of Contracting Authority's obligations of confidentiality in respect of any Confidential Information that is or is part of Licenced Intellectual Property.
- (g) The Licensee may Use Project Software that is licenced pursuant to this Section 3.2 in multiple environments or instances, including for training, development, testing, staging, and disaster recovery and in a live, production or operating environment.
- (h) The Licensee may make copies of the Licenced Intellectual Property as may be reasonably necessary for Use and Modification of the Licenced Intellectual Property in accordance with the Licence granted pursuant to this Section 3.2 or otherwise this Schedule 37. All such copies shall be Owned by Owner of the original Licenced Intellectual Property and licenced to the Licensee pursuant to this Section 3.2. Except as permitted by this Schedule 37, the Licensee will not copy, Modify, disassemble, reverse engineer, decompile, translate or otherwise obtain or create the source code for any Project Co Intellectual Property, Project Co Licenced Software, Project Co Embedded Software, Subcontractor Intellectual Property, Subcontractor Licenced Software or Subcontractor Embedded Software.
- (i) The Licensee will not remove from any Licenced Intellectual Property any markings or notices with respect to the ownership thereof, copyright therein or the confidentiality thereof.
- (j) Where Contracting Authority has the right to Modify any Licenced Intellectual Property, Project Co shall ensure that all authors of such Licenced Intellectual Property have waived all moral rights that such authors may have therein in favour of Contracting Authority and its successors, assigns and licensees.
- (k) If, pursuant to Section 3.2(a) and by virtue of the definition of Delivered in Section 1.1(k), Contracting Authority is granted a License in respect of any Project Co Intellectual Property or Subcontractor Intellectual Property that is not a Deliverable or incorporated, embedded or otherwise included in any Deliverable, Project Co shall, or shall cause the applicable Subcontractor to, physically supply and deliver to Contracting Authority the Project Co Intellectual Property and Subcontractor Intellectual Property that falls within the definition of Delivered but has not

previously been physically supplied and delivered to Contracting Authority, together with all related Project Co's Technical Information as may be necessary for Contracting Authority to Use and Modify that Project Co Intellectual Property and Subcontractor Intellectual Property in accordance with the Licenses granted herein.

- (l) In respect of the Project Co Intellectual Property and all or any part of the Source Materials for any Licensed Intellectual Property that are included with the Licensed Intellectual Property when Delivered to Contracting Authority pursuant to this Agreement (“**Included Source Materials**”) therefor, Project Co shall provide to Contracting Authority training and consulting services to ensure that Contracting Authority is able to carry out all Equivalent Activities and Permitted Purposes in respect of the Project Co Intellectual Property and the Subcontractor Intellectual Property, excluding Equivalent Activities and Permitted Purposes that require access to and Use and Modification of Escrow Materials other than the Included Source Materials. Project Co shall cause each Subcontractor in respect of its Subcontractor Intellectual Property and any Included Source Materials therefor to provide such training and consulting services. In addition, Project Co shall, and shall cause each Subcontractor to, disclose and provide to Contracting Authority all trade secrets, know-how, documentation and other information of any kind whatsoever within their possession or control as may be necessary for Contracting Authority to carry out all Equivalent Activities and Permitted Purposes in respect of the Project Co Intellectual Property and the Subcontractor Intellectual Property, excluding any of the foregoing that form part of Escrow Materials.
- (m) Project Co shall use reasonable commercial efforts to ensure that each Deliverable and all Intellectual Property included in each Deliverable as and when delivered to Contracting Authority do not contain Harmful Code, a Lock or Undisclosed Functionality. Upon notice by Contracting Authority that a Deliverable or any item of Intellectual Property as delivered to Contracting Authority contains Harmful Code, a Lock or Undisclosed Functionality, Project Co shall promptly repair or replace the Deliverable or item of Intellectual Property so that the Deliverable or item of Intellectual Property does not contain the Harmful Code, Lock or Undisclosed Functionality (as applicable). In this Section 3.2(l): “**Harmful Code**” means a virus, worm, “Trojan Horse”, or other code or routine that manifests contaminating or destructive properties that might damage, harm, detrimentally interfere with, or otherwise adversely affect a Deliverable, any Intellectual Property or the System or any computer system, hardware, software, equipment, or services in connection with which the Deliverable or Intellectual Property is Used or any related data; “**Lock**” means a “time bomb”, “logic bomb”, “back door”, “drop-dead device” or any other disabling or limiting code, design or routine that might be used to interrupt, lock, disable, erase, limit the functionality or Use of, or otherwise adversely affect, or facilitate unauthorized access to, a Deliverable, any Intellectual Property or the System or the computer system, hardware, software, equipment, or services in connection with which the Deliverable or Intellectual Property is Used or any related data; and “**Undisclosed Functionality**” means a functionality providing the capability to automatically communicate with or transmit data to any person or computer system, that is not expressly required by this Agreement or otherwise expressly agreed to by Contracting Authority.

3.3 Licences with Subcontractors

- (a) Project Co will be responsible to obtain from each Subcontractor the right to grant the Licence under Section 3.2 in respect of the Subcontractor Intellectual Property.
- (b) Project Co will be responsible to obtain from each Subcontractor the right to Use and Modify the Subcontractor Intellectual Property to the extent necessary for Project Co to perform its obligations under this Agreement, on such terms as are not in breach of or conflict with this Agreement.
- (c) Project Co will be responsible to grant to each Subcontractor the right to Use and Modify Contracting Authority Intellectual Property and Project Co Intellectual Property to the extent necessary for each Subcontractor to perform its obligations under its Subcontract, on such terms as are not in breach of or conflict with this Agreement.

3.4 Third Party Intellectual Property: Project Co will not, and will not permit any Project Co Personnel, Subcontractor or Subcontractor Personnel to, incorporate, embed or otherwise include in the Project Co Infrastructure or any Deliverable any Third Party Intellectual Property unless:

- (a) for Third Party Intellectual Property other than Third Party Embedded Software, such Third Party Intellectual Property is provided by the Owner thereof pursuant to a licence agreement that:
 - (i) grants to the Licensee rights equivalent to or better than the rights granted under the Licence in Section 3.2, including being assignable in accordance with Section 3.2(c), and, where the Third Party Intellectual Property is software or includes software, provides for the maintenance and support of that software on terms acceptable to Contracting Authority; or
 - (ii) has been approved by Contracting Authority in writing, which approval may be given or refused by Contracting Authority in its absolute and unfettered discretion;

and such licence agreement, if not entered into with Contracting Authority directly, has been assigned or is freely assignable to Contracting Authority;

- (b) for Third Party Embedded Software, either (i) such Third Party Embedded Software is embedded in Equipment and is not provided by the Owner thereof pursuant to a licence agreement, but may be used by Contracting Authority or any subsequent owner of the machine or equipment as part of and for the intended purposes of such machine or equipment upon the purchase thereof, or (ii) such Third Party Embedded Software is subject to a licence agreement that complies with Section 3.4(a).
- (c) If Project Co, Project Co Personnel, Subcontractor or Subcontractor Personnel incorporates, embeds or includes any Third Party Intellectual Property in the Project Co Infrastructure or any Deliverable other than in compliance with this Section 3.4, then in addition to any other rights and remedies Contracting Authority may have against Project Co, Project Co will take all necessary steps to comply with this Section 3.4 or, if Project Co is unable to do so, to remove such Third Party Intellectual Property and replace it with Project Co Intellectual Property that provides the same (or, substantially and in all relevant respects, equivalent functionality and performance, provided that all deviations from the functionality and performance of such Third Party Intellectual Property have been notified in advance and in writing to Contracting Authority specifying in

reasonable detail each such deviation and the reason as to why each such deviation is an immaterial deviation to the functionality and performance of such Third Party Intellectual Property, and Contracting Authority has agreed in writing to such substitution) functionality and performance as such Third Party Intellectual Property and which will operate within the Project Co Infrastructure without any degradation thereof or adverse effect thereon, and which will be included in the Project Co Intellectual Property for the purposes of the Licence granted pursuant to Section 3.2.

- 3.5 Non-Assertion:** Project Co agrees not to assert, and to cause its Subcontractors not to assert, any Intellectual Property right against Contracting Authority or any Licensee that would have the effect of diminishing the rights granted to Contracting Authority or any Licensee hereunder. Without limiting the generality of the foregoing, Project Co will not sue, and will cause its Subcontractors not to sue, Contracting Authority or any Licensee on the basis that any Equivalent Activity or the Ownership or Use of the Project Co Infrastructure or any Deliverable within the scope of the Permitted Purposes infringes any Intellectual Property right of Project Co or any Subcontractor.
- 3.6 Deliveries:** Project Co will deliver to Contracting Authority all Licenced Intellectual Property at the times specified in this Agreement, or where no time is specified, on or before the Project Final Completion Date or the Termination Date, whichever is first to occur. The media on which Project Software is delivered and tangible copies or embodiments of any Licenced Intellectual Property other than Project Software and will be the property of Contracting Authority, notwithstanding Project Co's, a Subcontractor's or a third party's Ownership of the Licenced Intellectual Property. If any Licenced Intellectual Property requires software in order to Use that Licenced Intellectual Property, Project Co will ensure that such software will be commercially available to Contracting Authority at a reasonable licence fee, or if such software is not commercially available, Project Co will provide such software and a licence therefor to Contracting Authority and Contracting Authority Parties on terms and conditions that do not result in any impairment of Contracting Authority's Use of the Licenced Intellectual Property in accordance with the Licence therefor.
- 3.7 Pass Through Obligations:** Project Co is responsible to include in all contracts with Project Co Personnel and in all Subcontracts with Subcontractors such terms and conditions as may be necessary for Project Co to grant, or obtain for Contracting Authority, the Ownership, Licences, rights and benefits provided for in this Schedule 37.
- 3.8 Conflicting Software Licences:** All software referenced in this Schedule 37 will be licenced in accordance with this Schedule 37 or such other software license agreement for same as may be agreed to by Contracting Authority in accordance with Section 3.4, and any form of software licence agreement used or provided by a licensor in association with any such software will be of no force or effect and will not be binding on Contracting Authority or any other Licensee, even if by its terms such software licence agreement is stated to be accepted by the installation or use of the software, and regardless of any acceptance of such software licence agreement that is required in order to install or use the software.
- 3.9 Trademarks and Names:** Except as expressly set forth: (a) in the Trademark Licence Agreement; (b) this Agreement; or (c) otherwise in a writing executed by each of Contracting Authority and Project Co, neither Party shall use any Trademarks owned by the other Party, or use the names or any identifying logos or otherwise of the other Party in any advertising or permit them so to be used.

3.10 Open Source. Project Co shall not, and shall cause the Subcontractor not to, incorporate, embed or include any Open Source Materials in any Deliverables, Contracting Authority Intellectual Property or Contracting Authority Supplied Third Party Intellectual Property without the prior written consent of Contracting Authority.

3.11 Escrow Agreements

- (a) If requested by Contracting Authority (which for the purposes of this Section 3.11 includes any permitted assignee under Section 44.2 (*Contracting Authority Assignment*) of this Agreement), at any time during the Project Term, Project Co will, or will require the applicable Subcontractor or third party licensor to, enter into an Escrow Agreement for any Software or Embedded Software (an “**Escrowed Deliverable**”) on terms that comply with this Section 3.11, or amend its existing Escrow Agreement for such Software or Embedded Software to comply with this Section 3.11, and add Contracting Authority as a beneficiary under the Escrow Agreement.
- (b) The Escrow Provider will deposit with the Escrow Agent the Escrow Materials for the Escrowed Deliverable and all Modifications thereto provided by the Escrow Provider to Contracting Authority as part of the Works, Software Maintenance and Support (if purchased by or on behalf of Contracting Authority) or any other services performed by the Escrow Provider for Contracting Authority, and in the case of Software or the Embedded Software, the Escrow Provider will update the Escrow Materials to conform to the then-current version of the Software in use by Contracting Authority including all Modification thereto made for the benefit of Contracting Authority.
- (c) Contracting Authority will have the right, on reasonable notice to the Escrow Provider and the Escrow Agent, to verify that the Escrow Materials conform to the Escrowed Deliverable supplied to and in use by Contracting Authority to which the Escrow Materials relate. In addition, Contracting Authority may purchase such additional verification services as may be offered by the Escrow Agent and the Escrow Provider will cooperate with Contracting Authority and the Escrow Agent in the performance of those verification services.
- (d) Contracting Authority will have the right to obtain from the Escrow Agent a copy of the Escrow Materials retained by such Escrow Agent for a particular Escrow Provider upon any of the following events:
- (i) the Escrow Provider is bankrupt;
 - (ii) a trustee, receiver, manager, receiver-manager, custodian or Person having similar authority is appointed for the Escrow Provider or its business and assets and is not released or removed within thirty (30) days after the appointment;
 - (iii) the Escrow Provider seeks protection from its creditors or undertakes any reorganization for the purpose of obtaining relief from its creditors;
 - (iv) the Escrow Provider ceases to carry on business; or
 - (v) in the case of Software, if Contracting Authority is purchasing Software Maintenance and Support for the Software in respect of which the Escrow Materials have been deposited, if the Escrow Provider has given Contracting Authority or any of its representatives notice

that it will no longer provide Software Maintenance and Support or if the Escrow Provider defaults in the performance of Software Maintenance and Support and does not remedy that default within thirty (30) days after receipt of notice from Contracting Authority demanding that the Escrow Provider do so.

- (e) Project Co shall ensure that the Escrow Agreement: (i) requires the Escrow Agent to release the Escrow Materials to Contracting Authority if any of the events listed in Section 3.11(d) occur; (ii) does not contain any provision placing any obligation on Contracting Authority, including any indemnity obligation; and (iii) complies with and does not contradict any provision of this Section 3.11. Where this Section 3.11 places an obligation on the Escrow Agent, Project Co shall cause the Escrow Agent to comply with all such obligations.
- (f) Project Co hereby grants, and Project Co shall ensure that all Escrow Providers grant to Contracting Authority, with effect as of the date the applicable Software or the applicable Embedded Software is used in connection with the Project Scope (but subject, for greater clarity, to the release of the applicable Escrow Materials), a Licence to:
- (i) Use the Escrow Materials to enable Contracting Authority to Use the Escrowed Deliverable to which the Escrow Materials relate for the Permitted Purposes, and where the Escrowed Deliverable is or contains Licenced Intellectual Property in accordance with the Licence applicable thereto;
 - (ii) make Modifications to the Escrow Materials notwithstanding any contradictory term or condition in the Licence applicable to the Escrow Materials which Modifications are only used for the Permitted Purposes or the Expanded Purposes, as applicable, and are subject to confidentiality obligations under Section 3.11(f)(vi);
 - (iii) in the case of Escrow Materials for Software and Embedded Software, recompile versions of the Software or Embedded Software from the Escrow Materials, which recompiled versions shall be deemed to form part of the Software or Embedded Software and be subject to the terms hereof;
 - (iv) in the case of Escrow Materials for Equipment, use the Escrow Materials to design and manufacture, or to have designed, manufactured and supplied, replacement Equipment or parts therefor;
 - (v) make only those copies of the Escrow Materials that Contracting Authority reasonably requires for the purposes set out in Sections 3.11(f)(i), 3.11(f)(ii) and 3.11(f)(iii); and
 - (vi) disclose the Escrow Materials, or any part thereof, only to agents, employees or contractors of Contracting Authority as reasonably required for the purposes set out in Sections 3.11(f)(i), 3.11(f)(ii) and 3.11(f)(iii), provided that such agents, employees and contractors are bound by obligations of confidentiality in respect of any Escrow Materials disclosed to them, the breach of which shall constitute a breach by Contracting Authority of its obligations of confidentiality in respect of the Escrow Materials.
- (g) The Licence granted pursuant to Section 3.11(f) will:

- (i) where the Escrow Provider is Project Co or a Subcontractor, form part of the Licence granted pursuant to Section 3.2; or
- (ii) where the Escrow Provider is a third party, form part of the licence granted by such third party to Contracting Authority,

and in either case remain in effect for so long as such licence remains in effect.

- (h) Except where Contracting Authority (i) terminates the Escrow Agreement, (ii) has a renewal right and fails to renew the Escrow Agreement, or (iii) fails to make payments as set out in Section 3.11(i), the Escrow Provider will not terminate or fail to renew the Escrow Agreement without entering into a new Escrow Agreement with a replacement escrow agent on terms and conditions substantially the same as the Escrow Agreement and this Section 3.11.
- (i) Contracting Authority will pay all fees charged by the Escrow Agent in association with the deposit and maintenance of the Escrow Materials by the Escrow Agent under the Escrow Agreement for the benefit of Contracting Authority. The Escrow Provider shall have no responsibility or liability arising from any failure of Contracting Authority to pay fees when due in order to maintain the Escrow Materials with the Escrow Agent.
- (j) If Contracting Authority receives the Escrow Materials, then as between Contracting Authority and Project Co and notwithstanding any other provision of this Agreement, Contracting Authority will own all Modifications to the Escrow Materials made by or for Contracting Authority and all Intellectual Property in such Modifications.
- (k) For greater certainty, the provisions of this Section 3.11 do not extend to include any OTS Software.

3.12 Modifications: Notwithstanding the granting of any licence pursuant to this Schedule 37, where Contracting Authority has made any Modification to the Project Co Intellectual Property or the Subcontractor Intellectual Property other than (a) a Modification made by or on behalf of Project Co or a Subcontractor or otherwise authorized by Project Co or any Subcontractor, or (b) a Modification made through the Limited Modification Rights, then,

- (i) any warranty provided by Project Co under this Agreement shall not apply solely in respect of and directly to the extent of such Modification;
- (ii) Project Co and the Subcontractors shall not be liable in respect of any Direct Losses arising in connection with such Modifications where such Modifications are the direct cause of such Direct Losses, and the Direct Losses would not have occurred but for the Modifications; and
- (iii) the indemnity obligations of Project Co set out in Section 41.1(g) (*Project Co Indemnities to Contracting Authority*) of this Agreement shall not apply in respect of any such Modifications where the Modifications are the direct cause of such Direct Losses, and the Direct Losses would not have occurred but for the Modifications.

APPENDIX A TO SCHEDULE 37

FORM OF TRADEMARK LICENCE AGREEMENT

TRADEMARK LICENCE AGREEMENT

THIS TRADEMARK LICENCE AGREEMENT, effective as of [DATE] (the “**Agreement**”), is between Contracting Authority (the “**Licensor**”), and Project Co (the “**Licensee**”), and Licensor and Licensee are referred to herein individually as a “**Party**” and collectively as the “**Parties**”.

WHEREAS:

1. Licensor and Licensee are parties to a Development and Master Construction Agreement dated January 17, 2024 (the “**Development and Master Construction Agreement**”);
2. Capitalized terms used but not defined herein have the meanings assigned to them in the Development and Master Construction Agreement and Schedule 37 thereto;
3. Licensor owns the trademarks shown on Exhibit A (the “**Marks**”);
4. Licensee proposes to use the Marks in [Ontario] (the “**Territory**”) for the Limited Purpose set forth below; and
5. Subject to the terms and conditions set forth herein, Licensor is willing to grant to Licensee, and Licensee is willing to accept, a non-exclusive licence to use the Marks pursuant to the terms of this Agreement.

NOW THEREFORE in consideration of the covenants contained herein, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

1. **Grant:** Licensor grants to Licensee, and Licensee accepts, a limited, non-transferable, non-exclusive, royalty-free right and licence to use the Marks in the Territory for the sole purpose of and only to the extent necessary for the performance by Licensee of the Project Scope and its obligations under the Development and Master Construction Agreement (the “**Limited Purpose**”).
2. **No Right to Sublicence:** Licensee acknowledges and agrees that it does not have the right to sublicense the use of the Marks to any party without the express written consent of Licensor.
3. **Ownership:** Licensee acknowledges Licensor’s ownership of the Marks, and agrees that its use of the Marks shall enure to Licensor’s benefit.
4. **Licensee Covenants:** Licensee acknowledges that Licensor is the owner of all rights in the Marks, and, except as otherwise expressly permitted by this Agreement, Licensee shall not at any time do or suffer to be done any act or thing that will in any way impair the rights of Licensor in and to the Marks. Nothing in this Agreement grants, nor shall Licensee acquire, any right, title or interest in

or to the Marks or any goodwill associated with the Marks, other than those rights expressly granted hereunder. Licensee shall affix to all materials that contain or bear one or more of the Marks such legends and notices as Licensor may reasonably require. At Licensor's request, Licensee shall publish a public notice in the following form, or in any other form prescribed by Licensor from time to time, in appropriate publications addressed to the general public: “[**MARK**] is a trademark owned by [**LICENSOR**] used under licence by [**LICENSEE**]”. Licensee undertakes to comply with all relevant laws and regulations pertaining to trademarks and marking requirements. Licensee shall execute all documents and provide all assistance reasonably required by Licensor to apply for, obtain and maintain registrations for the Marks, and to enforce rights in, and defend any proceedings brought against applications or registrations for, the Marks.

5. **Restrictions On Use:** Notwithstanding anything contained in this Agreement or otherwise, Licensee shall use the Marks only in accordance with the design, description and/or appearance of the Marks as shown on Exhibit A. Licensee may not change or modify the Marks nor join the mark with any other words or designs. Licensee agrees to abide by any reasonable guidelines provided by Licensor from time to time in connection with the use of the Marks.
6. **Quality Standards and Control:** Licensee agrees that use of the Marks by Licensee in association with any products or services (the “**Products**” and “**Services**”) will meet or surpass the standards set by Licensor and conveyed to Licensee from time to time for the character and quality of such Products and Services.
7. **Inspection:** At the request of the Licensor, the Licensee shall provide to Licensor for Licensor's review, comment and approval samples of any Products and sample copies of materials associated with the Products or Services or used to advertise/promote the Products or Services.
8. **Breach of Licence:** Licensor may notify the Licensee if it objects to any proposed or actual use of the Marks if in Licensor's sole judgment (acting reasonably) Licensor believes that the Marks are being used or proposed to be used in a manner that erodes the goodwill associated with the Marks or otherwise reduces the value of the Marks. If Licensee is so notified, the Parties shall attempt to settle any dispute and Licensee shall, if directed by Licensor to do so, cease using or cease from using the Marks until the time such dispute has been settled between the Parties or otherwise finally determined.
9. **Infringement:** Licensee shall promptly notify Licensor upon becoming aware of any infringement or dilution of the Marks and shall cooperate fully with Licensor to stop such infringement or dilution. Licensor, in its sole discretion, will take any action that it deems necessary to protect the validity of the Marks, and Licensee hereby waives any rights that it may have pursuant to section 50(3) of the *Trademarks Act*, R.S.C., 1985, c. T-13, as amended from time to time.
10. **Indemnification:** Licensor does not assume any liability to Licensee, or third parties, for Licensee's goods or services, including the Products and Services, and Licensee shall defend, indemnify and hold harmless Licensor and its affiliates, successors and assigns, and their respective officers, directors, employees, agents, lawyers and representatives from and against any and all claims, causes of action, suits, damages, losses, liabilities, costs and expenses (including reasonable lawyer fees and expenses), which may be sustained or suffered as a result of any such third party claims or arising from a breach of this Agreement by Licensee including any act or omission, which causes or is alleged to cause harm or a violation of any of the rights of any third party.

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11. **Breach/Use Outside Limited Purpose:** In the event that Licensee breaches any of the terms of this Agreement, including use of the Marks outside the Limited Purpose or Territory as determined by Licensor in its sole discretion, but acting reasonably, Licensor shall have the option to terminate this Agreement immediately, and if so terminated, all subsequent use by Licensee will be unauthorized and subject to legal action. Upon the termination of this Agreement for any reason, all rights in the Marks granted to Licensee hereunder shall automatically revert to Licensor, Licensee shall have no further rights in the Marks, and Licensee shall immediately change its use of the Marks to uses that do not consist of or include the Marks or any words similar to the Marks. In the event of an unauthorized use of the Marks by Licensee, Licensee consents to the immediate entry of a court injunction preventing Licensee's further use of the Marks.
 12. **Termination:** This licence granted to Licensee will terminate upon the expiry or termination of Licensee's services and other obligations under the Development and Master Construction Agreement.
 13. **No Agency:** The Parties hereto are independent contractors with respect to each other, and nothing herein shall create any association, partnership, joint venture or agency relationship between them.
 14. **Assignment:** Licensee may not convey, sublicense, assign, transfer, pledge, hypothecate, encumber or otherwise dispose of this Agreement without the prior written consent of Licensor, which consent may be unreasonably withheld.
 15. **Headings:** The headings contained in this Agreement are for purposes of convenience only and shall not affect the meaning or interpretation of this Agreement.
 16. **Notices:** All notices, requests, demands and other communications made in connection with this Agreement shall be made in the manner set out in the Development and Master Construction Agreement.
 17. **Entire Agreement:** This Agreement constitutes the entire agreement between Licensor and Licensee with respect to the subject matter hereof and supersedes all prior agreements and understandings, whether oral, written, express or implied, between Licensor and Licensee.
 18. **No Waiver:**
 - (a) No waiver made or given by a Party under or in connection with this Agreement shall be binding or effective unless the waiver is in writing, signed by an authorized representative of the Party giving such waiver, and delivered by such Party to the other Party. No waiver made with respect to any right, power or remedy in one instance will be deemed to be a waiver with respect to any other instance involving the exercise of such right, power, or remedy or with respect to any other right, power, or remedy.
 - (b) Failure by either Party to exercise any of its rights, powers or remedies hereunder or its delay to do so shall not constitute a waiver of those rights, powers or remedies. The single or partial exercise of a right, power or remedy shall not prevent its subsequent exercise or the exercise of any other right, power or remedy.

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19. **Successors:** This Agreement shall be binding upon and shall enure to the benefit of the Parties and their respective successors and permitted assigns.
20. **Severability:** Each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Agreement is declared invalid, unenforceable or illegal by the courts of a competent jurisdiction, such provision may be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Agreement. If any such provision of this Agreement is invalid, unenforceable or illegal, the Parties shall, acting in good faith, promptly negotiate new provisions to eliminate such invalidity, unenforceability or illegality and to restore this Agreement as near as possible to its original intent and effect.
21. **Governing Law:** This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract, without regard to conflict of laws principles. Each of the Parties attorn to the jurisdiction of the courts of the Province of Ontario and all courts competent to hear appeals therefrom.
22. **Counterparts:** This Agreement may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all the Parties shall constitute a full, original and binding agreement for all purposes. 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 Agreement which was so faxed.

[Remainder of page intentionally blank – Next page is the signature page.]

IN WITNESS WHEREOF, the Parties have signed this Agreement effective as of the date set forth above.

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

Per:

Name: [REDACTED]

Title: [REDACTED]

Per:

Name: [REDACTED]

Title: [REDACTED]

I/We have authority to bind the corporation.

METROLINX

Per:

Name: [REDACTED]

Title: [REDACTED]

I/We have authority to bind the corporation.

[LICENSEE]

Per:

Name: [REDACTED]

Title: [REDACTED]

Per:

Name: [REDACTED]

Title: [REDACTED]

I/We have authority to bind the corporation.

EXHIBIT A TO APPENDIX A

TRADEMARKS

[REDACTED]

SCHEDULE 38**INTEGRATION WITH EGS PROJECT****1. DEFINITIONS**

- 1.1 “**EGS Infrastructure Access Date**” has the meaning given in Section 3.1(a) of this Schedule 38.
- 1.2 “**EGS Infrastructure Access Period**” has the meaning given in Section 2.1(a) of this Schedule 38.
- 1.3 “**EGS Infrastructure Access Section**” means each of the discrete segments of the EGS Project Infrastructure listed in the column titled “EGS Infrastructure Access Section” in Part A of Appendix A to this Schedule 38.
- 1.4 “**EGS Infrastructure Health and Safety Plan**” means, in respect of an EGS Infrastructure Access Section, the applicable health and safety plan of EGS Project Co.
- 1.5 “**EGS Project Infrastructure**” means the infrastructure that EGS Project Co designs, constructs, installs, tests, supplies, delivers and commissions pursuant to the EGS DMCA, including any early works infrastructure delivered to EGS Project Co pursuant to the EGS DMCA.
- 1.6 “**EGS Project Lands**” means the EGS Project Infrastructure lands applicable to the EGS Infrastructure Access Sections set out in Part B of Appendix A to this Schedule 38.
- 1.7 “**No Earlier Than Access Date**” means, in respect of an EGS Infrastructure Access Section, the corresponding date identified in the column titled “No Earlier Than Access Date” in Part A of Appendix A to this Schedule 38.
- 1.8 “**No Later Than Access Date**” means, in respect of an EGS Infrastructure Access Section, the corresponding date identified in the column titled “No Later Than Access Date” in Part A of Appendix A to this Schedule 38.
- 1.9 “**PTUS EGS Infrastructure Activities**” means, in respect of an EGS Infrastructure Access Section, the Works identified in the column titled “PTUS EGS Infrastructure Activities” in Part A of Appendix A to this Schedule 38.

2. CONTRACTING AUTHORITY INTEGRATION OBLIGATIONS**2.1 Access to EGS Infrastructure Access Sections**

- (a) Contracting Authority shall cause EGS Project Co to grant Project Co and any Project Co Party access to each EGS Infrastructure Access Section from the EGS Infrastructure Access Date up to a period of time agreed to among Contracting Authority, Project Co and EGS Project Co, acting reasonably, applicable to the EGS Infrastructure Access Section (the “**EGS Infrastructure Access Period**”) for the exclusive purpose of performing the applicable PTUS EGS Infrastructure Activities, all subject to, and in accordance with, the provisions of this Schedule 38.
- (b) Subject to Project Co complying with its obligations pursuant to Section 3.1, during the EGS Infrastructure Access Period applicable to an EGS Infrastructure Access Section,

Contracting Authority shall cause EGS Project Co to grant Project Co and any Project Co Party access to such EGS Infrastructure Access Section, and ensure that EGS Project Co and all EGS Project Co Parties do not materially interfere with such access, between 7:00 a.m. and 7:00 p.m. each Business Day.

- (c) In the event that an EGS Infrastructure Access Date is a day that is prior to the No Earlier Than Access Date applicable to the relevant EGS Infrastructure Access Section, Project Co shall, subject to and in accordance with Schedule 22 – Estimates, Variations and Proposals, be entitled to a Variation.
- (d) In the event that an EGS Infrastructure Access Date has not occurred on or before the No Later Than Access Date applicable to the relevant EGS Infrastructure Access Section, Project Co shall, subject to and in accordance with Schedule 21 – Risk Allocations, be entitled to an Adjustment Event.

3. ACCESS TO EGS INFRASTRUCTURE ACCESS SECTIONS

3.1 EGS Infrastructure Access Sections

- (a) Project Co shall be granted access pursuant to Section 2.1 of this Schedule 38 to each EGS Infrastructure Access Section for purposes of carrying out the PTUS EGS Infrastructure Activities. Contracting Authority shall provide to Project Co notice of the date on which each applicable EGS Infrastructure Access Section shall be ready to be accessed by Project Co for purposes of Project Co performing the applicable PTUS EGS Infrastructure Activities (the “**EGS Infrastructure Access Date**”).
- (b) Project Co acknowledges and agrees that it shall have the right to access the EGS Infrastructure Access Section during the applicable EGS Infrastructure Access Period:
 - (i) for the exclusive purpose of performing the applicable PTUS EGS Infrastructure Activities; and
 - (ii) in accordance with the conditions set out in this Section 3 of Schedule 38.
- (c) In connection with Project Co accessing any EGS Infrastructure Access Section and the performance of any applicable PTUS EGS Infrastructure Activities, Project Co shall, and shall cause any Project Co Party to:
 - (i) comply with the EGS Infrastructure Health and Safety Plan of EGS Project Co that is applicable to the EGS Infrastructure Access Section and which has been provided by Contracting Authority to Project Co and comply with all directions of EGS Project Co in respect of any matter regarding health and safety at the applicable EGS Infrastructure Access Section, including, but not limited to:
 - (A) ensuring all employees, contractors, subcontractors and other Project Co Parties report to EGS Project Co to receive the necessary health and safety training on, or prior to, arrival at the EGS Infrastructure Access Section; and

- (B) complying with all applicable EGS Project Co health and safety plans and directions when accessing an EGS Infrastructure Access Section via the applicable EGS Project Infrastructure that is still under the care and control of EGS Project Co;
- (ii) coordinate with EGS Project Co the means of access to the applicable EGS Infrastructure Access Section;
- (iii) keep the applicable EGS Infrastructure Access Section, and all EGS Project Infrastructure thereon in a safe and orderly state in accordance with Good Industry Practice;
- (iv) not materially interfere with or delay the work of EGS Project Co or any EGS Project Co Party, not do anything that causes EGS Project Co to be in contravention of its obligations under the *Occupational Health and Safety Act* (Ontario), and Project Co shall promptly cease and desist any activity that results or has a likelihood in resulting in such interference or delay or causes such contravention; and
- (v) without derogating from the generality of the foregoing, not interfere with or delay EGS Project Co, any EGS Project Co Party or the EGS Independent Commissioning Agent (as defined in the EGS DMCA) in carrying out commissioning activities in respect of EGS Project Infrastructure which such EGS Infrastructure Access Section is comprised.

3.2 Damage to EGS Infrastructure Access Section

- (a) During the EGS Infrastructure Access Period, Project Co shall, and shall cause any Project Co Party accessing an EGS Infrastructure Access Section, to not cause any damage or destruction to the applicable EGS Infrastructure Access Section and any EGS Project Infrastructure contained therein, and shall comply, and cause any such Project Co Party to comply, with any directions of EGS Project Co as may be required to protect such EGS Infrastructure Access Section or EGS Project Infrastructure from damage or destruction.
- (b) Project Co shall be responsible for any damage caused by Project Co or any Project Co Parties to any EGS Project Infrastructure during any applicable EGS Infrastructure Access Period (including, for greater certainty, any damage to EGS Project Infrastructure outside of the applicable EGS Infrastructure Access Section). Upon causing any such damage it shall forthwith notify Contracting Authority and EGS Project Co. The repair of such damage shall be at the cost and expense of Project Co.
- (c) If Project Co causes any damage referred to in Section 3.2(b) of this Schedule 38 which results in, or could reasonably be expected to result in, a serious threat to the health and safety or security of any person, Project Co shall immediately notify Contracting Authority and stop the PTUS EGS Infrastructure Activities, shall follow the reasonable directions of EGS Project Co in respect of health and safety compliance and shall vacate the EGS Infrastructure Access Section, and the EGS Project Lands it is situated on until such time as Contracting Authority provides Notice to Project Co that the health and safety or security

issue identified by Project Co has been addressed and Project Co may return to the EGS Infrastructure Access Section.

- (d) In respect of any damage to the EGS Project Infrastructure caused by Project Co or any Project Co Party, Contracting Authority may, but shall not be obligated to:
 - (i) request that Project Co repair such damage, in which case Project Co shall repair such damage as directed by Contracting Authority, at the cost and expense of Project Co; or
 - (ii) arrange for the repair of such damage by EGS Project Co or an Additional Contractor, in which case Contracting Authority shall so notify Project Co and Project Co shall, as may be directed by Contracting Authority (A) stop the applicable PTUS EGS Infrastructure Activities, and/or (B) vacate the EGS Infrastructure Access Section and the EGS Project Lands it is situated on until such time as Contracting Authority provides Notice to Project Co that the damage has been repaired and Project Co may return thereto.
- (e) If any damage contemplated in this Section 3.2 of this Schedule 38 is to be repaired by EGS Project Co or an Additional Contractor, then subject to Section 3.2(d)(ii) of this Schedule 38, Project Co shall not and shall ensure all Project Co Parties, do not, interfere with EGS Project Co's or such Additional Contractor's (as applicable) work in respect of such repair.
- (f) If Project Co causes any damage or destruction referred to in Section 3.2(b) of this Schedule 38, Project Co may not claim any relief pursuant to Schedule 21 – Risk Allocations in connection with any PTUS EGS Infrastructure Activities affected by such damage or destruction or any repair thereof.

3.3 Title

In respect of Works performed by Project Co in any EGS Infrastructure Access Section, title to each item forming part thereof, including any materials, supplies, equipment, facilities, parts and any other deliverable or component items, but not the risk of loss or damage or destruction thereto or thereof, shall pass to Contracting Authority upon the receipt of such item in the EGS Infrastructure Access Section notwithstanding Section 40.1 (*Title*) of this Agreement.

APPENDIX A TO SCHEDULE 38

EGS INFRASTRUCTURE ACCESS

PART A – EGS INFRASTRUCTURE ACCESS SECTION

[REDACTED]

PART B – EGS PROJECT LANDS

[REDACTED]

SCHEDULE 39

FORM OF RSSOM INTERFACE AGREEMENT

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

BETWEEN:

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

(“Contracting Authority”)

AND:

CONNECT 6IX GENERAL PARTNERSHIP, [REDACTED]

(“RSSOM Project Co”)

AND:

PAPE NORTH CONNECT, [REDACTED]

(“North Civil PTUS Project Co”)

WHEREAS:

- A. RSSOM Project Co has on or about November 15, 2022 entered into an agreement (the “**RSSOM Project Agreement**”) with Contracting Authority to design, construct, finance, supply, operate, maintain and rehabilitate the Ontario Line Subway, to design, construct and finance the New Third Party Infrastructure, and to carry out the Project Operations (all as defined in the RSSOM Project Agreement);
- B. North Civil PTUS Project Co has on the date hereof entered into a development and master construction agreement (the “**North Civil DMCA**”) with Contracting Authority to design, construct and handover of three kilometres of twin running tunnels, the Pape Station and the Cosburn Station, and for other associated structures required for the new subway line in Toronto, Ontario, and to carry out the Works (all as defined in the North Civil DMCA); and
- C. RSSOM Project Co and North Civil PTUS Project Co have agreed to (a) establish and participate in an Integration Committee (as defined herein) with a view to coordinating the integration of the conduct of certain of their activities so as to meet their respective obligations under the RSSOM Project Agreement and the North Civil DMCA; (b) establish and participate in a Design Integration Working Group for the integration of the design of the RSSOM Project and the North Civil PTUS Project; and (c) resolve Integration Disputes (as defined herein) in accordance with the Integration Dispute Resolution Procedure (as defined herein), all in accordance with the terms of this agreement (this “**Agreement**”).

In consideration of the mutual promises and covenants contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties, the Parties hereby agree as follows:

ARTICLE 1
DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, including the recitals and appendices, unless the context indicates a contrary intention, the following terms shall have the following meanings,

“**Business Day**” means any day other than a Saturday, a Sunday, a statutory holiday in the Province of Ontario or any day on which banks are not open for business in the City of Toronto, Ontario.

“**Construction Integration Working Group**” has the meaning given in Section 5.1.

“**Contracting Authority**” has the meaning given in the preamble.

“**Contracting Authority Party**” has the meaning given to such term in the RSSOM Project Agreement or the North Civil DMCA, as applicable.

“**Crown**” means His Majesty the King in right of Ontario.

“**Design Integration Working Group**” has the meaning given in Section 4.1.

“**Dispute**” means all disagreements, disputes, or controversies arising during or following the Project Term (as defined in the RSSOM Project Agreement or the North Civil DMCA, as applicable) in relation to or arising out of the interpretation, enforceability, performance, breach, or validity of the RSSOM Project Agreement or the North Civil DMCA, respectively, or any provision of the RSSOM Project Agreement or the North Civil DMCA, as applicable, the rights or obligations of the Parties under the RSSOM Project Agreement or the North Civil DMCA, as applicable, or the exercise or failure to exercise a discretion or power given to a Party under the RSSOM Project Agreement or the North Civil DMCA, as applicable, but shall not include an Adjudication Dispute or any matter in respect of which the RSSOM Independent Certifier is entitled or required to make a final and binding determination under the RSSOM Project Agreement.

“**DIWG Draft Submittals**” means DIWG Review North Civil Integration Works Submittals or DIWG Review RSSOM Integration Works Submittals, as applicable.

“**DIWG Review North Civil Integration Works Submittals**” has the meaning given in Section 4.4(b).

“**DIWG Review RSSOM Integration Works Submittals**” has the meaning given in Section 4.4(b).

“**Governmental Authority**” has the meaning given to such term in the RSSOM Project Agreement or the North Civil DMCA, as applicable.

“**Independent Commissioning Agent**” has the meaning given to the term “Independent Commissioning Agent” in the North Civil DMCA.

“**Initial Integration Improvement Workshop Notice**” has the meaning given in Section 3.6(c).

“**Integration Committee**” has the meaning given to such term in Section 3.1.

“**Integration Dispute**” means a Dispute for which a Notice designating such Dispute as an Integration Dispute has been given by Contracting Authority pursuant to the Integration Dispute Resolution Procedure.

“**Integration Dispute Resolution Procedure**” means the procedure for final resolution of all Integration Disputes as set out in Appendix A hereto.

“**Integration Improvement Goals**” has the meaning given in Section 3.6(a).

“**Integration Improvement Opportunities**” has the meaning given in Section 3.6(f).

“**Integration Improvement Process**” has the meaning given in Section 3.6(a).

“**Integration Improvement Workshop Participants**” has the meaning given in Section 3.6(e).

“**Integration Improvement Workshops**” has the meaning given in Section 3.6(c).

“**Management Board of Cabinet**” has the meaning set out in the *Management Board of Cabinet Act (Ontario), R.S.O., 1990, c. M.1.*

“**North Civil Contracting Authority Representative**” has the meaning given to the term “Contracting Authority Representative” in the North Civil DMCA.

“**North Civil Construction Manager**” means the lead “Construction Director” identified in Schedule 9 – Key Individuals to the North Civil DMCA.

“**North Civil Design Manager**” means the “Design Director” identified in Schedule 9 – Key Individuals to the North Civil DMCA.

“**North Civil DMCA**” has the meaning in Recital B.

“**North Civil Effective Date**” has the meaning given to the term “DMCA Effective Date” in the North Civil DMCA.

“**North Civil Final Completion Date**” has the meaning given to the term “Project Final Completion Date” in the North Civil DMCA.

“**North Civil Leadership Team**” has the meaning given to the term “Leadership Team” in the North Civil DMCA.

“**North Civil Infrastructure**” has the meaning given to the term “Project Co Infrastructure” in the North Civil DMCA.

“**North Civil Integration Works Submittals**” has the meaning given to the term “North Civil Infrastructure Works Submittals” in Schedule 10 – Review Procedure of the RSSOM Project Agreement.

“**North Civil PTUS Project**” has the meaning given to the term “Project” in the North Civil DMCA.

“**North Civil PTUS Project Co**” has the meaning given in the preamble.

“**North Civil PTUS Project Co Parties**” has the meaning given to the term “Project Co Parties” in the North Civil DMCA.

“**North Civil PTUS Project Co Representative**” means the person designated as such by North Civil PTUS Project Co on or prior to the North Civil Effective Date and any permitted replacement.

“**North Civil PTUS Project Co Termination Date**” means “Termination Date” as defined in the North Civil DMCA.

“**North Civil System Integration Manager**” means the “System Integration Manager” identified in Schedule 9 – Key Individuals to the North Civil DMCA.

“**OL Project Cos**” means, collectively, RSSOM Project Co and North Civil PTUS Project Co, and “**OL Project Co**” means either one of them.

“**Parties**” means each of Contracting Authority, RSSOM Project Co and North Civil PTUS Project Co and “**Party**” means any one of them without specificity.

“**Projects**” means, collectively, RSSOM Project and North Civil PTUS Project, and “**Project**” means either one of them.

“**Proposed Integration Improvements List**” has the meaning given in Section 3.6(g).

“**Province Person**” has the meaning set out in the RSSOM Project Agreement or the North Civil DMCA, as applicable.

“**RSSOM Commercial Close**” has the meaning given to the term “Commercial Close” in the RSSOM Project Agreement.

“**RSSOM Contracting Authority Representative**” has the meaning given to the term “Contracting Authority Representative” in the RSSOM Project Agreement.

“**RSSOM Construction Manager**” means the lead “Construction Manager” identified in Schedule 9 – Key Individuals to the RSSOM Project Agreement.

“**RSSOM Design Manager**” means the “Design Manager” identified in Schedule 9 – Key Individuals to the RSSOM Project Agreement.

“**RSSOM Financial Close**” has the meaning given to the term “Financial Close” in the RSSOM Project Agreement.

“**RSSOM Independent Certifier**” has the meaning given to the term “Independent Certifier” in the RSSOM Project Agreement.

“**RSSOM Integration Works Submittals**” has the meaning given to the term “RSSOM Infrastructure Works Submittals” in Schedule 10 – Review Procedure of the North Civil DMCA.

“**RSSOM Operations Director**” means the “Operations Director” identified in Schedule 9 – Key Individuals to the RSSOM Project Agreement.

“**RSSOM Project**” has the meaning given to the term “Project” in the RSSOM Project Agreement.

“**RSSOM Project Agreement**” has the meaning in Recital A.

“**RSSOM Project Co**” has the meaning given in the preamble.

“**RSSOM Project Co Parties**” has the meaning given to the term “Project Co Parties” in the RSSOM Project Agreement.

“**RSSOM Project Co Representative**” means the person designated as such by RSSOM Project Co on or prior to RSSOM Commercial Close and any permitted replacement.

“**RSSOM Project Co Termination Date**” means “Termination Date” as defined in the RSSOM Project Agreement.

“**RSSOM System Integration Manager**” means the “System Integration Manager” identified in Schedule 9 – Key Individuals to the RSSOM Project Agreement.

“**RSSOM Works Committee**” has the meaning given to the term “Works Committee” in the RSSOM Project Agreement.

1.2 In Writing

Unless otherwise expressly provided, any notice, certificate, consent, approval, determination, agreement or waiver which is required to be issued, made or given in terms of this Agreement shall be required to be issued, made or given in writing in accordance with Section 8.5 hereof.

1.3 Interaction Among RSSOM Project Agreement, North Civil DMCA and this Agreement

- (a) To the extent of any inconsistency or conflict between the provisions of this Agreement and the provisions of the RSSOM Project Agreement or the North Civil DMCA, as applicable, the provisions of the RSSOM Project Agreement or the North Civil DMCA, as applicable, shall prevail as between the parties thereto, provided that, with respect to the resolution of an Integration Dispute the provisions of this Agreement shall prevail.
- (b) Except to the extent expressly provided in this Agreement, nothing in this Agreement shall affect, modify, reduce or limit in any way or manner whatsoever the rights or the obligations of any OL Project Co with respect to Contracting Authority under the RSSOM Project Agreement or the North Civil DMCA, as applicable, provided that, in all cases, there shall be no duplication of any claims made or amounts paid or payable by any party to this Agreement to any other party to this Agreement, whether under this Agreement, the RSSOM Project Agreement or the North Civil DMCA.
- (c) Except to the extent expressly provided for by the Parties in this Agreement, nothing in this Agreement shall affect, modify, reduce or limit in any manner whatsoever the rights or obligations of Contracting Authority with respect to any OL Project Co under the RSSOM Project Agreement or the North Civil DMCA, as applicable.

1.4 Joint and Several Liability

[REDACTED]

ARTICLE 2 GENERAL OBLIGATIONS

2.1 Purpose and Intent

The Parties acknowledge and agree that, for the RSSOM Project and the North Civil PTUS Project to be successful, it is necessary that the Parties work together cooperatively to address any integration issues arising in connection therewith. The Parties have therefore agreed to enter into this Agreement in order to commit to establish, and take part in, the Integration Committee, the Design Integration Working Group and the Construction Integration Working Group and agree to the Integration Dispute Resolution Procedure.

2.2 No Liability

The Parties hereby agree as follows:

- (a) Contracting Authority and RSSOM Project Co shall not be responsible or liable (whether in contract, tort, breach of statutory duty or under any other theory of law) to any Party in respect of any act, omission or statement by North Civil PTUS Project Co or any North Civil PTUS Project Co Party;
- (b) Contracting Authority and North Civil PTUS Project Co shall not be responsible or liable (whether in contract, tort, breach of statutory duty or under any other theory of law) to any Party in respect of any act, omission or statement by RSSOM Project Co or any RSSOM Project Co Party; and
- (c) no knowledge (whether constructive or implied, but excluding, for greater certainty, any actual knowledge of a Party) shall be imputed to a Party solely as a result of it being a party to this Agreement, nor shall such knowledge be used or relied upon in any claim or action at law made or instituted by any other Party against such Party in connection with the RSSOM Project or the North Civil PTUS Project under or pursuant to the RSSOM Project Agreement or the North Civil DMCA respectively, whether by waiver or otherwise,

provided that nothing in this Section 2.2 shall affect the rights and liabilities of the Parties, as applicable, under the RSSOM Project Agreement or the North Civil DMCA, as applicable, which would otherwise have arisen under the RSSOM Project Agreement or the North Civil DMCA, as applicable.

ARTICLE 3 INTEGRATION COMMITTEE

3.1 Establishment

- (a) The Parties shall, within thirty (30) days following the later to occur of North Civil Effective Date and RSSOM Financial Close, establish a committee (the “**Integration Committee**”) consisting of the following (and each Party shall identify its representatives by notice to the other Parties within such thirty (30) period):
 - (i) six representatives appointed by Contracting Authority from time to time, one of whom will be the RSSOM Contracting Authority Representative and one of whom will be the North Civil Contracting Authority Representative (provided if the RSSOM Contracting Authority Representative and North Civil Contracting

Authority Representative are the same person, Contracting Authority shall appoint 5 representatives);

- (ii) on behalf of North Civil PTUS Project Co: the North Civil PTUS Project Co Representative, the North Civil Construction Manager, the North Civil System Integration Manager and the North Civil Design Manager; and
- (iii) on behalf of RSSOM Project Co: the RSSOM Project Co Representative, the RSSOM Construction Manager, the RSSOM System Integration Manager and RSSOM Design Manager,

provided that the representatives that shall attend any Integration Improvement Workshops contemplated in Section 3.6 shall be the Integration Improvement Workshop Participants contemplated in Section 3.6(e).

- (b) A representative of the RSSOM Independent Certifier shall be required to attend meetings as a non-voting member of the Integration Committee. Members of the Integration Committee may invite, on prior Notice to all members, (i) such advisors and consultants as they require from time to time to attend meetings and to provide briefings to the Integration Committee, (ii) representatives of South Civil Project Co (as defined in the RSSOM Project Agreement and the North Civil DMCA) to participate in meetings of the Integration Committee (including any Integration Improvement Workshops), or (iii) the Independent Commissioning Agent, in each case on a non-voting basis to discuss matters relating to the integration of design of the Ontario Line Subway (as defined in the RSSOM Project Agreement or the North Civil DMCA, as applicable).
- (c) The RSSOM Contracting Authority Representative shall be the chairperson at all meetings of the Integration Committee, provided that any Integration Improvement Workshops shall be chaired by a representative of Contracting Authority identified in the applicable notice delivered by Contracting Authority pursuant to Section 3.6(c) or Section 3.6(e), as applicable.

3.2 Function and Role

- (a) The Integration Committee shall assist the Parties by promoting cooperative and effective communication with respect to matters related to integration and handover of the North Civil Infrastructure and all matters contemplated in Schedule 43 – North Civil Infrastructure Access and Handover of the RSSOM Project Agreement, and Schedule 45 – Integration with the RSSOM Project of the North Civil DMCA. The Integration Committee shall interface with the North Civil Leadership Team, the RSSOM Works Committee and the System Management Committee (as defined in the RSSOM Project Agreement) as and when required. In addition to the foregoing, the Integration Committee shall engage in the Integration Improvement Process set out in Section 3.6.
- (b) The Integration Committee shall be responsible for receiving and reviewing all matters related to integration of the North Civil Infrastructure with the RSSOM Project, including:
 - (i) discuss and resolve any matters or issues that arise under Schedule 43 – North Civil Infrastructure Access and Handover of the RSSOM Project Agreement or Schedule 45 – Integration with the RSSOM Project of the North Civil DMCA,

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- (ii) discuss and resolve any matters referred to the Integration Committee for consideration by the Design Integration Working Group or the Construction Integration Working Group, and
 - (iii) any special matters referred to the Integration Committee by Contracting Authority or either OL Project Co, including any Integration Improvement Opportunities identified by Contracting Authority as contemplated in Section 3.6(h).
- (c) Subject to Sections 3.2(d) and 3.6(i), any unanimous decision of the Integration Committee shall be final and binding on the Parties. If the Integration Committee is unable to reach a unanimous decision, any Party may refer the matter for resolution in accordance with Article 7 (Integration Dispute Resolution Procedure).
- (d) The Integration Committee shall not have authority to make decisions with respect to or approve (but may discuss and make recommendations to the applicable Parties in respect of):
- (i) any amendment to or waiver of any provision of this Agreement;
 - (ii) any amendment to or waiver of any obligations or requirements set out in the RSSOM Project Agreement or the North Civil DMCA; and
 - (iii) any Variation (as defined in the RSSOM Project Agreement) or any Variation (as defined in the North Civil DMCA).

3.3 Term of Integration Committee

Unless otherwise agreed by the Parties, the Integration Committee shall operate only until the North Civil Final Completion Date.

3.4 Replacement of Committee Members

Contracting Authority shall be entitled to replace any of its representatives on the Integration Committee by written Notice to the OL Project Cos. Contracting Authority will use commercially reasonable efforts to deliver prior written Notice of any such replacement to the OL Project Cos. The OL Project Cos may replace any of their representatives on the Integration Committee with the prior written consent of Contracting Authority.

3.5 Procedures and Practices

- (a) The members of the Integration Committee may:
- (i) adopt such procedures and practices for the conduct of the activities of the Integration Committee as they consider appropriate from time to time;
 - (ii) invite to any meeting of the Integration Committee such other persons as the members of the Integration Committee may agree;
 - (iii) exclude from any meeting of the Integration Committee such persons (excluding members) as the members of the Integration Committee may agree; and

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- (iv) receive and review reports from any person or organization agreed to by the members of the Integration Committee.
- (b) Once established, the Integration Committee shall meet at least once each month from the later of RSSOM Financial Close or North Civil Effective Date, as applicable, until the North Civil Final Completion Date, unless otherwise agreed by the members of the Integration Committee or the Parties. Members of the Integration Committee shall, by notice to the other members of the Integration Committee to be delivered no later than five (5) Business Days prior to the date of a meeting of the Integration Committee scheduled pursuant to this Section 3.5(b), propose agenda items for discussion at such meeting, or confirm that such member has no agenda items to include for discussion at such meeting.
- (c) Any one of the RSSOM Project Co Representative, the North Civil PTUS Project Co Representative, the RSSOM Contracting Authority Representative or the North Civil Contracting Authority Representative may convene a special meeting of the Integration Committee at any time. Special meetings of the Integration Committee may be convened on not less than five (5) Business Days' Notice to all members of the Integration Committee identifying the agenda items to be discussed at the special meeting.
- (d) Unless otherwise agreed by the members of the Integration Committee, the Integration Committee shall meet in the City of Toronto. Meetings of the Integration Committee may be held by means of such telephonic, electronic or other communication facilities as permit all persons participating in the meeting to communicate with each other simultaneously and instantaneously. A person participating in a meeting by such means will be deemed to be present at such meeting.
- (e) Four representatives of Contracting Authority (one of whom shall be the RSSOM Contracting Authority Representative and one of whom shall be the North Civil Contracting Authority Representative (and if they are the same person, 3 additional Contracting Authority Representatives shall be required) and two representatives of each of the OL Project Cos shall constitute a quorum at any meeting of the Integration Committee. A quorum of members may exercise all the powers of the Integration Committee. The members shall not transact business at a meeting of the Integration Committee unless a quorum is present.
- (f) Minutes of all meetings, recommendations and decisions of the Integration Committee, including those made by telephone or other form of communication, shall be recorded and maintained by RSSOM Project Co. RSSOM Project Co shall circulate copies of such minutes within five (5) Business Days of the holding of the meeting or the making of the recommendation or decision. Unless Contracting Authority or North Civil PTUS Project Co notifies the other Parties within five (5) Business Days of receipt of the minutes that such Party disagrees with the contents of the minutes, Contracting Authority and the OL Project Cos shall be deemed to have approved such minutes. RSSOM Project Co shall maintain a complete set of all minutes of the meetings of the Integration Committee and shall make such minutes available for inspection by the other Parties hereto during regular business hours.

3.6 Integration Improvement Process

- (a) The Parties shall participate, in accordance with this Section 3.6, in a process (the “**Integration Improvement Process**”) whose purpose shall be to create meaningful dialogue among the Parties with a view to identifying opportunities to improve, where possible, the integration of the Projects with a view to the successful delivery of the Ontario Line Subway System (as defined in the RSSOM Project Agreement or the North Civil DMCA, as applicable) on schedule. Such improvements could relate to design, construction or scheduling aspects of either Project, and/or to changes to allocation of scope of Works (as defined in the RSSOM Project Agreement or the North Civil DMCA, as applicable) as between the Projects which, in each case, may reduce integration risk and improve certainty of delivery of the Projects and the Ontario Line Subway System (the “**Integration Improvement Goals**”).
- (b) The Parties shall engage in the Integration Improvement Process in a collaborative good faith manner pursuant to this Section 3.6 as part of the work of the Integration Committee.
- (c) The Integration Improvement Process shall take place pursuant to workshops (the “**Integration Improvement Workshops**”) each of which shall take place for at least three (3) days (or such other duration as the Integration Improvement Workshop Participants shall determine in respect of the applicable Integration Improvement Workshop). Contracting Authority shall, no later than five (5) Business Days after the date that the Integration Committee is established pursuant to Section 3.1(a), confirm by Notice (the “**Initial Integration Improvement Workshop Notice**”) to the other Parties the date on which the first Integration Improvement Workshop shall take place, which date shall be no earlier than ten (10) Business Days after the date of the Initial Integration Improvement Workshop Notice. Contracting Authority shall identify in the Initial Integration Improvement Workshop Notice, in respect of the initial Integration Improvement Workshop, (i) the Contracting Authority’s Integration Improvement Workshop Participants, (ii) the Contracting Authority’s Integration Improvement Workshop Participant that shall act as chairperson of the Integration Improvement Workshop and (iii) the list of Integration Improvement Opportunities to be discussed at such initial Integration Improvement Workshop (which may include any of the Integration Improvement Opportunities identified in the Parties’ response to the RFP (as defined in the RSSOM Project Agreement or the North Civil DMCA, as applicable) in respect of either Project). Each OL Project Co shall, by Notice to the other Parties delivered no later than five (5) Business Days after the date of the Initial Integration Improvement Workshop Notice, identify such Party’s Integration Improvement Workshop Participants for such Integration Improvement Workshop.
- (d) Each subsequent Integration Improvement Workshop shall take place (i) during the period ending on the one (1) year anniversary of the date of the initial Integration Improvement Workshop, on a quarterly basis, with each subsequent Integration Improvement Workshop taking place on the date that is the three (3) month anniversary of the preceding Integration Improvement Workshop (or if such day is not a Business Day, on the next following Business Day), and (ii) at all times thereafter during the term of this Agreement, at such times and in such frequency as the Integration Improvement Workshop Participants shall agree from time to time at the most recent Integration Improvement Workshop. The Integration Improvement Workshops shall be in addition to all other meetings of the Integration Committee.

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- (e) The participants at each Integration Improvement Workshop (for each Integration Improvement Workshop, the “**Integration Improvement Workshop Participants**”) shall be such members of the Integration Committee, Design Integration Working Group or Construction Integration Working Group, such other representatives (including members of executive leadership and Project teams) of each Party, or the RSSOM Independent Certifier and/or Independent Commissioning Agent, as each Party shall identify with a view to ensuring that the Integration Improvement Workshop Participants are able to engage in the Integration Improvement Process in a meaningful manner as contemplated in Section 3.6(a) and contribute to the evaluation of, and proposal of, Integration Improvement Opportunities.
- (f) Each OL Project Co shall by Notice to Contracting Authority delivered no later than fifteen (15) Business Days prior to each Integration Improvement Workshop (other than the initial Integration Improvement Workshop) identify in respect of such Integration Improvement Workshop (i) its Integration Improvement Workshop Participants and (ii) the proposed changes to the Projects which would, in its opinion, likely advance the Integration Improvement Goals (“**Integration Improvement Opportunities**”), and which such Party proposes for discussion at the Integration Improvement Workshop.
- (g) Contracting Authority shall, by Notice to the other Parties delivered no later than five (5) Business Days prior to each Integration Improvement Workshop (other than the initial Integration Improvement Workshop) identify in respect of such Integration Improvement Workshop (i) its Integration Improvement Workshop Participants, (ii) its Integration Improvement Workshop Participant that shall act as chairperson and (iii) a list of all Integration Improvement Opportunities to be discussed at the Integration Improvement Workshop (the “**Proposed Integration Improvements List**”). For clarity, Contracting Authority shall include in the Proposed Integration Improvements List such Integration Improvement Opportunities as it shall determine, in its sole discretion and shall not be obligated to include therein all Integration Improvement Opportunities identified by the OL Project Cos in their Notices delivered pursuant to Section 3.6(f).
- (h) Contracting Authority may, in its sole discretion, propose for discussion at an Integration Committee meeting any Integration Improvement Opportunities (whether identified in the Proposed Integration Improvements List or not and whether proposed by the OL Project Cos or not).
- (i) The Parties acknowledge that any amendments to the RSSOM Project Agreement and the North Civil DMCA that are required to give effect to any Integration Improvement Opportunities (whether identified in the Proposed Integration Improvements List or not) shall require a Variation (as defined in the RSSOM Project Agreement or the North Civil DMCA, as applicable) and the Contracting Authority shall determine, in its sole discretion, whether to implement any Integration Improvement Opportunity by way of a Variation. For clarity, notwithstanding any agreement or disagreement by the Parties at a meeting of the Integration Committee or otherwise (including any Integration Improvement Workshop) with respect to the merit of, or the need for, an Integration Improvement Opportunity, the implementation of any Variation to give effect thereto shall remain at the sole discretion of Contracting Authority.
- (j) The terms of Sections 3.5(b)-(f) shall not apply in respect of any meetings of the Integration Committee that are Integration Improvement Workshops.

ARTICLE 4
DESIGN INTEGRATION WORKING GROUP

4.1 Establishment

- (a) The Parties shall, within thirty (30) days following the later to occur of North Civil Effective Date and RSSOM Financial Close, establish a working group which shall be responsible for all matters relating to the integration of the design of the North Civil PTUS Project and the RSSOM Project (the “**Design Integration Working Group**”).
- (b) The Design Integration Working Group shall include the following permanent members (and each Party shall identify its representatives (other than the RSSOM Operations Director) by notice to the other Parties within thirty (30) days following the later to occur of North Civil Effective Date and RSSOM Financial Close and RSSOM Project Co shall identify the RSSOM Operations Director by notice to the other Parties within ten (10) days after the date on which it is required to be appointed pursuant to the terms of the RSSOM Project Agreement):
 - (i) North Civil Design Manager;
 - (ii) North Civil System Integration Manager;
 - (iii) RSSOM Design Manager;
 - (iv) RSSOM System Integration Manager;
 - (v) RSSOM Operations Director; and
 - (vi) Representative(s) of the Contracting Authority.
- (c) The RSSOM Design Manager shall chair the Design Integration Working Group.

4.2 Function and Role

The Design Integration Working Group shall be responsible for:

- (a) coordinating the integrated design of the RSSOM Project with the North Civil PTUS Project;
- (b) promoting collaboration between RSSOM Project Co’s designers and North Civil PTUS Project Co’s designers;
- (c) resolution of design interface issues relating to the RSSOM Project and North Civil PTUS Project;
- (d) oversight of the interface management process described in the Construction Technical Requirements (as defined in the North Civil DMCA) and the Output Specifications (as defined in the RSSOM Project Agreement);

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- (e) monitoring of the interface matrix and interface register delivered by RSSOM Project Co pursuant to Schedule 15 to the RSSOM Project Agreement or by North Civil PTUS Project Co pursuant to Schedule 15 to the North Civil DMCA;
 - (f) resolution of interface management issues relating to the RSSOM Project and the North Civil PTUS Project, and directing the completion of the Interface Control Documents as required pursuant to Schedule 10 – Review Procedure of the RSSOM Project Agreement and the North Civil DMCA;
 - (g) coordination of sharing of design data between RSSOM Project Co and North Civil PTUS Project Co as needed to deliver the RSSOM Project and North Civil PTUS Project;
 - (h) review and coordination of RSSOM Integration Works Submittals and North Civil Integration Works Submittals as contemplated in Section 4.4; and
 - (i) report progress to the Integration Committee and Construction Integration Working Group.

4.3 Term of Design Integration Working Group

Unless otherwise agreed by the Parties, the Design Integration Working Group shall operate only until the North Civil Final Completion Date.

4.4 DIWG Draft Submittals

- (a) Nothing in this Section 4.4 shall limit or modify the obligations of the Parties pursuant to Schedule 10 – Review Procedure of either the RSSOM Project Agreement or North Civil DMCA. All submittals made pursuant to Section 4.4 of this Agreement are intended to be informal interim draft submittals and shall not be reviewed in accordance with either Schedule 10 – Review Procedure until such time as submittals are made pursuant such Schedule 10 – Review Procedure.
- (b) The Design Integration Working Group shall develop a schedule (which shall be consistent with the Interim Baseline Works Schedule (as defined in the RSSOM Project Agreement) or Baseline Works Schedule (as defined under the North Civil DMCA, and as defined under the RSSOM Project Agreement), as then applicable) for the timing of development and submission, by (i) North Civil PTUS Project Co of interim drafts of all North Civil Integration Works Submittals (the “**DIWG Review North Civil Integration Works Submittals**”) and (ii) RSSOM Project Co of interim drafts of all RSSOM Integration Works Submittals (the “**DIWG Review RSSOM Integration Works Submittals**”) to the Design Integration Working Group for review, in each case, in advance of their submission pursuant to (and at the times required under) Schedule 10 – Review Procedure of the RSSOM Project Agreement or the North Civil DMCA, as applicable (and delivery thereof by Contracting Authority to the other OL Project Co pursuant to Part C of Schedule 10 of the RSSOM Project Agreement or Part C of Schedule 10 of the North Civil DMCA, as applicable). Such schedule shall be developed with a view to ensuring sufficient opportunity for the Design Integration Working Group to review and consider (1) each DIWG Review North Civil Integration Works Submittal and provide an opportunity to North Civil PTUS Project Co to revise it to reflect discussions at the Design Integration Working Group prior to its submission under Schedule 10 – Review Procedure of the North Civil DMCA and (2) each DIWG Review RSSOM Integration Works Submittal and

provide an opportunity to RSSOM Project Co to revise it to reflect discussions at the Design Integration Working Group prior to its submission under Schedule 10 – Review Procedure of the RSSOM Project Agreement.

- (c) If the Design Integration Working Group fails to agree to and develop the schedule contemplated in Section 4.4(b) of this Agreement within thirty (30) days following the later to occur of North Civil Effective Date and RSSOM Financial Close, such schedule shall be deemed to require delivery to the Design Integration Working Group of (i) each DIWG Review North Civil Integration Work Submittal that is Critical Data as defined under the North Civil DMCA no later than fifteen (15) Business Days prior to the applicable Critical Data Deadline as defined under the North Civil DMCA, (ii) each other DIWG Review North Civil Integration Work Submittal no later than fifteen (15) Business Days prior to the date on which it is required to be submitted under Schedule 10 – Review Procedure of the North Civil DMCA as required under the Baseline Works Schedule (as defined under the North Civil DMCA), as then applicable, (iii) each DIWG Review RSSOM Integration Work Submittal that is Critical Data as defined under the RSSOM Project Agreement no later than fifteen (15) Business Days prior to the applicable Critical Data Deadline as defined under the RSSOM Project Agreement, (iv) each other DIWG Review RSSOM Integration Work Submittal no later than fifteen (15) Business Days prior to the date on which it is required to be submitted under Schedule 10 – Review Procedure of the RSSOM Project Agreement as required under the Interim Baseline Works Schedule or Baseline Works Schedule (each as defined under the RSSOM Project Agreement), as then applicable.
- (d) North Civil PTUS Project Co shall submit the DIWG Review North Civil Integration Works Submittals, and RSSOM Project Co shall submit the DIWG Review RSSOM Integration Works Submittals, in each case to the Design Integration Working Group, in accordance with the schedule developed pursuant to Section 4.4(b).
- (e) The Design Integration Working Group shall discuss and consider each DIWG Review North Civil Integration Works Submittal and each DIWG Review RSSOM Integration Works Submittal with a view to agreeing to any changes thereto.
- (f) Upon receipt of any DIWG Draft Submittal the Design Integration Working Group shall meet and consider such DIWG Draft Submittal in a reasonable and collaborative manner with a view to discussing and resolving any comments to such DIWG Draft Submittal made by any members of the Design Integration Working Group prior to submission of such DIWG Draft Submittal pursuant to the applicable Schedule 10 – Review Procedure.

4.5 Procedures and Practices.

- (a) The members of the Design Integration Working Group may:
 - (i) adopt such procedures and practices for the conduct of the activities of the Design Integration Working Group as they consider appropriate from time to time;
 - (ii) invite to any meeting of the Design Integration Working Group other parties to resolve specific interface matters, (including Early Works Contractors as defined in either the RSSOM Project Agreement or the North Civil DMCA) where such parties' involvement in the Ontario Line Subway may impact more than one of the

Parties hereto, or such other persons as the other members of the Design Integration Working Group may agree;

- (iii) exclude from any meeting of the Design Integration Working Group such persons as the members of the Design Integration Working Group may agree, acting reasonably; and
 - (iv) receive and review reports from any person or organization agreed to by the members of the Design Integration Working Group.
- (b) Once established, the Design Integration Working Group shall meet at least once each week from the later of RSSOM Financial Close or North Civil Effective Date, as applicable, until the North Civil Final Completion Date, unless otherwise agreed by the members of the Design Integration Working Group or the Parties. The Design Integration Working Group shall establish the frequency of scheduled meetings of the Design Integration Working Group (and confirm whether it shall meet on a weekly basis or otherwise) at the first meeting thereof.
- (c) Members of the Design Integration Working Group shall, by notice to the other members thereof to be delivered no later than five (5) Business Days prior to the date of any meeting of the Design Integration Working Group scheduled pursuant to Section 4.5(b), propose agenda items for discussion at such meeting, or confirm that such member has no agenda items to include for discussion at such meeting.
- (d) Any member of the Design Integration Working Group may convene a special meeting of the Design Integration Working Group at any time. Special meetings of the Design Integration Working Group may be convened on not less than five (5) Business Days' Notice, or such other period of time as may be agreed to by the Design Integration Working Group, to all members of the Design Integration Working Group identifying the agenda items to be discussed at the special meeting.
- (e) Unless otherwise agreed by the members of the Design Integration Working Group, the Design Integration Working Group shall meet in the City of Toronto. Meetings of the Design Integration Working Group may be held by means of such telephonic, electronic or other communication facilities as to permit all persons participating in the meeting to communicate with each other simultaneously and instantaneously. A person participating in a meeting by such means will be deemed to be present at such meeting.
- (f) One representative of Contracting Authority, one representative of RSSOM Project Co and one representative of North Civil PTUS Project Co shall constitute a quorum at any meeting of the Design Integration Working Group. A quorum of members may exercise all the powers of the Design Integration Working Group. The members shall not transact business at a meeting of the Design Integration Working Group unless a quorum is present. Decisions of the Design Integration Working Group shall be made by unanimous agreement of representatives of each of the Contracting Authority, RSSOM Project Co North Civil PTUS Project Co.
- (g) Minutes of all meetings, recommendations and decisions of the Design Integration Working Group, including those made by telephone or other form of communication, shall be recorded and maintained by RSSOM Project Co. RSSOM Project Co shall circulate

copies of such minutes within five (5) Business Days of the holding of the meeting or the making of the recommendation or decision. Unless Contracting Authority or North Civil PTUS Project Co notifies the other Parties within five (5) Business Days of receipt of the minutes that such Party disagrees with the contents of the minutes, Contracting Authority and the OL Project Cos shall be deemed to have approved such minutes. RSSOM Project Co shall maintain a complete set of all minutes of the meetings of the Design Integration Working Group and shall make such minutes available for inspection by the other Parties hereto during regular business hours.

- (h) The Design Integration Working Group may refer any unresolved issues for consideration by the Integration Committee.

ARTICLE 5 CONSTRUCTION INTEGRATION WORKING GROUP

5.1 Establishment

- (a) The Parties shall, within thirty (30) days following the later to occur of North Civil Effective Date and RSSOM Financial Close, establish a working group which shall be responsible for all matters relating to the integration of the construction of the North Civil PTUS Project and the RSSOM Project (the “**Construction Integration Working Group**”).
- (b) The Construction Integration Working Group shall include the following permanent members (and each Party shall identify its representatives by notice to the other Parties within thirty (30) following the later to occur of North Civil Effective Date and RSSOM Financial Close):
 - (i) North Civil Construction Manager;
 - (ii) RSSOM Construction Manager; and
 - (iii) Representative(s) of the Contracting Authority.
- (c) The RSSOM Construction Manager shall chair the Construction Integration Working Group.

5.2 Function and Role

The Construction Integration Working Group shall be responsible for:

- (a) coordinating the integrated construction of the RSSOM Project and the North Civil PTUS Project;
- (b) promoting collaboration between RSSOM Project Co and North Civil PTUS Project Co with a focus on the access and handover process set out in Schedule 43 – North Civil Infrastructure Access and Handover of the RSSOM Project Agreement;

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- (c) oversight of the interface management process described in the Construction Technical Requirements (as defined in the North Civil DMCA) and the Output Specifications (as defined in the RSSOM Project Agreement);
 - (d) monitoring of the interface matrix and interface register delivered by RSSOM Project Co pursuant to Schedule 15 to the RSSOM Project Agreement or by North Civil PTUS Project Co pursuant to Schedule 15 to the North Civil DMCA;
 - (e) coordinate RSSOM Integration Works Submittals and North Civil Integration Works Submittals relating to construction;
 - (f) coordinate access by RSSOM Project Co to elevators prior to handover thereof by North Civil PTUS Project Co;
 - (g) report progress to the Integration Committee and Design Integration Working Group; and
 - (h) resolution of construction interface issues relating to the RSSOM Project and North Civil PTUS Project.

5.3 Term of Construction Integration Working Group

Unless otherwise agreed by the Parties, the Construction Integration Working Group shall operate only until the North Civil Final Completion Date.

5.4 Procedures and Practices

- (a) The members of the Construction Integration Working Group may:
 - (i) adopt such procedures and practices for the conduct of the activities of the Construction Integration Working Group as they consider appropriate from time to time;
 - (ii) invite to any meeting of the Construction Integration Working Group other parties to resolve specific interface matters, (including Early Works Contractors as defined in either the RSSOM Project Agreement or the North Civil DMCA) where such parties' involvement in the Ontario Line Subway may impact more than one of the Parties hereto, or such other persons as the other members of the Construction Integration Working Group may agree;
 - (iii) exclude from any meeting of the Construction Integration Working Group such persons as the members of the Construction Integration Working Group may agree, acting reasonably; and
 - (iv) receive and review reports from any person or organization agreed to by the members of the Construction Integration Working Group.
- (b) Once established, the Construction Integration Working Group shall meet at least once each week from the later of RSSOM Financial Close or North Civil Effective Date, as applicable, until the North Civil Final Completion Date, unless otherwise agreed by the members of the Construction Integration Working Group or the Parties. The Construction

Integration Working Group shall establish the frequency of scheduled meetings of the Construction Integration Working Group (and confirm whether it shall meet on a weekly basis or otherwise) at the first meeting thereof.

- (c) Members of the Construction Integration Working Group shall, by notice to the other members thereof to be delivered no later than five (5) Business Days prior to the date of any meeting of the Construction Integration Working Group scheduled pursuant to Section 5.4(b), propose agenda items for discussion at such meeting, or confirm that such member has no agenda items to include for discussion at such meeting.
- (d) Any member of the Construction Integration Working Group may convene a special meeting of the Construction Integration Working Group at any time. Special meetings of the Construction Integration Working Group may be convened on not less than five (5) Business Days' Notice, or such other period of time as may be agreed to by the Construction Integration Working Group, to all members of the Construction Integration Working Group identifying the agenda items to be discussed at the special meeting.
- (e) Unless otherwise agreed by the members of the Construction Integration Working Group, the Construction Integration Working Group shall meet in the City of Toronto. Meetings of the Construction Integration Working Group may be held by means of such telephonic, electronic or other communication facilities as to permit all persons participating in the meeting to communicate with each other simultaneously and instantaneously. A person participating in a meeting by such means will be deemed to be present at such meeting.
- (f) One representative of Contracting Authority, one representative of RSSOM Project Co and one representative of North Civil PTUS Project Co shall constitute a quorum at any meeting of the Construction Integration Working Group. A quorum of members may exercise all the powers of the Construction Integration Working Group. The members shall not transact business at a meeting of the Construction Integration Working Group unless a quorum is present. Decisions of the Construction Integration Working Group shall be made by unanimous agreement of representatives of each of the Contracting Authority, RSSOM Project Co North Civil PTUS Project Co.
- (g) Minutes of all meetings, recommendations and decisions of the Construction Integration Working Group, including those made by telephone or other form of communication, shall be recorded and maintained by RSSOM Project Co. RSSOM Project Co shall circulate copies of such minutes within five (5) Business Days of the holding of the meeting or the making of the recommendation or decision. Unless Contracting Authority or North Civil PTUS Project Co notifies the other Parties within five (5) Business Days of receipt of the minutes that such Party disagrees with the contents of the minutes, Contracting Authority and the OL Project Cos shall be deemed to have approved such minutes. RSSOM Project Co shall maintain a complete set of all minutes of the meetings of the Construction Integration Working Group and shall make such minutes available for inspection by the other Parties hereto during regular business hours.
- (h) The Construction Integration Working Group may refer any unresolved issues for consideration by the Integration Committee.

**ARTICLE 6
TERMINATION****6.1 Termination of Agreement**

This Agreement shall take effect on the date hereof and, subject to Section 8.11, shall terminate and cease to have effect on the earlier of:

- (a) the RSSOM Project Agreement or the North Civil DMCA expires or terminates in accordance with its terms; and
- (b) the RSSOM Project Co Termination Date or the North Civil PTUS Project Co Termination Date,

provided that such expiry or earlier termination shall be without prejudice to any accrued rights and liabilities of the Parties prior to or as at the date of expiry or earlier termination of this Agreement and without prejudice to the final determination of any Integration Dispute that has not been finally determined prior to or as at the date of expiry or earlier termination of this Agreement and this Section 6.1 shall survive any such termination.

**ARTICLE 7
INTEGRATION DISPUTE RESOLUTION PROCEDURE****7.1 Integration Disputes**

Any Dispute which has been designated as an Integration Dispute shall be heard or determined in accordance with the Integration Dispute Resolution Procedure set out in Appendix A hereto.

7.2 Commencement of Disputes

Each Party hereto acknowledges and agrees that it may not make any claim or demand, or assert any Dispute or commence any action or proceeding, in tort, under contract, or otherwise at law, against any of the other Parties in connection with the North Civil PTUS Project or the RSSOM Project or the terms of this Agreement provided that nothing in this Section 7.2 shall in any way prevent, prohibit, limit or restrict (i) Contracting Authority or North Civil PTUS Project Co from making any such claim or demand, Dispute or action or proceeding against each other as may be asserted, made or initiated under the North Civil DMCA or (ii) Contracting Authority or RSSOM Project Co from making any such claim or demand, Dispute or action or proceeding against each other as may be asserted, made or initiated under the RSSOM Project Agreement.

7.3 Obligation to continue

The Parties shall diligently carry out their respective obligations under this Agreement and the RSSOM Project Agreement or the North Civil DMCA, as applicable, during the pendency of any Integration Disputes.

ARTICLE 8
GENERAL PROVISIONS**8.1 Interpretative Provisions**

In this Agreement:

- (a) references to this Agreement include the Appendices and other attachments hereto, each of which form an integral part hereof;
- (b) references to “hereunder”, “herein” and “hereof” are to the provisions of this Agreement, and references to Articles and Sections herein refer to articles, sections, or subsections of this Agreement;
- (c) the headings of the Articles, Sections, Appendices and any other headings, captions or indices herein are inserted for convenience of reference only and shall not be used in any way in construing or interpreting any provision hereof;
- (d) unless the context otherwise requires, wherever used herein the plural includes the singular, the singular includes the plural, and each of the masculine, feminine and neuter genders include all other genders;
- (e) where a term is defined herein, a derivative of such term shall have a corresponding meaning unless the context otherwise requires.
- (f) any reference to a statute shall include and shall be deemed to be a reference to such statute and to the regulations made pursuant thereto, and all amendments made thereto and in force from time to time, and to any statute or regulation that may be passed which has the effect of supplementing the statute so referred to or the regulations made pursuant thereto;
- (g) any reference to “including” and/or “includes” means “including, without limitation” and/or “includes, without limitation” respectively;
- (h) unless otherwise expressly stated, any reference to dollars or \$ means Canadian dollars;
- (i) all references to any agreement, document, standard, principle or other instrument include (subject to all relevant approvals and any other provision of this Agreement expressly concerning such agreement, document, standard, principle or other instrument) a reference to that agreement, document, standard, principle or instrument as amended, supplemented, substituted, novated or assigned; and
- (j) words importing persons or parties are to be broadly interpreted and include an individual, corporation, limited liability company, joint stock company, firm, partnership, joint venture, trust, unincorporated organization, Governmental Authority, unincorporated body of persons or association and any other entity having legal capacity, and the heirs, beneficiaries, executors, administrators or other legal representatives of a person in such capacity.

8.2 General Duty to Mitigate

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

8.3 Entire Agreement

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

8.4 Enurement

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

8.5 Notices

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

If to Contracting Authority or RSSOM Contracting Authority Representative:

Metrolinx
[REDACTED]

with a copy to:

North Civil Contracting Authority Representative
[REDACTED]

If to RSSOM Project Co:

[REDACTED]

If to North Civil PTUS Project Co:

[REDACTED]

- (b) Where any Notice is provided or submitted to a Party via electronic submission, an original of the Notice sent via electronic submission shall promptly be sent by regular mail or

registered mail. For greater certainty, a Notice given via electronic submission shall not be invalid by reason only of a Party's failure to comply with this Section 8.5(b).

- (c) Any Party to this Agreement may, from time to time, change any of its contact information set forth in Section 8.5(a) by prior Notice to the other Parties, and such change shall be effective on the Business Day that next follows the recipient Party's receipt of such Notice unless a later effective date is given in such Notice.
- (d) Subject to Sections 8.5(e), 8.5(f) and 8.5(g):
 - (i) a Notice given by registered mail shall be deemed to have been received on the third (3rd) Business Day after mailing;
 - (ii) a Notice given by hand delivery shall be deemed to have been received on the day it is delivered; and
 - (iii) a Notice given by electronic submission shall be deemed to have been received on the day it is transmitted by electronic submission.
- (e) If the Party giving the Notice knows or ought reasonably to know of difficulties with the postal system which might affect negatively the delivery of mail, any such Notice shall not be mailed but shall be made or given by personal delivery or by electronic submission in accordance with this Section 8.5.
- (f) If any Notice delivered by hand or transmitted by electronic submission is so delivered or transmitted, as the case may be, either on a day that is not a Business Day or on a Business Day after 4:00 p.m. (recipient's local time), then such Notice shall be deemed to have been received by such recipient on the next Business Day.
- (g) A Notice given by electronic submission shall be deemed to have been received by the recipient on the day it is transmitted only if an electronic submission report (maintained by the sender) indicates that the transmission of such Notice was successful.

8.6 Governing Law and Jurisdiction

- (a) This Agreement shall be governed by and construed in accordance with the laws of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract, without regard to conflict of laws principles.
- (b) Subject to Article 7 hereof (Integration Dispute Resolution Procedure) the Parties hereby irrevocably attorn to the exclusive jurisdiction of the courts of the Province of Ontario and all courts competent to hear appeals therefrom.
- (c) Nothing in this Agreement affects the rights, protections and immunities of the Crown under the *Crown Liability and Proceedings Act (Ontario)*.

8.7 Assignment

- (a) Either OL Project Co (in this Section 8.7(a), the "**Transferring Project Co**") may assign, transfer or otherwise dispose of the benefit of this Agreement to any person (in this Section

8.7(a), the “**assignee**”) to whom the Transferring Project Co assigns, transfers or otherwise disposes of its interest in the RSSOM Project Agreement or the North Civil DMCA, as applicable, to which it is party pursuant to Section 59.1 (*Project Co Assignment*) of the RSSOM Project Agreement or Section 44.1 (*Project Co Assignment*) of the North Civil DMCA, as applicable, and shall provide written notice to Contracting Authority and the other OL Project Co of such assignment, transfer or other disposition. Such assignee, as a condition precedent to any such assignment, transfer or other disposition, shall assume the obligations and acquire the rights of the Transferring Project Co under this Agreement pursuant to an assumption agreement with, and in form and substance satisfactory to, Contracting Authority and the other OL Project Co, each acting reasonably. Contracting Authority, the OL Project Cos and the assignee shall, at the Transferring Project Co’s cost and expense, do all things and execute all further documents as may be necessary in connection therewith.

- (b) Contracting Authority may assign, transfer or otherwise dispose of the benefit of the whole or part of this Agreement to any person (in this Section 8.7(b), the “**assignee**”) to whom Contracting Authority assigns, transfers or otherwise disposes of its interest in the RSSOM Project Agreement or the North Civil DMCA, as applicable, pursuant to Section 59.2 (*Contracting Authority Assignment*) of the RSSOM Project Agreement and Section 44.2 (*Contracting Authority Assignment*) of the North Civil DMCA, and shall provide written notice to the OL Project Cos of such assignment, transfer or other disposition.
- (c) Neither OL Project Co shall assign, novate, or otherwise transfer its interest in this Agreement to any person except concurrently with an assignment, novation or transfer of the RSSOM Project Agreement or the North Civil DMCA, as applicable, to the same person in accordance with the provisions of the RSSOM Project Agreement or the North Civil DMCA, as applicable.

8.8 Time of the Essence

Time is of the essence of every provision of this Agreement. Extension, waiver or variation of any provisions of this Agreement shall not be deemed to affect this provision and there shall be no implied waiver of this provision.

8.9 Further Assurance

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

8.10 Third Party Beneficiaries

Except as provided in the indemnities pursuant to the RSSOM Project Agreement or the North Civil DMCA, as applicable, it is specifically agreed between the Parties executing this Agreement that it is not intended by any of the provisions of any part of this Agreement to create in the public or any member thereof, a third party beneficiary hereunder, or to authorize anyone not a party to this Agreement to maintain a suit for personal injury or property damage pursuant to the terms or provisions of this Agreement.

8.11 Survival

The Parties agree that Article 1, Section 2.2, Article 7 and Article 8 of this Agreement shall survive the termination of this Agreement.

8.12 Waiver

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

8.13 Counterparts

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

8.14 Language of Agreement

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

8.15 Liability

Metrolinx, as Crown agency, shall be liable for all of the obligations of Contracting Authority under this Agreement.

8.16 No Reliance

- (a) Each of the Parties acknowledge that:
 - (i) it has not entered into this Agreement on the basis of and does not rely, and has not relied, upon any statement or representation, whether negligent or innocent, or warranty or other provision, whether oral, written, express or implied, made or agreed to by any person, whether a Party to this Agreement or not, except those expressly made, given or repeated in this Agreement and the only remedy or remedies available in respect of any misrepresentation or untrue statement made to it shall be those expressly provided for in this Agreement; and

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- (ii) this Section 8.16 shall not apply to any statement, representation or warranty made fraudulently, or to any provision of this Agreement which was induced by fraud, for which the remedies available shall be all those available under the law governing this Agreement.

8.17 Costs

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

8.18 Proof of Authority

Each Party reserves the right to require any person executing this Agreement on behalf of any other Party to provide proof, in a form acceptable to such Party, as applicable, that they have the requisite authority to execute this Agreement on behalf of and to bind such Party.

8.19 Copyright Notice

The Parties acknowledge that King's Printer for Ontario is the exclusive owner of copyright in the RSSOM Project Agreement, the North Civil DMCA and this Agreement.

[REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF the Parties hereto have duly executed this Agreement as of the day and year first above written.

METROLINX

By:

Name: [REDACTED]

Title: [REDACTED]

I have authority to bind the corporation.

[RSSOM PROJECT CO]

By:

Name: [REDACTED]

Title: [REDACTED]

By:

Name: [REDACTED]

Title: [REDACTED]

I/We have authority to bind the corporation.

PAPE NORTH CONNECT, [REDACTED]:

[REDACTED]

By:

Name: [REDACTED]

Title: [REDACTED]

Name: [REDACTED]

Title: [REDACTED]

We have authority to bind the corporation.

[REDACTED]

By: _____

Name: **[REDACTED]**

Title: **[REDACTED]**

I have authority to bind the corporation.

APPENDIX A TO SCHEDULE 39

INTEGRATION DISPUTE RESOLUTION PROCEDURE**1. General****1.1 Definitions**

- (a) In this Appendix A, unless the context otherwise requires:
- (i) “**Adjudication Dispute**” means a matter to which there is a statutory right to submit such matter to adjudication under the *Construction Act* (Ontario).
 - (ii) “**Arbitration Act, 1991**” means the *Arbitration Act, 1991*, S.O. 1991, c. 17, as amended from time to time.
 - (iii) “**Arbitration Referral Period**” has the meaning given in Section 3.13(a) of this Appendix A.
 - (iv) “**CIDB**” has the meaning given in Section 3.1(a) of this Appendix A.
 - (v) “**CIDB Chair**” has the meaning given in Section 3.1(c)(ii) of this Appendix A.
 - (vi) “**CIDB Expiry Date**” means five (5) years after the Project Substantial Completion Date (as defined in the North Civil DMCA), subject to any extension of the CIDB Expiry Date pursuant to Section 3.1(b) of this Appendix A.
 - (vii) “**CIDB Member**” has the meaning given in Section 3.1(a) of this Appendix A.
 - (viii) “**CIDB Member Agreement**” has the meaning given in Section 3.1(a) of this Appendix A.
 - (ix) “**CIDB Member Statement**” has the meaning given in Section 3.3(a) of this Appendix A.
 - (x) “**CIDB Technical Member**” has the meaning given in Section 3.1(c)(i) of this Appendix A.
 - (xi) “**Claimant**” has the meaning given in Section 3.6(a) of this Appendix A.
 - (xii) “**Date of Commencement**” has the meaning given in Section 3.6(b) of this Appendix A.
 - (xiii) “**Dispute**” has the meaning given in Section 1.1 of the main body of this Agreement.
 - (xiv) “**Integration Dispute**” has the meaning given in Section 1.1 of the main body of this Agreement.
 - (xv) “**Integration Dispute Notice Supporting Documents**” means all key documents relevant to the Integration Dispute on which the Party intends to rely for the purposes of resolving the Integration Dispute pursuant to this Integration Dispute Resolution Procedure in the possession or control of such Party following reasonable due diligence.

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- (xvi) “**Notice of Request to Arbitrate**” has the meaning given in Section 4(c) of this Appendix A.
- (xvii) “**Parties**” means the Parties to this Interface Agreement and, in respect of any Integration Dispute, includes any other Parties added to such Integration Dispute in accordance with this Integration Dispute Resolution Procedure, and “**Party**” means any one of them without specificity, as the context requires.
- (xviii) “**Party Executive**” has the meaning given in Section 2(a) of this Appendix A.
- (xix) “**Party Executive IDR Termination Notice**” has the meaning given in Section 2(e) of this Appendix A.
- (xx) “**Party Representative**” means the Contracting Authority Representative, the RSSOM Project Co Representative, the North Civil PTUS Project Co Representative, a person designated as such by a RSSOM Project Co Party or a person designated as such by a North Civil PTUS Project Co Party, as the context requires.
- (xxi) “**Public Safety Integration Dispute**” means any Integration Dispute which Contracting Authority, RSSOM Project Co or North Civil PTUS Project Co, acting reasonably, determines involves an alleged breach of this Interface Agreement, the RSSOM Project Agreement or the North Civil DMCA by another Party or any act or omission on the part of another Party or any person with whom another Party is legally affiliated or for whom another Party is legally responsible (including a RSSOM Project Co Party, North Civil PTUS Project Co Party or a Contracting Authority Party, as applicable), which creates or can reasonably be expected to create a serious threat to the health, safety or security of any person, including any user of any part of or the whole of either Project or the Lands (as defined in the RSSOM Project Agreement or the North Civil DMCA, as applicable), or to the environment.
- (xxii) “**Reply Period**” has the meaning given in Section 3.7(a) of this Appendix A.
- (xxiii) “**Respondent**” has the meaning given in Section 3.6(a) of this Appendix A.
- (xxiv) “**Rules of Civil Procedure**” means R.R.O. 1990, Reg. 194: Rules of Civil Procedure under the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended from time to time.
- (xxv) “**Statement of Case**” has the meaning given in Section 3.6(a) of this Appendix A.
- (xxvi) “**Statement of Reply**” has the meaning given in Section 3.7(a) of this Appendix A.
- (xxvii) “**Third Party Arbitration**” has the meaning given in Section 6(a) of this Appendix A.
- (xxviii) “**Third Party Litigation**” has the meaning given in Section 6(b) of this Appendix A.

1.2 Applicability of Integration Dispute Resolution Procedure

- (a) All Integration Disputes shall be resolved subject to and in accordance with this Integration Dispute Resolution Procedure.

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- (b) Without limiting any provision of this Appendix A, the Parties intend that all Integration Disputes that arise:
- (i) prior to the CIDB Expiry Date, shall be resolved in accordance with Sections 2 to 5; and
 - (ii) on and following the CIDB Expiry Date, shall be resolved in accordance with Sections 2, 4 and 5.

1.3 Notice of Integration Dispute

- (a) Where a Notice of Dispute has been given under the RSSOM Project Agreement or the North Civil DMCA, as applicable, Contracting Authority may give Notice to RSSOM Project Co and North Civil PTUS Project Co designating such Dispute as an Integration Dispute where it appears to Contracting Authority that:
- (i) there is a claim for contribution, indemnity or other relief under any one or more of the following:
 - (A) Sections 56.1(a)(vi) or 56.1(a)(vii) (*Project Co Indemnities to Contracting Authority*) of the RSSOM Project Agreement;
 - (B) Sections 56.2(a)(i), 56.2(a)(ii) or 56.2(a)(iii) (*Contracting Authority Indemnities to Project Co*) of the RSSOM Project Agreement arising, directly or indirectly, out of, or in consequence of, or involving or relating to any act or omission, or any deliberate or negligent act or omission, of North Civil PTUS Project Co (as applicable);
 - (C) Sections 41.1(a)(vii) or 41.1(a)(viii) (*Project Co Indemnities to Contracting Authority*) of the North Civil DMCA; or
 - (D) Sections 41.2(a)(i), 41.2(a)(ii) or 41.2(a)(iii) (*Contracting Authority Indemnities to Project Co*) of the North Civil DMCA arising, directly or indirectly, out of, or in consequence of, or involving or relating to any act or omission, or any deliberate or negligent act or omission, of RSSOM Project Co (as applicable);
 - (ii) as a result of, in respect of, or arising out of the same matter or occurrence or series of matters or occurrences (including common issues of damages or compensation), there is any one or more of the following:
 - (A) doubt as to responsibility or entitlement to relief among Contracting Authority, RSSOM Project Co and North Civil PTUS Project Co, or the respective extent to which each may be responsible or entitled, whether jointly, severally or in the alternative;
 - (B) a common question of fact among Contracting Authority, RSSOM Project Co and North Civil PTUS Project Co;
 - (C) a common question of law among Contracting Authority, RSSOM Project Co and North Civil PTUS Project Co, including the determination of rights that depends upon the interpretation of the RSSOM Project Agreement or North Civil DMCA,

as applicable, or the interpretation of Applicable Law (as defined in the RSSOM Project Agreement or the North Civil DMCA, as applicable); or

- (iii) the Parties agree that designation of such Dispute as an Integration Dispute may promote or secure the most expeditious and least expensive determination of such Dispute on its merits.
- (b) Contracting Authority may give a Notice under section 1.3(a) designating a Dispute as an Integration Dispute, at any time that is at least seven (7) days before the Date of Commencement of a CDB (as defined in the RSSOM Project Agreement or the North Civil DMCA, as applicable) proceeding with respect to such Dispute. For greater certainty, Contracting Authority may issue a Notice pursuant to Section 1.3(a) concurrent with a Notice of Dispute under the RSSOM Project Agreement or the North Civil DMCA, as applicable.
- (c) Any RSSOM Project Co Party or North Civil PTUS Project Co Party referred to in a Notice designating a Dispute as an Integration Dispute who is not a Party to such Integration Dispute may be added or joined by Contracting Authority as a necessary Party where Contracting Authority considers that the presence of such additional Party is necessary to enable the issues in the Integration Dispute to be effectively and completely determined.
- (d) Where Notice designating a Dispute as an Integration Dispute has been given by Contracting Authority, the Dispute shall thereafter be considered and heard or determined in accordance with this Integration Dispute Resolution Procedure, unless a Party challenges such Notice, by bringing a motion or application to the CIDB within seven (7) days after such Notice was given, and demonstrates that:
 - (i) grounds for such Notice, as set out in this Section 1.3, do not exist;
 - (ii) designation of the Dispute as an Integration Dispute will unduly complicate or delay the Dispute, or cause undue prejudice to such Party, in a manner which cannot be adequately addressed by appropriate terms, directions, or an award of costs; or
 - (iii) the Dispute is an Adjudication Dispute or a matter in respect of which the RSSOM Independent Certifier is entitled or required to make a final and binding determination under the RSSOM Project Agreement.
- (e) The CIDB shall decide whether a Dispute should be heard or determined as an Integration Dispute, on such terms and subject to such directions as the CIDB may decide, where any Party challenges a Notice designating such Dispute as an Integration Dispute.
- (f) All time periods with respect to a Dispute under Schedule 27 – Dispute Resolution Procedure of the RSSOM Project Agreement or the North Civil DMCA, as applicable, shall be suspended where a Notice designating such Dispute as an Integration Dispute has been challenged until the CIDB has decided whether such Dispute should be heard or determined as an Integration Dispute.
- (g) Any Party may challenge a decision of the CIDB that a Dispute should be heard or determined as an Integration Dispute by delivering a Notice of Request to Arbitrate such decision within seven (7) days after the date of the decision of the CIDB. All time periods with respect to such Dispute under Schedule 27 – Dispute Resolution Procedure of the RSSOM Project Agreement or the North Civil DMCA, as applicable, shall be suspended where such Notice of Request to Arbitrate has been

delivered until the arbitral tribunal has decided pursuant to Section 4 whether such Dispute should be heard or determined as an Integration Dispute.

- (h) If no Party delivers a Notice of Request to Arbitrate a decision of the CIDB whether a Dispute should be heard or determined as an Integration Dispute before the expiry of the time period set out in Section 1.3(g), or if any arbitration that is commenced pursuant to Section 4 is subsequently abandoned by the Parties in writing before an arbitral award is made pursuant to Section 4, then the decision of the CIDB whether a Dispute should be heard or determined as an Integration Dispute shall be final and binding on the Parties.

1.4 RSSOM Independent Certifier/Independent Commissioning Agent Determinations and Decisions

- (a) If a Party refers an Integration Dispute in respect of a determination or decision of the RSSOM Independent Certifier or Independent Commissioning Agent, as applicable, made pursuant to the RSSOM Project Agreement or the North Civil DMCA for resolution by the CIDB pursuant to Section 3, the RSSOM Independent Certifier or Independent Commissioning Agent, as applicable, shall not be permitted to provide its opinion as an expert to the CIDB pursuant to Section 3.9(c).

1.5 Continued Performance During Integration Disputes

- (a) RSSOM Project Co, North Civil PTUS Project Co and Contracting Authority shall diligently carry out their respective obligations under the RSSOM Project Agreement or the North Civil DMCA, as applicable, during the pendency of any Integration Dispute. If during the pendency of any Integration Dispute it is considered necessary by any Party to proceed in respect of a matter that is in Dispute, then subject to Section 1.5(b), any Party may proceed without prejudice to any other Party's rights under the RSSOM Project Agreement or the North Civil DMCA, as applicable, in respect of the Integration Dispute (including in respect of any entitlement of RSSOM Project Co to a Delay Event, Compensation Event and/or Variation pursuant to the RSSOM Project Agreement or North Civil PTUS Project Co to an Adjustment Event and/or Variation pursuant to the North Civil DMCA).
- (b) While an Integration Dispute is pending, Contracting Authority may give such written instructions as in Contracting Authority's opinion are necessary in respect of the matter that is the subject of the Dispute, including for RSSOM Project Co to proceed with the Project Operations or North Civil PTUS Project Co to proceed with the Works which are the subject of the Dispute in accordance with the position of Contracting Authority, and RSSOM Project Co or North Civil PTUS Project Co, as applicable, shall comply with such written instructions forthwith.
- (c) RSSOM Project Co and North Civil PTUS Project Co acknowledge and agree that (i) a pending Integration Dispute will not justify any failure or refusal to comply with any written instructions given by Contracting Authority pursuant to Section 1.5(b), including in the event that complying with such written instructions would prevent RSSOM Project Co or North Civil PTUS Project Co, as applicable, from achieving Substantial Completion by the Scheduled Substantial Completion Date under the RSSOM Project Agreement or Project Substantial Completion by the Project Substantial Completion Date under the North Civil DMCA and (ii) RSSOM Project Co and North Civil PTUS Project Co shall have no right to require a determination pursuant to this Integration Dispute Resolution Procedure or otherwise of whether or not Contracting Authority is entitled to give such written instructions or whether or not RSSOM Project Co or North Civil PTUS Project Co, as applicable, is required to comply with such written instructions, before complying with such

written instructions. Only concurrently with or after complying with Contracting Authority's written instructions shall RSSOM Project Co or North Civil PTUS Project Co be entitled to refer any such Dispute for resolution.

- (d) Any claims for time and/or cost consequences of complying with this Section 1.5(d) shall be addressed as part of the resolution of the applicable Integration Dispute, provided that, in the event the matter of the Integration Dispute is determined in favour of RSSOM Project Co or North Civil PTUS Project Co, as applicable, proceeding in accordance with Contracting Authority's written instructions pursuant to Section 1.5(b) shall (i) subject to and in accordance with Section 40 (*Delay Events*) of the RSSOM Project Agreement, be treated as a Delay Event; (ii) subject to and in accordance with Section 41 (*Compensation Events*) of the RSSOM Project Agreement, be treated as a Compensation Event; (iii) subject to and in accordance with Schedule 22 – Variation Procedure of the RSSOM Project Agreement or Schedule 22 – Estimates, Variations and Proposals of the North Civil DMCA, as applicable, result in a Variation; and (iv) subject to and in accordance with Schedule 21 – Risk Allocations of the North Civil DMCA, be treated as an Adjustment Event.

1.6 Mutual Resolution Efforts

- (a) The Parties agree that at all times each of them will make reasonable and *bona fide* efforts to resolve any Integration Dispute:
- (i) in the ordinary course in accordance with the RSSOM Project Agreement or the North Civil DMCA, as applicable, starting with the respective Project teams of the Parties; and
 - (ii) if and to the extent the respective Project teams cannot resolve the matter in the ordinary course in accordance with the RSSOM Project Agreement or the North Civil DMCA, as applicable, by amicable negotiations on a without prejudice basis among the Party Representatives.
- (b) Each Party shall provide full, frank, candid and timely disclosure of relevant facts, information and documents (subject to legal privilege) as may be required by the RSSOM Project Agreement or the North Civil DMCA, as applicable, or reasonably requested by another Party to facilitate the resolution of any Integration Dispute and shall provide such cooperation and assistance as is necessary to enable the issues in any Integration Dispute to be effectively and completely determined.
- (c) The communication of facts, documents, or information by a Party on a without prejudice basis does not relieve that Party of any obligation to deliver any facts, documents or information required under the RSSOM Project Agreement or the North Civil DMCA, as applicable.

2. Amicable Resolution by Party Executives

- (a) Upon receipt of a Notice designating a Dispute as an Integration Dispute, the Integration Dispute shall be escalated for amicable resolution by an executive of each Party (each a “**Party Executive**”).
- (b) The selected Party Executive for each Party shall be:
- (i) in a position of authority above that of the Party Representative; and

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- (ii) shall have or be delegated full authority to resolve the Integration Dispute subject only to approval of the Chief Executive Officer and board of directors or similar governing or regulatory body of the Party (as applicable).
 - (c) The Party Executives shall promptly, and by no later than fifteen (15) Business Days (or such longer period agreed by the Parties in writing) from the date of the receipt of the Notice designating the Dispute as an Integration Dispute, meet and make reasonable and *bona fide* efforts to resolve the Integration Dispute.
 - (d) All discussions and negotiations held, and all communications exchanged, among the Parties in connection with the Party Executive negotiations shall be on a without prejudice basis to facilitate the resolution of the Integration Dispute.
 - (e) Any Party may terminate the process of amicable resolution by the Party Executives by providing Notice of termination of such process (each a “**Party Executive IDRPs Termination Notice**”) at any time:
 - (i) if the initial Party Executive meeting does not occur by the expiry of the period set out in Section 2(c); or
 - (ii) ten (10) Business Days after the initial Party Executive meeting described in Section 2(c).
 - (f) The requirements of this Section 2 cannot be waived or amended except as expressly agreed by the Parties pursuant to Section 8(a).

3. Combined Integration Dispute Board

3.1 Appointment of the CIDB

- (a) The Combined Integration Dispute Board (“**CIDB**”) shall be a standing body composed of three members appointed in accordance with this Integration Dispute Resolution Procedure (each a “**CIDB Member**”). On or before the North Civil Effective Date, CIDB shall be constituted by a written agreement among the Parties and each of the CIDB Members substantially in the form set out in Attachment 2 to this Appendix A and executed and delivered in accordance with the RSSOM Project Agreement or the North Civil DMCA, as applicable (each a “**CIDB Member Agreement**”).
- (b) The CIDB shall remain constituted until the CIDB Expiry Date. The Parties may agree in writing to extend the term of the CIDB, and shall agree in writing to any extensions necessary in order to obtain CIDB decisions in relation to Integration Disputes which remain outstanding at the end of the CIDB term.
- (c) Unless otherwise agreed by the Parties in writing:
 - (i) two CIDB Members shall be Professional Engineers qualified to practice in Ontario or another province of Canada or have technical and/or senior managerial expertise relevant to the Project (each a “**CIDB Technical Member**”); and
 - (ii) the third Member, who shall be the chair of the CIDB, shall have significant experience in construction law and shall be either: (A) a lawyer who is licensed to practice law in Ontario or another province of Canada other than Quebec; or (B) an ex-judge or master of a superior

court in Ontario or another province of Canada other than Quebec providing adjudication, arbitration and/or mediation services in Ontario or another province of Canada (the “**CIDB Chair**”).

- (d) Each CIDB Member shall be independent, impartial and, unless otherwise agreed by the Parties in writing, experienced in resolving and deciding disputes of a type, complexity and value commensurate with the potential Integration Disputes that could be referred to the CIDB.
- (e) Each of RSSOM Project Co and North Civil PTUS Project Co shall appoint a CIDB Technical Member of its choice on or prior to the North Civil Effective Date, and shall deliver to the other Parties a CIDB Member Statement for that CIDB Member upon appointment in accordance with the RSSOM Project Agreement or the RFP (as defined in the North Civil DMCA), as applicable.
- (f) Contracting Authority shall appoint the CIDB Chair on or prior to the North Civil Effective Date, and deliver a CIDB Member Statement for the CIDB Chair upon appointment in accordance with the RSSOM Project Agreement or the RFP (as defined in North Civil DMCA), as applicable.
- (g) Before commencing CIDB activities, each CIDB Member shall sign with the Parties a CIDB Member Agreement. The CIDB Member Agreement may be terminated in accordance with the CIDB Member Agreement.

3.2 Replacement of CIDB Member

- (a) When a CIDB Member must be replaced due to death, incapacity, resignation, termination or removal, or when a CIDB Technical Member must be replaced because such CIDB Technical Member has ceased to be a Technical Member of the CDB under the RSSOM Project Agreement or the North Civil DMCA, as applicable, a new CIDB Member shall be appointed within thirty (30) days of the need for replacement arising, in the same manner as the CIDB Member being replaced was originally selected in accordance with this Integration Dispute Resolution Procedure, unless otherwise agreed by the Parties in writing. All actions taken by the CIDB prior to the replacement of a CIDB Member shall remain valid. When one CIDB Member is to be replaced, the other CIDB Members shall continue to be CIDB Members, but shall not hold hearings or issue CIDB decisions without the agreement of the Parties in writing prior to the replacement of the CIDB Member.
- (b) If a Party fails to appoint a replacement CIDB Technical Member and the Parties cannot agree on an alternative CIDB Technical Member within the period of time set out in Section 3.2(a), any Party may refer the appointment of that CIDB Technical Member or the alternative CIDB Technical Member for a court determination pursuant to Section 5(b).
- (c) If Contracting Authority is unable to appoint a replacement CIDB Chair within the period of time set out in Section 3.2(a), any Party may refer the appointment of the replacement CIDB Chair for a court determination pursuant to Section 5(b).

3.3 Impartiality of CIDB Members

- (a) Every prospective CIDB Member shall sign a statement of acceptance, availability, impartiality and independence and disclose in writing to the Parties and the other CIDB Members, any facts or circumstances which might call into question the CIDB Member’s independence in the eyes of the Parties or give rise to reasonable doubts as to the prospective CIDB Member’s impartiality (including if such prospective CIDB Member, other than a prospective CIDB Technical Member

being appointed in accordance with Section 3.1(f), is or has been a CDB Member (as defined in the RSSOM Project Agreement or the North Civil DMCA, as applicable) or arbitrator under the RSSOM Project Agreement or the North Civil DMCA), substantially in the form set out in Attachment 1 to this Appendix A (the “**CIDB Member Statement**”).

- (b) A CIDB Member shall immediately disclose in writing to the Parties any facts or circumstances concerning the CIDB Member’s impartiality or independence which may arise in the course of such CIDB Member’s tenure.
- (c) Should any Party wish to challenge a prospective or current CIDB Member on the basis of an alleged lack of impartiality, independence or qualifications, it may, as soon as practicable after learning of the facts upon which the challenge is based, submit to the CIDB and the other Parties a request for a decision upon the challenge including a written statement of such facts.
- (d) If the challenged prospective or current CIDB Member does not withdraw, and the other Parties do not agree to the challenge, any Party may refer the matter for a court determination pursuant to Section 5(b).
- (e) No Party shall challenge a current CIDB Member on the basis of an alleged lack of impartiality or independence as a result of the CIDB Member carrying out its duties under the CIDB Member Agreement, including the provision of without prejudice dispute resolution assistance.
- (f) If a prospective or current CIDB Member is successfully challenged, the prospective CIDB Member shall not be appointed, or the current CIDB Member shall be removed forthwith from the CIDB, and the CIDB Member Agreement, if any, between that CIDB Member and the Parties shall be automatically terminated.

3.4 Project Monitoring by the CIDB

- (a) The Parties shall fully cooperate with the CIDB and communicate information to it in a timely manner.
- (b) During any meetings and site visits in which the CIDB participates, the CIDB may review the performance of the Parties’ obligations under the RSSOM Project Agreement and North Civil DMCA, as applicable, with the Parties. The Parties may at any time by agreement in writing request that the CIDB (i) provide informal assistance to the Parties with regards to avoiding or addressing Integration Disputes; or (ii) mediate any Integration Dispute. All such reviews by the CIDB and any informal assistance or mediation provided by the CIDB pursuant to this Section 3.4(b) is provided on a without prejudice basis and shall not be considered or referred to in any such Integration Dispute or if any Integration Dispute is submitted for resolution in any subsequent dispute resolution processes or proceedings.
- (c) Each Party is required to copy the other Parties in all written communications in respect of either Project it provides to a CIDB Member. Unless otherwise agreed by the Parties in writing or as provided in Section 3.10(d), no Party shall have any conversation or any meeting with any CIDB Member in respect of either Project without the other Parties being included in such conversation or being present at such meeting.

3.5 CIDB to Resolve Integration Disputes

- (a) If the Parties are unable to resolve an Integration Dispute prior to the CIDB Expiry Date through amicable resolution by the Party Executives pursuant to Section 2 and a Party delivers a Party Executive IDR Termination Notice to the other Parties, then any Party may in writing refer the Integration Dispute to the CIDB for resolution.
- (b) The CIDB shall have all the powers in respect of Integration Disputes that a CDB has in respect of other Disputes under the RSSOM Project Agreement or the North Civil DMCA, as applicable.

3.6 Statement of Case

- (a) The Party referring an Integration Dispute to the CIDB pursuant to Section 3.5(a) (the “**Claimant**”) shall submit a concise written statement of its case (the “**Statement of Case**”) to the responding Parties (the “**Respondent**”) and the CIDB within thirty (30) days (or such longer period agreed by the Parties in writing, acting reasonably) of a Party’s referral of the Integration Dispute to the CIDB for resolution pursuant to Section 3.5(a). The Statement of Case shall only include:
 - (i) the Notice of Dispute, including all Integration Dispute Notice Supporting Documents;
 - (ii) the issues submitted to the CIDB for decision;
 - (iii) a statement of the Claimant’s position, including a statement of relevant facts and law; and
 - (iv) any amendments, updates, additions to, or deletions from the Notice of Dispute or the Integration Dispute Notice Supporting Documents.
- (b) The date on which the Statement of Case is received by the CIDB Chair shall be deemed to be the date of the commencement of the CIDB proceeding (the “**Date of Commencement**”).
- (c) If the Claimant provides any material amendment, update, addition to, or deletion from the Notice of Dispute or the Integration Dispute Notice Supporting Documents pursuant to Section 3.6(a)(iv), then the CIDB shall permit each Respondent a reasonable amount of time to review and respond to such material amendment, update, addition to, or deletion from the Notice of Dispute or the Integration Dispute Notice Supporting Documents, and shall extend the Reply Period accordingly pursuant to Section 3.7(b)(i).
- (d) Unless the CIDB orders otherwise, the Claimant shall not be entitled to rely upon any documents other than the documents contained in its Statement of Case. In the event that the CIDB permits the Claimant to rely on any additional documents, the CIDB shall permit each Respondent a reasonable amount of time to review and respond to such additional documents.

3.7 Statement of Reply

- (a) Subject to Section 3.7(b), within thirty (30) days of the Date of Commencement (the “**Reply Period**”), each Respondent shall deliver to the Claimant and the CIDB a concise written statement of its reply to the Statement of Case (the “**Statement of Reply**”). The Statement of Reply shall only include:
 - (i) a statement of the Respondent’s position, including a statement of relevant facts and law;

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- (ii) the issues submitted to the CIDB for a decision; and
 - (iii) any documents not contained in the Statement of Case on which the Respondent intends to rely.
- (b) The Reply Period may be extended to permit each Respondent additional time to provide its Statement of Case by:
- (i) order of the CIDB (including pursuant to Section 3.6(c) or Section 3.6(d)); or
 - (ii) agreement of the Parties, acting reasonably.

3.8 Additional Documents Required by the CIDB

- (a) The CIDB may at any time request a Party to submit additional written statements or documentation within a reasonable amount of time to assist the CIDB in preparing its decision. Each such request shall be communicated in writing by the CIDB to the Parties, and any additional written statements or documentation submitted in response to the CIDB's request shall be submitted to the CIDB and the other Parties. The CIDB shall permit the other Parties a reasonable amount of time to review and respond to such additional written statements or documentation.

3.9 Evidence and Powers of the CIDB

- (a) Subject to Section 3.9(b), the CIDB shall decide Integration Disputes based on the Parties' Statement of Case and Statement of Reply and any additional documents and responses delivered pursuant to any of Sections 3.6(d), 3.7(a) or 3.8(a).
- (b) If there are any material factual disputes among the Parties or other issues arising from the Parties' Statement of Case or Statement of Reply, the CIDB may order such additional procedural steps or give such directions as the CIDB considers appropriate to address such disputes or other issues, with a view to proportionality and the Parties' desire to resolve Integration Disputes in a cost-effective and expeditious manner.
- (c) Without limiting Section 3.9(b), the CIDB may, if necessary, appoint one or more experts after considering the positions of the Parties or, subject to Section 1.4(a), obtain and consider the opinion of the RSSOM Independent Certifier and/or Independent Commissioning Agent as an expert.

3.10 Hearings

- (a) The CIDB shall order that a hearing in respect of the Integration Dispute take place unless the Parties and CIDB agree in writing that a hearing is not required.
- (b) The hearing shall be conducted in Toronto, Ontario or by teleconference or videoconference on written agreement of the Parties and the CIDB.
- (c) The Parties shall appear through duly authorized representatives. In addition, the Parties may be assisted or represented by advisers and legal counsel.
- (d) If any Party refuses or fails to take part in the CIDB hearing or in any preceding steps, the CIDB may proceed notwithstanding such refusal or failure.

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- (e) The CIDB may request that the Parties provide and exchange summaries of their argument in advance of the hearing.
 - (f) Subject to the discretion of the CIDB, the hearing shall proceed as follows:
 - (i) the Claimant shall present its case;
 - (ii) each Respondent shall present its case; and
 - (iii) the Claimant shall have an opportunity to reply.

3.11 Basis for Decision

- (a) The CIDB shall make decisions under the RSSOM Project Agreement based on the provisions of the RSSOM Project Agreement and under the North Civil DMCA based on the provisions of the North Civil DMCA.
- (b) The CIDB may take into account:
 - (i) any failure of a Party to comply with the RSSOM Project Agreement or North Civil DMCA, as applicable, including any of its mitigation obligations or its procedural obligations under this Interface Agreement; and
 - (ii) any unreasonable delay in bringing the claim, including any unreasonable delay that prevented or prejudiced proper investigation of, opportunity for mitigation of, or ability to respond to the claim.
- (c) A decision of the CIDB shall be in writing and state the findings, reasons, and determination of the CIDB and include:
 - (i) a summary of the Integration Dispute, the positions of the Parties and the decision requested; and
 - (ii) a summary of the relevant provisions of the RSSOM Project Agreement or North Civil DMCA, as applicable, and the relevant facts and law considered by the CIDB.
- (d) The CIDB shall issue its decision promptly and, in any event, within thirty (30) days after the hearing unless the Parties consent in writing to an extension, which consent shall not be unreasonably withheld. Failure to issue a decision of the CIDB within the time allowed does not invalidate the decision.
- (e) The CIDB shall make its decision by a majority of the CIDB Members. Any CIDB Member who disagrees with the decision shall give the reasons for such disagreement in a separate written document that shall form part of the decision but which shall not be binding on the Parties.

3.12 Costs

- (a) Unless otherwise agreed by the Parties in writing or ordered by the CIDB, or otherwise set out in a CIDB Member Agreement, all CIDB Member fees and expenses and any other costs associated with the establishment and activities of the CIDB (including in relation to obtaining CIDB decisions

and the cost of any experts appointed pursuant to Section 3.9(c)) shall be paid by the Parties in accordance with each CIDB Member Agreement, and shared as follows:

- (i) [REDACTED]% by Contracting Authority;
 - (ii) [REDACTED]% by each of RSSOM Project Co and North Civil PTUS Project Co.
- (b) Each Party shall bear its own costs associated with Integration Disputes referred to the CIDB for a decision.

3.13 Subsequent Dispute Resolution Procedure to the CIDB

- (a) Any Party that is dissatisfied with a decision of the CIDB may, within thirty (30) days of the release of the CIDB's decision (or such longer period agreed by the Parties, acting reasonably) (the "**Arbitration Referral Period**"), deliver a Notice of Request to Arbitrate the Integration Dispute pursuant to Section 4(c). The decision of the CIDB shall be stayed during the Arbitration Referral Period. If the Integration Dispute is arbitrated pursuant to Section 4, the arbitration tribunal shall conduct the arbitration *de novo* and the decision of the CIDB shall not, subject to the following sentence, be binding on the Parties. If no Party delivers a Notice of Request to Arbitrate the Integration Dispute pursuant to Section 4(c) before the expiry of the Arbitration Referral Period, or if any arbitration that is commenced pursuant to Section 4 is subsequently abandoned by the Parties in writing before an arbitral award is made pursuant to Section 4, then the decision of the CIDB shall be final and binding on the Parties.
- (b) The Parties agree that any decision of the CIDB that becomes final and binding on the Parties in accordance with Section 3.13(a) shall not be subject to appeal, arbitration, litigation or any other dispute resolution process and expressly waive any and all such rights in respect of the Integration Dispute resolved by the CIDB.

4. Arbitration

- (a) Prior to the CIDB Expiry Date, if the Parties fail to resolve an Integration Dispute through the processes set out in Sections 2 and 3, and where no final and binding CIDB decision exists in respect of the Integration Dispute, then the Integration Dispute shall be resolved by *de novo* arbitration in accordance with this Section 4.
- (b) On and following the CIDB Expiry Date, if the Parties fail to resolve the Integration Dispute through the process set out in Section 2, then the Dispute shall be resolved by *de novo* arbitration in accordance with this Section 4.
- (c) Any Party may deliver a Notice of request to arbitrate an Integration Dispute eligible to be referred to arbitration in accordance with this Integration Dispute Resolution Procedure (each a "**Notice of Request to Arbitrate**").
- (d) A Notice of Request to Arbitrate will not be effective unless it:
- (i) is signed by the Party Representative;
 - (ii) if applicable, is delivered to the other Party Representatives within the period of time set out in Section 3.13(a) following the release of any applicable CIDB decision;

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- (iii) indicates it is a Notice of Request to Arbitrate pursuant to Section 4(c); and
 - (iv) expressly identifies the Integration Dispute to be arbitrated.
- (e) The *Arbitration Act, 1991* shall apply to an arbitration pursuant to this Section 4.
- (f) An Integration Dispute referred to arbitration shall be resolved by a single arbitrator unless:
- (i) the Parties otherwise agree in writing; or
 - (ii) one of the Parties, by Notice delivered to the other Parties within seven (7) days after delivery of a Notice of Request to Arbitrate, requires the Integration Dispute to be resolved by a three person arbitral tribunal, in which case the Integration Dispute shall be resolved by a three person arbitral tribunal.
- (g) If the arbitral tribunal is comprised of a single arbitrator:
- (i) the Parties shall jointly appoint the arbitrator; and
 - (ii) if the Parties are unable to agree on the arbitrator within thirty (30) days after delivery of the Notice of Request to Arbitrate, any Party may apply to the Ontario Superior Court of Justice to appoint the arbitrator pursuant to the *Arbitration Act, 1991*.
- (h) If the arbitral tribunal is comprised of three arbitrators:
- (i) RSSOM Project Co and North Civil PTUS Project Co shall each appoint one arbitrator and Contracting Authority shall appoint the third arbitrator, who shall act as the chair; and
 - (ii) if the Parties have not appointed an arbitrator or arbitrators pursuant to Section 4(h)(i), any Party may apply to the Ontario Superior Court of Justice to appoint the remaining arbitrator(s) pursuant to the *Arbitration Act, 1991*.
- (i) All arbitrators must have qualifications and experience relevant to the issues in the Integration Dispute commensurate with the nature, complexity and value of the Integration Dispute(s) to be arbitrated.
- (j) No one shall be nominated or appointed to act as an arbitrator who is or was within the past five years:
- (i) a Member of a CDB under the RSSOM Project Agreement or the North Civil DMCA;
 - (ii) an arbitrator under the RSSOM Project Agreement or the North Civil DMCA, unless the arbitral tribunal will be comprised of three (3) arbitrators with one (1) arbitrator who is an existing or former arbitrator under the RSSOM Project Agreement and one (1) arbitrator who is an existing or former arbitrator under the North Civil DMCA; or
 - (iii) in any way interested, financially or otherwise, in the conduct of the Project Operations under the RSSOM Project Agreement, the Works under the North Civil DMCA, or in the business affairs of Contracting Authority, RSSOM Project Co, North Civil PTUS Project

Co or any consultant, subconsultant or subcontractor of any of them who may be involved or implicated in the Integration Dispute.

- (k) Unless otherwise agreed by the Parties, the seat and venue of the arbitration shall be Toronto, Ontario. The language of the arbitration shall be English.
- (l) The arbitral tribunal shall render its award as soon as possible and no later than sixty (60) days after the date of the closure of the hearing, or such other period of time as agreed to by the Parties in writing and accepted by the arbitral tribunal.
- (m) The costs of the arbitration are within the discretion of the arbitral tribunal. In exercising discretion to award costs, the arbitrator(s) will take into account the desire of the Parties that costs should generally be awarded to each Party in proportion to the relative success that such Party has in the arbitration.
- (n) The award of the arbitral tribunal shall be final and binding upon the Parties and not subject to appeal.
- (o) Where a Dispute has been designated as an Integration Dispute, the arbitral tribunal shall have all the powers in respect of such Integration Dispute that an arbitral tribunal has in respect of other Disputes under the RSSOM Project Agreement or the North Civil DMCA, as applicable.
- (p) The arbitral tribunal shall make decisions under the RSSOM Project Agreement based on the provisions of the RSSOM Project Agreement and under the North Civil DMCA based on the provisions of the North Civil DMCA.

5. Litigation

- (a) If necessary to prevent irreparable harm to a Party, including in connection with a Public Safety Integration Dispute, nothing contained in this Appendix A will prevent the Parties from seeking interim protection from the Ontario Superior Court of Justice, including seeking an interlocutory injunction. However, the Parties agree that no irreparable harm shall occur if the RSSOM Project Agreement or North Civil DMCA, as applicable, is terminated and that any termination of the RSSOM Project Agreement or North Civil DMCA, as applicable, by any Party, if found to be wrongful, would be adequately compensated for by an award of damages.
- (b) Any Party may bring an application or motion directly to the Ontario Superior Court of Justice for a determination regarding appointment of a challenged or a proposed alternative CIDB Member or arbitrator.
- (c) All litigation permitted pursuant this Integration Dispute Resolution Procedure shall be resolved in the Ontario Superior Court of Justice. All Parties irrevocably attorn to the exclusive jurisdiction of the courts of the Province of Ontario in respect of any Integration Disputes which are to be resolved by litigation.

6. Stay and Consolidation with Third Party and Integration Disputes

- (a) Subject to Section 6(c), if any Party is involved in an arbitration in the Province of Ontario with a third party (“**Third Party Arbitration**”), and if such Third Party Arbitration involves common factual or legal issues (including common issues of damages) which are also the subject of an

Integration Dispute, then any arbitration of the Integration Dispute which includes those common factual, legal or damages issues may be stayed, consolidated or joined with the Third Party Arbitration(s) but only if the Parties to the Integration Dispute and the other parties to such Third Party Arbitration all agree in writing.

(b) Subject to Section 6(c), if any Party is involved in litigation in the Province of Ontario with a third party (“**Third Party Litigation**”) and if:

(i) such Third Party Litigation involves common factual or legal issues (including common issues of damages) which are the subject of an arbitration under this Integration Dispute Resolution Procedure; and

(ii) such Party is brought directly into the Third Party Litigation as a party to that litigation,

then on the application of any Party to the court in the Province of Ontario having jurisdiction the court may, if it determines that it is just and convenient in all the circumstances, order a stay of the Third Party Litigation.

(c) Sections 6(a) and 6(b) only apply:

(i) if the Integration Dispute includes a claim by one Party against another for contribution or indemnity for that Party’s liability or potential liability to the third party where such liability results or will result from an award in the Third Party Arbitration or a judgment in the Third Party Litigation; and

(ii) to those specific issues that are common issues in the arbitration under this Integration Dispute Resolution Procedure and the Third Party Arbitration or the Third Party Litigation, such that all other issues in the Integration Dispute shall continue to be resolved by arbitration under this Integration Dispute Resolution Procedure and shall not be consolidated with the Third Party Arbitration or Third Party Litigation.

(d) Where two or more Integration Disputes are pending between or among Contracting Authority, RSSOM Project Co and North Civil PTUS Project Co, at any stage of the Integration Resolution Dispute Procedure, the Parties to such Integration Disputes may agree or the CIDB or arbitral tribunal, as applicable, may order that:

(i) an Integration Dispute shall be considered or consolidated with, or heard at the same time as or immediately before or after, another Integration Dispute; or

(ii) claims made in an Integration Dispute shall be:

(A) stayed until after the determination of claims in another Integration Dispute; or,

(B) asserted by way of counterclaim, crossclaim or third party claim in another Integration Dispute.

7. Confidentiality

(a) Unless otherwise agreed by the Parties in writing or required by law, no Party shall rely on or introduce as evidence in any subsequent proceeding or investigation, and shall treat as confidential

and inadmissible in any arbitration or litigation proceeding or other investigation or proceeding, any information, data, statements, submissions, admissions, settlement proposals, recommendations, discussions, opinions, or any other documents within the meaning of the *Rules of Civil Procedure*, other than documents which would otherwise be admissible pursuant to the *Rules of Civil Procedure*, which were obtained, exchanged or delivered:

- (i) on a without prejudice basis, including through the process for the amicable resolution of the Integration Dispute by the Party Executives set out in Section 2; or
 - (ii) through the decision process by any Party or the CIDB or any CIDB Member, except for a decision and reasons of the CIDB, which may be introduced in any subsequent dispute resolution processes or proceedings regarding the same Integration Dispute(s).
- (b) Any CIDB Member or arbitrator appointed pursuant this Integration Dispute Resolution Procedure shall keep all information about any Integration Dispute(s) referred to the CIDB or for arbitration confidential and shall not disclose such information to anyone other than the Parties.
 - (c) Any arbitrator shall execute non-disclosure agreements in a form satisfactory to the Parties, providing that, among other things, material delivered by a Party in connection with arbitration shall not be disclosed to any person or used for any other purpose, in accordance with this Section 7, and all such material shall remain the property of the Party disclosing or delivering same.
 - (d) A CIDB Member or arbitrator shall not be compelled to give evidence in any proceeding in respect of an Integration Dispute that was referred to the CIDB or arbitrator for a decision.

8. Miscellaneous

- (a) The Parties can, by written agreement on an Integration Dispute by Integration Dispute basis:
 - (i) extend any or all timelines set out in this Integration Dispute Resolution Procedure;
 - (ii) agree to waive or by-pass any one or more of the Integration Dispute resolution processes in Sections 2 and 3 and, instead, proceed directly to resolution of the Integration Dispute by arbitration pursuant to Sections 4;
 - (iii) agree to a different process for arbitration than the one contemplated in this Integration Dispute Resolution Procedure; or
 - (iv) agree to refer any Integration Dispute to mediation by a neutral third party mediator.

ATTACHMENT 1 TO APPENDIX A

**FORM OF CIDB MEMBER STATEMENT OF ACCEPTANCE, AVAILABILITY,
IMPARTIALITY AND INDEPENDENCE**

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

(“Contracting Authority”)

AND TO: THE MINISTER OF INFRASTRUCTURE

AND TO: CONNECT 6IX GENERAL PARTNERSHIP (“RSSOM Project Co”)

AND TO: PAPE NORTH CONNECT, [REDACTED] (“North Civil PTUS Project Co”)

RE: The **INTERFACE AGREEMENT** dated the [•] day of [•], 20[•] between Contracting Authority, RSSOM Project Co and North Civil PTUS Project Co, the **RSSOM PROJECT AGREEMENT** dated the 15th day of November, 2022 between Contracting Authority and RSSOM Project Co, and the **NORTH CIVIL DEVELOPMENT AND MASTER CONSTRUCTION AGREEMENT** dated the 17th day of January, 2024 between Contracting Authority and North Civil PTUS Project Co, each in respect of the Ontario Line Subway

1. General**1.1 Name and Position**

- (a) Family Name(s):
- (b) Given Name(s):
- (c) CIDB Member Position (circle one): Technical or Chair
- (d) Please attach a current copy of your CV.

1.2 Definitions, Interpretation and Governing Law

- (a) This statement (the “**Statement**”) shall be interpreted in accordance with the Interface Agreement, the RSSOM Project Agreement and the North Civil DMCA, and governed by the laws of Ontario, without regard to conflict of laws provisions. Please initial below all relevant statements.

1.3 Acceptance

- (a) I accept to serve as a Combined Integration Dispute Board (“**CIDB**”) Member (“**CIDB Member**”) in accordance with the Interface Agreement, the RSSOM Project Agreement and the North Civil DMCA.

Initial: _____

- (b) I decline to serve as a CIDB Member in accordance with the Interface Agreement, the RSSOM Project Agreement and the North Civil DMCA. *(If you tick here, simply date and sign the form without completing any other sections).*

Initial: _____

1.4 Availability

- (a) I confirm, on the basis of the information presently available to me that I have received and reviewed a copy of the Interface Agreement and can devote the time necessary to discharge the duties of a CIDB Member throughout the entire duration of the CIDB’s anticipated activities as diligently, efficiently and expeditiously as possible in accordance with the timelines and procedures set out in the Interface Agreement.

Initial: _____

- (b) I understand that it is important to discharge the duties of a CIDB Member set out in the Interface Agreement as promptly as reasonably practicable. My current and anticipated professional roles and significant engagements are set out below for the information of the Parties (anonymized as necessary to remain compliant with my professional obligations).

Initial: _____

Number of currently pending matters or roles in which I am involved (*i.e. arbitrations and dispute board activities pending now, not previous experience; additional details you wish to make known to the Parties in relation to these matters can be provided on a separate sheet*):

	As tribunal or dispute board chair / sole arbitrator / sole DB member	As co-arbitrator / co-dispute board member	As counsel	As other
Standing dispute boards				
Ad-hoc dispute boards				
Arbitrations				
Court litigation (e.g., international commercial courts)				
Other (attach separate sheet if necessary)				

I have attached a calendar showing for the next twenty-four (24) months all currently scheduled hearings and other existing commitments (anonymized as necessary) that would prevent me from attending meetings or sitting in a hearing on this Project.

I have further marked in the box below or on a separate sheet any other relevant information regarding my availability.

- (c) I shall make best efforts to maintain the availability necessary to discharge the duties of a CIDB Member throughout the entire duration of the CIDB’s anticipated activities which require my involvement, and shall immediately disclose in writing to the Parties and the other CIDB Members any additional significant matters that I may become involved in and any other relevant information regarding my availability which may arise in the course of my tenure as a CIDB Member and which may materially affect my ability to discharge my duties as a CIDB Member.

Initial: _____

1.5 Independence and Impartiality

- (a) In deciding which disclosure method applies to you, you should take into account, whether there exists any past, present or future, anticipated or planned relationship, direct or indirect, whether financial, professional or of any other kind, between you and any of the Parties, their lawyers or other representatives, or related entities and individuals. You are also required to disclose all recent, professional or personal, relationships with all key members of all Parties. Any doubt must be resolved in favour of disclosure. Any disclosure should be complete and specific, identifying *inter alia* relevant dates (both start and end dates), financial arrangements, details of companies and individuals, and all other relevant information.

- (i) **Nothing to disclose:** I am impartial and independent of the Parties and intend to remain so. To the best of my knowledge, and having made due enquiry, there are no facts or circumstances, past or present, that I should disclose because they might be of such a nature as to call into question my independence in the eyes of any of the Parties and no circumstances that could give rise to reasonable doubts as to my impartiality.

Initial: _____

- (ii) **Acceptance with disclosure:** I am impartial and independent and intend to remain so. However, mindful of my obligation to disclose any facts or circumstances which might be of such a nature as to call into question my independence in the eyes of any of the Parties or that could give rise to reasonable doubts as to my impartiality, I draw attention to the matters below and/or on the attached sheet.

I confirm that the matters disclosed above represent full and complete disclosure with respect to any facts or circumstances which might be of such a nature as to call into question my independence in the eyes of any of the Parties or that could give rise to reasonable doubts as to my impartiality.

Initial: _____

- (b) I shall make best efforts to maintain the independence and impartiality necessary to discharge the duties of a CIDB Member throughout the entire duration of the CIDB’s anticipated activities, but shall immediately disclose in writing to the Parties and the other CIDB Members any facts or circumstances concerning my impartiality or independence which may arise in the course of my tenure as a CIDB Member.

Initial: _____

- (c) In accordance with the Interface Agreement, I understand that the Parties may exercise their right to challenge me on the basis of an alleged lack of impartiality, independence or qualifications. In the event that I do not withdraw and the other Parties do not agree to the challenge, I understand that the challenge shall be determined in accordance with the Interface Agreement.

Initial: _____

- (d) In the event that I am successfully challenged, I understand that I will be removed from the CIDB forthwith and that my CIDB Member Agreement shall be terminated.

Initial: _____

1.6 Delivery

- (a) This Statement may be delivered by sending a fully executed copy by electronic mail or other electronic transmission to the Parties, and such delivery shall be as effective as the manual delivery of this executed Statement.

[SIGNATURE PAGE FOLLOWS IMMEDIATELY]

Date:

Signature:

ATTACHMENT 2 TO APPENDIX A
FORM OF CIDB MEMBER AGREEMENT

This CIDB Member Agreement (this “**Agreement**”) is entered into among:

- (a) **CIDB Member:** [●] [*Note: Full name and title (sole Member, CIDB Technical Member.)*] (the “**CIDB Member**”);
- (b) **Party 1: METROLINX** (“**Contracting Authority**”);
- (c) **Party 2: CONNECT 6IX GENERAL PARTNERSHIP** (“**RSSOM Project Co**”); and
- (d) **Party 3: PAPE NORTH CONNECT, [REDACTED]** (“**North Civil PTUS Project Co**”),

(collectively, the “**Undersigned Parties**”).

WHEREAS:

- A. The Undersigned Parties have entered into an agreement dated [date of the **Interface Agreement**] (the “**Interface Agreement**”) for the Ontario Line Subway (the “**Project**”);
- B. The Interface Agreement provides for the appointment of a Combined Integration Dispute Board (the “**CIDB**”), and that the CIDB shall, *inter alia*, issue decisions under the Interface Agreement, and perform other tasks in accordance with the Interface Agreement (the “**CIDB Services**”);
- C. Certain Integration Disputes may be referred to the CIDB for determination in accordance with the Interface Agreement; and
- D. The undersigned individual has been appointed to serve on the CIDB as a CIDB Member

The CIDB Member and the Parties therefore agree as follows:

1.1 Definitions and Interpretation

- (a) This Agreement shall be interpreted in accordance with the Interface Agreement and defined terms shall have the same meaning as in the Interface Agreement, unless otherwise specified here.
- (b) If there is any conflict between this Agreement and the Interface Agreement, this Agreement will take precedence to the extent of the conflict.

1.2 Undertaking

- (a) The CIDB Member shall act as [a **CIDB Technical Member/the CIDB Chair**] and hereby agrees to perform the duties of a CIDB Member and provide the CIDB Services in accordance with the terms of the Interface Agreement and the terms of this Agreement.
- (b) The CIDB Member confirms that he or she is and shall remain impartial and independent of the Parties.

-
- (c) The CIDB Member further confirms that he or she has executed and will comply with the terms of the CIDB Member Statement.

1.3 Composition of the CIDB and Contact Details

- (a) Subject to Section 3 of the Integration Dispute Resolution Procedure under the Interface Agreement, the CIDB shall be composed of three independent and impartial CIDB Members.
- (b) The CIDB Member can be contacted as follows: CIDB Member: *[Note: Include name, address, telephone, email and any other contact details.]*
- (c) The CIDB Chair is listed below and can be contacted as follows: CIDB Chair: *[Note: Include name, address, telephone, email and any other contact details.]*
- (d) The **[other CIDB Technical Member]** is listed below and can be contacted as follows: CIDB Technical Member: *[Note: Include name, address, telephone, email and any other contact details.]*
- (e) The Parties to the Interface Agreement are those indicated above with the following contact details:
- (i) Party 1:
Metrolinx
[REDACTED]
- (ii) Party 2:
[REDACTED]
- (iii) Party 3:
Pape North Connect
[REDACTED]
- (f) Any changes in these contact details shall be immediately communicated to all other Undersigned Parties.

1.4 Qualifications

- (a) The Parties recognise that the CIDB Member is a **[●]**, in accordance with Section 3.1(c) of the Integration Dispute Resolution Procedure under the Interface Agreement.
- (b) The Parties recognise that the CIDB Member is independent, impartial and skilled in resolving and deciding disputes of a type, complexity and value commensurate with the Integration Dispute(s) likely to be referred to the CIDB, in accordance with Section 3.1(d) of the Integration Dispute Resolution Procedure under the Interface Agreement.

1.5 Fees and Disbursements

- (a) In consideration of the CIDB Member performing the CIDB activities in accordance with this Agreement and the Interface Agreement, the CIDB Member shall be entitled to be paid the initial fee (the “**Initial Fee**”) and the ad-hoc hourly fee (the “**Ad-hoc Hourly Fee**”) described in this Section 1.5.
- (b) The Initial Fee shall be a lump sum amount equal to CAD \$[REDACTED] and shall be reflected in the first invoice of the CIDB Member provided pursuant to Section 1.6(a).
- (c) The CIDB Member’s Initial Fee shall cover:
- (i) reviewing and becoming and remaining familiar with the RSSOM Project Agreement and the North Civil DMCA, including without limitation, Schedule 15 – Output Specifications of the RSSOM Project Agreement, Construction Technical Requirements of the North Civil DMCA, Schedule 43 – North Civil Infrastructure Access and Handover of the RSSOM Project Agreement, and Schedule 45 – Integration with the RSSOM Project of the North Civil DMCA;
 - (ii) reviewing any relevant amendments to the RSSOM Project Agreement, the North Civil DMCA and Variation Confirmations (as defined in the RSSOM Project Agreement and the North Civil DMCA);
 - (iii) reviewing correspondence from the Parties, and other documents which the CIDB is required to review;
 - (iv) reviewing specific documents which the CIDB requests for its review;
 - (v) attending internal CIDB meetings;
 - (vi) attending meetings and/or any site visits in which the CIDB is required to participate;
 - (vii) providing informal assistance with Integration Disputes or potential Integration Disputes;
 - (viii) managing and coordinating the operation of the CIDB; and
 - (ix) any overhead and office expenses.
- (d) The CIDB Member’s Ad-hoc Hourly Fee shall be [CAD \$[●] per hour], and shall be billed in hourly increments for certain work performed. The Ad-hoc Hourly Fee shall cover:
- (i) preparation for and attendance at ad-hoc meetings/site visits with the Parties; and
 - (ii) any work carried out in connection with referrals for a CIDB decision, including preparation, attendance at hearings, review of the Parties’ submissions, delivery of the CIDB decision, and revisions to same.
- (e) Any non-productive ad-hoc travel shall be reimbursed at half the hourly rate of the CIDB Member’s Ad-hoc Hourly Fee.

-
- (f) Reasonable CIDB Member expenses and disbursements relating to (i) flights (at economy class rates), (ii) hotel (to a maximum of CAD \$[REDACTED] per night), and (iii) the cost of retaining any experts shall be reimbursed at cost, with the prior approval of the Parties. All other costs and disbursements are and shall be deemed to be included in the Initial Fee and the Ad-hoc Hourly Fee. The CIDB Member shall retain all receipts and proof of payment of claimed disbursements and expenses, and shall provide them to the Parties or any Party upon request. The Parties shall have no obligation to reimburse the CIDB Member if the CIDB Member fails to produce receipts and proof of payment upon request.

1.6 Payment of Fees and Expenses

- (a) Unless otherwise agreed by the Parties and the CIDB Member in writing, all fees, expenses and disbursements payable under this Agreement shall be invoiced by the CIDB Member to the Parties on a monthly basis, which invoice shall reflect the performance of the CIDB activities performed in the previous month and be in form and substance reasonably satisfactory to the Parties.
- (b) RSSOM Project Co, North Civil PTUS Project Co and Contracting Authority shall each pay one third of such fees, expenses and disbursements to the CIDB Member, with the exception of the Initial Fee, which shall be split (i) [REDACTED]% by Contracting Authority and (ii) [REDACTED]% by each of RSSOM Project Co and North Civil PTUS Project Co. While each Party is responsible for paying its portion of the CIDB Member's fees, expenses and disbursements, this obligation is several and not joint. If one Party fails to make payment, the other Parties may make payment of the amounts owed by the non-paying Party and recover the costs of doing so from the non-paying Party, but has no obligation to do so.
- (c) All payments to the CIDB Member shall be made to the following account: **[name of bank, account number, SWIFT code, etc.]**.
- (d) All payments to the CIDB Member under this Agreement shall be payable by the Parties monthly in arrears, and by no later than the date that is thirty (30) days of the receipt by the Parties of an invoice provided by the CIDB Member in accordance with this Agreement.
- (e) Intentionally deleted.

1.7 Duration and Termination of this Agreement

- (a) Subject to Section 3 of the Integration Dispute Resolution Procedure under the Interface Agreement, the CIDB Member agrees to serve for the duration of the CIDB to the extent reasonably possible.
- (b) The Parties may at any time, without cause and with immediate effect, jointly terminate this Agreement.
- (c) The CIDB Member may terminate this Agreement at any time by giving a minimum of three months' written notice to the Parties, unless otherwise agreed by the Parties and the CIDB Member in writing.
- (d) If the CIDB Member is successfully challenged in accordance with Section 4.3 of Appendix A to the CIDB Member Agreement, the CIDB Member shall be removed forthwith from the CIDB and this Agreement shall be terminated.

-
- (e) The CIDB Member shall be entitled to claim payment for work performed to the date of termination of this Agreement in accordance with this Agreement, but shall not be entitled to claim any further payment.

1.8 Indemnity

- (a) The Parties shall jointly and severally indemnify and hold harmless the CIDB Member from any claims of third parties for anything done or omitted to be done in the discharge of the CIDB Member's activities under this Agreement.
- (b) The indemnity provided in Section 1.8(a) shall not extend to:
- (i) any act or omission of the CIDB Member that is shown to have been in bad faith;
 - (ii) any breach of this Agreement by the CIDB Member,
 - (iii) any negligent or unlawful act or omission or willful misconduct of the CIDB Member;
 - (iv) any action taken by the CIDB Member outside the scope of authority set forth in this Agreement; or
 - (v) any debt, cost, expense, claim or demand for which insurance proceeds are recoverable by the CIDB Member.
- (c) The indemnity provided in Section 1.8(a) shall survive the termination of this Agreement.

1.9 Confidentiality

- (a) The CIDB Member and all of the member's affiliates, employees, servants and agents shall keep all information about each Project, the CIDB Member's involvement on each Project, any CIDB Services performed by the CIDB, and any Integration Dispute(s) referred for a CIDB decision strictly confidential and shall not disclose such information to anyone other than the Parties.
- (b) The CIDB Member shall treat as confidential any information, data, statements, submissions, admissions, settlement proposals, recommendations, discussions, opinions, or any other documents within the meaning of the *Rules of Civil Procedure*, other than documents which would otherwise be admissible pursuant to the *Rules of Civil Procedure*, which were obtained, exchanged or delivered on a without prejudice basis or through the CIDB decision process by any other Party or the CIDB or any CIDB Member, except as set out in Section 7(a)(ii) of the Integration Dispute Resolution Procedure under the Interface Agreement.
- (c) Material delivered by a Party in connection with a CIDB decision shall not be disclosed to any person or used, copied, supplied or reproduced for any other purpose other than for the performance of the CIDB Services, and all such material shall remain the property of the Party disclosing or delivering same.
- (d) The CIDB Member shall be bound by and shall comply with the confidentiality and communication provisions set out in Section 52 (*Confidentiality/Communications*) of the RSSOM Project Agreement and Section 37 (*Confidentiality*) of the North Civil DMCA.

-
- (e) The Parties may at any time require the CIDB Member to give and to arrange for its officers, directors, members, employees, servants and agents engaged in the performance of the CIDB Services to give written undertakings, in the form of confidentiality agreements on terms required by the Parties, relating to the non disclosure of confidential information, in which case the CIDB Member must promptly arrange for such agreements to be made.

1.10 Disputes and Applicable Law

- (a) All disputes arising out of this Agreement which are not subject to resolution pursuant to Section 5(b) of the Integration Dispute Resolution Procedure under the Interface Agreement shall be finally settled by arbitration by one arbitrator agreed by the Undersigned Parties in writing or appointed in accordance with the *Arbitration Act*, 1991. This Agreement shall be governed by the laws of Ontario, without regard to conflict of laws provisions. The place of arbitration shall be Toronto, Ontario. The language of the arbitration shall be English.

1.11 Counterparts

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

[Remainder of page intentionally left blank]

This Agreement is entered into on [specify date] at [specify place].

METROLINX

By:

Name: [REDACTED]

Title: [REDACTED]

I have authority to bind the corporation.

[CIDB MEMBER]

By:

Name: [REDACTED]
Title: [REDACTED]

By:

Name: [REDACTED]
Title: [REDACTED]

I/We have the authority to bind the corporation.

PAPE NORTH CONNECT, [REDACTED]:

[REDACTED]

By:

Name: [REDACTED]
Title: [REDACTED]

Name: [REDACTED]
Title: [REDACTED]

We have authority to bind the corporation.

[REDACTED]

By: _____

Name: [REDACTED]

Title: [REDACTED]

I have authority to bind the corporation.

[RSSOM PROJECT CO]

By: _____

Name: [REDACTED]

Title: [REDACTED]

By: _____

Name: [REDACTED]

Title: [REDACTED]

I/We have authority to bind the corporation

SCHEDULE 40

RAIL CORRIDOR ACCESS AND FLAGGING

[REDACTED]

1. INTERPRETATION AND DEFINITIONS

1.1 Schedule Documents

- (a) This Schedule 40 consists of the main body of this Schedule 40 and the appendices and attachments as follows:
- (i) Appendix A – Project-Specific Provisions, including,
 - (A) Attachment 1 to Appendix A – Engineering Access Statement;
 - (ii) Appendix B – Implementation of Track Protection and Flagging;
 - (iii) Appendix C – Train Schedules;
 - (iv) Appendix D – [Intentionally Deleted];
 - (v) Appendix E – Third Party Operator Railway Operations Provisions; and
 - (vi) Appendix F – Metrolinx Dedicated Risk Assessment Process.

1.2 Definitions

In this Schedule 40, unless the context indicates a contrary intention, terms that are defined in this Agreement (and not otherwise defined in this Schedule 40) shall have meanings given to them in this Agreement and the following terms shall have the following meanings:

- (a) “**Access Agreement(s)**” means, to the extent applicable, the agreements that Project Co is obliged to execute to access the CN Territory or the CP Territory, as applicable, as set out in Appendix A to this Schedule 40.
- (b) “**Access Pack**” has the meaning given in the Metrolinx Network Access Planning Standard.
- (c) “**Applicable CROR**” has the meaning given in Section 2.3(a).
- (d) “**Application for Access**” means any application, request or submission for Rail Corridor Access submitted in accordance with the Metrolinx Network Access Planning Standard.
- (e) “**Canadian Pacific Minimum Safety Requirements for Contractors Working on CP Property in Canada**” means the Rail Corridor Access requirements of CP Rail.
- (f) “**Canadian Rail Operating Rules**” or “**CROR**” means the Transport Canada Canadian Rail Operating Rules, as amended or replaced from time to time.

- (g) “**Category of Access**” means those categories of Rail Corridor Access described in the Metrolinx Network Access Planning Standard.
- (h) “**CN Standards**” mean, to the extent applicable, the Canadian National Railway Company standards set out in the Output Specifications.
- (i) “**CN Supplemented CROR**” means, to the extent applicable, the CROR as revised or supplemented by CN Rail for application on the CN Territory, as amended or replaced from time to time.
- (j) “**CN Territory**” means that part of the Rail Corridors owned by CN Rail.
- (k) “**Contracting Authority Access Contact**” has the meaning given in Section 2.7(a)(i).
- (l) “**Control Locations**” means a portion of the Rail Corridor to which specific Rail Corridor Access rules apply, as set out in Attachment 1 to Appendix A to this Schedule 40.
- (m) “**CP Standards**” means the Canadian Pacific Railway Company standards set out in the Output Specifications.
- (n) “**CP Supplemented CROR**” means, to the extent applicable, the CROR as revised or supplemented by CP Rail for application on the CP Territory, as amended or replaced from time to time.
- (o) “**CP Territory**” means that part of the Rail Corridors owned by CP Rail.
- (p) “**Disruptive Access**” has the meaning given in the Metrolinx Network Access Planning Standard.
- (q) “**Emergency Rail Situation**” means any situation that, in the opinion of CN Rail or Contracting Authority, causes an immediate and serious threat or danger to the public, Contracting Authority Parties, or Project Co Parties, or that causes an immediate and serious threat to VIA Rail’s, CN Rail’s, CP Rail’s or Contracting Authority’s Railway Operations.
- (r) “**Engineering Access Statement**” has the meaning given in the Metrolinx Network Access Planning Standard, being the then current “Engineering Access Statement” as set out in Attachment 1 to Appendix A to this Schedule 40, as amended or replaced from time to time.
- (s) “**Engineering Access Statement Standard**” means that document titled “Engineering Access Statement Standard”, as provided in the Background Information, and as amended or replaced from time to time.
- (t) “**Foul of Track**” means that an individual and/or portion of work equipment is:
 - (i) within four feet of the nearest rail;
 - (ii) within the GO Transit Heavy Rail Clearance Envelopes; or
 - (iii) on or over the yellow line at the edge of station platforms,

and “**Fouling of Track**” has a corresponding meaning.

- (u) “**Fouling**” means encroaching on a prohibited GO Transit Heavy Rail Clearance Envelopes.
- (v) “**GO Transit Heavy Rail Clearance Envelopes**” has the meaning given in the GO Transit Track Standards.
- (w) “**GO Transit Track Standards**” means the GO Transit Track Standards dated May 2018, as amended or replaced from time to time.
- (x) “**Main Track**” has the meaning given in Appendix A to this Schedule 40.
- (y) “**Major Track Closure**” has the meaning given in the Metrolinx Network Access Planning Standard.
- (z) “**Metrolinx Dedicated Risk Assessment**” has the meaning given in Appendix F to this Schedule 40.
- (aa) “**Metrolinx General Engineering Instructions**” means those general engineering instructions referred to in the Metrolinx Network Access Planning Standard, as provided in the Background Information and as amended or replaced from time to time, including all summary bulletins issued from time to time.
- (bb) “**Metrolinx Network Access Planning Standard**” means the Metrolinx Network Access Planning Standard, as provided in the Background Information and as amended or replaced from time to time.
- (cc) “**Metrolinx Supplemented CROR**” means the CROR as revised and supplemented by Contracting Authority for application on the Metrolinx Territory, as amended or replaced from time to time.
- (dd) “**Metrolinx Territory**” means that part of the Rail Corridors owned by Contracting Authority.
- (ee) “**Minor Track Closure**” has the meaning given in the Metrolinx Network Access Planning Standard.
- (ff) “**Network Access Planning Tool**” has the meaning given in the Metrolinx Network Access Planning Standard.
- (gg) “**Non-Disruptive Access**” has the meaning given in the Metrolinx Network Access Planning Standard.
- (hh) “**Permitted Rail Corridor Access**” is a Rail Corridor Access for which Contracting Authority has issued an Access Pack.
- (ii) “**Planned Operational Changes**” has the meaning given in Section 2.2(b)(vi).
- (jj) “**Project Rail Corridor**” means the Rail Corridor(s) applicable to this Project as set out in Appendix A to this Schedule 40.

- (kk) “**Rail Corridor**” has the meaning given to it in the Metrolinx Network Access Planning Standard.
- (ll) “**Rail Corridor Access**” has the meaning given to it in the Metrolinx Network Access Planning Standard.
- (mm) “**Rail Corridor Access Plan**” has the meaning given to it in the Metrolinx Network Access Planning Standard.
- (nn) “**Rail Corridor Access Site**” means the part of the Rail Corridor on which Project Co is permitted to perform Works as set out in an Access Pack.
- (oo) “**Rail Corridors Infrastructure Handover Protocols**” means the document titled “GO Transit Rail Corridors Infrastructure Handover Protocols”, as provided in the Background Information, and as amended or replaced from time to time.
- (pp) “**Rail Operator**” has the meaning given to it in the Metrolinx Network Access Planning Standard.
- (qq) “**Railway Foreman**” means the foreman, sub-foreman and other flag persons in charge of the protection of track work and Track Units during the Rail Corridor Access and by way of flagging.
- (rr) “**Railway Maintenance**” means the maintenance activities being carried out on or adjacent to the Rail Corridor at any time.
- (ss) “**Railway Operations**” means the operation of one or more active railways by Contracting Authority or Third Party Operators, including, for clarity, the passage of freight, equipment, and passenger trains both in revenue service and non-revenue service, and includes Railway Maintenance.
- (tt) “**RCAC**” has the meaning given to it in the Metrolinx Network Access Planning Standard.
- (uu) “**Rule 841**” has the meaning given in the Canadian Rail Operating Rules.
- (vv) “**Rule 842**” has the meaning given in the Canadian Rail Operating Rules.
- (ww) “**Signal Person**” means the Project Co employee responsible for communicating with the Railway Foreman to govern Project Co’s entrance into the Rail Corridor Access Site.
- (xx) “**Subcategory of Access**” means those subcategories of Rail Corridor Access described in the Metrolinx Network Access Planning Standard.
- (yy) “**Subdivision**” and “**Subdivisions**” means a subdivision or subdivisions on a Rail Corridor.
- (zz) “**Third Party Operators**” means Rail Operators other than Contracting Authority.
- (aaa) “**Track Closure**” means the closure of one or more tracks within the Rail Corridor.
- (bbb) “**Track Occupancy Permit**” has the meaning given in the Canadian Rail Operating Rules.
- (ccc) “**Track Protection**” has the meaning given in the Metrolinx Network Access Planning Standard.

- (ddd) “**Track Unit**” means a vehicle or machine capable of on-track operation and utilized for track inspection, track work and other railway activities when on the track.
- (eee) “**Train Schedules**” means the current and projected train schedules set out in Appendix C to this Schedule 40 and, if applicable, the Third Party Operator Railway Operations provisions set out in Appendix E to this Schedule 40.
- (fff) “**White Period Access**” has the meaning given in the Metrolinx Network Access Planning Standard.
- (ggg) “**Work Plan**” has the meaning given in Section 2.4(a).
- (hhh) “**Work Plan Methodology Template User Manual**” means the document titled “CPG-PGM-MAN-278 Metrolinx Work Plan Methodology Template User Manual”, as provided in the Background Information and as amended or replaced from time to time.
- (iii) “**Zone**” means an area within the Rail Corridor that contains multiple Control Locations and is defined for the purposes of limiting simultaneous Major Track Closures and/or Minor Track Closures, as set out in Appendix A to this Schedule 40.

2. ACCESSING THE RAIL CORRIDOR

2.1 Rail Corridor Access

- (a) Project Co’s access to the Rail Corridor shall be governed at all times by the terms of this Schedule 40, the Metrolinx Network Access Planning Standard and the then current Engineering Access Statement. Project Co’s Rail Corridor Access Plan and all Applications for Access shall be submitted in strict accordance with the Metrolinx Network Access Planning Standard.

2.2 Fundamental Requirements of Rail Corridor Access

- (a) Project Co shall not:
 - (i) access any part of any Rail Corridor unless and until it has received an Access Pack for Rail Corridor Access;
 - (ii) enter or occupy any part of a Rail Corridor during a Permitted Rail Corridor Access other than the Rail Corridor Access Site that is explicitly approved in the Access Pack;
 - (iii) commit any Fouling or Fouling of Track, unless explicitly permitted in an Access Pack;
 - (iv) use flagging services on a standby basis; or
 - (v) perform any Works on or adjacent to a Rail Corridor, unless:
 - (A) the Project Co Site Specific Safety Manual has been reviewed by Contracting Authority in accordance with Schedule 10 – Review Procedure, and Project Co has received a “No Comment” or “Reviewed As Noted – Minor Issues” designation in respect of such Project Co Site Specific Safety Manual;

- (B) Project Co has executed all Access Agreements applicable to the Project Rail Corridor as set out in Appendix A to this Schedule 40;
 - (C) Project Co has scheduled, applied for, and received an Access Pack and Track Protection for the applicable Works in accordance with this Schedule 40 and the Metrolinx Network Access Planning Standard; and
 - (D) a Railway Foreman is present, and Project Co has participated in a job briefing held by such Railway Foreman.
- (b) Project Co acknowledges and agrees that:
- (i) certain portions of the Works may have to be carried out on or adjacent to tracks on which Railway Operations by Third Party Operators and/or work by Other Contractors and Third Party Operators are carried out;
 - (ii) portions of the Works may be carried out on, to the extent applicable, CN Territory or CP Territory as set out in Appendix A to this Schedule 40;
 - (iii) Other Contractors performing construction or maintenance activities may have Permitted Rail Corridor Access at the same time and in close proximity to Project Co’s Permitted Rail Corridor Access, and Project Co may be one of many entities seeking Rail Corridor Access on the Project Rail Corridor;
 - (iv) if Project Co’s performance of the Works requires Rail Corridor Access, these Works will be affected by Railway Operations and, except in cases of Major Track Closures, Project Co shall provide continued safe movement of Railway Operations through or adjacent to the Rail Corridor Access Site, as applicable, in accordance with the standards set out in Appendix A to this Schedule 40 and the Output Specifications;
 - (v) the freight trains that operate on the Rail Corridor do not operate in accordance with a prescribed schedule;
 - (vi) the schedules for Railway Operations change from time to time, and Project Co shall plan, design and organize its construction means and methodologies in accordance with the Engineering Access Statement and the planned changes to Railway Operations set out in the Train Schedules, including, for clarity, the changes to peak periods and frequency of trains (“**Planned Operational Changes**”);
 - (vii) Project Co shall:
 - (A) only submit an Application for Access that is permitted by the then current Engineering Access Statement; and
 - (B) have no special rights with respect to the Engineering Access Statement or preferential treatment with respect to the specific dates within any given Engineering Access Statement, and Permitted Rail Corridor Access will be provided on a first come, first served basis;

- (viii) Project Co shall, at all times, abide by the directions of the Railway Foreman; and
 - (ix) Project Co shall comply with the requirements of Track Protection throughout the Rail Corridor.
- (c) Project Co shall plan and organize its construction means and methodologies:
- (i) with regard to the access that is available to Project Co in accordance with the Engineering Access Statement, the Train Schedules, and the rules for applying for and receiving Rail Corridor Access in accordance with this Schedule 40;
 - (ii) to anticipate Railway Operations based on the Train Schedules, and information set out in Appendix A to this Schedule 40;
 - (iii) to avoid interference with all Railway Operations;
 - (iv) in accordance with the access provisions applicable to the Project Rail Corridor, or any parts thereof, as set out in this Agreement, including, for clarity, the Output Specifications, Schedule 35 – Lands, this Schedule 40 and Schedule 29 – Safety, System Assurance and Security;
 - (v) in accordance with the applicable Access Pack;
 - (vi) to anticipate the lack of predictability of the passage of freight trains on the Project Rail Corridor; and
 - (vii) to ensure that safe and uninterrupted Railway Operations always take priority over the performance of the Works, subject only to the applicable Permitted Rail Corridor Access and this Schedule 40.
- (d) Project Co shall:
- (i) prepare and serve all notices of Works on the Project Rail Corridor as required under the *Railway Safety Act (Canada)*; and
 - (ii) respond to any objection received in respect of any notices of Works on the Project Rail Corridor served as required under the *Railway Safety Act (Canada)*.
- (e) With respect to Works carried out under an Access Pack on Metrolinx Territory and, to the extent applicable, CN Territory and CP Territory, Project Co shall:
- (i) permit and facilitate access to the Rail Corridor Access Site(s), the Works on the Rail Corridor Access Site(s), and all documentation regarding Works on the Rail Corridor Access Site(s) for:
 - (A) CN Rail or CP Rail representatives, as applicable; and
 - (B) Utility Companies, in the case of Utility placement parallel to or crossing on the Project Rail Corridor; and

- (ii) provide monthly reports to Contracting Authority on the progress of the Works on the Rail Corridor Access Site(s), including any Permits, Licences, Approvals and Agreements, public consultations, changes, and schedules, with sections of the monthly reports addressing the CN Territory and CP Territory, which reports Contracting Authority will forward to CN Rail or CP Rail, as applicable.

2.3 Canadian Rail Operating Rules – Supplementary Provisions

- (a) Contracting Authority carries out Railway Operations on Metrolinx Territory and, to the extent applicable, CN Territory and CP Territory. While each of Contracting Authority, CN Rail, and CP Rail applies the CROR on its own CN Territory or CP Territory, each of Contracting Authority and, to the extent applicable, CN Rail and CP Rail, may revise or supplement the CROR with additional provisions or requirements specific to the Metrolinx Territory and, to the extent applicable, the CN Territory or the CP Territory. The CROR that is applicable to the Project is set out in Appendix A to this Schedule 40 (the “**Applicable CROR**”).

2.4 Work Plans

- (a) After Contracting Authority has reviewed and approved an Application for Access, Project Co shall submit to Contracting Authority a work plan for that Application for Access in accordance with the Work Plan Methodology Template User Manual (each a “**Work Plan**”), in accordance with Schedule 10 – Review Procedure, and Project Co must receive a “No Comment” or “Reviewed As Noted – Minor Issues” designation in respect of such Work Plan by no later than the deadline to submit such Work Plan to the Network Access Planning Tool, as set out in Appendix A to the Metrolinx Network Access Planning Standard.
- (b) Project Co shall ensure that each Work Plan submitted pursuant to Section 2.2(a) is consistent with the corresponding Application for Access.
- (c) For an Application for Access in respect of a Disruptive Access, Project Co shall include the following in its Work Plan:
 - (i) a completed hour-by-hour schedule submission in the Work Plan and in accordance with the Work Plan Methodology Template User Manual;
 - (ii) within the duration of each Rail Corridor Access, a schedule contingency of (A) two hours if the total estimated number of hours for the corresponding Rail Corridor Access is 24 hours or less, or (B) four hours if the total estimated number of hours for the corresponding Rail Corridor Access is more than 24 hours but less than 51 hours; and
 - (iii) any information that Project Co believes is relevant to the Application for Access or any information that Contracting Authority may request, acting reasonably.

2.5 Access Pack

- (a) If Project Co has received approval in writing from Contracting Authority pursuant to each of the applicable steps in planning and seeking Rail Corridor Access, as identified in the Metrolinx Network Access Planning Standard, and Project Co is not in default with respect to this Schedule 40 or Schedule 29 – Safety, System Assurance and Security, Contracting Authority shall issue an

Access Pack in respect of the access set out in the corresponding Application for Access. Only an Access Pack for Rail Corridor Access issued by Contracting Authority permits Project Co to enter the applicable Rail Corridor Access Site. Project Co shall carry out all Rail Corridor Accesses in accordance with the applicable Access Packs approved by Contracting Authority.

- (b) Contracting Authority may, in its sole discretion, grant an Access Pack for a single entry into a Rail Corridor Access Site or for multiple entries into that Rail Corridor Access Site over an extended period of time, each depending on the scope of the Works to be completed under the applicable Access Pack.
- (c) Project Co shall ensure that Access Packs are maintained and displayed at the Rail Corridor Access Site prior to performing any Work requiring an Access Pack.

2.6 Preparatory Work Prior to a Permitted Rail Corridor Access

- (a) Project Co shall perform advance preparatory work, in accordance with this Schedule 40, CN Standards, or CP Standards, in each case to the extent applicable, and the Output Specifications, in order to minimize the duration of each Permitted Rail Corridor Access and to ensure the completion of the applicable Works, including the completion of the Rail Corridors Infrastructure Handover Protocols, within the allotted time set out in the applicable Access Pack.
- (b) No later than forty-eight (48) hours prior to the date and time that a Permitted Rail Corridor Access is scheduled to commence, in accordance with the applicable Access Pack, Project Co shall:
 - (i) ensure that all resources and equipment required to carry out the Works set out in the approved Work Plan and permitted by the applicable Access Pack are available to be deployed when required; and
 - (ii) give Notice to Contracting Authority to confirm that the requirements of Section 2.6(b)(i) have been met.
- (c) If Contracting Authority determines that Project Co has not complied with Section 2.6(b) in respect of an Access Pack, Contracting Authority may cancel that Access Pack.
- (d) Project Co may Dispute a decision by Contracting Authority made pursuant to Section 2.6(c) and may refer it for resolution in accordance with Schedule 27 – Dispute Resolution Procedure. Notwithstanding any such Dispute, any cancellation by Contracting Authority of an Access Pack in accordance with Section 2.6(c) will remain in full force and effect.

2.7 Disruptive Access – Rules and Requirements

- (a) For each Access Pack in respect of a Disruptive Access, Project Co shall provide Contracting Authority with the following:
 - (i) written progress updates, via email to the individual(s) identified by Contracting Authority as Contracting Authority contact person(s) (individually or collectively, the “**Contracting Authority Access Contact**”), during Project Co’s performance of all preparatory Works required in accordance with the applicable Work Plan, every twenty-four (24) hours during the five (5) Business Days that precede the applicable Permitted Rail Corridor Access;

- (ii) written progress updates every four (4) hours or as otherwise instructed by the Contracting Authority Access Contact, via email to the Contracting Authority Access Contact, in accordance with the applicable Work Plan, for the duration of the performance of the Works during the duration of the applicable Permitted Rail Corridor Access;
 - (iii) a detailed written summary of the progress of the Works when compared to the applicable Work Plan, at each of the critical milestones identified in the Work Plan for the applicable Permitted Rail Corridor Access; and
 - (iv) a description of any contingency or mitigation actions that Project Co has taken in order to maintain the progress of the Works in a manner that is consistent with the applicable Work Plan.
- (b) If directed by Contracting Authority, Project Co shall meet with Contracting Authority to discuss Project Co's progress of the Works with respect to any or all of the critical milestones described in a Work Plan.
 - (c) Contracting Authority shall use the information provided by Project Co pursuant to Sections 2.7(a) and 2.7(b) in order to assess the progress of the preparatory Works required for the corresponding Rail Corridor Access, and the progress of the Works during such Rail Corridor Access.

2.8 Implementation of Track Protection and Flagging

- (a) Contracting Authority, in its sole discretion, shall determine the appropriate Track Protection to be provided by Contracting Authority, for each Permitted Rail Corridor Access, including Track Occupancy Permit, Rule 841 or Rule 842, and Project Co shall carry out the Works in accordance with Track Protection requirements set out in Appendix A and Appendix B to this Schedule 40, and the applicable Access Pack.

2.9 Inspections, Handover, and Completion of a Permitted Rail Corridor Access

- (a) Prior to the completion of each Permitted Rail Corridor Access, and within the allotted time set out in the applicable Access Pack, Project Co shall inspect the Works, complete the Rail Corridors Infrastructure Handover Protocols and shall certify to Contracting Authority that the Rail Corridor Access Site meets the requirements of the standards set out in Appendix A to this Schedule 40 and in the Output Specifications. Within ten (10) Business Days of any such certification, one or more of Contracting Authority, and, to the extent applicable CN Rail or CP Rail, as set out in Appendix A to this Schedule 40, will inspect and place the track in service prior to the re-commencement of routine Railway Operations or the termination of the Permitted Rail Corridor Access. Project Co shall coordinate this inspection with Contracting Authority.

3. COMMERCIAL MATTERS

3.1 Engineering Access Statement and Railway Operations Changes

- (a) Contracting Authority and Project Co acknowledge and agree that, at any time, the current Engineering Access Statement may not provide dates for the full duration of the Project. For Project Co's planning and scheduling purposes, and for purposes of administering the rights and remedies under this Schedule 40, Project Co shall assume all subsequent years not yet addressed in the

current Engineering Access Statement are the same as, or substantially similar to, the forecast for the final year in the current Engineering Access Statement and, for purposes of this Schedule 40, the Engineering Access Statement shall be deemed to include such assumption.

- (b) Contracting Authority may amend the Engineering Access Statement, to take into account the Planned Operational Changes. Contracting Authority may also, at any time, implement or decline to implement a Planned Operational Change.
- (c) Contracting Authority may amend the Rail Corridor Access opportunities in the Engineering Access Statement to take into account changes to Railway Operations that are not Planned Operational Changes.
- (d) Subject to Sections 3.1(a), 3.1(b), 3.1(c) and 3.2, if Contracting Authority amends the Engineering Access Statement, Project Co shall, subject to and in accordance with Schedule 22 – Estimates, Variations and Proposals, be entitled to a Variation.

3.2 Contracting Authority Right to Change Dates

- (a) In addition to, and without limiting the process set out in the Metrolinx Network Access Planning Standard for establishing the Engineering Access Statement, following the issuance of the applicable Engineering Access Statement, Contracting Authority may, in its sole discretion, at any time after the submission by Project Co of an Application for Access, and on a one-time basis per requested Rail Corridor Access, revise the date or time for any requested Rail Corridor Access. In the event of such a revision, the following rules shall apply:
 - (i) for all Categories of Access and Subcategories of Access except for a Major Track Closure:
 - (A) if Contracting Authority has given Project Co at least twenty (20) Business Days' prior Notice of the revision and the revision is less than or equal to seven (7) calendar days, Project Co shall not be eligible for an Adjustment Event; and
 - (B) if Contracting Authority (I) fails to give the Notice required by Section 3.2(a)(i)(A), (II) if the revision is for more than seven (7) calendar days or (III) changes a Rail Corridor Access in an Application for Access without identifying an alternative date and time for the Rail Corridor Access, then Project Co shall, subject to and in accordance with Schedule 22 – Estimates, Variations and Proposals, be entitled to a Variation; and
 - (ii) for Major Track Closures:
 - (A) if Contracting Authority has given Project Co at least one-hundred and fifty-five (155) Business Days' prior Notice of the revision and the revision is less than or equal to seven (7) calendar days, Project Co shall not be eligible for an Adjustment Event; and
 - (B) if Contracting Authority fails to give the Notice required by Section 3.2(a)(ii)(A) or if the revision is for more than seven (7) calendar days, then Project Co shall,

subject to and in accordance with Schedule 22 – Estimates, Variations and Proposals, be entitled to a Variation.

3.3 Project Co Cancellation or Modification of Rail Corridor Access

- (a) If Project Co intends to cancel or modify a Permitted Rail Corridor Access, then the Project Co shall promptly provide Contracting Authority with Notice of such cancellation or modification.

3.4 Reduction in the Time Allocated for a Permitted Rail Corridor Access

- (a) Contracting Authority may, in its sole discretion and after the issuance of an Access Pack, reduce the length of time that Project Co will be allowed for a Permitted Rail Corridor Access. In the event of such a reduction the following rules shall apply:

- (i) for all Categories of Access and Subcategories of Access except for Major Track Closures:

- (A) if the reduction is equal to or exceeds the greater of:

- (I) [REDACTED] in total; or

- (II) [REDACTED] of the total planned duration for Rail Corridor Access under the applicable Access Pack (measured from the date and time the Railway Foreman was scheduled to arrive at the location of the applicable Works on the Rail Corridor),

then such reduction shall, subject to and in accordance with Schedule 21 – Risk Allocations, be treated as an Adjustment Event;

- (B) if Contracting Authority reduces more than [REDACTED] percent of the total number of Permitted Rail Corridor Accesses, each by less than [REDACTED] percent of the total planned duration for Rail Corridor Access under the applicable Access Pack (measured from the date and time the Railway Foreman was scheduled to arrive at the location of the applicable Works on the Rail Corridor), then Project Co shall, subject to and in accordance with Schedule 21 – Risk Allocations, be entitled to an Adjustment Event; and

- (C) if Contracting Authority reduces more than [REDACTED] percent of the total number of Permitted Rail Corridor Accesses, each by less than [REDACTED], then Project Co shall, subject to and in accordance with Schedule 21 – Risk Allocations, be entitled to an Adjustment Event; and

- (ii) for Major Track Closures:

- (A) if the reduction is for less than [REDACTED] in total, then such reduction shall, subject to and in accordance with Schedule 21 – Risk Allocations, be treated as an Adjustment Event; and

- (B) if the reduction is for greater than [REDACTED] in total, then such reduction shall, subject to and in accordance with Schedule 21 – Risk Allocations, be treated as an Adjustment Event.

3.5 Delay of a Permitted Rail Corridor Access

- (a) Contracting Authority may, in its sole discretion, at any time after the submission by Project Co of an Application for Access, delay the date or time for any requested Rail Corridor Access, or, at any time after the issuance of an Access Pack, due to unplanned events, delay the allocated date or time for any Permitted Rail Corridor Access. In the event of such a delay the following rules shall apply:
 - (i) for all Categories of Access and Subcategories of Access except for a Major Track Closure:
 - (A) if Contracting Authority has given Project Co at least seven (7) calendar days prior Notice of the delay and the delay is for seven (7) calendar days or less, then such delay shall, subject to and in accordance with Schedule 21 – Risk Allocations, be treated as an Adjustment Event; and
 - (B) if Contracting Authority fails to give the Notice required by Section 3.5(a)(i)(A) or if the delay is for more than seven (7) calendar days, then such delay shall, subject to and in accordance with Schedule 21 – Risk Allocations, be treated as an Adjustment Event;
 - (ii) for Major Track Closures:
 - (A) if Contracting Authority has given Project Co at least one hundred forty (140) Business Days prior Notice of the delay and the delay is for seven (7) calendar days or less, then such delay shall, subject to and in accordance with Schedule 21 – Risk Allocations, be treated as an Adjustment Event; and
 - (B) if Contracting Authority fails to give the Notice required by Section 3.5(a)(ii)(A) or if the delay is for more than seven (7) calendar days, then such delay shall, subject to and in accordance with Schedule 21 – Risk Allocations, be treated as an Adjustment Event; and
 - (iii) for all Categories of Access and Subcategories of Access except Major Track Closures, if Contracting Authority delays a Permitted Rail Corridor Access or requested Rail Corridor Access in an Application for Access without identifying an alternative date and time for the Rail Corridor Access, it shall be considered to be a delay in excess of seven (7) calendar days pursuant to Section 3.5(a)(i)(B).

3.6 Contracting Authority Cancellation of Rail Corridor Access

- (a) Project Co acknowledges and agrees that, if Contracting Authority determines, with respect to Works pursuant to a Work Plan, that:
 - (i) the Works related to the Rail Corridor Access will not be completed within the permitted time set out in the applicable Access Pack; or

- (ii) notwithstanding any contingency or mitigation actions that Project Co has taken or intends to take in accordance with the Work Plan, Project Co will not be able to complete the Works and restore the Rail Corridor to a service condition in accordance with the requirements set out in Section 2.8, within the time set out in the applicable Access Pack, then Contracting Authority may, in its sole discretion:
 - (iii) at any time prior to the commencement of the Rail Corridor Access, require Project Co to cease all preparatory work and Contracting Authority may cancel such Rail Corridor Access; and
 - (iv) at any time during the Rail Corridor Access, require Project Co to cease all the Works, restore the Rail Corridor to a service condition in accordance with the requirements set out in Section 2.8 and vacate the Rail Corridor Access Site.
- (b) Project Co shall, subject to and in accordance with Schedule 22 – Estimates, Variations and Proposals, be entitled to a Variation, if an action taken by Contracting Authority pursuant to Section 3.6(a) did not relate to an act or omission of Project Co, as determined by Contracting Authority, in its sole discretion.
 - (c) Project Co may Dispute a decision by Contracting Authority pursuant to Section 3.6(a) and may refer it for resolution in accordance with Schedule 27 – Dispute Resolution Procedure. Notwithstanding any such Dispute, any cancellation by Contracting Authority of a Rail Corridor Access Permit in accordance with Section 3.6(a) will remain in full force and effect.

4. RAIL CORRIDOR SAFETY AND TRAINING

4.1 General

- (a) During Project Co’s performance of the Works in the Rail Corridor, Project Co shall adhere to, and shall cause Project Co Parties to adhere to, the Canadian Rail Operating Rules, the *Railway Safety Act* (Canada), the OHSA, directions of the Railway Foreman, including with respect to security restrictions, safety requirements or emergency situations, the Access Pack approved by Contracting Authority, Applicable Law, Schedule 29 – Safety, System Assurance and Security, and any additional rules and directions set out in this Schedule 40.
- (b) Project Co shall comply with all instructions of the Railway Foreman related to Railway Operations, provided that such directions are consistent with the Applicable CROR and the Metrolinx General Engineering Instructions.
- (c) If, during Project Co’s performance of Works on or adjacent to the Rail Corridor, an Emergency Rail Situation arises, Contracting Authority, CN Rail or CP Rail, to the extent applicable, may direct that Project Co and all Project Co Parties exit from the Rail Corridor for such period of time as is necessary for Contracting Authority, CN Rail or CP Rail, to the extent applicable, acting reasonably, to remedy the Emergency Rail Situation. Provided that the Emergency Rail Situation did not arise as a result of an act or omission of Project Co or a Project Co Party, and that the delay meets or exceeds the thresholds set out in Section 3.4, as applicable, then such direction shall, subject to and in accordance with Schedule 21 – Risk Allocations, be treated as an Adjustment Event.

4.2 Training Requirements

- (a) Project Co shall ensure that all employees of Project Co or a Project Co Party who are granted access to the Rail Corridor or have the potential to enter the Rail Corridor are trained and current in the following railway safety training course:
 - (i) Metrolinx approved Personal Track Safety Program; and
 - (ii) all training set out in Appendix A of this Schedule 40.
- (b) Project Co shall ensure that all employees of Project Co or a Project Co Party who are engaged in track work and/or operate track mounted construction equipment are trained and current in the following:
 - (i) Metrolinx Supplemented CROR; and
 - (ii) Metrolinx General Engineering Instructions.
- (c) Project Co shall maintain and keep on the Site and the Rail Corridor Access Site, an up-to-date list of all employees of Project Co and Project Co Parties that have been trained in accordance with this Section 4.2. Project Co shall ensure all such trained employees shall, at all times when on the Rail Corridor, wear the sticker that is issued upon successful completion of the courses, on a readily visible location on their hardhats, or carry the wallet card that is issued upon successful completion of the courses. Project Co shall not commence the Works on the Rail Corridor until Project Co has complied with this Section 4.2(c).
- (d) Project Co shall complete training associated with the Network Access Planning Tool as may reasonably be required by Contracting Authority. Contracting Authority may, from time to time, make updates or changes to the Network Access Planning Tool, and Project Co shall cooperate with such changes including reading any communication related to updates or new features and protocols.

APPENDIX A TO SCHEDULE 40

PROJECT-SPECIFIC PROVISIONS

[REDACTED]

ATTACHMENT 1 TO APPENDIX A TO SCHEDULE 40

ENGINEERING ACCESS STATEMENT

[REDACTED]

APPENDIX B TO SCHEDULE 40

IMPLEMENTATION OF TRACK PROTECTION AND FLAGGING

- (a) Contracting Authority shall determine, in its sole discretion, whether Project Co will be obliged to have track protection for a Rail Corridor Access, having regard to the Canadian Rail Operating Rules, Applicable CROR and the Metrolinx General Engineering Instructions.
- (b) Contracting Authority shall arrange for Rail Corridor flagging on Project Co's behalf.
- (c) In scheduling the Works, Project Co shall allow time for the Railway Foreman to set up and dismantle flags or communicate with rail traffic control in accordance with the Canadian Rail Operating Rules and Applicable CROR.
- (d) Project Co shall prioritize the use of temporary concrete barrier and delineation lines in accordance with the Metrolinx General Engineering Instructions in performance of Works that can have an impact on any train movement.
- (e) Project Co shall ensure that all gates that provide direct access to the Rail Corridor are governed by the Railway Foreman. Project Co shall ensure that the railway approved locks are Abloy (or a Contracting Authority approved equivalent) switch locks. Project Co shall not use private locks on these gates. Project Co acknowledges that it is the responsibility of the Railway Foreman to lock and close all gates that are not in immediate use. If during the performance of the Works, Project Co requires the use of these gates, Project Co shall assign a Signal Person at each gate to govern construction equipment, vehicles and personnel entering the Rail Corridor. Project Co shall ensure that the Signal Person is in direct communication with the Railway Foreman via radio or face to face contact, and that hand signals are prohibited. Project Co acknowledges that it will be at the sole discretion of the Railway Foreman to grant permission to the Signal Person as to whom may enter the Rail Corridor.
- (f) Project Co shall not carry out a Rail Corridor Access without a Railway Foreman and Signal Person present. Project Co acknowledges that:
- (i) prior to entering the Rail Corridor, a Railway Foreman must be present and that Project Co's forces, including any Project Co Parties, shall attend a job briefing outlining the protection areas where work may take place and any restrictions that will be in place; and
 - (ii) Project Co must identify and be responsible to ensure that the Metrolinx General Engineering Instructions rules and restrictions discussed at the job briefing are followed.
- (g) Where applicable, Project Co shall perform Works on or adjacent to the Rail Corridor under Rule 842 and, subject to the parameters set out below, Project Co shall not perform Works under more than one Rule 842 at any one time. For clarity, Rule 842s will have the following parameters:
- up to eight (8) Railway Foreman; risk assessment only required for more than four (4) Railway Foreman, to be reviewed and approved by Contracting Authority;
 - Rule 842s shall be no longer than 5 miles in length, unless otherwise approved by Contracting Authority; and

- separation between Rule 842s shall be in compliance with the Canadian Rail Operating Rules.
- (h) Where applicable, Project Co shall perform the Works under Rule 841 as prescribed by the Canadian Rail Operating Rules.
- (i) Where applicable, Project Co shall perform the Works under Track Occupancy Permit as prescribed by the Canadian Rail Operating Rules.
- (j) Project Co shall use the form provided by Contracting Authority for all requests for flagging services and shall reference the applicable Access Pack. Contracting Authority will not arrange flagging services for Project Co unless an Access Pack has been granted.
- (k) Project Co shall have a competent supervisor present in reasonable proximity to the Rail Corridor at all times during a Rail Corridor Access, to whom Contracting Authority and the Railway Foreman shall issue instructions regarding performance of the Works within the Rail Corridor. Project Co shall also have a competent supervisor present to ensure all persons performing the Works in the Rail Corridor have the applicable training certificates on their person in addition to escorting non-certified personnel who are not directly involved in the completion of the Works (such as for deliveries) on and off the Rail Corridor; provided that any such non-certified personnel cannot access the Rail Corridor unless such person's access has been approved by the Railway Foreman.
- (l) Project Co shall supply each Railway Foreman with a Kenwood TK3302 or approved equivalent portable two-way radio for communication with the competent supervisor(s) referred to in Section (k) of this Appendix B and shall ensure that all radios provided to the Railway Foreman communicate on the same frequency. The protocols regarding Track Protection radio communication with the Railway Foreman shall be governed by the Railway Foreman.
- (m) If Project Co fails to adhere to the Canadian Rail Operating Rules, the Applicable CROR and the Canadian Pacific Minimum Safety Requirements for Contractors Working on CP Property in Canada, or the instructions of a Railway Foreman during a Rail Corridor Access, Contracting Authority may, in its sole discretion, require Project Co to vacate the Rail Corridor under terms and conditions to be determined by Contracting Authority. If Project Co is required to vacate the Rail Corridor in accordance with this Section (m), Project Co shall not be eligible for a Variation, nor any other form of compensation or relief arising from the requirement to vacate the Rail Corridor.
- (n) Project Co shall adhere to the Railway Foreman's procedures pertaining to job briefings, supplemental job briefings (should changes arise on site), sign-in/out procedures, and other railway flagging related duties in compliance with Section (m) of this Appendix B.
- (o) Project Co shall submit the Track Protection requests in the form provided by Contracting Authority and in accordance with the deadlines set out in this Appendix B to the Metrolinx Network Access Planning Standard with respect to the applicable Access Pack being sought.
- (p) Project Co shall comply with the radio communications protocol for crossing of the tracks as defined by Contracting Authority and its Railway Foreman. Project Co shall ensure that there is no crossing of the tracks by vehicles or workers without first advising and obtaining permission from the Railway Foreman using radio communication devices. Project Co acknowledges that hand signals are prohibited.

- (q) The Railway Foreman’s responsibilities include being in direct communication with train movements, and CROR qualified Railway Foreman to ensure the safe Railway Operations and the safety of persons and machinery. In performance of their duties, the Railway Foreman requires direct access to their vehicle at all times to communicate with the train crews via a thirty-watt radio. It will be in the sole discretion of the Railway Foreman, the flagging manager, or Contracting Authority as to whether, based on the scope of work and the amount of train movement, the Railway Foreman can also protect any local contracting forces working for Project Co. Otherwise, a Railway Foreman will be the person in direct communication with Project Co providing Track Protection. Project Co shall ensure that it does not unnecessarily distract the Railway Foremen from performing their duties.

- (r) Contracting Authority will provide Project Co with no more than the number of sub-foremen as prescribed in the Canadian Rail Operating Rules with respect to each Rail Corridor Access. For clarity, the number of sub-foremen that Contracting Authority provides to Project Co with respect to each Rail Corridor Access shall be determined by Contracting Authority on a case by case basis and set out in the Work Event and Protection Request, and in no event shall this Section (r) of this Appendix B be construed to mean that Contracting Authority is guaranteeing the provision of any number of sub-foremen to Project Co for a Rail Corridor Access.

APPENDIX C TO SCHEDULE 40

TRAIN SCHEDULES

[REDACTED]

APPENDIX D TO SCHEDULE 40

INTENTIONALLY DELETED

APPENDIX E TO SCHEDULE 40

THIRD PARTY OPERATOR RAILWAY OPERATIONS PROVISIONS

[REDACTED]

APPENDIX F TO SCHEDULE 40

METROLINX DEDICATED RISK ASSESSMENT PROCESS

- (a) Without limiting Project Co’s obligations to conduct risk assessments pursuant to this Agreement and pursuant to Applicable Law, Project Co shall conduct a risk assessment, in accordance with the Metrolinx Safety Division Railway Risk Assessment Standard MXSD-SSA-L1-STD-0001, dated April 8, 2022, and the Metrolinx Safety Department Risk Assessment Guide MX-SMS-G001, for activities with potential to impact Railway Operations (each a “**Metrolinx Dedicated Risk Assessment**”).
- (b) Project Co shall review the Metrolinx General Engineering Instructions for activities and scenarios that require a Metrolinx Dedicated Risk Assessment to be approved by Contracting Authority, prior to issuance to Project Co of a Rail Corridor Access Permit.
- (c) Contracting Authority’s approval of a Metrolinx Dedicated Risk Assessment shall be contingent upon Project Co’s successful demonstration that adequate mitigation measures or corrective actions are planned to be implemented, such that the risks identified therein are as low as reasonably practical and, in any event, that the Risk Index for any such risk is no greater than “Medium”, as defined in the Metrolinx Safety Department Risk Assessment Guide MX-SMS-G001.
- (d) Project Co shall seek approval from Contracting Authority for each Metrolinx Dedicated Risk Assessment in accordance with the following process:
 - (i) Eighty (80) Business Days prior to the corresponding Rail Corridor Access that requires a Metrolinx Dedicated Risk Assessment, Project Co shall submit for Contracting Authority’s review a draft risk assessment worksheet, in accordance with the Metrolinx Safety Department Risk Assessment Guide MX-SMS-G001.
 - (ii) As part of the draft Risk Assessment Worksheet submission, Project Co shall complete the Hazard Table including the following steps:
 - (A) Step 2 – Triggering Circumstances;
 - (B) Step 4 – Project Co members of the risk assessment team (the “**Risk Assessment Team**”);
 - (C) Step 5 – Identify Risk Scenarios;
 - (D) Step 6 – Evaluate Risk;
 - (E) Step 7 – Mitigation and Control(s); and
 - (F) Step 8 – Re-evaluate Risk – Determine Residual Risk.

Steps not outlined above shall be completed in accordance with the Risk Assessment Worksheet.

- (iii) No later than five (5) Business Days after the receipt of the draft Risk Assessment Worksheet, Contracting Authority shall confirm to Project Co the parties that will form the Risk Assessment Team, including the risk assessment lead, the impacted groups and the Contracting Authority Parties.
- (iv) No later than ten (10) Business Days after the receipt of the draft Risk Assessment Worksheet (or at a different time as agreed to by the Parties), Project Co shall attend a meeting with the Risk Assessment Team to review the draft Risk Assessment Worksheet and to facilitate the Metrolinx Dedicated Risk Assessment process (the “**Metrolinx Dedicated Risk Assessment Review Meeting**”). At the Metrolinx Dedicated Risk Assessment Review Meeting, Project Co shall present the draft Risk Assessment Worksheet. Contracting Authority shall provide verbal feedback to Project Co on the draft Risk Assessment Worksheet.
- (v) No later than ten (10) Business Days following the Metrolinx Dedicated Risk Assessment Review Meeting, Contracting Authority shall provide written feedback to Project Co on the draft Risk Assessment Worksheet.
- (vi) No later than ten (10) Business Days following receipt of written feedback from Contracting Authority, Project Co shall submit an updated Risk Assessment Worksheet for Contracting Authority’s review and approval, including appropriate revisions based on the verbal and written feedback provided by Contracting Authority pursuant to this Appendix F of Schedule 40, as well as completion of Step 9 – Comments and Notes and Step 10 – Workshop Review, Communication, Notification and Document Retention of the Hazard Table.
- (vii) No later than ten (10) Business Days following the receipt of Project Co’s updated Risk Assessment Worksheet, Contracting Authority shall provide written feedback to Project Co.
- (e) Notwithstanding the Dispute Resolution Procedure in Schedule 27 – Dispute Resolution Procedure, if Project Co disagrees with critical aspects of the written feedback provided by Contracting Authority pursuant to this Appendix F of Schedule 40, Project Co shall give Notice to Contracting Authority of the details of such disagreement. Following the delivery of such Notice, the Parties agree to meet on an expedited basis to resolve any matters of disagreement on the feedback provided by Contracting Authority pursuant to this Appendix F of Schedule 40.
- (f) Following the meeting between the Parties pursuant to this Appendix F of Schedule 40, any persisting Dispute between Contracting Authority and Project Co with respect to the updated Metrolinx Dedicated Risk Assessment may be referred for resolution in accordance with Schedule 27 – Dispute Resolution Procedure.
- (g) Project Co shall not be granted a Rail Corridor Access Permit in respect of Works that require a Metrolinx Dedicated Risk Assessment, unless, Contracting Authority has approved the Metrolinx Dedicated Risk Assessment, and Project Co has confirmed that:
 - (i) Project Co has successfully completed the implementation of all mitigations or corrective actions, in each case in accordance with the Risk Assessment Worksheet approved by Contracting Authority; and

- (ii) Project Co has available evidence of the completion of all mitigations or corrective actions, in each case in accordance with the Risk Assessment Worksheet approved by Contracting Authority.

SCHEDULE 41

EARLY WORKS HANDOVER

1. DEFINITIONS

- 1.1 “**Built to Specification and Design**” means, in respect of any Early Works Infrastructure Section or any Early Works Infrastructure comprised therein, that it is built in conformance with the Early Works Technical Specifications applicable thereto, subject to Seasonal Minor Deficiencies.
- 1.2 “**Built to Specification and Design Deficiency**” has the meaning given in Section 3.1(d)(ii)(A) of this Schedule 41.
- 1.3 “**CA Post-Handover Response**” has the meaning given in Section 3.1(d) of this Schedule 41.
- 1.4 “**Early Works Construction Defect**” means any deficiency, defect or error in the Early Works Infrastructure other than to the extent such deficiency, defect or error (i) has arisen as a result of ordinary wear and tear or (ii) was caused or contributed to by Project Co or any Project Co Party.
- 1.5 “**Early Works Construction Defect Warranty Period**” has the meaning given in Section 1.16(a) of this Schedule 41.
- 1.6 “**Early Works Construction Latent Defect**” means an Early Works Construction Defect that could not reasonably have been ascertained by a competent person in accordance with Good Industry Practice during a visual inspection of the Early Works Infrastructure if such inspection took place prior to the expiry of the applicable Early Works Construction Defect Warranty Period.
- 1.7 “**Early Works Contract**” means each of the contracts entered into with the Early Works Contractors in respect of the Early Works Infrastructure.
- 1.8 “**Early Works Design and Construction Data**” has the meaning set out in Section 2.2(b) of this Schedule 41.
- 1.9 “**Early Works Infrastructure Section**” means, in respect of each Early Works Contract, each of the discrete segments of the Early Works Infrastructure listed in the column titled “Early Works Infrastructure Section” in Appendix A of this Schedule 41.
- 1.10 “**Early Works Lands**” means the applicable Lands set out in Part B (*Metrolinx Lands*) of Schedule 35 – Lands.
- 1.11 “**Early Works Section Final Completion**” means, in respect of an Early Works Infrastructure Section, final completion thereof in accordance with the applicable Early Works Contract.
- 1.12 “**Early Works Section Handover**” has the meaning set out in Section 2.1(a) of this Schedule 41.
- 1.13 “**Early Works Section Handover Date**” means, in respect of an Early Works Infrastructure Section, the date determined pursuant to Section 3.1(a) of this Schedule 41.

- 1.14** “**Early Works Section Handover Notice**” has the meaning set out in Section 3.1(a) of this Schedule 41.
- 1.15** “**Early Works Technical Specifications**” means, in respect of each Early Works Contract and the Early Works Infrastructure to be delivered thereunder, the technical specifications applicable thereto, contained in Appendix B to this Schedule 41.
- 1.16** “**Early Works Warranty Period**” means, subject to Section 4.2:
- (a) in respect of an Early Works Construction Defect, the period commencing on the applicable Early Works Section Handover Date and ending on the date that is two (2) years thereafter (the “**Early Works Construction Defect Warranty Period**”); or
 - (b) in respect of an Early Works Construction Latent Defect, the period commencing on the day following the end of the applicable Early Works Construction Defect Warranty Period and ending on the Termination Date.
- 1.17** “**Early Works Warranty Work**” means, in respect of any Early Works Infrastructure, work to correct an Early Works Construction Defect, Early Works Construction Latent Defect or any work to correct any damage to other Project Co Infrastructure caused by such repair or correction work.
- 1.18** “**Handover Data and Equipment**” means, in respect of an Early Works Infrastructure Section, as-built drawings for the applicable Early Works Infrastructure and other applicable Early Works Design and Construction Data and equipment identified in the Early Works Technical Specifications as being necessary to achieve Early Works Section Handover in respect of such Early Works Infrastructure Section.
- 1.19** “**No Earlier Than Date**” means, in respect of an Early Works Infrastructure Section, the corresponding date identified in the column titled “No Earlier Than Date” in Appendix A to this Schedule 41.
- 1.20** “**No Later Than Date**” means, in respect of an Early Works Infrastructure Section, the corresponding date identified in the column titled “No Later Than Date” in Appendix A to this Schedule 41.
- 1.21** “**Project Co Post-Handover Deficiency**” has the meaning set out in Section 3.1(c) of this Schedule 41.
- 1.22** “**Project Co Post-Handover Deficiency List**” has the meaning set out in Section 3.1(c) of this Schedule 41.
- 1.23** “**Post-Handover Inspection Period**” has the meaning given in Section 3.1(b) of this Schedule 41.
- 1.24** “**Seasonal Minor Deficiencies**” means, in respect of any Early Works Infrastructure, any defects, deficiencies and items of outstanding work that are seasonal in nature and could not be completed on or prior to the applicable Early Works Section Handover Date and that would not materially impair (i) Project Co’s use of such Early Works Infrastructure, or (ii) safety or security on the Project Co Infrastructure in any relevant respect.

2. CONTRACTING AUTHORITY OBLIGATIONS

2.1 Handover of Early Works Infrastructure Sections

- (a) Contracting Authority shall cause each Early Works Infrastructure Section to be handed over to Project Co, subject to and in accordance with the provisions of this Schedule 41. Subject to Section 3 of this Schedule 41, each Early Works Infrastructure Section shall be handed over to Project Co on a Built to Specification and Design basis on the applicable Early Works Section Handover Date (each such handover being a “**Early Works Section Handover**”).
- (b) On or before the Early Works Section Handover Date applicable to each Early Works Infrastructure Section, Contracting Authority shall:
 - (i) ensure that the applicable Early Works Contractor and its contractors have vacated the applicable Early Works Infrastructure Section and corresponding Early Works Lands (except as expressly contemplated pursuant to the terms of this Agreement); and
 - (ii) provide Project Co with the most recent versions of all Early Works Design and Construction Data received from the applicable Early Works Contractor in respect of the applicable Early Works Infrastructure Section (and Contracting Authority shall provide final versions of such Early Works Design and Construction Data as soon as reasonably practicable thereafter upon receipt thereof from the applicable Early Works Contractor).
- (c) In the event that an Early Works Section Handover occurs on a day prior to the No Earlier Than Date applicable to the relevant Early Works Infrastructure Section, Project Co shall, subject to and in accordance with Schedule 22 – Estimates, Variations and Proposals, be entitled to a Variation.
- (d) In the event that an Early Works Section Handover has not occurred on or before the No Later Than Date applicable to the relevant Early Works Infrastructure Section, then Project Co shall, subject to and in accordance with Schedule 21 – Risk Allocations, be entitled to an Adjustment Event.
- (e) Without prejudice to any rights Project Co may have under this Agreement, Project Co may, prior to any Early Works Section Handover Date, request to participate with Contracting Authority in, or conduct, an inspection of any Early Works Infrastructure. Contracting Authority may determine whether to permit Project Co or any Project Co Party to participate in, or conduct, such an inspection, and shall act reasonably in making such determination where it has received at least five (5) Business Days notice from Project Co of such intended inspection. If Contracting Authority permits Project Co or a Project Co Party to participate in, or conduct, such an inspection, then Project Co or the applicable Project Co Party shall comply with all instructions provided by Contracting Authority in respect of such inspection.
- (f) Contracting Authority may, by Notice to Project Co prior to any Early Works Section Handover Date, request that Project Co participate with Contracting Authority in an

inspection of any Early Works Infrastructure. If so requested, Project Co (or an applicable Project Co Party) shall participate in such inspection together with Contracting Authority, and Project Co or the applicable Project Co Party shall comply with all instructions provided by Contracting Authority in respect of such inspection.

- (g) In respect of each Early Works Infrastructure Section, following Early Works Section Handover and subject to the terms of Section 4.1, at all times from and after the applicable Early Works Section Handover Date:
 - (i) the applicable Early Works Infrastructure Section shall form part of the Project Co Infrastructure and the Ontario Line Subway and Project Co shall be responsible for such Early Works Infrastructure Section in accordance with the provisions of this Agreement; and
 - (ii) the applicable Early Works Lands that such Early Works Infrastructure Section is situated on shall form part of the Lands that Project Co is responsible for under this Agreement.

2.2 Handover Data and Equipment, and Early Works Design and Construction Data

- (a) Contracting Authority shall provide Project Co with all Handover Data and Equipment in respect of each applicable Early Works Infrastructure Section on or before the Early Works Section Handover Date thereof.
- (b) Contracting Authority shall provide to Project Co all design and construction related data and information received from the applicable Early Works Contractor in respect of the Early Works Infrastructure and shall update such information from time to time on an ongoing basis upon receipt of such updates from the applicable Early Works Contractor (such data and information, as updated from time to time, referred to as the “**Early Works Design and Construction Data**”).

3. EARLY WORKS INFRASTRUCTURE SECTION HANDOVER

3.1 Early Works Infrastructure Section Handover

- (a) In respect of each Early Works Infrastructure Section, Contracting Authority shall provide written notice (the “**Early Works Section Handover Notice**”) to Project Co of the day on which Early Works Section Handover in respect of such Early Work Infrastructure Section shall occur (the “**Early Works Section Handover Date**”). The Early Works Section Handover Date shall be no earlier than thirty (30) days from the date of the Early Works Section Handover Notice. For clarity, if the Early Works Section Handover Date is a day that is less than thirty (30) days after the date of the Early Works Section Handover Notice, then the Early Works Section Handover Date shall be deemed to be the day that is thirty (30) days from the date of the Early Works Section Handover Notice.
- (b) In respect of each Early Works Infrastructure Section, Project Co shall, during the period commencing on the Early Works Section Handover Date and ending thirty (30) days thereafter (the “**Post-Handover Inspection Period**”) carry out such inspections of the Early Works Infrastructure that has become Project Co Infrastructure as Project Co deems

necessary in order to determine (to the extent possible from a visual inspection carried out by a competent person in a manner consistent with Good Industry Practice) whether such Project Co Infrastructure has been Built to Specification and Design and shall invite Contracting Authority to participate in such inspections.

- (c) Project Co shall, no later than the last day of the Post-Handover Inspection Period, provide in writing to Contracting Authority Project Co’s opinion as to whether such Project Co Infrastructure is Built to Specification and Design and, if applicable, a list of all deficiencies (each a “**Project Co Post-Handover Deficiency**”) which, in Project Co’s opinion, prevent such Project Co Infrastructure from being Built to Specification and Design (the “**Project Co Post-Handover Deficiency List**”). Project Co shall identify in the Project Co Post-Handover Deficiency List, in respect of each Project Co Post-Handover Deficiency:
- (i) an explanation of why it constitutes a non conformance to the Built to Specification and Design standard, the modifications that would be required to be made to the applicable Early Works Infrastructure to remove such Project Co Post-Handover Deficiency, with specific reference to the applicable requirements of the applicable Early Works Technical Specifications, and
 - (ii) set out any modifications which Project Co considers necessary to the definition of Built to Specification and Design, including the applicable Early Works Technical Specifications, in the event that such Project Co Post-Handover Deficiency is not corrected.
- (d) Within ten (10) Business Days of receipt of a Project Co Post-Handover Deficiency List, Contracting Authority shall (in case of (i) below) and may (in case of (ii) below), by Notice to Project Co (the “**CA Post-Handover Response**”) indicate:
- (i) whether (notwithstanding any Project Co Post-Handover Deficiency List) Contracting Authority is of the opinion that the applicable Early Works Infrastructure was Built to Specification and Design as of the Early Works Section Handover Date, in which case such Early Works Infrastructure shall be deemed to be Built to Specification and Design as of such Early Works Section Handover Date (subject to the Dispute Resolution Procedure); and
 - (ii) with respect to each Project Co Post-Handover Deficiency, whether Contracting Authority,
 - (A) agrees that such Project Co Post-Handover Deficiency is a deficiency in meeting the Built to Specification and Design standard (a “**Built to Specification and Design Deficiency**”) in which case Contracting Authority may, in its sole discretion, take any one or more of the following actions:
 - (i) require Project Co to correct the Built to Specification and Design Deficiency by issuing a Variation subject to and in accordance with Schedule 22 – Estimates, Variations and Proposals;

- (ii) modify the requirements of this Agreement (including the Early Works Technical Specifications) by issuing a Variation subject to and in accordance with Schedule 22 – Estimates, Variations and Proposals in order to eliminate the Built to Specification and Design Deficiency; or
 - (iii) arrange for the correction of the Built to Specification and Design Deficiency by the applicable Early Works Contractor or an Additional Contractor; or
- (B) does not agree that the Project Co Post-Handover Deficiency identified by Project Co is a Built to Specification and Design Deficiency in which case Contracting Authority shall not have any further obligation in respect of such Project Co Post-Handover Deficiency, except as may be determined pursuant to the Dispute Resolution Procedure and subject to Section 4.1 of this Schedule 41.

If Contracting Authority does not provide the confirmation set out above in this Section 3.1(d)(ii) in respect of any Project Co Post-Handover Deficiency, it shall be deemed to have provided the response set out in Section 3.1(d)(ii)(B) in respect thereof on that date that is ten (10) Business Days after receipt of a Project Co Post-Handover Deficiency List.

- (e) If Project Co disagrees with any determination made by Contracting Authority in respect of a Project Co Post-Handover Deficiency included in the CA Post-Handover Response, then Project Co may, no later than ten (10) Business Days after receipt of the CA Post-Handover Response, refer such matter for resolution in accordance with the Dispute Resolution Procedure. Project Co acknowledges and agrees that if it does not initiate a Dispute within such timeframe with respect to any Project Co Post-Handover Deficiency, it shall be deemed to waive any claim that such Built to Specification and Design Deficiency prevents the applicable Early Works Infrastructure from being Built to Specification and Design (subject to Section 4.1 of this Schedule 41).
- (f) Subject to Section 3.1(e) and Section 4.1 of this Schedule 41, Project Co may not make any claim or commence any Dispute asserting that a Built to Specification and Design Deficiency exists at any time after the end of the Post-Handover Inspection Period unless (i) such Built to Specification and Design Deficiency is included in a Project Co Post-Handover Deficiency List delivered on or prior to such date, (ii) such Built to Specification and Design Deficiency could not reasonably be ascertained by a competent person in accordance with Good Industry Practice during a visual inspection of the Early Works Infrastructure if such inspection took place on the last day of the Post-Handover Inspection Period, or (iii) such Built to Specification and Design Deficiency is also an Early Works Construction Defect or an Early Works Construction Latent Defect.
- (g) Contracting Authority shall provide Notice to Project Co upon completion of all Seasonal Minor Deficiencies.

4. WARRANTY CLAIMS, WARRANTY WORK AND SEASONAL MINOR DEFICIENCIES

- 4.1** During each applicable Early Works Warranty Period, Contracting Authority shall (or shall cause the applicable Early Works Contractor or an Additional Contractor to) promptly, at Contracting Authority’s sole cost and expense, correct and Make Good all Early Works Construction Defects and Early Works Construction Latent Defects arising in respect of the Early Works Infrastructure (the “**Early Works Warranty Work**”), subject to Section 4.3 of this Schedule 41.
- 4.2** The applicable Early Works Warranty Period shall be extended for a further two (2) years from the date of the last Early Works Warranty Work completed in respect of the applicable Early Works Infrastructure. For clarity, any extension of an Early Works Warranty Period for the purposes of a correction shall only apply to the relevant Early Works Warranty Work and not the Early Works Infrastructure delivered under any Early Works Contract as a whole nor the whole of any Early Works Infrastructure Section.
- 4.3** Project Co may not make any claim or commence any Dispute asserting that an Early Works Construction Defect exists in respect of any Early Works Infrastructure that has become Project Co Infrastructure in accordance with the terms of this Schedule 41 or that any damage has been caused to any Project Co Infrastructure as a result of any Early Works Warranty Work, in each case at any time after the end of the applicable Early Works Warranty Period.
- 4.4** Project Co shall provide access to the applicable Project Co Infrastructure and Lands to the applicable Early Works Contractor or Additional Contractor, as applicable, and their contractors for the purpose of carrying out Early Works Warranty Work and completion of Seasonal Minor Deficiencies, subject to Section 4.6 of this Schedule 41 at all times after the applicable Early Works Section Handover Dates, including,
- (a) arranging access to the relevant portion of the Lands during normal working hours;
 - (b) arranging for the applicable Early Works Contractor or Additional Contractor or their contractors to use utilities available on the Site including power and water and toilet facilities; and
 - (c) accommodating reasonable parking for the applicable Early Works Contractor or Additional Contractor or their contractors’ labour and material deliveries.
- 4.5** Project Co may, acting reasonably, schedule all Early Works Warranty Work and work to complete Seasonal Minor Deficiencies at times that are convenient to the Works and do not cause delay in the performance of the Works provided that:
- (a) Project Co shall ensure that its scheduling of Early Works Warranty Work pursuant to this Section 4.5 of this Schedule 41 does not, in any way, worsen the relevant Early Works Construction Defect; and
 - (b) Project Co shall ensure that its scheduling of Early Works Warranty Work and work to complete Seasonal Minor Deficiencies pursuant to this Section 4.5 of this Schedule 41 does not in any way void, or risk voiding, the applicable Early Works Contractor’s warranty,
- in each case where Project Co has (or should reasonably have had) knowledge of such impact.

4.6 In connection with any Early Works Contractor accessing any Project Co Infrastructure or Lands after the applicable Early Works Section Handover Date, for any of the purposes contemplated in Section 4.4 of this Schedule 41, Contracting Authority shall require such Early Works Contractor, pursuant to the terms of the applicable Early Works Contract, to:

- (i) comply with all directions of Project Co in respect of any matter regarding health and safety at the applicable Early Works Infrastructure Section;
- (ii) coordinate with Project Co the means of access to the applicable Early Works Infrastructure Section;
- (iii) keep the Early Works Infrastructure Section and all Project Co Infrastructure thereon in a safe and orderly state in accordance with Good Industry Practice; and
- (iv) not materially interfere with or delay the work of Project Co or any Project Co Parties, and not do anything that causes Project Co to be in contravention of its obligations under the *Occupational Health and Safety Act* (Ontario), and to promptly cease and desist any activity that results or has a likelihood in resulting in such interference or delay or causes such contravention.

4.7 In connection with an Early Works Contractor accessing any Project Co Infrastructure or Lands after the applicable Early Works Section Handover Date, for any of the purposes contemplated in Section 4.4 of this Schedule 41, if:

- (i) such Early Works Contractor causes any damage to the Works;
- (ii) Project Co incurs any additional costs or there is any delay in the Works as a result of such Early Works Contractor not complying with the coordination, scheduling and safety instructions of Project Co; or
- (iii) subject to the performance by Project Co of its obligations under Sections 4.4 and 4.5 of this Schedule 41, if Project Co incurs any additional costs or there is any delay in the Works as a result of any such access by such Early Works Contractor,

then any such delay in the Works or additional costs in respect of the Works shall, subject to and in accordance with Schedule 21 – Risk Allocations, be entitled to an Adjustment Event.

4.8 If, in connection with an Early Works Contractor accessing any Project Co Infrastructure or Lands after the applicable Early Works Section Handover Date for the purpose of completing Seasonal Minor Deficiencies or Early Works Warranty Work, Project Co is not able to schedule such work as contemplated in Section 4.5 of this Schedule 41 in a manner which does not materially interfere with or delay the work of Project Co or any Project Co Party pursuant to this Agreement, Project Co shall, subject to and in accordance with Schedule 22 – Estimates, Variations and Proposals, be entitled to a Variation.

APPENDIX A TO SCHEDULE 41

EARLY WORKS HANDOVER

[REDACTED]

APPENDIX B TO SCHEDULE 41

EARLY WORKS TECHNICAL SPECIFICATIONS

[REDACTED]

SCHEDULE 42

PAYMENT PROCEDURES

PART A

This Part A of Schedule 42 applies to Works other than TPA Works.

1. DEFINITIONS AND GENERAL

1.1 Definitions

In this Part A of Schedule 42, unless the context indicates a contrary intention, terms that are defined in this Agreement (and not otherwise defined in Part A of this Schedule 42) shall have the same meanings given to them in this Agreement and the following terms shall have the following meanings:

- (a) “**Actualized Rates**” has the meaning given in Schedule 48 – Defined Cost.
- (b) “**Bank Account**” has the meaning given in Part A, Section 3.6(a).
- (c) “**Cost Element Task**” means each task category listed in, without duplication, each of the following:
 - (i) Project Co’s Proposed Mobilization Plan (until such time, pursuant to Section 2.3(e) (*First Development Phase*) of Schedule 2 – Development Works Submissions and Project Development Process, that the Project Execution Plan receives a CA Approval);
 - (ii) the Development Works Execution Plan;
 - (iii) the DMCA Construction Works Implementation Plan;
 - (iv) each other Work Breakdown Structure and Work Plan submitted as part of an Estimate in accordance with Part A of Schedule 22 – Estimates, Variations and Proposals for which an Estimate Approval was provided by Contracting Authority; and
 - (v) any other task category identified by Contracting Authority to Project Co,provided that, for clarity, if there is any conflict or inconsistency between any of the foregoing documents, the task category in the subsequently finalized or dated document shall prevail to the extent of the conflict or inconsistency.
- (d) “**DMCA Warranty Invoice Date**” means the date that is the later of:
 - (i) the date on which Contracting Authority receives an invoice from Project Co for the sum payable pursuant to Part A, Section 6.1(a) of this Schedule 42; and

- (ii) the date on which Contracting Authority receives the supporting evidence required pursuant to Part A, Section 6.1(a) of this Schedule 42.
- (e) “**DMCA Warranty Work Reimbursement Cap**” shall be an amount equal to the product of: (A) [REDACTED]%; and (B) the Defined Cost component of the DMCA Construction Works for actual costs incurred.
- (f) “**Employed Staff**” has the meaning given in Schedule 48 – Defined Cost.
- (g) “**Fixed Rates**” has the meaning given in Schedule 48 – Defined Cost.
- (h) “**Milestone Payment**” has the meaning given in Schedule 43 – Incentives and Construction Enforcement Regime.
- (i) “**Overpayment**” has the meaning given in Part A, Section 7.1.
- (j) “**Payment Period**” means each monthly period commencing on the first day of the month, except as set out in Part A, Section 3.4(b)(i)A in respect of the first Payment Period.
- (k) “**Proper Invoice**” has the meaning given in Part A, Section 3.2.
- (l) “**Reconciled Payment Amount**” has the meaning given in Part A, Section 3.3(b)(vi).
- (m) “**Reconciliation Certificate**” has the meaning given in Part A, Section 3.3(d).
- (n) “**Reconciliation Period**” has the meaning given in Part A, Section 3.3(b)(i).
- (o) “**Reconciliation Statement**” means the statement contemplated in Part A, Section 3.3(b).
- (p) “**Resource Unit Rate**” means the individual rate (including Actualized Rates and Fixed Rates) or price for the supply of a single unit of labour, staff, goods, materials, plant, or equipment contemplated as a Defined Cost.
- (q) “**Three-Month Defined Cost Plan**” has the meaning given in Part A, Section 2.1(a).
- (r) “**Underpayment**” has the meaning given in Part A, Section 7.2.
- (s) “**Warranty Claims**” has the meaning given in Schedule 48 – Defined Cost.

1.2 General Principles

- (a) Contracting Authority shall, in accordance with Applicable Law, including the *Construction Act*, and subject to the other provisions of this Agreement, including the process set out in Part A of this Schedule 42:
 - (i) pay Project Co the undisputed amounts payable under Proper Invoices provided by Project Co to Contracting Authority in accordance with this Agreement, on account of:

A. the Defined Cost reasonably and actually incurred by Project Co in performing the Development Works or DMCA Construction Works, as applicable; and

B. the Corporate Overhead and Profit,

payable by Contracting Authority to Project Co for the relevant Payment Period, in each case as further determined in accordance with Schedule 47 – Corporate Overhead and Profit, Schedule 48 – Defined Cost, and Part A of this Schedule 42; and

(ii) upon each yearly anniversary of the DMCA Effective Date, pay Project Co the unpaid balance of all Legislative Holdbacks in accordance with Part A, Section 4.

(b) Contracting Authority shall make payment based on principles of cash neutrality in which Project Co submits a Proper Invoice for Defined Costs, Corporate Overhead and Profit anticipated in the upcoming Payment Period, subsequently submits a summary of Defined Costs, Corporate Overhead and Profit actually incurred in the preceding Payment Period, and past overpayments or underpayments are adjusted by reconciliation of those Defined Costs, Corporate Overhead and Profit actually incurred in previous payment periods against forward ‘on account’ payments being made by Contracting Authority, as set out in Part A of this Schedule 42. For the purposes of this Part A, Section 1.2(b), Corporate Overhead and Profit shall be considered ‘actually incurred’ if the corresponding Defined Cost was actually incurred.

1.3 Holdbacks

(a) Contracting Authority shall retain the Legislative Holdback pursuant to the *Construction Act* in respect of liens that may be claimed from each sum otherwise payable to Project Co under this Agreement that is not a release of any monies so retained.

(b) Subject to Part A, Section 1.3(c) and Part A, Section 4, any Legislative Holdbacks retained pursuant to Part A, Section 1.3(a) shall not be due and payable until after the expiry of the applicable period for preservation of liens under the *Construction Act*, and provided that no liens are preserved by persons supplying the Development Works or DMCA Construction Works, as applicable.

(c) Notwithstanding any provision of this Agreement, but subject to the *Construction Act*:

(i) no sum shall be payable by Contracting Authority to Project Co pursuant to this Agreement if, at the time such sum would otherwise be payable, there is outstanding and unsatisfied any claim for lien which has been preserved pursuant to the *Construction Act* by any person for Development Works or DMCA Construction Works, as applicable, provided directly or indirectly to Project Co to enable performance of any part of the Development Works or DMCA Construction Works, as applicable, or Contracting Authority has received a written notice of lien; and

- (ii) where any sum which would otherwise be payable by Contracting Authority to Project Co is not so payable because a claim for lien has been preserved pursuant to the *Construction Act*, or Contracting Authority has received written notice of such a lien, such sum shall be payable by Contracting Authority to Project Co only at such time when all liens or written notices of a lien which may be claimed against that sum have expired or been satisfied, withdrawn, discharged or vacated by an order made pursuant to a payment into court in accordance with the *Construction Act*,

provided that this Part A, Section 1.3(c) shall not apply to any such claim for lien claimed by Project Co as a result of any default by Contracting Authority to make any payments to Project Co in accordance with this Agreement.

2. COST CONTROL AND AUDIT

2.1 Three-Month Defined Cost Plans

- (a) With each Proper Invoice, Project Co shall submit to Contracting Authority a rolling look-ahead cost expenditure plan for the Defined Costs anticipated to be incurred by Project Co and the Project Co Parties during the current Payment Period and the subsequent two Payment Periods in respect of the Development Works or DMCA Construction Works, as applicable (“**Three-Month Defined Cost Plan**”).
- (b) Each Three-Month Defined Cost Plan shall:
 - (i) be based on and consistent with the Work Breakdown Structure and Work Plan submitted to Contracting Authority, and allocate each cost anticipated to be incurred against the individual approved Work Breakdown Structure and Work Plan;
 - (ii) identify each Cost Element Task; and
 - (iii) represent Project Co’s best judgment as to how it shall perform and the resources required for the Development Work during that period.
- (c) The Three-Month Defined Cost Plan shall include sufficient detail for Contracting Authority to:
 - (i) clearly identify the proposed amount for the Proper Invoice to be issued for the first month contemplated in that plan;
 - (ii) identify, and address separately for each month, the:
 - A. hours of work associated with each Employed Staff;
 - B. rates and other costs per category of Employed Staff;
 - C. activities to be undertaken;

- D. estimates or prices for each other Cost Element Task;
 - E. all other anticipated Defined Costs; and
- (iii) utilize the structure of, and contain the other information contemplated in, Part A, Section 3.3(b) below.

2.2 Time Reports and Monthly Submissions

- (a) Project Co shall collect weekly summary reports of time records for all staff and labour for whom Project Co is seeking payment as a Defined Cost, with each weekly time record summary signed and certified as accurate by a designated manager. Project Co shall verify and consolidate all weekly from Subcontractor summaries, and submit the consolidated reports monthly, in a format consistent and aligned with the financial systems employed by Project Co and acceptable to Contracting Authority.
- (b) Project Co shall submit its consolidated monthly reports to Contracting Authority as identified to Project Co by Contracting Authority and using the electronic means (whether Contracting Authority’s software, Internet portal or otherwise) specified by Contracting Authority, consistent with the procedure for secure transmission and storage of such records set out in Section 26 (*Records, Information, Audit and Claims Management*) of this Agreement.
- (c) Project Co shall also make available electronically to the Contracting Authority (unless otherwise requested by Contracting Authority in respect of any items) verifiable copies of all invoices, including signed time records, invoices, expense sheets and similar documents, and all other relevant items for which Project Co is seeking payment as a Defined Cost.

2.3 Cost Audits

- (a) Contracting Authority may, at any time up until seven years following the achievement of Project Substantial Completion, and at Contracting Authority’s cost, appoint a financial auditor to audit, inspect, transcribe or investigate all information, reports, documents, records and the like in Project Co’s consolidated cost management system and any other document prepared or maintained by Project Co as referred to in Schedule 26 – Record Provisions.
- (b) The financial auditor may exercise Contracting Authority’s rights of audit pursuant to Section 26 (*Records, Information, Audit and Claims Management*) of this Agreement, insofar as those rights relate to the audit of any Defined Costs incurred by Project Co or a Project Co Party. The financial auditor shall be bound by the same confidentiality obligations as Contracting Authority.
- (c) Project Co acknowledges that as part of Contracting Authority’s audit rights, Contracting Authority anticipates carrying out regular ‘deep dive’ audits of Project Co’s Proper Invoices received in the preceding quarter, which audits may extend to any relevant Reconciliation Statements and Three-Month Defined Cost Plans.

- (d) Without limiting any rights of Contracting Authority under Section 26 (*Records, Information, Audit and Claims Management*) of this Agreement, the financial auditor may also, during a cost audit:
 - (i) review and assess the reliability, integrity, timeliness, and accuracy of the financial and operating information relating to a Defined Cost, and the means and systems used to identify, measure, classify, record and report such information;
 - (ii) access the particulars, details, information and documentation being audited in electronic format, and audit such information and documentation at the auditor’s own business premises during such hours as the financial auditor may see fit, without being limited by the provisions of Section 26.2 (*Information and General Audit Rights*) of this Agreement;
 - (iii) interview relevant personnel of Project Co and the Project Co Parties; and
 - (iv) determine under Section 1.1(b) (*Disallowed Costs*) of Appendix A (*Cost Element Allocation Tables Rules*) of Schedule 48 – Defined Cost that a cost claimed is not a Defined Cost, on the basis that the cost is not auditable and verifiable.
- (e) At the conclusion of a cost audit, Contracting Authority shall determine the actions (if any) required to be taken by Project Co to rectify problems, weaknesses, deficiencies or non-compliances detected during the cost audit, including whether Project Co must reimburse Contracting Authority for any payments made in excess of the Defined Cost.

3. PAYMENT PROCEDURE

3.1 Agreed Form of Proper Invoice

Within 5 days after the DMCA Effective Date, Project Co shall develop and submit for approval by Contracting Authority a form of Proper Invoice to be provided by Project Co detailing the applicable information referred to in Part A, Sections 3.2, 3.3 and 3.4.

3.2 Proper Invoice

For the purposes of this Agreement, “**Proper Invoice**” shall mean a written bill or other request for payment for services and materials comprising the Development Works or DMCA Construction Works, as applicable, performed under this Agreement issued by Project Co, provided such bill or request shall, except as otherwise agreed by Contracting Authority:

- (a) contain the information set out in Section 6.1 of the *Construction Act*;
- (b) include:
 - (i) an updated Three-Month Defined Cost Plan pursuant to Part A, Section 3.3 below;
 - (ii) commencing with the fourth (4th) Payment Period, the relevant Reconciliation Certificate (being the Reconciliation Certificate in respect of the first (1st))

Payment Period for the fourth (4th) Proper Invoice, in respect of the second (2nd) Payment Period for the fifth (5th) Proper Invoice, and so on) as contemplated in Section 3.3(d); and

- (iii) the net Reconciled Payment Amount for that Payment Period, or in respect of the first and second Proper Invoices only, the amount due for that Payment Period based on the initial Three-Month Defined Cost Plan);
- (c) any claim for Milestone Payments payable by Contracting Authority to Project Co or Construction Period Deductions payable by Project Co to Contracting Authority as defined in and in accordance with Schedule 43 – Incentives and Construction Enforcement Regime;
- (d) outline the aggregate amount of the Legislative Holdback retained by Contracting Authority under this Agreement and the amount of the Legislative Holdback to be retained under and applicable to the current Proper Invoice, and which will enable ready identification of Legislative Holdbacks and payments to be made to Subcontractors;
- (e) attach a WSIB clearance certificate;
- (f) for advance payment for any goods or materials not yet incorporated into the Development Works or DMCA Construction Works, as applicable: (i) list such goods or materials (and the advance payment calculations in respect thereof) as a separate line item; (ii) be supported by invoices and such other evidence as the Contracting Authority may reasonably request to establish the value and delivery date of such goods or materials; and (iii) for any goods or materials not stored on Site, provide satisfactory evidence of proof that Contracting Authority is the owner of those goods or materials;
- (g) satisfy invoicing requirements of Applicable Law in respect of Taxes and, in particular, include Project Co’s registration number for HST and list the total amount of HST separate from the total amount payable and list the total amount due (total amount of HST plus the amount payable for the work completed in the current Payment Period);
- (h) include a statement in large font all in uppercase as follows: “THE CONSTRUCTION ACT, AS REVISED, IS APPLICABLE TO THIS INVOICE”;
- (i) commencing with the second Proper Invoice, attach a statutory declaration on an original form of CCDC Document 9A-2018 Statutory Declaration of Progress Payment Distribution by Project Co, declaring that payments in connection with the Development Works or DMCA Construction Works, as applicable, as noted in the statutory declaration, have been made to the end of the preceding Payment Period (the statutory declaration shall be dated the same date as the Proper Invoice); and
- (j) commencing with the second Proper Invoice, attach a statutory declaration from any Subcontractor as may be identified by the Contracting Authority, on an original form of CCDC Document 9B-2018 Statutory Declaration of Progress Payment Distribution by Subcontractor (the statutory declaration shall be dated the same date as the Proper Invoice).

3.3 Three-Month Defined Cost Plan and Reconciliation Statement

- (a) As part of each Proper Invoice, Project Co shall submit an updated Three-Month Defined Cost Plan.
- (b) Commencing from the second (2nd) Payment Period, Project Co shall, on or before the tenth (10th) day of the calendar month, or where that day of the month is not a Business Day, on the immediately following Business Day, submit the following documentation in respect of the Development Works or DMCA Construction Works, as applicable, performed by Project Co up to the end of the preceding Payment Period (a “**Reconciliation Statement**”) through the software and portal identified in Part A, Section 2.2(b) above. The Reconciliation Statement shall set out:
 - (i) the Defined Costs reasonably and actually incurred by Project Co in performing the Development Works or DMCA Construction Works, as applicable, during the immediately preceding Payment Period (the “**Reconciliation Period**”), based on the weekly submissions in Part A, Section 2.2 above, and including:
 - A. a comparison of all hours for Employed Staff who carried out the Development Works or DMCA Construction Works, as applicable, in the Reconciliation Period against those forecasted to carry out the Development Works or DMCA Construction Works, as applicable, in the Reconciliation Period;
 - B. the Cost Element Task associated with each listed Employed Staff;
 - C. the Resource Unit Rate associated with each listed Employed Staff;
 - D. the number of hours, or part hours, expended by each listed Employed Staff carrying out the Development Works or DMCA Construction Works, as applicable, organized by Cost Element Task;
 - E. the total cost associated with each Employed Staff for each Cost Element Task as a product of their Resource Unit Rate and their total number of hours, or part hours, expended to that category of Development Works or DMCA Construction Works, as applicable; and
 - F. a summary table showing the total cost for the Payment Period for each Cost Element Task;
 - (ii) the Corporate Overhead and Profit claimed in respect of the Reconciliation Period;
 - (iii) any adjustment to the cumulative Defined Costs previously certified up for to the end of the Reconciliation Period, including any adjustments required in accordance with this Agreement (and which adjustment may be for a negative amount);

- (iv) the cumulative Corporate Overhead and Profit previously certified for up to the end of the Reconciliation Period, including any adjustments thereto required in accordance with this Agreement;
- (v) any Milestone Payments paid or payable by Contracting Authority to Project Co or Construction Period Deductions paid or payable by Project Co to Contracting Authority in respect of that Reconciliation Period in accordance with Schedule 43 – Incentives and Construction Enforcement Regime, noting that any Construction Period Deduction is treated as negative amount; and
- (vi) the net amount claimed as due for the Reconciliation Period (“**Reconciled Payment Amount**”), being:
 - A. the total amount due in respect of Defined Costs, Corporate Overhead and Profit for the Reconciliation Period reconciled against the amount previously paid on account by Contracting Authority for same period (and this may be a negative amount); and
 - B. the total of all other amounts due to Project Co from Contracting Authority in accordance with this Agreement;LESS
 - C. the aggregate of all previous payments paid or payable to Project Co for up to the end of that Reconciliation Period; and
 - D. the total of all other amounts due to Contracting Authority from Project Co in accordance with this Agreement for up to the end of that Reconciliation Period,

and if the amount determined in accordance with this Part A, Section 3.3(b) is a negative amount, the Reconciled Payment Amount will be an amount due from Project Co to Contracting Authority, which Contracting Authority may set off or recover from Project Co, as the case may require.

- (c) Each Reconciliation Statement must be certified as correct and must be accompanied by all supporting information and verification as may be required by this Agreement and any additional information reasonably required by the Contracting Authority to allow the Contracting Authority to properly administer the payment procedure in this Agreement, including:
 - (i) verifying the progress of the Development Works or DMCA Construction Works, as applicable, up to the end of that Reconciliation Period;
 - (ii) assessing the Reconciled Payment Amount; and
 - (iii) certifying the applicable amount due for the Reconciliation Period in accordance with Part A, Section 3.3(d).

- (d) The Contracting Authority shall review and validate each timely submitted and compliant Reconciliation Statement, and issue Project Co with a certificate setting out any adjustment made by the Contracting Authority to the Reconciled Payment Amount (“**Reconciliation Certificate**”) no later than the twenty-first (21st) day of the Payment Period or 21 days after the Contracting Authority’s receipt of the Reconciliation Statement, whichever is later. The Reconciliation Certificate issued by the Contracting Authority must be issued to Project Co on the date it is certified. A Reconciliation Certificate must be issued even if the Contracting Authority considers the amount due to be zero.
- (e) Project Co shall, at Contracting Authority’s option, participate in one or more meetings with the Contracting Authority, in accordance with the Contracting Authority’s timing and requirements, to review the particulars, details, information and documentation in the Reconciliation Statement, so as to assist Project Co with the preparation and submission of a Reconciliation Certificate.
- (f) If the Reconciliation Statement is found to be repeatedly and/or significantly greater than the Reconciliation Certificate, or if the Contracting Authority is of the opinion that the Three-Month Defined Cost Plan contains exaggerated costs and must be reviewed before submission, Contracting Authority may require Project Co to submit a draft Three-Month Defined Cost Plan using a process to be agreed by the Parties, or failing agreement, proposed by the Contracting Authority, acting reasonably, and on a schedule consistent with the payment process set out in Part A of this Schedule 42.

3.4 Proper Invoice and Reconciliation Certificate

- (a) A non-binding graphical summary illustration of the review and reconciliation process is set out in Attachment A to this Schedule 42.
- (b) On a monthly basis, the following process shall be followed in relation to applications for payment as provided in Part A, Section 1.2(a) and pursuant to the delivery of Proper Invoices:
 - (i) Project Co shall submit simultaneously to Contracting Authority (c/o Contracting Authority’s Finance Department), a Proper Invoice for payment due in the upcoming Payment Period, between the hours of 9:00 A.M. and 5:00 P.M. on a Business Day, utilizing the software and portal identified in Part A, Section 2.2(b) above:
 - A. for the first Proper Invoice only, within 14 calendar days after the DMCA Effective Date, which Proper Invoice shall be in respect of (1) the period from the DMCA Effective Date to the end of that calendar month; and (2) the whole of the second calendar month (that combined period being the first Payment Period); and
 - B. thereafter, on the first day of each calendar month, commencing from the first day of the third calendar month (i.e., commencing in respect of the

next Payment Period after the Payment Period contemplated in Part A, Section 3.4(b)(i)A).

(ii) for clarity, if the Proper Invoice is received by either Contracting Authority after 5:00 PM on a Business Day or at any time on a non-Business Day, the Proper Invoice shall be deemed to be received on the following Business Day;

(iii) if:

- A. any relevant Reconciliation Certificate shows that the amount due from Project Co to Contracting Authority exceeds the amount claimed for payment in an upcoming a Proper Invoice; or
- B. any Proper Invoice from Project Co does not accurately reflect the reconciliation of the amount due in a Proper Invoice with the Reconciliation Certificate,

the Contracting Authority shall issue a notice of non-payment of that Proper Invoice in accordance with the *Construction Act*. Project Co shall amend the Proper Invoice and submit to Contracting Authority, a revised and corrected Proper Invoice within two Business Days following receipt of Contracting Authority’s notice of non-payment. For clarity, the form and date of the Proper Invoice cannot change despite such a revision; and

(iv) except in respect of the first Proper Invoice (which shall be processed as set out above), any invoice submitted either prior to or after the first (1st) Business Day of a month shall be the basis for the issuance of a notice of non-payment by Contracting Authority in accordance with the *Construction Act*; and

(c) Project Co shall, upon request, promptly make available for inspection and audit by the Contracting Authority all supporting documentation (in both physical and electronic format) relating to the amounts contained in each Proper Invoice (including in the Reconciliation Statement).

3.5 Due Dates for Monthly Payments

(a) Contracting Authority shall, subject to the *Construction Act*, pay the sum in respect of the first Proper Invoice by no later than 14 calendar days after receipt by the Contracting Authority of the Proper Invoice, together with any HST thereon.

(b) In respect of each Proper Invoice after that contemplated in Part A, Section 3.5(a) above:

(i) Contracting Authority must, subject to the *Construction Act*, pay the sum certified in the Reconciliation Certificate (or, where there is no Reconciliation Certificate, the Proper Invoice), together with any HST thereon, to Project Co by no later than 28 calendar days after receipt by the Contracting Authority of the Proper Invoice; and

- (ii) where there is a sum due to Contracting Authority from Project Co, Project Co must pay the sum due to Contracting Authority no later than 10 Business Days after Project Co's receipt of the an invoice from Contracting Authority.
- (c) On receipt of payment from Contracting Authority or notice of non-payment from the Contracting Authority, Project Co shall comply with the *Construction Act* and either cause payment to be made to all Subcontractors promptly when due in accordance with the *Construction Act* or issue notices of non-payment in accordance with the timelines and requirements of the *Construction Act*.
- (d) Nothing in this Schedule 42 limits Contracting Authority's rights to set off, withhold or deduct payments in accordance with this Agreement, Applicable Law, or pursuant to any statutory rights it possesses.

3.6 Establishing the Bank Account

- (a) Within five Business Days of the DMCA Effective Date, Project Co must notify Contracting Authority in writing of its nominated bank account for payments by Contracting Authority to Project Co under this Agreement (“**Bank Account**”).
- (b) Project Co may change its Bank Account by Notice to Contracting Authority in writing of Project Co's new nominated Bank Account for payments by Contracting Authority to Project Co under this Agreement, provided that Notice under this Part A, Section 3.6(b) is given by Project Co to Contracting Authority at least 10 Business Days prior to the due date for payment under this Agreement.
- (c) Notwithstanding any other provision of this Agreement, for the purpose of this Agreement, payments made by electronic transfer shall be deemed to have been made on the day and at the time the electronic transfer is initiated, as confirmed by the initiating bank by a confirmation setting out the transfer number and the other details of the transfer.

4. RELEASE OF ACCRUED HOLDBACK ON AN ANNUAL BASIS

- 4.1 On the yearly anniversary of the commencement date of each applicable Development Works and DMCA Construction Works, Project Co shall:
 - (a) submit an application to the Contracting Authority requesting the release of the Legislative Holdback amount that has accrued during the preceding 365 calendar days;
 - (b) attach a statutory declaration on an original form CCDC 9A – 2018 Statutory Declaration of Progress Payment Distribution by Contractor, stating that all accounts for services, subcontracts, materials, and other indebtedness which may have been incurred by Project Co in connection with this Agreement during the relevant period referred to in Part A, Section 4.1(a) above and for which Contracting Authority might in any way be held responsible have been paid in full, except for amounts properly retained as a holdback or as an identified amount in dispute and, if requested by Contracting Authority, attach a statutory declaration from any Subcontractor, as may be identified by Contracting

Authority, on an original form of CCDC Document 9B – 2018 Statutory Declaration of Progress Payment Distribution by Subcontractor; and

- (c) provide confirmation to Contracting Authority in writing that:
 - (i) there are no preserved or perfected liens under, or notices of liens provided pursuant to, the *Construction Act* in respect of this Agreement or any Subcontractors; or
 - (ii) all liens and notices of liens in respect of this Agreement, and all liens and notices of liens in respect of any of the Subcontractors, have been satisfied, discharged or otherwise provided for under the *Construction Act* and Project Co shall provide proof of same to Contracting Authority.

4.2 After the receipt of applications from Project Co requesting release of the Legislative Holdback and the documents required by Part A, Sections 4.1(b) and 4.1(c), the Contracting Authority will certify payment of the accrued holdback amounts.

4.3 This Agreement shall be subject to the *Construction Act*, and in accordance with the *Construction Act*, Contracting Authority may retain any amounts which are required by law to satisfy any liens against the applicable Development Works and DMCA Construction Works.

5. RELEASE OF HOLDBACK ON DMCA CONSTRUCTION WORKS SUBSTANTIAL COMPLETION AND FINISHING HOLDBACK

5.1 The provisions of Part B, Sections 5 and 6 shall apply *mutatis mutandis* to DMCA Construction Works which are subject to Section 23 (*Commissioning and Completion*) of this Agreement.

6. WARRANTY CLAIMS

6.1 Payment on account of certain Warranty Claims

- (a) To the extent that Project Co or any Project Co Party suffers or incurs costs or expenses in connection with the applicable DMCA Construction Works related to, in respect of or arising out of applicable Warranty Claims that would have constituted a Defined Cost, but for the exclusion set forth in Section 1.1(n) (*Disallowed Costs*) of Appendix A (*Cost Element Allocation Tables Rules*) of Schedule 48 – Defined Cost, Contracting Authority shall pay to Project Co the amount of such costs or expenses until such time that the aggregate amount of such costs and expenses incurred or suffered during the applicable DMCA Warranty Period exceeds the DMCA Warranty Work Reimbursement Cap. For certainty, all costs and expenses incurred or suffered by the Project Co or any Project Co Party related to, in respect of or arising out of Warranty Claims:
 - (i) shall not constitute Defined Costs;
 - (ii) shall not include any form of overhead, mark-up or profit (or any similar or analogous cost or compensation) payable to Project Co or any Project Co Party, and to the extent that any such overhead, mark-up or profit (or any similar or analogous cost or compensation), as applicable, is so paid or credited to the Project

Co or any Project Co Party, as applicable, the same shall accrue to, and shall be held in trust for, Contracting Authority, and Project Co shall make provisions so that that any such overhead, mark-up or profit (or any similar or analogous cost or compensation), as applicable, is secured for the benefit of, and be paid promptly to, Contracting Authority; and

- (iii) in excess of the DMCA Warranty Work Reimbursement Cap shall be the sole responsibility of the Project Co.

- (b) In respect of any payment to be made pursuant this Section 6.1, Project Co shall give to Contracting Authority an invoice therefor and sufficient supporting evidence, reasonably satisfactory to Contracting Authority, justifying the amount of the applicable sum including a detailed breakdown of each of the individual items comprising such sum. Following the review and approval of each such invoice by Contracting Authority, Contracting Authority shall pay to Project Co the amount payable pursuant to this Section 6.1, within 60 days after the DMCA Warranty Invoice Date and, if such payment is not made within 60 days after the DMCA Warranty Invoice Date, an amount equivalent to the Payment Compensation Amount for the period from the date which is 60 days after the DMCA Warranty Invoice Date until the date of payment.

7. OVERPAYMENTS AND UNDERPAYMENTS

- 7.1 If the payments made to Project Co are greater than Project Co’s entitlement to payment under this Agreement (the difference being an “**Overpayment**”), then Project Co shall indemnify Contracting Authority in accordance with Section 41.1(d) (*Project Co Indemnities to Contracting Authority*) of this Agreement.
- 7.2 If the payments made to Project Co are less than Project Co’s entitlement to payment under this Agreement (the difference being an “**Underpayment**”), then Contracting Authority shall indemnify Project Co in accordance with Section 41.2(c) (*Contracting Authority Indemnities to Project Co*) of this Agreement.
- 7.3 Where it is determined that a payment is required under this Part A, Section 7, such payment shall be considered to be an increase or reduction, as applicable, of the consideration for the supply by Project Co of the Development Works or DMCA Construction Works, as applicable.
- 7.4 If a Party is required to make a payment under this Part A, Section 7, such Party must make that payment within 21 Business Days of a written request for payment being made.
- 7.5 Contracting Authority or Project Co may take steps to recover any amount payable to them under this Part A, Section 7 which is not paid in accordance with Part A, Section 7.4.

8. TAXES

- 8.1 All amounts specified in this Agreement are expressed exclusive of HST, but inclusive of all other Taxes payable pursuant to Applicable Law.

- 8.2 Unless otherwise set out in this Agreement, Project Co shall pay all applicable Taxes (including HST) incurred by or on behalf of Project Co with respect to this Agreement.
- 8.3 To the extent that HST is payable in respect of any supply made by a Party under or in connection with this Agreement, the recipient of the supply shall pay the applicable HST upon receipt of a Proper Invoice in addition to the amount otherwise payable under this Agreement.
- 8.4 If required by any Applicable Law, Contracting Authority shall withhold any applicable withholding Taxes from amounts due and owing to Project Co under this Agreement and shall remit it to the appropriate Governmental Authority in accordance with Applicable Law.
- 8.5 In the case of an Overpayment under Part A, Section 7.1:
- (a) where HST calculated on the amount of the Overpayment was charged but not collected, Project Co shall adjust the amount of HST charged by subtracting the portion of HST that was calculated on the amount of the Overpayment; and
 - (b) where HST calculated on the Overpayment was collected, Project Co shall pay or credit to Contracting Authority an amount equal to the HST that had been collected on the amount of the Overpayment and issue a credit note containing the information prescribed under the *Excise Tax Act* (Canada).
- 8.6 If a Party is entitled to be reimbursed or indemnified for a loss, cost, expense or outgoing incurred in connection with this Agreement, then the amount of the reimbursement or indemnity payment must first be reduced by an amount equal to any input tax credit or HST rebate to which the Party being reimbursed or indemnified is entitled in relation to that loss, cost, expense or outgoing and, then, if the amount of the payment is consideration or part consideration for a taxable supply, it must be increased on account of HST under Part A, Section 8.1.
- 8.7 For clarity, Contracting Authority shall not be required to pay any interest and/or penalties that are imposed on or assessed against Project Co or any Project Co Party for non-compliance with Applicable Law. If Project Co is required by Applicable Law to collect any such HST from Contracting Authority, Contracting Authority shall pay such HST to Project Co simultaneously with the amount to which such applicable HST relates or applies.
- 9. PAYMENT RECEIPT**
- 9.1 Project Co shall issue to Contracting Authority a receipt evidencing payment by Contracting Authority of any amount paid by Contracting Authority pursuant to this Agreement (including HST).

PART B

This Part B of Schedule 42 applies to TPA Works.

1. DEFINITIONS AND GENERAL

1.1 Definitions

In this Part B of Schedule 42, unless the context indicates a contrary intention, terms that are defined in this Agreement (and not otherwise defined in Part B of this Schedule 42) shall have the same meanings given to them in this Agreement and the following terms shall have the following meanings:

- (a) “**Actualized Rates**” has the meaning given in Schedule 48 – Defined Cost.
- (b) “**Bank Account**” has the meaning given in Part B, Section 3.6(a).
- (c) “**Cost Element Task**” means each task category listed in, without duplication:
 - (i) each Work Breakdown Structure and Work Plan submitted under this Agreement to Contracting Authority; and
 - (ii) any other task category identified by Contracting Authority to Project Co,provided that, for clarity, if there is any conflict or inconsistency between any of the foregoing documents, the task category in the subsequently finalized or dated document shall prevail to the extent of the conflict or inconsistency.
- (d) “**Employed Staff**” has the meaning given in Schedule 48 – Defined Cost.
- (e) “**Fixed Rates**” has the meaning given in Schedule 48 – Defined Cost.
- (f) “**Milestone Payment**” has the meaning given in Schedule 43 – Incentives and Construction Enforcement Regime.
- (g) “**Overpayment**” has the meaning given in Part B, Section 9.1.
- (h) “**Payment Period**” means each monthly period commencing on the first day of the month, except as set out in Part B, Section 3.4(b)(i)A in respect of the first Payment Period.
- (i) “**Proper Invoice**” has the meaning given in Part B, Section 3.2.
- (j) “**Reconciliation Certificate**” has the meaning given in Part B, Section 3.3(d).
- (k) “**Reconciled Payment Amount**” has the meaning given in Part B, Section 3.3(b)(viii).
- (l) “**Reconciliation Period**” has the meaning given in Part B, Section 3.3(b)(i).
- (m) “**Reconciliation Statement**” means the statement contemplated in Part B, Section 3.3(b).

- (n) **“Resource Unit Rate”** means the individual rate (including Actualized Rates and Fixed Rates) or price for the supply of a single unit of labour, staff, goods, materials, plant, or equipment contemplated as a Defined Cost.
- (o) **“Three-Month Defined Cost Plan”** has the meaning given in Part B, Section 2.1(a).
- (p) **“TPA Warranty Invoice Date”** means the date that is the later of:
 - (i) the date on which Contracting Authority receives an invoice from Project Co for the sum payable pursuant to Part B, Section 8.1(a) of this Schedule 42; and
 - (ii) the date on which Contracting Authority receives the supporting evidence required pursuant to Part B, Section 8.1(b) of this Schedule 42.
- (q) **“TPA Warranty Work Reimbursement Cap”** has the meaning set out in the applicable Target Price Agreement in effect.
- (r) **“Underpayment”** has the meaning given in Part B, Section 9.2.
- (s) **“Warranty Claims”** has the meaning given in Schedule 48 – Defined Cost.
- (t) **“Work Plan”** means each work plan prepared in accordance with the template provided by Contracting Authority, which shall be based on the Work Breakdown Structure and shall, at a minimum, include:
 - (i) a scope of work description and methodology statements for each task defined;
 - (ii) assumptions, exclusions, and concerns;
 - (iii) a description of the resources to be engaged by Project Co in the delivery of the TPA Works scope;
 - (iv) an estimate of the hours required to perform the TPA Works scope and any allowable disbursements;
 - (v) an organizational chart;
 - (vi) individuals’ names, with a description of roles and responsibilities;
 - (vii) a description of any additional Subcontract anticipated as being required to deliver the TPA Works scope;
 - (viii) a list of deliverables;
 - (ix) a description of assumptions used in and exclusions to the TPA Works scope, and areas of concern;
 - (x) any information, assistance and/or facilities required from Contracting Authority in relation to the TPA Works scope;

- (xi) identification of all key stakeholders with whom Project Co may be required to interface;
- (xii) subject to the limitations and the Parties' rights and obligations set out in this Agreement, a description of any Lands and Permits, Licences, Approvals and Agreements Project Co and Project Co Parties will require for the performance of the TPA Works scope and who will obtain them;
- (xiii) the schedule for performing and completing the TPA Works scope and any schedule impact on the performance of all of the TPA Works scope, together with a Critical Path schedule analysis detailing and demonstrating such impact, all in accordance with the requirements of Schedule 12 – Works Schedule Requirements;
- (xiv) a description of the place of work of all members of Project Co's team delivering the TPA Works scope;
- (xv) a description of any office accommodation and facilities proposed by Project Co to deliver the TPA Works scope; and
- (xvi) if the Work Plan is in relation to a Variation, the proposed methods of certification of the TPA Works scope if not covered by the provisions of this Agreement.

1.2 General Principles

Subject to the provisions of this Agreement and in accordance with Applicable Law, including the *Construction Act*, Contracting Authority shall:

- (a) pay Project Co the undisputed amounts for the Reimbursable Price payable under Proper Invoices provided by Project Co to Contracting Authority in accordance with this Agreement, on account of the:

- (i) Defined Cost; and
- (ii) Corporate Overhead and Profit,

payable by Contracting Authority to Project Co for the relevant Payment Period, in each case as further determined in accordance with Schedule 21 – Risk Allocations, Schedule 43 – Incentives and Construction Enforcement Regime, Schedule 49 – Target Price Gainshare/Painshare Regime, Schedule 47 – Corporate Overhead and Profit, Schedule 48 – Defined Cost, and this Schedule 42 – Payment Procedures;

- (b) upon each yearly anniversary of any TPA Effective Date, pay Project Co the unpaid balance of all Legislative Holdbacks relating to such Target Price Agreement that have accrued during the 365 calendar days that preceded the previous payment of holdback made pursuant to this Agreement in connection with the TPA Works supplied by Project Co pursuant to such Target Price Agreement, in accordance with Part B, Section 4;

- (c) upon issuance of the applicable TPA Final Completion Certificate, make payment to Project Co in accordance with Part B, Section 7; and
- (d) make payment based on principles of cash neutrality in which Project Co submits a Proper Invoice for Defined Costs, Corporate Overhead and Profit anticipated in the upcoming Payment Period, subsequently submits a summary of Defined Costs, Corporate Overhead and Profit actually incurred in the preceding Payment Period, and past overpayments or underpayments are adjusted by reconciliation of those Defined Costs, Corporate Overhead and Profit actually incurred in previous payment periods against forward ‘on account’ payments being made by Contracting Authority, as set out in Part B of this Schedule 42. For the purposes of this Part B, Section 1.2(d), Corporate Overhead and Profit shall be considered ‘actually incurred’ if the corresponding Defined Cost was actually incurred.

1.3 General Principles for Payments under this Agreement

Following the TPA Final Completion Date, and such other times as expressly provided for under this Agreement prior to such TPA Final Completion Date:

- (a) Contracting Authority will pay Project Co its share (if any and as the case may be) of:
 - (i) Gainshare; and/or
 - (ii) Painshare previously deducted where and to the extent subsequent Painshare is reduced or extinguished;in each case, as determined in accordance with Schedule 49 – Target Price Gainshare/Painshare Regime; and/or
- (b) Project Co will pay Contracting Authority its share (if any and as the case may be) of Painshare as determined in accordance with Schedule 49 – Target Price Gainshare / Painshare Regime; and/or
- (c) Contracting Authority will pay Project Co any the Milestone Payments (if applicable) at each relevant Milestone Payment Date and any Performance Reward Amount (if applicable), in each case as determined in accordance with Schedule 43 – Incentives and Construction Enforcement Regime; and/or
- (d) Project Co will pay Contracting Authority any Performance Liability Amount and any Construction Period Deductions as determined in accordance with Schedule 43 – Incentives and Construction Enforcement Regime.

1.4 Holdbacks

- (a) Contracting Authority shall retain the Legislative Holdback pursuant to the *Construction Act* in respect of liens that may be claimed from each sum otherwise payable to Project Co under this Agreement that is not a release of any monies so retained.
- (b) Subject to Part B, Section 1.4(c) and Section 4, any Legislative Holdbacks retained pursuant to Part B, Section 1.4(a) shall not be due and payable until after the expiry of the

applicable period for preservation of liens under the *Construction Act*, and provided that no liens are preserved by persons supplying the TPA Works.

- (c) Notwithstanding any provision of this Agreement, but subject to the *Construction Act*:
 - (i) no sum shall be payable by Contracting Authority to Project Co pursuant to this Agreement if, at the time such sum would otherwise be payable, there is outstanding and unsatisfied any claim for lien which has been preserved pursuant to the *Construction Act* by any person for TPA Works provided directly or indirectly to Project Co to enable performance of any part of the Works or Contracting Authority has received a written notice of lien; and
 - (ii) where any sum which would otherwise be payable by Contracting Authority to Project Co is not so payable because a claim for lien has been preserved pursuant to the *Construction Act*, or Contracting Authority has received written notice of such a lien, such sum shall be payable by Contracting Authority to Project Co only at such time when all liens or written notices of a lien which may be claimed against that sum have expired or been satisfied, withdrawn, discharged or vacated by an order made pursuant to a payment into court in accordance with the *Construction Act*,

provided that this Part B, Section 1.4(c) shall not apply to any such claim for lien claimed by Project Co as a result of any default by Contracting Authority to make any payments to Project Co in accordance with this Agreement.

2. COST CONTROL AND AUDIT

2.1 Three-Month Defined Cost Plans

- (a) With each Proper Invoice, Project Co shall submit to Contracting Authority a rolling look-ahead cost expenditure plan for the Defined Costs anticipated to be incurred by Project Co and Project Co Parties during the current Payment Period and the subsequent two Payment Periods in respect of the TPA Works (“**Three-Month Defined Cost Plan**”).
- (b) Each Three-Month Defined Cost Plan shall:
 - (i) be based on and consistent with the Work Breakdown Structure and Work Plan submitted to Contracting Authority, and allocate each cost anticipated to be incurred against the individual approved Work Breakdown Structure and Work Plan;
 - (ii) identify each Cost Element Task; and
 - (iii) represent Project Co’s best judgment as to how it shall perform and the resources required for the Works (other than the Development Works) during that period.
- (c) The Three-Month Defined Cost Plan shall include sufficient detail for Contracting Authority to:

- (i) clearly identify the proposed amount for the Proper Invoice to be issued for the first month contemplated in that plan;
- (ii) identify, and address separately for each month, the:
 - A. hours of work associated with each Employed Staff;
 - B. rates and other costs per category of Employed Staff;
 - C. activities to be undertaken;
 - D. estimates or prices for each other Cost Element Task;
 - E. all other anticipated Defined Costs; and
- (iii) utilize the structure of, and contain the other information contemplated in, Part B, Section 3.3(b) below.

2.2 Time Reports and Monthly Submissions

- (a) Project Co shall collect weekly summary reports of time records for all staff and labour for whom Project Co is seeking payment as a Defined Cost, with each weekly time record summary signed and certified as accurate by a designated manager. Project Co shall verify and consolidate all weekly from Subcontractor summaries, and submit the consolidated reports monthly, in a format consistent and aligned with the financial systems employed by Project Co and acceptable to Contracting Authority.
- (b) Project Co shall submit its consolidated monthly reports to Contracting Authority as identified to Project Co by Contracting Authority and using the electronic means (whether Contracting Authority's software, Internet portal or otherwise) specified by Contracting Authority, consistent with the procedure for secure transmission and storage of such records set out in Section 26 (*Records, Information, Audit and Claims Management*) of this Agreement.
- (c) Project Co shall also make available electronically to the Contracting Authority (unless otherwise requested by Contracting Authority in respect of any items) verifiable copies of all invoices, including signed time records, invoices, expense sheets and similar documents, and all other relevant items for which Project Co is seeking payment as a Defined Cost.

2.3 Cost Audits

- (a) Contracting Authority may, at any time up until 7 years following achievement of Project Substantial Completion to be completed under this Agreement, and at Contracting Authority's cost, appoint a financial auditor to audit, inspect, transcribe or investigate all information, reports, documents, records and the like in Project Co's consolidated cost management system and any other document prepared or maintained by Project Co as referred to in Schedule 26 – Record Provisions of this Agreement.

- (b) The financial auditor may exercise Contracting Authority’s rights of audit pursuant to Section 26 (*Records, Information, Audit and Claims Management*) of this Agreement, insofar as those rights relate to the audit of any Defined Costs incurred by Project Co or a Project Co Party. The financial auditor shall be bound by the same confidentiality obligations as Contracting Authority.
- (c) Project Co acknowledges that as part of Contracting Authority’s audit rights, Contracting Authority anticipates carrying out regular ‘deep dive’ audits of Project Co’s Proper Invoices received in the preceding quarter, which audits may extend to any relevant Reconciliation Statements and Three-Month Defined Cost Plans.
- (d) Without limiting any rights of Contracting Authority under Section 26 (*Records, Information, Audit and Claims Management*) of this Agreement, the financial auditor may also, during a cost audit:
 - (i) review and assess the reliability, integrity, timeliness, and accuracy of the financial and operating information relating to a Defined Cost, and the means and systems used to identify, measure, classify, record and report such information;
 - (ii) access the particulars, details, information and documentation being audited in electronic format, and audit such information and documentation at the auditor’s own business premises during such hours as the financial auditor may see fit, without being limited by the provisions of Section 26.2 (*Information and General Audit Rights*) of this Agreement;
 - (iii) interview relevant personnel of Project Co and Project Co Parties; and
 - (iv) determine under Section 1.1(b) (*Disallowed Costs*) of Appendix A (*Cost Element Allocation Tables Rules*) of Schedule 48 – Defined Cost that a cost claimed is not a Defined Cost, on the basis that the cost is not auditable and verifiable.
- (e) At the conclusion of a cost audit, Contracting Authority shall determine the actions (if any) required to be taken by Project Co to rectify problems, weaknesses, deficiencies or non-compliances detected during the cost audit, including whether Project Co must reimburse Contracting Authority for any payments made in excess of the Defined Cost.

3. PAYMENT PROCEDURE

3.1 Agreed Form of Proper Invoice

Within 5 days after the applicable TPA Effective Date, Project Co shall develop and submit for approval by Contracting Authority a form of Proper Invoice to be provided by Project Co detailing the applicable information referred to in Part B, Sections 3.2, 3.3 and 3.4.

3.2 Proper Invoice

For the purposes of this Agreement, “**Proper Invoice**” shall mean a written bill or other request for payment for services and materials comprising the TPA Works performed under this

Agreement issued by Project Co, provided such bill or request shall, except as otherwise agreed by Contracting Authority:

- (a) contain the information set out in Section 6.1 of the *Construction Act*;
- (b) include:
 - (i) an updated Three-Month Defined Cost Plan pursuant to Part B, Section 3.3 below;
 - (ii) commencing with the fourth (4th) Payment Period, the relevant Reconciliation Certificate (being the Reconciliation Certificate in respect of the first (1st) Payment Period for the fourth (4th) Proper Invoice, in respect of the second (2nd) Payment Period for the fifth (5th) Proper Invoice, and so on) as contemplated in Section 3.3(d); and
 - (iii) the net Reconciled Payment Amount for that Payment Period, or in respect of the first and second Proper Invoices only, the amount due for that Payment Period based on the initial Three-Month Defined Cost Plan);
- (c) any claim for Milestone Payments payable by Contracting Authority to Project Co or Construction Period Deductions payable by Project Co to Contracting Authority as defined in and in accordance with Schedule 43 – Incentives and Construction Enforcement Regime;
- (d) outline the aggregate amount of the Legislative Holdback retained by Contracting Authority under this Agreement and the amount of the Legislative Holdback to be retained under and applicable to the current Proper Invoice, and which will enable ready identification of Legislative Holdbacks and payments to be made to Subcontractors;
- (e) attach a WSIB clearance certificate;
- (f) for advance payment for any goods or materials not yet incorporated into the TPA Works: (i) list such goods or materials (and the advance payment calculations in respect thereof) as a separate line item; (ii) be supported by invoices and such other evidence as the Contracting Authority may reasonably request to establish the value and delivery date of such goods or materials; and (iii) for any goods or materials not stored on Site, provide satisfactory evidence of proof that Contracting Authority is the owner of those goods or materials;
- (g) satisfy invoicing requirements of Applicable Law in respect of Taxes and, in particular, include Project Co’s registration number for HST and list the total amount of HST separate from the total amount payable and list the total amount due (total amount of HST plus the amount payable for the work completed in the current Payment Period);
- (h) include a statement in large font all in uppercase as follows: “THE CONSTRUCTION ACT, AS REVISED, IS APPLICABLE TO THIS INVOICE”;

- (i) commencing with the second Proper Invoice, attach a statutory declaration on an original form of CCDC Document 9A-2018 Statutory Declaration of Progress Payment Distribution by Project Co, declaring that payments in connection with the TPA Works, as noted in the statutory declaration, have been made to the end of the preceding Payment Period (the statutory declaration shall be dated the same date as the Proper Invoice); and
- (j) commencing with the second Proper Invoice, attach a statutory declaration from any Subcontractor as may be identified by the Contracting Authority, on an original form of CCDC Document 9B-2018 Statutory Declaration of Progress Payment Distribution by Subcontractor (the statutory declaration shall be dated the same date as the Proper Invoice).

3.3 Three-Month Defined Cost Plan and Reconciliation Statement

- (a) As part of each Proper Invoice, Project Co shall submit an updated Three-Month Defined Cost Plan.
- (b) Commencing from the second (2nd) Payment Period, Project Co shall, on or before the tenth (10th) day of the calendar month, or where that day of the month is not a Business Day, on the immediately following Business Day, submit the following documentation in respect of the TPA Works performed by Project Co up to the end of the preceding Payment Period (a “**Reconciliation Statement**”) through the software and portal identified in Part B, Section 2.2(b) above. The Reconciliation Statement shall set out:
 - (i) the Defined Cost, Corporate Overhead, Profit and other amounts certified by the Contracting Authority for all Works performed by Project Co during the immediately preceding Payment Period (the “**Reconciliation Period**”), based on the weekly submissions in Section 2.2 above, and including for the Defined Cost incurred during the Reconciliation Period:
 - A. a comparison of all hours for Employed Staff who carried out TPA Works in the Reconciliation Period against those forecasted to carry out TPA Works in the Reconciliation Period;
 - B. the Cost Element Task associated with each listed Employed Staff;
 - C. the Resource Unit Rate associated with each listed Employed Staff;
 - D. the number of hours, or part hours, expended by each listed Employed Staff carrying out the TPA Works, organized by Cost Element Task;
 - E. the total cost associated with each Employed Staff for each Cost Element Task as a product of their Resource Unit Rate and their total number of hours, or part hours, expended to that category of TPA Works; and
 - F. a summary table showing the total cost for the Payment Period for each Cost Element Task;

- (ii) the Corporate Overhead and Profit claimed in respect of the Reconciliation Period, which will be calculated by multiplying the applicable Corporate Overhead and Profit percentages set out in Schedule 47 – Corporate Overhead and Profit by the Defined Cost for that Reconciliation Period;
- (iii) any adjustment to the cumulative Defined Costs previously certified up for to the end of the Reconciliation Period, including any adjustments required in accordance with this Agreement (and which adjustment may be for a negative amount);
- (iv) the cumulative Corporate Overhead and Profit previously certified for up to the end of the Reconciliation Period, including any adjustments thereto required in accordance with this Agreement;
- (v) any payment determined in accordance with Schedule 49 – Target Price Gainshare/Painshare Regime, in respect of that Reconciliation Period;
- (vi) following the TPA Substantial Completion Date, the TPA Final Completion Date and at such other times as expressly provided for under this Agreement, its share of Gainshare or Painshare (if any and as the case may be) as determined in accordance with Schedule 49 – Target Price Gainshare/Painshare Regime, noting that any Painshare is treated as a negative amount;
- (vii) any Milestone Payments, Performance Reward Amount and any Performance Liability Amount, paid or payable by Contracting Authority to Project Co or any Construction Period Deductions paid or payable by Project Co to Contracting Authority in respect of that Reconciliation Period, in each case as determined in accordance with Schedule 43 – Incentives and Construction Enforcement Regime, noting that any Performance Liability Amount or Construction Period Deduction are treated as negative amounts; and
- (viii) the net amount claimed as due for the Reconciliation Period (“**Reconciled Payment Amount**”), being:
 - A. the total amount due in respect of Defined Costs, Corporate Overhead and Profit for the Reconciliation Period reconciled against the amount previously paid on account by Contracting Authority for same period (and this may be a negative amount); and
 - B. the total of all other amounts due to Project Co from Contracting Authority in accordance with this Agreement;LESS
 - C. the aggregate of all previous payments paid or payable to Project Co for up to the end of that Reconciliation Period; and

- D. the total of all other amounts due to Contracting Authority from Project Co in accordance with this Agreement for up to the end of that Reconciliation Period,

and if the amount determined in accordance with this Part B, Section 3.3(b) is a negative amount, the Reconciled Payment Amount will be an amount due from Project Co to Contracting Authority, which Contracting Authority may set off or recover from Project Co, as the case may require.

- (c) Each Reconciliation Statement must be certified as correct and must be accompanied by all supporting information and verification as may be required by this Agreement and any additional information reasonably required by the Contracting Authority to allow the Contracting Authority to properly administer the payment procedure in this Agreement, including:
- (i) verifying the progress of the TPA Works up to the end of that Reconciliation Period;
 - (ii) assessing the Reconciled Payment Amount; and
 - (iii) certifying the applicable amount due for the Reconciliation Period in accordance with Part B, Section 3.3(d).
- (d) The Contracting Authority shall review and validate each timely submitted and compliant Reconciliation Statement, and issue Project Co with a certificate setting out any adjustment made by the Contracting Authority to the Reconciled Payment Amount (“**Reconciliation Certificate**”) no later than the twenty-first (21st) day of the Payment Period or 21 days after the Contracting Authority’s receipt of the Reconciliation Statement, whichever is later. The Reconciliation Certificate issued by the Contracting Authority must be issued to Project Co on the date it is certified. A Reconciliation Certificate must be issued even if the Contracting Authority considers the amount due to be zero.
- (e) Project Co shall, at Contracting Authority’s option, participate in one or more meetings with the Contracting Authority, in accordance with the Contracting Authority’s timing and requirements, to review the particulars, details, information and documentation in the Reconciliation Statement, so as to assist Project Co with the preparation and submission of a Reconciliation Certificate.
- (f) If the Reconciliation Statement is found to be repeatedly and/or significantly greater than the Reconciliation Certificate, or if the Contracting Authority is of the opinion that the Three-Month Defined Cost Plan contains exaggerated costs and must be reviewed before submission, Contracting Authority may require Project Co to submit a draft Three-Month Defined Cost Plan using a process to be agreed by the Parties, or failing agreement, proposed by the Contracting Authority, acting reasonably, and on a schedule consistent with the payment process set out in this Schedule 42.

3.4 Proper Invoice and Reconciliation Certificate

- (a) A non-binding graphical summary illustration of the review and reconciliation process is set out in Attachment B to this Schedule 42.
- (b) On a monthly basis, the following process shall be followed in relation to applications for payment as provided in Part B, Section 1.2(a) and pursuant to the delivery of Proper Invoices:
 - (i) Project Co shall submit simultaneously to Contracting Authority (c/o Contracting Authority’s Finance Department), a Proper Invoice for payment due in the upcoming Payment Period, between the hours of 9:00 A.M. and 5:00 P.M. on a Business Day, utilizing the software and portal identified in Part B, Section 2.2(b) above:
 - A. for the first Proper Invoice only, within 14 calendar days after the applicable TPA Effective Date, which Proper Invoice shall be in respect of (1) the period from the applicable TPA Effective Date to the end of that calendar month; and (2) the whole of the second calendar month (that combined period being the first Payment Period); and
 - B. thereafter, on the first day of each calendar month, commencing from the first day of the third calendar month (i.e., commencing in respect of the next Payment Period after the Payment Period contemplated in Part B, Section 3.4(b)(i)A).
 - (ii) for clarity, if the Proper Invoice is received by either Contracting Authority after 5:00 PM on a Business Day or at any time on a non-Business Day, the Proper Invoice shall be deemed to be received on the following Business Day;
 - (iii) if:
 - A. any relevant Reconciliation Certificate shows that the amount due from Project Co to Contracting Authority exceeds the amount claimed for payment in an upcoming a Proper Invoice; or
 - B. any Proper Invoice from Project Co does not accurately reflect the reconciliation of the amount due in a Proper Invoice with the Reconciliation Certificate,

the Contracting Authority shall issue a notice of non-payment of that Proper Invoice in accordance with the *Construction Act*. Project Co shall amend the Proper Invoice and submit to Contracting Authority, a revised and corrected Proper Invoice within two Business Days following receipt of Contracting Authority’s notice of non-payment. For clarity, the form and date of the Proper Invoice cannot change despite such a revision; and

- (iv) except in respect of the first Proper Invoice (which shall be processed as set out above), any invoice submitted either prior to or after the first (1st) Business Day of a month shall be the basis for the issuance of a notice of non-payment by Contracting Authority in accordance with the *Construction Act*; and
- (c) Project Co shall, upon request, promptly make available for inspection and audit by the Contracting Authority all supporting documentation (in both physical and electronic format) relating to the amounts contained in each Proper Invoice (including in the Reconciliation Statement).

3.5 Due Dates for Monthly Payments

- (a) Contracting Authority shall, subject to the *Construction Act*, pay the sum certified by the Contracting Authority in respect of the first Proper Invoice by no later than 14 calendar days after receipt by the Contracting Authority of the Proper Invoice, together with any HST thereon.
- (b) In respect of each Proper Invoice after that contemplated in Part B, Section 3.5(a) above:
 - (i) Contracting Authority must, subject to the *Construction Act*, pay the sum certified in the Reconciliation Certificate (or, where there is no Reconciliation Certificate, the Proper Invoice), together with any HST thereon, to Project Co by no later than 28 calendar days after receipt by the Contracting Authority of the Proper Invoice; and
 - (ii) where there is a sum due to Contracting Authority from Project Co, Project Co must pay the sum due to Contracting Authority no later than 10 Business Days after Project Co's receipt of the an invoice from Contracting Authority.
- (c) On receipt of payment from Contracting Authority or notice of non-payment from the Contracting Authority, Project Co shall comply with the *Construction Act* and either cause payment to be made to all Subcontractors promptly when due in accordance with the *Construction Act* or issue notices of non-payment in accordance with the timelines and requirements of the *Construction Act*.
- (d) Nothing in this Schedule 42 limits Contracting Authority's rights to set off, withhold or deduct payments in accordance with this Agreement, Applicable Law, or pursuant to any statutory rights it possesses.

3.6 Establishing the Bank Account

- (a) Within five Business Days of the Effective Date, Project Co must notify Contracting Authority in writing of its nominated bank account for payments by Contracting Authority to Project Co under this Agreement ("**Bank Account**").
- (b) Project Co may change its Bank Account by Notice to Contracting Authority in writing of Project Co's new nominated Bank Account for payments by Contracting Authority to Project Co under this Agreement, provided that Notice under this Part B, Section 3.6(b) is

given by Project Co to Contracting Authority at least 10 Business Days prior to the due date for payment under this Agreement.

- (c) Notwithstanding any other provision of this Agreement, for the purpose of this Agreement, payments made by electronic transfer shall be deemed to have been made on the day and at the time the electronic transfer is initiated, as confirmed by the initiating bank by a confirmation setting out the transfer number and the other details of the transfer.

4. RELEASE OF ACCRUED HOLDBACK ON AN ANNUAL BASIS

4.1 On each yearly anniversary of the applicable TPA Effective Date, Project Co shall:

- (a) submit an application to the Contracting Authority requesting the release of the Legislative Holdback amount that has accrued during the preceding 365 calendar days;
- (b) attach a statutory declaration on an original form CCDC 9A – 2018 Statutory Declaration of Progress Payment Distribution by Project Co, stating that all accounts for services, subcontracts, materials, and other indebtedness which may have been incurred by Project Co in connection with this Agreement during the relevant period referred to in Part B, Section 4.1(a) above and for which Contracting Authority might in any way be held responsible have been paid in full, except for amounts properly retained as a holdback or as an identified amount in dispute and, if requested by Contracting Authority, attach a statutory declaration from any Subcontractor, as may be identified by Contracting Authority, on an original form of CCDC Document 9B – 2018 Statutory Declaration of Progress Payment Distribution by Subcontractor; and
- (c) provide confirmation to Contracting Authority in writing that:
 - (i) there are no preserved or perfected liens under, or notices of liens provided pursuant to, the *Construction Act* in respect of this Agreement or any Subcontractors; or
 - (ii) all liens and notices of liens in respect of this Agreement, and all liens and notices of liens in respect of any of the Subcontractors, have been satisfied, discharged or otherwise provided for under the *Construction Act* and Project Co shall provide proof of same to Contracting Authority.

4.2 After the receipt of applications from Project Co requesting release of the Legislative Holdback and the documents required by Part B, Sections 4.1(b) and 4.1(c), the Contracting Authority will certify payment of the accrued holdback amounts.

4.3 This Agreement shall be subject to the *Construction Act*, and in accordance with the *Construction Act*, Contracting Authority may retain any amounts which are required by law to satisfy any liens against the TPA Works.

5. RELEASE OF HOLDBACK ON TPA SUBSTANTIAL COMPLETION

- 5.1 In accordance with the requirements of this Agreement for achieving the applicable TPA Substantial Completion, Contracting Authority shall, on the application of Project Co and in accordance with the *Construction Act*, certify substantial performance of the TPA Works (each, a “**Certificate of Substantial Performance of TPA Works**”) and give a signed copy to Project Co and Contracting Authority. Project Co shall publish each Certificate of Substantial Performance of TPA Works in accordance with the requirements of the *Construction Act* in a construction trade newspaper (as that term is defined in the *Construction Act* or the regulations promulgated thereunder) and shall provide to the Contracting Authority Representative a copy of such certificate and confirmation of the date of publication and the name of the construction trade newspaper in which the publication occurred. If Project Co fails to comply with this provision, Contracting Authority may publish a copy of the certificate and the costs so incurred by Contracting Authority will be payable as a cost incurred by Contracting Authority.
- 5.2 After due publication of each Certificate of Substantial Performance of TPA Works, Project Co shall:
- (a) submit an application requesting the release of the applicable Legislative Holdback amount;
 - (b) attach a statutory declaration on an original form CCDC 9A – 2018 Statutory Declaration to state that all accounts for labour, Subcontracts, Materials, Construction Plant, and other indebtedness which may have been incurred by Project Co in connection with the completion of the TPA Works and for which Contracting Authority might in any way be held responsible have been paid in full, except for amounts properly retained as a holdback or as an identified amount in dispute and, if requested by Contracting Authority, attach a statutory declaration from any Subcontractor, as may be identified by Contracting Authority, on an original form of CCDC Document 9B – 2018 Statutory Declaration of Progress Payment Distribution by Subcontractor; and
 - (c) by no later than 30 days following the date of publication of the applicable Certificate of Substantial Performance of TPA Works, provide confirmation to Contracting Authority in writing that:
 - (i) there are no preserved or perfected liens under, or notices of liens provided pursuant to, the *Construction Act* in respect of this Agreement or any Subcontractors; or
 - (ii) all liens and notices of liens in respect of this Agreement, and all liens and notices of liens in respect of any of the Subcontractors have been satisfied, discharged, vacated or otherwise provided for under the *Construction Act* and Project Co shall provide proof of same to Contracting Authority.
- 5.3 After the receipt of applications from Project Co requesting release of the applicable Legislative Holdback and the documents as provided in Part B, Sections 5.2(b) and 5.2(c), Contracting Authority will certify payment of the accrued holdback amounts.

5.4 The Legislative Holdback amount authorized by the certificate for payment referred to in Part B, Section 5.3 above is due and payable on the day following the expiry of the holdback period specified in the *Construction Act* for the retention of Legislative Holdback funds following substantial performance of the work, unless (i) a claim for lien has been registered against title to the Site; (ii) Contracting Authority has received a valid written notice of lien in respect of the TPA Works; or (iii) Contracting Authority has published a notice of non-payment in the form prescribed by the *Construction Act* prior to the 40th calendar day following the publication of the applicable Certificate of Substantial Performance of TPA Works.

6. RELEASE OF FINISHING HOLDBACK

6.1 Prior to release of the Legislative Holdback for finishing work provided for under the *Construction Act*, Project Co shall submit:

- (a) a written request for release of the Legislative Holdback for finishing work (if applicable), including a declaration that Project Co's obligations relating to the subject TPA Works, including all obligations arising during the applicable TPA Warranty Period, have been completed;
- (b) written confirmation that no written notices of lien have been received by it;
- (c) a statutory declaration on an original form CCDC 9A – 2018 Statutory Declaration to state that all accounts for labour, Subcontracts, Materials, Construction Plant, and other indebtedness which may have been incurred by Project Co in connection with finishing the TPA Works and for which Contracting Authority might in any way be held responsible have been paid in full; and
- (d) a final WSIB clearance certificate.

7. FINAL PAYMENT

7.1 Final Submission by Project Co

- (a) Within 60 days of Project Co having complied with its obligations relating to the whole of the Works including all TPA Works, Project Co shall submit to Contracting Authority a statement of final account stating the final amounts due to or from it under this Agreement (if any and as the case may be) in respect of:
 - (i) Defined Cost;
 - (ii) Corporate Overhead;
 - (iii) Profit;
 - (iv) its share of any Gainshare or Painshare;
 - (v) any Milestone Payments, Performance Reward Amount, Performance Liability Amount, Construction Period Deductions or other incentive payment amounts under Schedule 43 – Incentives and Construction Enforcement Regime;

- (vi) any other amounts due to or from it under this Agreement; and
 - (vii) all payments received or made by Project Co.
- (b) Project Co must also prepare a draft of the applicable TPA Final Completion Certificate in accordance with Part B, Section 7.3 of this Schedule 42 – Payment Procedures and submit it for approval by Contracting Authority with the final account prepared under Part B, Section 7.1(a) above for the Project.

7.2 Agreement of Final Account by Project Co and Contracting Authority

- (a) Contracting Authority must consider the statement of final account and a draft of the applicable TPA Final Completion Certificate submitted by Project Co under Part B, Section 7.1(a) within three months.
- (b) Contracting Authority may request Project Co to provide further information and/or substantiation of the final account and the draft of the applicable TPA Final Completion Certificate submitted by Project Co under Part B, Section 7.1. Contracting Authority may provide comments to Project Co on the final account and the draft of the applicable TPA Final Completion Certificate.
- (c) Should Contracting Authority disagree with the final account and/or the draft of the applicable TPA Final Completion Certificate submitted by Project Co under Part B, Section 7.1, it must promptly notify Project Co, giving all the reasons for the failure to agree.
- (d) Project Co must promptly address the reasons for disagreement given by Contracting Authority under Part B, Section 7.2(c) and when those reasons have been addressed, re-consider and seek to agree to all matters relating to the final account and the draft of the applicable TPA Final Completion Certificate.
- (e) The process in this Part B, Section 7.2 is repeated until the final account and a draft of the applicable TPA Final Completion Certificate is agreed by Project Co and Contracting Authority.
- (f) Project Co must endeavour to re-determine and resubmit the final account and a draft of the applicable TPA Final Completion Certificate in accordance with Contracting Authority's requirements within 10 Business Days (or such later date as is fair and reasonable having regard to any delay by Project Co) and in any case within such period to enable Contracting Authority to issue the applicable TPA Final Completion Certificate in accordance with Part B, Section 7.3.

7.3 Final Account and TPA Final Completion Certificate

- (a) Contracting Authority must issue a final payment certificate to reflect the final account and a draft of the applicable TPA Final Completion Certificate notified and agreed in accordance with Part B, Section 7.2 above.
- (b) Contracting Authority must issue the applicable TPA Final Completion Certificate to Project Co:

- (i) within 20 Business Days of the agreement of the applicable TPA Final Completion Certificate;
- (ii) within three months of the agreement of the final account; or
- (iii) by the date Project Co has complied with all of its obligations relating to the whole of the Works,

whichever is the latest.

- (c) The applicable TPA Final Completion Certificate must be issued even if the amount due is zero.
- (d) In the applicable TPA Final Completion Certificate, Contracting Authority must certify:
 - (i) that Project Co’s obligations relating to the TPA Works has been properly completed in accordance with this Agreement; and
 - (ii) the applicable TPA Final Completion Date.
- (e) In the applicable TPA Final Completion Certificate, Contracting Authority must certify the following amounts:
 - (i) the aggregate of all Defined Cost, Corporate Overhead and Profit due to Project Co;
 - (ii) the amount paid by Contracting Authority to Project Co prior to the date of the applicable TPA Final Completion Certificate (including any incentive payment pursuant to Schedule 43 – Incentives and Construction Enforcement Regime or Schedule 49 – Target Price Gainshare/Painshare Regime);
 - (iii) the amount paid by Project Co to Contracting Authority prior to the date of the applicable TPA Final Completion Certificate;
 - (iv) the calculation of the Reimbursable Price, the Painshare or Gainshare due under Schedule 49 – Target Price Gainshare/Painshare Regime of this Agreement and Project Co’s share thereof;
 - (v) the calculation of any other incentive payments due under Schedule 49 – Target Price Gainshare/Painshare Regime of this Agreement and Project Co’s share thereof;
 - (vi) any other amounts due to Project Co from Contracting Authority under this Agreement;
 - (vii) any other amounts due from Project Co to Contracting Authority under this Agreement; and

- (viii) the net amount which is finally due and payable to Project Co by Contracting Authority or from Project Co to Contracting Authority (as the case may be).

7.4 Final Payment

Contracting Authority shall make payment to Project Co and/or Project Co shall make payment to Contracting Authority (as the case may be) of any amount certified in the applicable TPA Final Completion Certificate issued in accordance with Part B, Section 7.3.

7.5 Due Date for Final Payment Invoice

- (a) The date for submission of a Proper Invoice for payment due under the applicable TPA Final Completion Certificate is the date that is three months from the date of receipt by Contracting Authority of a statement of final account in accordance with Part B, Section 7.1 and the information reasonably required for its verification (“**Due Date for Final Payment Invoice**”).
- (b) Contracting Authority and/or Project Co (as the case may be) must, subject to the *Construction Act*, make the payment certified in the applicable TPA Final Completion Certificate within 28 days of receipt of the Due Date for Final Payment Invoice, which is the final date for payment of the final payment.

8. WARRANTY CLAIMS

8.1 Payment on account of certain Warranty Claims

- (a) To the extent that Project Co or any Project Co Party suffers or incurs costs or expenses in connection with any TPA Works related to, in respect of or arising out of applicable Warranty Claims that would have constituted a Defined Cost, but for the exclusion set forth in Section 1.1(n) (*Disallowed Costs*) of Appendix A (*Cost Element Allocation Tables Rules*) of Schedule 48 – Defined Cost, Contracting Authority shall pay to Project Co the amount of such costs or expenses until such time that the aggregate amount of such costs and expenses incurred or suffered during the applicable TPA Warranty Period exceeds the applicable TPA Warranty Work Reimbursement Cap. For certainty, all costs and expenses incurred or suffered by Project Co or any Project Co Party related to, in respect of or arising out of Warranty Claims:
 - (i) shall not constitute Defined Costs;
 - (ii) shall not include any form of overhead, mark-up or profit (or any similar or analogous cost or compensation) payable to Project Co or any Project Co Party, and to the extent that any such overhead, mark-up or profit (or any similar or analogous cost or compensation), as applicable, is so paid or credited to Project Co or any Project Co Party, as applicable, the same shall accrue to, and shall be held in trust for, Contracting Authority, and Project Co shall make provisions so that that any such overhead, mark-up or profit (or any similar or analogous cost or compensation), as applicable, is secured for the benefit of, and be paid promptly to, Contracting Authority; and

- (iii) in excess of the applicable TPA Warranty Work Reimbursement Cap shall be the sole responsibility of Project Co.

- (b) In respect of any payment to be made pursuant this Section 8.1, Project Co shall give to Contracting Authority an invoice therefor and sufficient supporting evidence, reasonably satisfactory to Contracting Authority, justifying the amount of the applicable sum including a detailed breakdown of each of the individual items comprising such sum. Following the review and approval of each such invoice by Contracting Authority, Contracting Authority shall pay to Project Co the amount payable pursuant to this Section 8.1, within 60 days after the TPA Warranty Invoice Date and, if such payment is not made within 60 days after the TPA Warranty Invoice Date, an amount equivalent to the Payment Compensation Amount for the period from the date which is 60 days after the TPA Warranty Invoice Date until the date of payment.

9. OVERPAYMENTS AND UNDERPAYMENTS

- 9.1 If the payments made to Project Co are greater than Project Co’s entitlement to payment under this Agreement (the difference being an “**Overpayment**”), then Project Co shall indemnify Contracting Authority in accordance with Section 41.1(d) (*Project Co Indemnities to Contracting Authority*) of this Agreement.
- 9.2 If the payments made to Project Co are less than Project Co’s entitlement to payment under this Agreement (the difference being an “**Underpayment**”), then Contracting Authority shall indemnify Project Co in accordance with Section 41.2(c) (*Contracting Authority Indemnities to Project Co*) of this Agreement.
- 9.3 Where it is determined that a payment is required under this Part B, Section 9, such payment shall be considered to be an increase or reduction, as applicable, of the consideration for the supply by Project Co of the Works.
- 9.4 If a Party is required to make a payment under this Part B, Section 9, such Party must make that payment within 21 Business Days of a written request for payment being made.
- 9.5 Contracting Authority or Project Co may take steps to recover any amount payable to them under this Section 9 which is not paid in accordance with Part B, Section 9.4.

10. TAXES

- 10.1 All amounts specified in this Agreement are expressed exclusive of HST, but inclusive of all other Taxes payable pursuant to Applicable Law.
- 10.2 Unless otherwise set out in this Agreement, Project Co shall pay all applicable Taxes (including HST) incurred by or on behalf of Project Co with respect to this Agreement.
- 10.3 To the extent that HST is payable in respect of any supply made by a Party under or in connection with this Agreement, the recipient of the supply shall pay the applicable HST upon receipt of a Proper Invoice in addition to the amount otherwise payable under this Agreement.

- 10.4 If required by any Applicable Law, Contracting Authority shall withhold any applicable withholding Taxes from amounts due and owing to Project Co under this Agreement and shall remit it to the appropriate Governmental Authority in accordance with Applicable Law.
- 10.5 In the case of an Overpayment under Part B, Section 9.1:
- (a) where HST calculated on the amount of the Overpayment was charged but not collected, Project Co shall adjust the amount of HST charged by subtracting the portion of HST that was calculated on the amount of the Overpayment; and
 - (b) where HST calculated on the Overpayment was collected, Project Co shall pay or credit to Contracting Authority an amount equal to the HST that had been collected on the amount of the Overpayment and issue a credit note containing the information prescribed under the *Excise Tax Act* (Canada).
- 10.6 If a Party is entitled to be reimbursed or indemnified for a loss, cost, expense or outgoing incurred in connection with this Agreement, then the amount of the reimbursement or indemnity payment must first be reduced by an amount equal to any input tax credit or HST rebate to which the Party being reimbursed or indemnified is entitled in relation to that loss, cost, expense or outgoing and, then, if the amount of the payment is consideration or part consideration for a taxable supply, it must be increased on account of HST under Part B, Section 10.1.
- 10.7 Notwithstanding Part B, Section 10.6, where Contracting Authority is entitled under this Agreement to employ a Third Party Contractor to fulfill Project Co's obligations, Project Co shall reimburse and indemnify Contracting Authority for any HST incurred by Contracting Authority that is not recoverable through an input tax credit or similar mechanism to the extent such HST exceeds the unrecoverable HST that would have been payable by Contracting Authority had there been no default.
- 10.8 For clarity, Contracting Authority shall not be required to pay any interest and/or penalties that are imposed on or assessed against Project Co or any Project Co Party for non-compliance with Applicable Law. If Project Co is required by Applicable Law to collect any such HST from Contracting Authority, Contracting Authority shall pay such HST to Project Co simultaneously with the amount to which such applicable HST relates or applies.

11. PAYMENT RECEIPT

- 11.1 Project Co shall issue to Contracting Authority a receipt evidencing payment by Contracting Authority of any amount paid by Contracting Authority pursuant to this Agreement (including HST).

APPENDIX A TO SCHEDULE 42
ILLUSTRATION OF PAYMENT PROCESS – WORKS

[REDACTED]

SCHEDULE 43

INCENTIVES AND CONSTRUCTION ENFORCEMENT REGIME

[REDACTED]

SCHEDULE 44

GEOTECHNICAL BASELINE REPORT

1. DEFINITIONS

In this Schedule 44, unless the context indicates a contrary intention, terms which are defined in this Agreement (and not otherwise defined in this Schedule 44) shall have meanings given to them in this Agreement and the following terms shall have the following meanings:

- 1.1 “**Geotechnical Baseline Statements**” means the statements embedded in the Project GBR that are identified in bold and italics typeface within square brackets, and the statements identified in Sections 2.2(a) and 2.2(b);
- 1.2 “**Geotechnical Testing**” has the meaning given in Section 2.3(a)(iii);
- 1.3 “**Geotechnical Testing Boreholes**” has the meaning given in Section 2.4(a)(vi);
- 1.4 “**Geotechnical Testing Requirements**” has the meaning given in Section 2.4(a);
- 1.5 “**Geotechnical Testing Results**” has the meaning given in Section 2.3(a)(iv);
- 1.6 “**Geotechnical Testing Zone**” has the meaning given in Section 2.4(a)(v); and
- 1.7 “**Project GBR**” has the meaning given in Section 2.1(a).

2. GEOTECHNICAL BASELINE REPORT AND GEOTECHNICAL BASELINE STATEMENTS

2.1 Project GBR

- (a) For the purposes of this Agreement “**Project GBR**” shall mean the report entitled [REDACTED] attached as Appendix A to this Schedule 44.
- (b) Project Co acknowledges and agrees that the Geotechnical Baseline Statements contained in the Project GBR are contractually binding, and that all other information in the Project GBR is Background Information only.
- (c) For clarity, notwithstanding that the Project GBR is a Schedule to this Agreement, only the Geotechnical Baseline Statements contained in the Project GBR can be used by Project Co to establish a Differing Geotechnical Site Condition or Contracting Authority Contamination as described in Section 2.3.
- (d) The Parties acknowledge and agree that the Geotechnical Baseline Statements shall be interpreted in accordance with the following:

- (i) Geotechnical Baseline Statements are standalone and independent statements and do not rely upon the remaining portions of the Project GBR to either interpret, support, or provide context to a Geotechnical Baseline Statement;
- (ii) if a table, figure or footnote is referenced in the Geotechnical Baseline Statement, the referenced table, figure or footnote is considered to be part of the Geotechnical Baseline Statement;
- (iii) any reference to the stratigraphic profile in a Geotechnical Baseline Statement is considered to be a reference to the computer aided design and drafting (CADD) version of the stratigraphic profile; and
- (iv) in the event of ambiguities, conflicts or inconsistencies between or among one or more of the Geotechnical Baseline Statements, or between or among any Geotechnical Baseline Statement and any other information set out in the Project GBR or other Background Information, the following shall apply:
 - (A) any Geotechnical Baseline Statement(s) establishing a higher risk or level of variability in the applicable Site Condition shall govern and take precedence over all Geotechnical Baseline Statement(s) that establish a lower risk or variability in the applicable Site Conditions; and
 - (B) the Geotechnical Baseline Statements shall govern and take precedence over any other information set out in the Project GBR or other Background Information.

2.2 Geotechnical Baseline Statements Not Included In Project GBR

- (a) The following Geotechnical Baseline Statements are applicable to elements of Works not covered under the Project GBR. Project Co acknowledges and agrees that the following Geotechnical Baseline Statements are contractually binding:
 - (i) for baseline purposes, all in situ excavated material will be classified as non-Hazardous Waste; and
 - (ii) for baseline purposes, all groundwater will require advanced treatment in addition to sedimentation control, to meet the City of Toronto Sewers By-law limits for sanitary and combined sewers discharge.
- (b) The following Geotechnical Baseline Statements are applicable to elements of Works not covered under the Project GBR. Project Co acknowledges and agrees that the following Geotechnical Baseline Statements are contractually binding:
 - (i) **[REDACTED]**

2.3 Evidence for Differing Geotechnical Site Condition and Contamination Claims

- (a) In order to establish whether:
- (i) a Geotechnical Site Condition experienced by Project Co is a Differing Geotechnical Site Condition pursuant to Section 18.2 (*Geotechnical Site Conditions*) of this Agreement; or
 - (ii) Contamination encountered by Project Co is Contracting Authority Contamination pursuant to Section 18.3 (*Contamination*) of this Agreement on the basis that it is Contamination that was not described in a Geotechnical Baseline Statement,

for the purposes of a claim for an Adjustment Event pursuant to Section 18.2(c) (*Geotechnical Site Conditions*) and Section 18.3(g) (*Contamination*) of this Agreement, respectively, Project Co shall provide Contracting Authority with the following information:

- (iii) written evidence of all investigations consisting of subsurface explorations, geological mapping in conjunction with photographs and videos, or a combination thereof, laboratory and field test results, and other construction field reports conducted by Project Co in accordance with Section 2.4 to this Schedule 44 (the “**Geotechnical Testing**”);
- (iv) comparison of the results of the Geotechnical Testing (the “**Geotechnical Testing Results**”) with the applicable Geotechnical Baseline Statement using statistical and analytical methods, and graphics (including stratigraphic profiles as applicable), on a “like for like” basis of Geotechnical Testing being conducted in an unbiased, systematic manner across the same zone indicated for the Geotechnical Baseline Statement, such as for all or a portion of the Project alignment;
- (v) identification and description of the impact of the alleged Differing Geotechnical Site Condition or Contracting Authority Contamination, as applicable, on production rates, materials, equipment use, labour requirements and other cost and schedule expectations (including as may have been based on the applicable Geotechnical Baseline Statement); and
- (vi) any other information required by this Agreement (including pursuant to Schedule 21 – Risk Allocations).

2.4 Testing Requirements

- (a) Any Geotechnical Testing shall be conducted in accordance with the following requirements (collectively, the “**Geotechnical Testing Requirements**”):
- (i) Project Co shall comply with the minimum requirements set out in Appendix B to this Schedule 44 for the Geotechnical Baseline Statement against which Project Co is claiming a Differing Geotechnical Site Condition.

- (ii) Project Co shall notify Contracting Authority at least twenty-four hours in advance of any Geotechnical Testing and Contracting Authority shall have the right to be present at and observe any such Geotechnical Testing.
- (iii) Project Co shall ensure that Contracting Authority is provided the opportunity to obtain split or duplicate samples or testing measurements as Project Co obtains from such Geotechnical Testing.
- (iv) All Geotechnical Testing shall be conducted by Project Co in accordance with:
 - (A) Section [●] of the Output Specifications for advancing boreholes, test holes and subsurface explorations, and testing (field, in situ, and laboratory).
- (v) The minimum investigation zone for any Geotechnical Testing (each such zone a “**Geotechnical Testing Zone**”) shall extend a minimum of ten meters horizontally in all directions beyond the areal extent of each claimed Differing Geotechnical Site Conditions, and a minimum of five meters vertically below the lowest elevation at which the Differing Geotechnical Site Condition is being claimed.
- (vi) All boreholes for Geotechnical Testing (the “**Geotechnical Testing Boreholes**”) shall be performed in accordance with the requirements of the Geotechnical Testing Zone.
- (vii) Project Co shall perform all Geotechnical Testing Boreholes in accordance with Good Industry Practice and Applicable Law, and decommission the Geotechnical Testing Boreholes in accordance with Ontario Regulation 903 (as amended).

2.5 Testing at Project Co Risk

- (a) Contracting Authority will reimburse Project Co for additional costs incurred in relation to Geotechnical Testing as a result of successful Differing Geotechnical Site Condition or Contracting Authority Contamination claims for which compensation is owed to Project Co. All costs of Geotechnical Testing associated with unsuccessful Differing Geotechnical Site Condition or Contracting Authority Contamination claims, and all delays associated with any Geotechnical Testing will remain with Project Co, except to the extent such additional costs or delays are caused or contributed to by Contracting Authority.

APPENDIX A TO SCHEDULE 44

PROJECT GBR

[REDACTED]

APPENDIX B TO SCHEDULE 44

MINIMUM TESTING REQUIREMENTS

1. For the purposes of this Appendix B, a “representative number” of Geotechnical Testing Boreholes, tests, shafts, samples, piezometers, field measurements, or other requirements shall be determined by Contracting Authority based on the nature and areal extent of the claimed Differing Geotechnical Site Condition. The following are examples of how a “representative number” of Geotechnical Testing may be determined, which are provided for illustrative purposes only:
 - (a) For a potential Differing Geotechnical Site Condition relating to subsurface conditions at an emergency exit building, a “representative number” of Geotechnical Testing Boreholes and samples could include one or two Geotechnical Testing Boreholes at the emergency exit building location in question, with continuous samples from two meters above to two meters below the potential Differing Geotechnical Site Condition zone.
2. Any capitalized terms that are not defined in this Schedule 44 or Schedule 1 – Definitions and Interpretation of this Agreement shall have the meanings set out in the Project GBR.
3. Those Geotechnical Baseline Statements where measurements or evidence will be required to demonstrate a Differing Geotechnical Site Condition have been reproduced in this Appendix B for convenience only. In the event of ambiguities, conflicts or inconsistencies between or among one or more of the Geotechnical Baseline Statements set out in this Appendix B and one or more of the Geotechnical Baseline Statements set out in the Project GBR, the Geotechnical Baseline Statements set out in the Project GBR shall govern and take precedence over the Geotechnical Baseline Statements set out in this Appendix B

[REDACTED]

SCHEDULE 45**INTEGRATION WITH RSSOM PROJECT****1. DEFINITIONS**

- 1.1** “**Access Readiness Deficiency List**” has the meaning given in Section 6.2(a)(iii) of this Schedule 45.
- 1.2** “**Access Ready**” means, in respect of a Project Co Infrastructure Subsection, that the Project Co Infrastructure forming part thereof is built in compliance with this Agreement, including the Construction Technical Requirements, in respect of all Access Ready Requirements, in the opinion of the Independent Commissioning Agent.
- 1.3** “**Access Ready Checklist**” means, in respect of any Project Co Infrastructure Subsection, the table listing of requirements for access set out in Part C to Appendix A to this Schedule 45.
- 1.4** “**Access Ready Inspection**” has the meaning given in Section 6.2(a)(i) of this Schedule 45.
- 1.5** “**Access Ready Requirements**” means, in respect of any Project Co Infrastructure Subsection, all requirements set out in the applicable Access Ready Checklist.
- 1.6** “**Built to Specification and Design**” means, in respect of any Critical RSSOM Infrastructure Works, that they are built in conformance with:
- (a) the RSSOM Infrastructure Technical Specifications; and
 - (b) any Critical RSSOM Infrastructure Data,
- each as modified pursuant to the Design Submittal Review Process.
- 1.7** “**Construction Integration Working Group**” has the meaning given to it in the RSSOM Interface Agreement.
- 1.8** “**Critical Data**” means the data and information set out in the column titled “Critical Data” in Part B of Appendix A to this Schedule 45.
- 1.9** “**Critical Data Deadline**” means the date set out in the column titled “Critical Data Deadline” in Part B of Appendix A to this Schedule 45, as such date may be amended pursuant to Schedule 21 – Risk Allocations.
- 1.10** “**Critical RSSOM Infrastructure Data**” means the data and information set out in the column titled “Critical RSSOM Infrastructure Data” in Part A of Appendix B to this Schedule 45.
- 1.11** “**Critical RSSOM Infrastructure Works**” means, in respect of a Project Co Infrastructure Section, the works to be carried out by RSSOM Project Co identified by reference to such Project Co Infrastructure Section in the column titled “Critical RSSOM Infrastructure Works” in Part B of Appendix B to this Schedule 45.

- 1.12 “**Critical RSSOM Infrastructure Works Complete**” means, in respect of any Critical RSSOM Infrastructure Works, that such Critical RSSOM Infrastructure Works have achieved Critical RSSOM Infrastructure Works Completion.
- 1.13 “**Critical RSSOM Infrastructure Works Completion**” means, in respect of any Critical RSSOM Infrastructure Works, completion thereof in compliance with the Built to Specification and Design standard, as confirmed by the RSSOM Independent Certifier, as contemplated in Section 7.1 of this Schedule 45.
- 1.14 “**Critical RSSOM Infrastructure Works Completion Date**” has the meaning given in Section 7.1(a)(iv) of this Schedule 45.
- 1.15 “**Critical RSSOM Infrastructure Works Completion Deficiency List**” has the meaning given in Section 7.1(a)(iii) of this Schedule 45.
- 1.16 “**Critical RSSOM Infrastructure Works Completion Notice**” has the meaning given to it in Section 7.1(a)(i) of this Schedule 45.
- 1.17 “**Critical RSSOM Infrastructure Works Completion Target Date**” has the meaning given in Section 7.1(a)(i) of this Schedule 45.
- 1.18 “**Critical RSSOM Infrastructure Works Deadline**” means, in respect of any Critical RSSOM Infrastructure Works, the applicable date set out in the column titled “Critical RSSOM Infrastructure Works Deadline” in Part B of Appendix B to this Schedule 45.
- 1.19 “**Critical RSSOM Infrastructure Works Deficiency Identification Deadline**” has the meaning given in Section 7.1(a)(iii) of this Schedule 45.
- 1.20 “**Critical RSSOM Infrastructure Works Inspection**” has the meaning given in Section 7.1(a)(i) of this Schedule 45.
- 1.21 “**Critical Works**” means, in respect of a Project Co Infrastructure Section, the Construction Works identified by reference to such Project Co Infrastructure Section in the column titled “Critical Works” in Part D of Appendix A to this Schedule 45.
- 1.22 “**Critical Works Complete**” means, in respect of any Critical Works, that such Critical Works are built in accordance with the requirements of this Agreement, including the Construction Technical Requirements in the opinion of the Independent Commissioning Agent as contemplated in Section 4.3 of this Schedule 45.
- 1.23 “**Critical Works Completion Notice**” has the meaning given to it in Section 4.3(b) of this Schedule 45.
- 1.24 “**Critical Works Deadline**” means, in respect of any Critical Works, the applicable date set out in the column titled “Critical Works Deadline” in Part D of Appendix A to this Schedule 45, as such date may be amended pursuant to Schedule 21 – Risk Allocations.
- 1.25 “**Critical Works Inspection**” has the meaning given to it in Section 4.3(b) of this Schedule 45.
- 1.26 “**Design and Construction Data**” has the meaning given in Section 5.1(b)(iii) of this Schedule 45.

- 1.27 “**Design Integration Working Group**” has the meaning given to it in the RSSOM Interface Agreement.
- 1.28 “**Design Submittal Review Process**” means the process contemplated in Section 11 (*Integration Works Submittal Review Procedure*) of Part A and Part C (*Review of RSSOM Infrastructure Design and Construction Data*) of Schedule 10 – Review Procedure.
- 1.29 “**Early Access Noise and Vibration Tests**” means the noise and vibration tests to be conducted by RSSOM Project Co pursuant to and in accordance with Section 6.5.3.2(c)(ii)(II) (*Prediction and Assessment of Operations Noise and Vibration*) of Schedule 17 – Environmental Obligations to the RSSOM Project Agreement.
- 1.30 “**Early Access Tunnel**” means the Project Co Infrastructure Sections identified in the following rows of Part A of Appendix A of this Schedule 45: 4, 15, 19, 28 and 29 in each case prior to Section Substantial Completion occurring in respect thereof.
- 1.31 “**Early Tunnel Access Commencement Date**” has the meaning set out in Section 6.6(b) of this Schedule 45.
- 1.32 “**Early Tunnel Access Period**” has the meaning set out in Section 6.6(b) of this Schedule 45.
- 1.33 “**Elevator Access Period**” has the meaning set out in Section 6.7(b) of this Schedule 45.
- 1.34 “**Handover Data and Equipment**” means, in respect of a Project Co Infrastructure Section, the applicable Design and Construction Data and equipment identified in the Construction Technical Requirements as being necessary to achieve Section Substantial Completion in respect of such Project Co Infrastructure Section.
- 1.35 “**Integration Committee**” has the meaning given to it in the RSSOM Interface Agreement.
- 1.36 “**Integration Improvement Workshops**” has the meaning given to it in the RSSOM Interface Agreement.
- 1.37 “**No Later Than Date**” means, in respect of a Project Co Infrastructure Section or Project Co Infrastructure Subsection, as applicable, the corresponding date identified in the column titled “No Later Than Date” in Part A of Appendix A to this Schedule 45.
- 1.38 “**North Civil Elevator**” means an elevator located on a Project Co Infrastructure Section in respect of which Section Substantial Completion has not yet occurred.
- 1.39 “**Permitted Elevator Use**” has the meaning set out in Section 6.7(a) of this Schedule 45.
- 1.40 “**Post Completion Access Tunnel**” means the Project Co Infrastructure Sections identified in the following rows of Part A of Appendix A of this Schedule 45: 4, 15, 19, 28 and 29, in each case after Section Substantial Completion has occurred in respect thereof.
- 1.41 “**Post Completion Jet Fan Commissioning**” means the commissioning activities to be conducted by Project Co pursuant to and in accordance with Section 3.1.21.2(d)(viii) (*Fire/Life Safety Systems and Procedures*) of the Construction Technical Requirements.

- 1.42 “**Post Completion Tunnel Access Commencement Date**” has the meaning set out in Section 6A.1(b) of this Schedule 45.
- 1.43 “**Post Completion Tunnel Access Period**” has the meaning set out in Section 6A.1(b) of this Schedule 45.
- 1.44 “**Project Co Health and Safety Plan**” means, in respect of any Project Co Infrastructure Subsection or Project Co Infrastructure Section, prior to Section Substantial Completion thereof, the applicable health and safety plan of Project Co.
- 1.45 “**Project Co Infrastructure Section**” means each of the discrete segments of the Project Co Infrastructure listed in the column titled “Infrastructure Section” in Part A of Appendix A to this Schedule 45.
- 1.46 “**Project Co Infrastructure Subsection**” means each of the discrete subsections of the Project Co Infrastructure Sections identified in the column titled “Infrastructure Subsection” in Part A of Appendix A to this Schedule 45.
- 1.47 “**RSSOM Activities**” means, in respect of a Project Co Infrastructure Subsection, the works and activities of RSSOM Project Co identified in the column titled “RSSOM Activities” in Part A of Appendix A to this Schedule 45.
- 1.48 “**RSSOM Design and Construction Data**” has the meaning given in Section 2.1 of this Schedule 45.
- 1.49 “**RSSOM Independent Certifier**” means the person appointed as independent certifier under the RSSOM Project Agreement.
- 1.50 “**RSSOM Infrastructure Technical Specifications**” means, the technical specifications applicable to the RSSOM Project Infrastructure contained in Appendix C to this Schedule 45, as may be modified pursuant to Schedule 10 – Review Procedure.
- 1.51 “**Subsection Access Readiness Notice**” has the meaning given in Section 6.2(a)(i) of this Schedule 45.
- 1.52 “**Subsection Access Ready Target Date**” has the meaning given in Section 6.2(a)(i) of this Schedule 45.
- 1.53 “**Subsection RSSOM Access Date**” has the meaning given in Section 6.2(a)(iv)(A) of this Schedule 45.
- 1.54 “**Subsection RSSOM Access Period**” has the meaning given in Section 6.3(a) of this Schedule 45.

2. CONTRACTING AUTHORITY INTEGRATION OBLIGATIONS

2.1 RSSOM Design and Construction Data

Contracting Authority shall, upon receipt, provide to Project Co such relevant design and construction related data and information as it receives from RSSOM Project Co, including all Critical RSSOM Infrastructure Data, in respect of the RSSOM Project (the “**RSSOM Design and**

Construction Data”) and shall update such information from time to time on an ongoing basis upon receipt of such updates from RSSOM Project Co.

2.2 Critical RSSOM Infrastructure Works

- (a) Contracting Authority shall cause RSSOM Project Co to complete the Critical RSSOM Infrastructure Works, such that they are Critical RSSOM Infrastructure Works Complete on or before the applicable Critical RSSOM Infrastructure Works Deadline subject to, and in accordance with, Section 7.1 of this Schedule 45.
- (b) Contracting Authority shall ensure, or cause RSSOM Project Co to ensure, that the Critical RSSOM Infrastructure Works perform in accordance with the RSSOM Infrastructure Technical Specifications from the date that Critical RSSOM Infrastructure Works Completion is achieved in respect thereof until Project Co achieves Section Substantial Completion in respect of the applicable Project Co Infrastructure Section. Project Co shall notify the Contracting Authority immediately upon a failure of any Critical RSSOM Infrastructure Works to perform in accordance with the RSSOM Infrastructure Technical Specifications.
- (c) Without prejudice to any other right Project Co may have under this Agreement, Project Co may, prior to any applicable Critical RSSOM Infrastructure Works Completion Date, request to participate with Contracting Authority in, or conduct, an inspection of, any Critical RSSOM Infrastructure Works. Contracting Authority may determine whether to permit Project Co or any Project Co Party to participate in, or conduct, such an inspection, and shall act reasonably in making such determination where it has received at least five (5) Business Days notice from Project Co of such intended inspection. If Contracting Authority so permits Project Co or a Project Co Party to participate in, or conduct, such an inspection, then Project Co or the applicable Project Co Party shall comply with all instructions provided by Contracting Authority in respect of such inspection.
- (d) In the event that,
 - (i) a Critical RSSOM Infrastructure Works Completion Date has not occurred on or before the Critical RSSOM Infrastructure Works Deadline applicable to the relevant Critical RSSOM Infrastructure Works, or
 - (ii) the applicable Critical RSSOM Infrastructure Works cease to be Critical RSSOM Infrastructure Works Complete thereafter;

then Project Co shall, subject to and in accordance with Schedule 21 – Risk Allocations, be entitled to an Adjustment Event.

2.3 Post Completion Access Tunnels – Jet Fan Commissioning

Contracting Authority shall cause RSSOM Project Co to grant Project Co and any Project Co Party access to each Post Completion Access Tunnel during each applicable Post Completion Tunnel Access Period for the exclusive purpose of conducting Post Completion Jet Fan Commissioning, all in accordance with Section 6A of this Schedule 45, and Contracting Authority shall ensure that RSSOM Project Co and all RSSOM Project Co Parties do not materially interfere with such access.

3. INTENTIONALLY DELETED**4. CRITICAL DATA AND CRITICAL WORKS****4.1 Project Co to Provide Critical Data**

Project Co shall provide Contracting Authority with the Critical Data on or before the applicable Critical Data Deadline.

4.2 Other Information

Project Co shall provide such other information as Contracting Authority may reasonably require in order to facilitate the development of an integrated Ontario Line Subway System.

4.3 Project Co to Complete Critical Works

- (a) Project Co shall complete the Critical Works, such that they are Critical Works Complete on or before the applicable Critical Works Deadline.
- (b) Project Co shall provide to Contracting Authority and the Independent Commissioning Agent notice (the “**Critical Works Completion Notice**”) twenty-five (25) Business Days prior to the date on which it anticipates the Critical Works will be completed in compliance with the requirements of this Agreement, including the Construction Technical Requirements. The Critical Works Completion Notice shall include particulars of a scheduled inspection by the Independent Commissioning Agent of the applicable Critical Works (the “**Critical Works Inspection**”) which shall take place no earlier than five (5) Business Days after the date of the Critical Works Completion Notice.
- (c) On the date specified in the Critical Works Completion Notice Project Co shall participate, together with Contracting Authority and the Independent Commissioning Agent, in the Critical Works Inspection of the Critical Works, with a view to determining whether the Critical Works are Critical Works Complete. It is acknowledged that pursuant to the RSSOM Project Agreement, RSSOM Project Co shall participate in the Critical Works Inspection.
- (d) Contracting Authority shall notify Project Co and the Independent Commissioning Agent within ten (10) Business days of the completion of the Critical Works Inspection whether it is of the opinion that the Critical Works are completed in compliance with the requirements of this Agreement, including the Construction Technical Requirements. In determining whether the Critical Works are completed in compliance with the requirements of this Agreement, Contracting Authority may, but shall not be obligated to, take account of the views of Project Co expressed during the Critical Works Inspection.
- (e) Within five (5) Business Days after Project Co’s receipt of Contracting Authority’s opinion pursuant to Section 4.3(d) of this Schedule 45, the Parties shall cause the Independent Commissioning Agent to determine whether the Critical Works are completed in compliance with the requirements of this Agreement, including the Construction Technical Requirements, having regard to the opinions of both Project Co and Contracting Authority.

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- (f) If the Independent Commissioning Agent determines that the Critical Works are completed in compliance with the requirements of this Agreement, including the Construction Technical Requirements, the Critical Works shall be deemed Critical Works Complete on the date confirmed by the Independent Commissioning Agent, provided that the Independent Commissioning Agent may have regard to such confirmation, but shall not be bound by it, for purposes of determining if TPA Substantial Completion or DMCA Construction Works Substantial Completion has occurred and for purposes of the issuance of the applicable TPA Substantial Completion Certificate or DMCA Construction Works Substantial Completion Certificate pursuant to Section 23 (*Commissioning and Completion*) of this Agreement (provided further that the Independent Commissioning Agent shall be bound by such confirmation to the extent no change has occurred since the date thereof).
- (g) If the Independent Commissioning Agent determines that the Critical Works are not completed in compliance with the requirements of this Agreement, including the Construction Technical Requirements, the Critical Works Completion Notice shall be deemed rescinded and Project Co may provide a subsequent Critical Works Completion Notice pursuant to Section 4.3(b) of this Schedule 45.
- (h) Project Co shall ensure that all Critical Works are compliant with and function in accordance with all requirements of this Agreement, including the Construction Technical Requirements, at all times from and after the date that such Critical Works are Critical Works Complete until Project Substantial Completion.

5. SECTION SUBSTANTIAL COMPLETION

5.1 Section Substantial Completion

- (a) Project Co shall achieve Section Substantial Completion in respect of each Project Co Infrastructure Section on or before the No Later Than Date applicable thereto, in accordance with, the provisions of this Agreement including this Schedule 45.
- (b) Without limiting Project Co's obligations under this Agreement, for each Project Co Infrastructure Section, Project Co shall, on or before the applicable Section Substantial Completion Date:
- (i) vacate the applicable Project Co Infrastructure Section and corresponding Lands (except as expressly contemplated pursuant to the terms of this Agreement);
 - (ii) provide Contracting Authority with all Handover Data and Equipment in respect of the applicable Project Co Infrastructure Section; and
 - (iii) provide Contracting Authority with the most recent versions of all design and construction data required to be delivered by Project Co in respect of such Project Co Infrastructure Section pursuant to the Construction Technical Requirements (the "**Design and Construction Data**") in respect of the applicable Project Co Infrastructure Section (and provide final versions of such Design and Construction Data as soon as reasonably practicable thereafter).

- (c) Project Co acknowledges that Contracting Authority shall share with RSSOM Project Co copies of the Notices of Commissioning, Section Substantial Completion Notices, CA Section Substantial Completion Deliverables Confirmations and Section Substantial Completion Certificates delivered pursuant to this Agreement and will grant RSSOM Project Co an opportunity to opine whether the applicable Project Co Infrastructure Sections have met the requirements for Section Substantial Completion. Project Co acknowledges that Contracting Authority may at its discretion take such opinion from RSSOM Project Co into consideration in confirming to the Independent Commissioning Agent whether it is of the opinion that the Project Co Infrastructure Section has met the requirements for Section Substantial Completion pursuant to this Agreement and may, but shall not be obligated to, provide to Project Co and/or the Independent Commissioning Agent any deficiency list in respect thereof received by Contracting Authority from RSSOM Project Co.
- (d) Project Co acknowledges that upon Section Substantial Completion being achieved in respect of a Project Co Infrastructure Section, such Project Co Infrastructure Section and all Project Co Infrastructure thereon shall form part of the RSSOM Project Infrastructure and the Ontario Line Subway.

6. RSSOM PROJECT CO ACCESS TO PROJECT CO INFRASTRUCTURE SUBSECTIONS, EARLY ACCESS TUNNELS AND NORTH CIVIL ELEVATORS

6.1 Access Readiness of Project Co Infrastructure Subsections

Project Co shall cause each Project Co Infrastructure Subsection to be Access Ready, as determined in accordance with the procedure set out in Section 6.2 of this Schedule 45, on or before the applicable No Later Than Date.

6.2 Determination of Project Co Infrastructure Subsection Access Readiness

- (a) The Parties shall determine whether a Project Co Infrastructure Subsection is Access Ready in accordance with the following procedure and subject to Section 6.3 of this Schedule 45:
- (i) Project Co shall provide Notice to Contracting Authority and the Independent Commissioning Agent (the “**Subsection Access Readiness Notice**”) of the date on which each applicable Project Co Infrastructure Subsection shall be ready to be accessed by RSSOM Project Co for purposes of RSSOM Project Co performing the applicable RSSOM Activities (the “**Subsection Access Ready Target Date**”) no later than twenty five (25) Business Days prior to such Subsection Access Ready Target Date which Notice shall include particulars of a scheduled inspection by the Independent Commissioning Agent of the Project Co Infrastructure Subsection (the “**Access Ready Inspection**”) which shall take place no earlier than five (5) Business Days after the date of the Subsection Access Readiness Notice.
- (ii) Upon the Subsection Access Readiness Notice being provided to Contracting Authority, Contracting Authority and the Independent Commissioning Agent shall conduct the Access Ready Inspection of the Project Co Infrastructure Subsection, with a view to determining whether the Project Co Infrastructure Subsection is Access Ready. Pursuant to the RSSOM Project Agreement, Contracting Authority shall invite RSSOM Project Co to participate in such Access Ready Inspection.

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- (iii) If Contracting Authority is of the opinion that the Project Co Infrastructure forming part of the Project Co Infrastructure Subsection is not built in compliance with the requirements of this Agreement including the Construction Technical Requirements in respect of any Access Ready Requirements, it shall provide to the Independent Commissioning Agent a list of deficiencies (the “**Access Readiness Deficiency List**”) no later than fifteen (15) Business Days after the date of the Access Ready Inspection. Project Co acknowledges that any Access Readiness Deficiency List provided by Contracting Authority may be informed by input received by the Contracting Authority from RSSOM Project Co pursuant to the RSSOM Project Agreement.
- (iv) Project Co and Contracting Authority shall cause the Independent Commissioning Agent to consider any Access Readiness Deficiency List provided by Contracting Authority pursuant to Section 6.2(a)(iii) of this Schedule 45, if any, and determine, and notify Project Co and Contracting Authority within twenty-five (25) Business Days of the date of the Subsection Access Readiness Notice whether:
- (A) all Project Co Infrastructure forming part of the Project Co Infrastructure Subsection is built in compliance with the requirements of this Agreement, including the Construction Technical Requirements in respect of all Access Ready Requirements in which case the Project Co Infrastructure Subsection shall be deemed Access Ready and the date on which RSSOM Project Co shall be deemed to be granted access to such Project Co Infrastructure Subsection in order to carry out the applicable RSSOM Activities (the applicable “**Subsection RSSOM Access Date**”) shall be the date of the notice provided by the Independent Commissioning Agent pursuant to this Section 6.2(a)(iv) of this Schedule 45, or
- (B) the relevant Project Co Infrastructure forming part of the Project Co Infrastructure Subsection is not built in compliance with the requirements of this Agreement, including the Construction Technical Requirements, in respect of any Access Ready Requirements, in which case the Subsection Access Readiness Notice shall be deemed rescinded.
- (b) The Independent Commissioning Agent may have regard to its determination pursuant to Section 6.2(a)(iv) of this Schedule 45 but shall not be bound by it for purposes of determining if Section Substantial Completion has occurred in respect of any applicable Project Co Infrastructure Section and for purposes of the issuance of a Section Substantial Completion Certificate, DMCA Construction Works Substantial Completion Certificate or TPA Substantial Completion Certificate pursuant to Section 23 (*Commissioning and Completion*) of this Agreement (provided the Independent Commissioning Agent shall be bound by such determination to the extent no change has occurred since the date thereof).
- (c) A determination by the Independent Commissioning Agent pursuant to Section 6.2(a)(iv)(A) of this Schedule 45 that all Project Co Infrastructure forming part of the Project Co Infrastructure Subsection is built in compliance with the requirements of this Agreement, including the Construction Technical Requirements, in respect of all the Access Ready Requirements shall in no way limit the obligations of Project Co under this Agreement including in respect of the applicable Project Co Infrastructure Subsection or

any applicable Project Co Infrastructure Section including but not limited to, its obligations in respect of any defects, deficiencies or items of outstanding works existing or discovered prior to or after the date of such determination.

- (d) Project Co acknowledges that RSSOM Project Co will be granted an opportunity to consider and opine on whether all Project Co Infrastructure forming part of the Project Co Infrastructure Subsection is built in compliance with the requirements of this Agreement, including the Construction Technical Requirements, in respect of all Access Ready Requirements, and that if in RSSOM Project Co’s opinion it does not meet such requirements then Contracting Authority may take such opinion into consideration when exercising its rights pursuant to Section 6.2(a)(iii) of this Schedule 45.
- (e) If, for the purposes of this Section 6.2, Project Co disagrees with a determination by the Independent Commissioning Agent that Project Co Infrastructure forming part of a Project Co Infrastructure Subsection is not built in compliance with this Agreement in respect of any Access Ready Requirements, Project Co may, no later than five (5) Business Days after receipt of the Independent Commissioning Agent’s confirmation under 6.2(a)(iv) of this Schedule 45, bring a Dispute in respect thereof. Project Co acknowledges and agrees that if it does not initiate a Dispute within such timeframe with respect thereto, it shall be deemed to waive any claim in relation thereto for purposes of determining whether the applicable Project Co Infrastructure Subsection was Access Ready and/or whether Subsection RSSOM Access Date has occurred (but for clarity not for any other purposes under this Schedule 45 or this Agreement).
- (f) The process contemplated in Sections 6.2(a)(i)-(iv) of this Schedule 45 shall be repeated in respect of a Project Co Infrastructure Subsection until such time as a Subsection RSSOM Access Date is determined in respect thereof.

6.3 RSSOM Project Co Access to Project Co Infrastructure Subsections

- (a) Project Co shall grant RSSOM Project Co access to each Project Co Infrastructure Subsection from the applicable Subsection RSSOM Access Date up to the Section Substantial Completion Date applicable to such Project Co Infrastructure Subsection (the “**Subsection RSSOM Access Period**”) between 7:00 a.m. and 7:00 p.m. each Business Day for the exclusive purpose of performing the applicable RSSOM Activities and shall ensure that Project Co and all Project Co Parties do not materially interfere with such access, all subject to Contracting Authority complying with its obligations pursuant to Section 6.4 of this Schedule 45.
- (b) Project Co shall grant RSSOM Project Co access to:
 - (i) a Project Co Infrastructure Subsection in respect of which a Subsection RSSOM Access Date has not yet occurred, or
 - (ii) a Project Co Infrastructure Section in respect of which a Section Substantial Completion Date has not yet occurred,

in each case where such access is required by RSSOM Project Co in order to access (or bring equipment on site to) a Project Co Infrastructure Subsection in respect of which a

Subsection RSSOM Access Date has occurred, or a Project Co Infrastructure Section in respect of which a Section Substantial Completion Date has occurred.

6.4 Conditions of Access by RSSOM Project Co

- (a) Contracting Authority shall ensure that RSSOM Project Co and any RSSOM Project Co Party, in connection with accessing any Project Co Infrastructure Subsection, Early Access Tunnel or North Civil Elevator, as applicable, and the performance of any applicable RSSOM Activities, or Early Access Noise and Vibration Tests, as applicable, and in connection with accessing any Project Co Infrastructure as contemplated in Section 6.3(b) of this Schedule 45, shall agree in the RSSOM Project Agreement to:
- (i) comply with the Project Co Health and Safety Plan that is applicable to the Project Co Infrastructure Subsection, Early Access Tunnel, North Civil Elevator or Project Co Infrastructure Section (as applicable) and comply with all directions of Project Co in respect of any matter regarding health and safety at the applicable Project Co Infrastructure Subsection, Early Access Tunnel or North Civil Elevator, as applicable, including but not limited to:
 - (A) ensuring all employees, contractors, subcontractors and other RSSOM Project Co Parties report to Project Co to receive the necessary health and safety training on, or prior to, arrival at the Project Co Infrastructure Section that the Project Co Infrastructure Subsection, Early Access Tunnel or North Civil Elevator is comprised in; and
 - (B) complying with all applicable health and safety plans and directions of Project Co when accessing a Project Co Infrastructure Subsection or RSSOM Project Infrastructure via any applicable Project Co Infrastructure Section that is still under the care and control of Project Co;
 - (ii) coordinate with Project Co the means of access to the applicable Project Co Infrastructure Subsection, Early Access Tunnel, North Civil Elevator or applicable RSSOM Project Infrastructure (or to any Project Co Infrastructure Section to which RSSOM Project Co may require access solely for the purpose contemplated pursuant to Section 6.3(b) of this Schedule 45);
 - (iii) keep the Project Co Infrastructure Subsection, Early Access Tunnel or North Civil Elevator, as applicable, and all Project Co Infrastructure thereon in a safe and orderly state in accordance with Good Industry Practice;
 - (iv) not materially interfere with or delay the work of Project Co or any Project Co Parties, and not do anything that causes Project Co to be in contravention of its obligations under the *Occupational Health and Safety Act* (Ontario), and cause RSSOM Project Co to promptly cease and desist any activity that results or has a likelihood in resulting in such interference or delay or causes such contravention;
 - (v) without derogating from the generality of the foregoing, not interfere with or delay Project Co, any Project Co Party or the Independent Commissioning Agent in carrying out commissioning activities in respect of a Project Co Infrastructure

Section in which such Project Co Infrastructure Subsection, Early Access Tunnel or North Civil Elevator, as applicable, is comprised; and

- (vi) not cause any damage or destruction to the applicable Project Co Infrastructure Subsection, Early Access Tunnel or North Civil Elevator, as applicable, and any Project Co Infrastructure contained therein, and comply with any directions of Project Co as may be required to protect such Project Co Infrastructure Subsection, Early Access Tunnel, North Civil Elevator or Project Co Infrastructure from damage or destruction.

6.5 Protection of Project Co Infrastructure Subsection During Subsection RSSOM Access Period

- (a) During the Subsection RSSOM Access Period, Project Co shall remain responsible for protecting the Project Co Infrastructure Subsection pursuant to Section 11.9 (*Protection of Works and Property and Reinstatement Work*) of this Agreement.
- (b) If any damage to or destruction of Project Co Infrastructure during a Subsection RSSOM Access Period, Early Tunnel Access Period or Elevator Access Period, as applicable, was caused by RSSOM Project Co or a RSSOM Project Co Party then:
 - (i) if such damage or destruction results in, or could reasonably be expected to result in, a serious threat to the health and safety or security of any person, Contracting Authority shall require RSSOM Project Co to follow the reasonable directions of Project Co in respect of health and safety compliance and to vacate the Project Co Infrastructure Subsection, Early Access Tunnel or North Civil Elevator, as applicable, and the Lands it is situated on until such time as Project Co provides Notice to Contracting Authority that the health and safety or security issue identified by Project Co has been addressed and RSSOM Project Co may return thereto;
 - (ii) any repair thereof shall be carried out in accordance with Section 11.9 (*Protection of Works and Property and Reinstatement Work*) of this Agreement and to the extent such repair affects Project Co's cost of performing the Works, then subject to and in accordance with Schedule 21 – Risk Allocations, entitle Project Co to an Adjustment Event; and
 - (iii) Project Co shall, subject to and in accordance with Schedule 21 – Risk Allocations, be entitled to an Adjustment Event.

6.6 Early Access Tunnels – Noise and Vibration Tests

- (a) Project Co shall grant RSSOM Project Co and each RSSOM Project Co Party access to each Early Access Tunnel during the applicable Early Tunnel Access Period between 7:00 p.m. on each Business Day and 7:00 a.m. on the next following Business Day, for the exclusive purpose of conducting Early Access Noise and Vibration Tests, and shall ensure that Project Co and all Project Co Parties do not materially interfere with such access, all subject to Contracting Authority complying with its obligations pursuant to Section 6.4 of this Schedule 45.

- (b) Contracting Authority shall provide Notice to Project Co of the date on which RSSOM Project Co requires access to an Early Access Tunnel for the purpose of conducting Early Access Noise and Vibration Tests (the “**Early Tunnel Access Commencement Date**”) provided the Early Tunnel Access Commencement Date shall be no earlier than ninety (90) days prior to the No Later Than Date applicable to the relevant Early Access Tunnel as identified in Appendix A of this Schedule 45 and the applicable period (the “**Early Tunnel Access Period**”) commencing on such date during which such access is required, provided such Notice shall be provided to Project Co no later than sixty (60) days prior to the Early Tunnel Access Commencement Date identified therein.
- (c) Contracting Authority may refer the determination of the Early Tunnel Access Commencement Date and the Early Tunnel Access Period for consideration at the next following meeting of the Integration Committee pursuant to the RSSOM Interface Agreement, in accordance with the terms of Section 3 (*Integration Committee*) of the RSSOM Interface Agreement, in which case it shall take into consideration any determination thereof made by the Integration Committee, provided that the Early Tunnel Access Commencement Date may in no event be earlier than ninety (90) days prior to the applicable No Later Than Date.
- (d) If Contracting Authority notifies Project Co that RSSOM Project Co requires access to an Early Access Tunnel for purposes of Early Access Noise and Vibration Tests on a date earlier than the Early Tunnel Access Commencement Date or at a time other than during the Early Tunnel Access Period determined in accordance with this Section 6.6 of this Schedule 45, or if RSSOM Project Co does not vacate the Early Access Tunnel at the end of such Early Tunnel Access Period, Project Co shall, subject to and in accordance with Schedule 22 – Estimates, Variations and Proposals, be entitled to a Variation.

6.7 Elevator Access

- (a) Project Co shall grant RSSOM Project Co and any RSSOM Project Co Party access to each North Civil Elevator during each applicable Elevator Access Period, between 7:00 a.m. and 7:00 p.m. on each Business Day, for the exclusive purpose of RSSOM Project Co transporting equipment to Project Co Infrastructure Subsections in respect of which the applicable Subsection RSSOM Access Date has occurred or Project Co Infrastructure Sections in respect of which the Section Substantial Completion Date has occurred (each a “**Permitted Elevator Use**”), and Project Co and all Project Co Parties shall not materially interfere with such access.
- (b) Project Co acknowledges that RSSOM Project Co may, if it requires access to North Civil Elevators for purposes of Permitted Elevator Use, raise such requirements for discussion at the next following meeting of the Construction Integration Working Group pursuant to Section 5 (*Construction Integration Working Group*) of the RSSOM Interface Agreement. If and to the extent Project Co agrees to provide access to RSSOM Project Co to North Civil Elevators for purposes of specified Permitted Elevator Use disclosed by RSSOM Project Co to the Construction Integration Working Group (which disclosure shall include identification of the equipment intended to be transported), the period for access (the “**Elevator Access Period**”) applicable to such disclosed Permitted Elevator Use shall be the period (if any) agreed to by Project Co and established by the Construction Integration Working Group.

- (c) For clarity, Project Co shall not be required to provide RSSOM Project Co with access to North Civil Elevators outside of the applicable Elevator Access Period or for any purpose other than Permitted Elevator Use disclosed to the Construction Integration Working Group in respect thereof.
- (d) Contracting Authority shall cause RSSOM Project Co to comply with the terms of Section 6.4 at all times while accessing a North Civil Elevator during an applicable Elevator Access Period.

6A. ACCESS TO POST COMPLETION ACCESS TUNNELS

6A.1 Access to Post Completion Access Tunnels

The applicable Post Completion Tunnel Access Commencement Date and Post Completion Tunnel Access Period during which Project Co shall be granted access pursuant to Section 2.3 of this Schedule 45 to each Post Completion Access Tunnel for purposes of carrying out Post Completion Jet Fan Commissioning, shall be determined in the following manner:

- (a) Project Co shall provide to Contracting Authority Notice of the proposed date on which Project Co requires access to the applicable Post Completion Access Tunnel for purposes of performing the Post Completion Jet Fan Commissioning (which date shall be no earlier than two-hundred and ten (210) days after the Critical RSSOM Infrastructure Works Deadline applicable to the relevant Post Completion Access Tunnel) and the proposed time period for access commencing on such date. For clarity, more than one (1) Notice may be provided to Contracting Authority in respect of a Post Completion Access Tunnel pursuant to this Section 6A.1(a) of this Schedule 45, provided that no more than twelve (12) Notices in aggregate may be provided by Project Co pursuant to this Section 6A.1(a).
- (b) Contracting Authority shall, no later than thirty (30) Business Days after receipt of Notice pursuant to Section 6A.1(a) of this Schedule 45, confirm by Notice to Project Co the access period (the “**Post Completion Tunnel Access Period**”) and commencement date thereof (the “**Post Completion Tunnel Access Commencement Date**”) in respect of Post Completion Jet Fan Commissioning to be conducted in such Post Completion Access Tunnel (which, for clarity, may be the same as, or different from, those proposed by Project Co in its Notice provided pursuant to Section 6A.1(a) of this Schedule 45).
- (c) Contracting Authority may refer the determination of the Post Completion Tunnel Access Commencement Date and the Post Completion Tunnel Access Period for consideration at the next following meeting of the Integration Committee pursuant to the RSSOM Interface Agreement, in accordance with the terms of Section 3 (*Integration Committee*) of the RSSOM Interface Agreement, in which case it shall take into consideration any determination made in respect thereof by the Integration Committee, provided that the Post Completion Tunnel Access Commencement Date may in no event be earlier than two-hundred and ten (210) days after the Critical RSSOM Infrastructure Works Deadline applicable to the relevant Post Completion Access Tunnel.

7. CRITICAL RSSOM WORKS COMPLETION PROCEDURE

7.1 Critical RSSOM Infrastructure Works Completion

- (a) Critical RSSOM Infrastructure Works Completion shall be determined in respect of any Critical RSSOM Infrastructure Works in accordance with the following procedure:
- (i) Contracting Authority shall provide to Project Co notice (the “**Critical RSSOM Infrastructure Works Completion Notice**”) of the date on which Contracting Authority expects the Critical RSSOM Infrastructure Works to be Critical RSSOM Infrastructure Works Complete (the “**Critical RSSOM Infrastructure Works Completion Target Date**”), no later than two (2) Business Days after receipt of notice of same from RSSOM Project Co, which notice shall include particulars of a scheduled inspection by the RSSOM Independent Certifier of the applicable Critical RSSOM Infrastructure Works (the “**Critical RSSOM Infrastructure Works Inspection**”) which shall take place no earlier than three (3) Business Days after the date of the Critical RSSOM Infrastructure Works Completion Notice.
 - (ii) Upon the Critical RSSOM Infrastructure Works Completion Notice being provided to Project Co, Project Co shall participate, together with the RSSOM Independent Certifier, in the Critical RSSOM Infrastructure Works Inspection of the Critical RSSOM Infrastructure Works, with a view to determining (to the extent possible from a visual inspection carried out by a competent person in a manner consistent with Good Industry Practice) whether they have achieved Critical RSSOM Infrastructure Works Completion.
 - (iii) If Project Co is of the opinion that the Critical RSSOM Infrastructure Works are not Built to Specification and Design, it shall provide to Contracting Authority a list of deficiencies (the “**Critical RSSOM Infrastructure Works Completion Deficiency List**”) no later than ten (10) Business Days after the date of the Critical RSSOM Infrastructure Works Inspection (the “**Critical RSSOM Infrastructure Works Deficiency Identification Deadline**”). Project Co acknowledges that Contracting Authority may at its discretion take the Critical RSSOM Infrastructure Works Completion Deficiency List into consideration in confirming to the RSSOM Independent Certifier and/or RSSOM Project Co whether it is of the opinion that the Critical RSSOM Infrastructure Works are Built to Specification and Design and may, but shall not be obligated to, provide the Critical RSSOM Infrastructure Works Completion Deficiency List to RSSOM Project Co and/or the RSSOM Independent Certifier.

In respect of each deficiency identified on the Critical RSSOM Infrastructure Works Completion Deficiency List, Project Co shall:

- (A) explain why it constitutes a non conformance to the Built to Specification and Design standard, and identify the modifications required to be made to the applicable Critical RSSOM Infrastructure Works to remove such non-conformance, with specific reference to the applicable requirements of the RSSOM Infrastructure Technical Specifications; and

- (B) set out any modifications which Project Co considers necessary to the definition of Built to Specification and Design, including the applicable RSSOM Infrastructure Technical Specifications, in the event that such deficiency is not corrected.
- (iv) Contracting Authority shall notify Project Co within twenty-five (25) Business Days of the date of the Critical RSSOM Infrastructure Works Completion Notice whether the RSSOM Independent Certifier has opined that (1) the Critical RSSOM Infrastructure Works are built in compliance with the requirements of the RSSOM Project Agreement in which case the Critical RSSOM Infrastructure Works shall be deemed Critical RSSOM Infrastructure Works Complete on the date (the applicable “**Critical RSSOM Infrastructure Works Completion Date**”) so confirmed by the RSSOM Independent Certifier and notified by the Contracting Authority, or (2) the relevant Critical RSSOM Infrastructure Works are not built in compliance with the requirements of the RSSOM Project Agreement, in which case the Critical RSSOM Infrastructure Works Completion Notice shall be deemed rescinded.
- (v) If, notwithstanding Project Co has delivered a Critical RSSOM Infrastructure Works Completion Deficiency List pursuant to Section 7.1(a)(iii) of this Schedule 45, Contracting Authority proceeds to issue a notice pursuant to Section 7.1(a)(iv)(1) above hereof confirming that Critical RSSOM Infrastructure Works Completion has occurred, Project Co may, no later than five (5) Business Days after receipt of such notice from the Contracting Authority, bring a Dispute in respect thereof. Project Co acknowledges and agrees that if it does not initiate a Dispute within such timeframe with respect to any non conformance to the Built to Specification and Design standard that is identified in the Critical RSSOM Infrastructure Works Completion Deficiency List, it shall be deemed to waive any claim in relation thereto. If such Dispute is resolved in favour of Project Co, Project Co shall be entitled to a Variation subject to and in accordance with Schedule 22 – Estimates, Variations and Proposals. Such Dispute, if applicable, shall not affect the Critical RSSOM Infrastructure Works Completion Date established pursuant to Section 7.1(a)(iv)(1) of this Schedule 45.
- (vi) Subject to Section 7.1(a)(v) of this Schedule 45, Project Co may not make any claim or commence any Dispute asserting that any Critical RSSOM Infrastructure Works are not Critical RSSOM Infrastructure Works Complete at any time after the Critical RSSOM Infrastructure Works Deficiency Identification Deadline unless (i) such deficiency is included in a Critical RSSOM Infrastructure Works Completion Deficiency List delivered on or prior to the Critical RSSOM Infrastructure Works Deficiency Identification Deadline or (ii) such deficiency could not reasonably be ascertained by a competent person in accordance with Good Industry Practice during a visual inspection of the Critical RSSOM infrastructure Works if such inspection took place on the Critical RSSOM Infrastructure Works Deficiency Identification Deadline.
- (vii) The process contemplated in Sections 7.1(a)(i)-(v) of this Schedule 45 shall be repeated in respect of any Critical RSSOM Infrastructure Works until such time as

a Critical RSSOM Infrastructure Works Completion Date is determined in respect thereof.

APPENDIX A TO SCHEDULE 45

**SUBSECTION RSSOM ACCESS, SECTION SUBSTANTIAL COMPLETION,
CRITICAL DATA AND CRITICAL WORKS**

[REDACTED]

APPENDIX B TO SCHEDULE 45

CRITICAL RSSOM INFRASTRUCTURE DATA
AND CRITICAL RSSOM INFRASTRUCTURE WORKS

[REDACTED]

APPENDIX C TO SCHEDULE 45

RSSOM INFRASTRUCTURE TECHNICAL SPECIFICATIONS

[REDACTED]

SCHEDULE 46

TTC STATION WEEKEND CLOSURES

1. DEFINITIONS

In this Schedule 46, unless the context indicates a contrary intention, terms which are defined in this Agreement (and not otherwise defined in this Schedule 46) shall have meanings given to them in this Agreement and the following terms shall have the following meanings:

- (i) “**Additional TTC Weekend Closure**” has the meaning given to it in Section 2(b).
- (ii) “**Final Annual TTC Station Weekend Closures Schedule**” has the meaning given to it in Section 3(e).
- (iii) “**Initial Annual TTC Station Weekend Closures Schedule**” has the meaning given to it in Section 3(a).
- (iv) “**Initial TTC Station Weekend Closures**” has the meaning given to it in Section 2(a).
- (v) “**Proposed Final Annual TTC Station Weekend Closures Schedule**” has the meaning given to it in Section 3(b).
- (vi) “**TTC Station – Full Weekend Closure**” means the full closure of public access and operation of the Pape TTC subway station from 2 a.m. Saturday through 5 a.m. Monday, including the cessation of TTC subway passenger trains through such closed TTC subway station.
- (vii) “**TTC Station – Station By Pass**” means the full closure of public access and operation of the Pape TTC subway station from 2 a.m. Saturday through 5 a.m. Monday, with TTC subway passenger trains operating during normal operating hours through such closed station, without stopping at such station.
- (viii) “**TTC Station Weekend Closure**” means either a TTC Station – Full Weekend Closure or a TTC Station – Station By Pass.
- (ix) “**TTC Station Weekend Closures Schedule**” means the schedule for Project Co’s TTC Station Weekend Closures in the form set out in Appendix B to this Schedule 46.
- (x) “**TTC Station Weekend Closures Target Letter**” means the letter attached to Appendix A of this Schedule 46.

2. TTC STATION WEEKEND CLOSURES - GENERAL

- (a) Project Co shall be entitled to the number and type of TTC Station Weekend Closures set out in the TTC Station Weekend Closures Target Letter (the “**Initial TTC Station Weekend Closures**”).

- (b) Subject to Section 2(c), Project Co may, as part of an Initial Annual TTC Station Weekend Closures Schedule, request TTC Station Weekend Closures in addition to Initial TTC Station Weekend Closures (each, an “**Additional TTC Weekend Closure**”).
- (c) Prior to Project Substantial Completion, Project Co may have, in the aggregate, a maximum of **[REDACTED]** TTC Station Weekend Closures in the aggregate to facilitate the Works at the Pape TTC subway station, provided that:
- (i) a maximum of **[REDACTED]** of the TTC Station Weekend Closures may be TTC Station – Full Weekend Closures;
 - (ii) Project Co shall be entitled to a maximum of **[REDACTED]** TTC Station Weekend Closures in any calendar year;
 - (iii) a maximum of **[REDACTED]** closure or diversion per line or route in the TTC network will be permitted on the same day or during the same weekend;
 - (iv) no TTC Station Weekend Closure of the Pape TTC subway station shall be permitted after the Section Substantial Completion of Pape Station; and
 - (v) no TTC Station Weekend Closure shall be permitted on the following weekends or during the following events:
 - (A) St. Patrick’s Parade weekend (March);
 - (B) Toronto Marathon (May);
 - (C) Sporting Life 10K (May);
 - (D) Ride for Heart (June);
 - (E) Pride weekend (June);
 - (F) Canada Day long weekend (July);
 - (G) Honda Indy weekend (July);
 - (H) Veld Music Festival (July);
 - (I) Caribbean Carnival (July);
 - (J) Taste of the Danforth (August);
 - (K) Canadian National Exhibition (third week of August to first week of September);
 - (L) Nuit Blanche (September);

- (M) TCS Toronto Waterfront Marathon (October; previously known as Scotiabank Waterfront Marathon);
 - (N) Santa Claus Parade (November);
 - (O) Christmas Eve and Christmas Day (December);
 - (P) New Year’s Eve (December);
 - (Q) distance sporting events;
 - (R) municipal seasonal clean up events (e.g. Don Valley Parkway closures, Gardiner Expressway closures, etc.);
 - (S) major sporting events (e.g. playoffs, championship parades, FIFA World Cup, Pan Am and Para Pan Am games, Olympics, etc.);
 - (T) major sporadic municipal events (e.g. international summits, World Youth Day, etc.); or
 - (U) unsanctioned parades, protests and events;
- (d) All TTC Station Weekend Closures shall be performed in accordance with the “*Priority Provincial Subways Program Closures and Diversions Roles and Responsibilities (Construction Phase Only)*”, prepared by the TTC [REDACTED].

3. SCHEDULING AND CANCELLING TTC STATION WEEKEND CLOSURES

- (a) On or before January 1 of each year prior to the year in which Project Co plans for a TTC Station Weekend Closure, Project Co shall submit to Contracting Authority a TTC Station Weekend Closures Schedule for such subsequent year (the “**Initial Annual TTC Station Weekend Closures Schedule**”). Each Initial Annual TTC Station Weekend Closures Schedule shall also including the following information:
- (i) the total number of TTC Station Weekend Closures set out in the TTC Station Weekend Closures Target Letter;
 - (ii) the total number of TTC Station Weekend Closures to be used within the applicable Initial Annual TTC Station Weekend Closures Schedule including by type of TTC Station Weekend Closure;
 - (iii) the total aggregate number of TTC Station Weekend Closures used to date including by type of TTC Station Weekend Closure;
 - (iv) the total remaining TTC Station Weekend Closures set out in the TTC Station Weekend Closures Target Letter;

- (v) the total number of Additional TTC Station Weekend Closures be used within the applicable Initial Annual TTC Station Weekend Closures Schedule including by type of TTC Station Weekend Closure; and
 - (vi) the total aggregate number of Additional TTC Station Weekend Closures used to date including by type of TTC Station Weekend Closure.
- (b) On or before June 1 of the year prior to the year in which Project Co plans for a TTC Station Weekend Closure, Project Co shall submit to Contracting Authority a proposed final TTC Station Weekend Closures Schedule for such subsequent year (the “**Proposed Final Annual TTC Station Weekend Closures Schedule**”). Project Co may cancel or reschedule any TTC Station Weekend Closure set out in the Initial Annual TTC Station Weekend Closures Schedule provided that such cancellation or rescheduling meets the requirements set out in Section 2 of this Schedule 46. Each Proposed Final Annual TTC Station Weekend Closures Schedule shall also including the following information:
- (i) the total number of TTC Station Weekend Closures set out in the TTC Station Weekend Closures Target Letter;
 - (ii) the total number of TTC Station Weekend Closures to be used within the applicable Proposed Final Annual TTC Station Weekend Closures Schedule including by type of TTC Station Weekend Closure;
 - (iii) the total aggregate number of TTC Station Weekend Closures used to date including by type of TTC Station Weekend Closure;
 - (iv) the total remaining TTC Station Weekend Closures set out in the TTC Station Weekend Closures Target Letter;
 - (v) the total number of Additional TTC Station Weekend Closures be used within the applicable Proposed Final Annual TTC Station Weekend Closures Schedule including by type of TTC Station Weekend Closure; and
 - (vi) the total aggregate number of Additional TTC Station Weekend Closures used to date including by type of TTC Station Weekend Closure.
- (c) Project Co shall, as part of the submissions required in Sections 3(a) and 3(b) of this Schedule 46, include a TTC Station Weekend Closures Schedule for all TTC Station Weekend Closures that Project Co is then planning until the Project Substantial Completion Date.
- (d) Contracting Authority shall review the Initial Annual TTC Station Weekend Closures Schedule and Proposed Final Annual TTC Station Weekend Closures Schedule in accordance with Schedule 10 – Review Procedure and shall accept any proposed TTC Station Weekend Closures that meet the requirements of Section 2(c). Contracting Authority may reject any proposed TTC Station Weekend Closure that does not meet the requirements of Section 2(c). Project Co may resubmit a Proposed Final Annual TTC Station Weekend Closures Schedule on or before June 1 of the year prior to the year in which Project Co plans for a TTC Station Weekend Closure. For greater certainty, Contracting Authority shall be under no obligation to accept any proposed TTC Station

Weekend Closure that was not included in a Proposed Final Annual TTC Station Weekend Closures Schedule submitted after June 1 of the year prior to the year in which Project Co plans for a TTC Station Weekend Closure.

- (e) Once a Proposed Final Annual TTC Station Weekend Closures Schedule has been accepted pursuant to Section 3(d) it shall be deemed to be a **“Final Annual TTC Station Weekend Closures Schedule”**.
- (f) Contracting Authority may, but shall not be obligated, to review and comment on the additional TTC Station Weekend Closures Schedule submitted by Project Co pursuant to Section 3(c).
- (g) Project Co may, at any time, request to reschedule a TTC Station Weekend Closure included in a Final Annual TTC Station Weekend Closures Schedule and Contracting Authority may accept or reject such request in its sole discretion.
- (h) If Project Co no longer requires a TTC Station Weekend Closure that is included in a Final Annual TTC Station Weekend Closures Schedule, it shall promptly cancel such TTC Station Weekend Closure by providing written notice to Contracting Authority. For greater certainty, any cancelled TTC Station Weekend Closure that is not subsequently rescheduled shall not count towards the number of Initial TTC Station Weekend Closures set out in Section 2(a) or the maximum number of TTC Station Weekend Closures set out in Section 2(c).
- (i) Contracting Authority may, at any time, on or before the day that is ten (10) weeks prior to a TTC Station Weekend Closure included in a Final Annual TTC Station Weekend Closures Schedule, change the dates of such TTC Station Weekend Closure to dates that are either one week before or one week after such Scheduled TTC Station Weekend Closure, and Project Co shall not be entitled to any additional compensation or extension of time in relation thereto.
- (j) Contracting Authority may cancel or reschedule a TTC Station Weekend Closure included in a Final Annual TTC Station Weekend Closures Schedule in which case Project Co shall, subject to and in accordance with Schedule 21 – Risk Allocations, be entitled to an Adjustment Event except:
 - (i) where such rescheduling is in accordance with Section 3(i); or
 - (ii) to the extent such cancellation or rescheduling arises, directly or indirectly, out of, or in consequence of, or involve or relate to, any breach of this Agreement by Project Co or any Project Co Party.

APPENDIX A TO SCHEDULE 46

TTC STATION WEEKEND CLOSURES TARGET LETTER

[REDACTED]

APPENDIX B TO SCHEDULE 46

FORM OF TTC STATION WEEKEND CLOSURES SCHEDULE

[REDACTED]

SCHEDULE 47

CORPORATE OVERHEAD AND PROFIT

1. INTRODUCTION

1.1 In this Schedule 47, unless the context indicates a contrary intention, terms that are defined in this Agreement (and not otherwise defined in this Schedule 47) shall have the same meanings given to them in this Agreement and the following terms shall have the following meaning:

- (a) “**Corporate Overhead**” means the amount of corporate overhead as determined in accordance with Section 2.1.
- (b) “**Profit**” means the amount for profit as determined in accordance with Section 2.2.

2. CORPORATE OVERHEAD AND PROFIT

2.1 Subject to Section 11.38 (*Subcontracting*) of this Agreement, Schedule 49 – Target Price Gainshare/Painshare Regime and Schedule 48 – Defined Cost, the Corporate Overhead payable by Contracting Authority to Project Co under this Agreement is the amount equal to:

- (a) [REDACTED]% of the Defined Cost for Primary Team Self-Performed Design Work;
- (b) [REDACTED]% of the Defined Cost for Primary Team Subcontracted Design Work;
- (c) [REDACTED]% of the Defined Cost for Primary Team Self-Performed Development Work and Construction Work; and
- (d) [REDACTED]% of the Defined Cost for Primary Team Subcontracted Development Work and Construction Work.

2.2 Subject to Section 11.38 (*Subcontracting*) of this Agreement, Schedule 49 – Target Price Gainshare/Painshare Regime and Schedule 48 – Defined Cost, the Profit payable by Contracting Authority to the Project Co under this Agreement is the amount equal to:

- (a) [REDACTED]% of the Defined Cost for Primary Team Self-Performed Design Work;
- (b) [REDACTED]% of the Defined Cost for Primary Team Subcontracted Design Work;
- (c) [REDACTED]% of the Defined Cost for Primary Team Self-Performed Development Work and Construction Work; and
- (d) [REDACTED]% of the Defined Cost for Primary Team Subcontracted Development Work and Construction Work.

2.3 The percentage figures specified in Sections 2.1 and 2.2 will apply for the duration of the Project and will not be adjusted, split, modified or altered in any way for any reason or purpose, including for the purpose of recognizing that Project Co may have a different internal percentage figure that is normally applied in other contracting arrangements.

- 2.4 The amount of Corporate Overhead and Profit calculated in accordance with Sections 2.1 and 2.2, represents:
- (a) with respect to Corporate Overhead, a mark-up on Defined Cost reasonably and actually incurred in performing the Works, whether by way of self-performing the Works or by way of Subcontract; and
 - (b) with respect to Profit, a reasonable profit margin in performing the Works, whether by way of self-performing the Works or by way of Subcontract.
- 2.5 The procedure for payment of Corporate Overhead and Profit is set out in Schedule 42 – Payment Procedures.
- 2.6 Project Co agrees that Corporate Overhead is, unless this Agreement expressly provides to the contrary, inclusive of all overhead costs.

SCHEDULE 48

DEFINED COST

1. DEFINITIONS

- 1.1 In this Schedule 48, unless the context indicates a contrary intention, terms that are defined in this Agreement (and not otherwise defined in this Schedule 48) shall have the same meanings given to them in this Agreement and the following terms shall have the following meaning:
- (a) “**Actualized Category**” means any skill type category, grade and/or band against which Project Co allocated and remunerates its personnel engaged in the Works and which is approved by Contracting Authority for the purposes of determining any Actualized Rates.
 - (b) “**Actualized Period**” means the period for determining and reconciling Actualized Rates pursuant to Section 5.2, being the period of three months commencing on the anniversary of January 1, April 1, July 1 and October 1 of any calendar year.
 - (c) “**Actualized Rates**” means the rates calculated in accordance with the methodology agreed to by Contracting Authority and Project Co in accordance with this Schedule 48 as the proxy for Defined Cost.
 - (d) “**Adjusted Actualized Amount**” has the meaning given in Section 5.2(h).
 - (e) “**Affiliate Subcontract Fee**” means that part of the total price payable or to be credited to an Affiliated Subcontractor which is attributable to the Affiliated Subcontractor’s overhead and profit for the part of the Works undertaken pursuant to the relevant Affiliated Subcontract.
 - (f) “**Corporate Office**” means any location or premise where Project Co operates any of its businesses that is not a Project Office, including for certainty Project Co’s corporate or head office, as well as any regional, divisional or subsidiary offices of Project Co.
 - (g) “**Cost Element Allocation Tables**” has the meaning giving in Section 3.1, and “**Cost Element Allocation Table**” means any one of them.
 - (h) “**Cost Estimating System**” means [REDACTED].
 - (i) “**Cost Management System**” means [REDACTED].
 - (j) “**Current Actualized Period**” means any Actualized Period during which payment of Defined Cost is measured using Actualized Rates determined in respect of the relevant Preceding Period in accordance with Section 5.2(h).
 - (k) “**Current Fixed Rate Period**” means any Fixed Rate Period during which payment of Defined Cost is measured using Fixed Rates determined in respect of the relevant Preceding Period in accordance with Section 6.4.
 - (l) “**Defined Cost**” has the meaning given in Section 2.1.

- (m) “**DMCA Warranty Work Reimbursement Cap**” has the meaning given in Schedule 42 – Payment Procedures.
- (n) “**Employed Staff**” means any person employed by Project Co to which Table B of the Cost Element Allocation Tables is applicable.
- (o) “**Fixed Rates**” means the rates calculated in accordance with the methodology agreed to by Contracting Authority and Project Co in accordance with this Schedule 48 as the proxy for Defined Cost.
- (p) “**Fixed Rate Category**” means any cost element defined in the Cost Element Allocation Table and which is approved by Contracting Authority for the purposes of determining any Fixed Rate.
- (q) “**Fixed Rate Period**” means the period to which the Fixed Rates apply pursuant to Section 6.4.
- (r) “**Initial Actualized Amount**” has the meaning given in Section 5.2(h).
- (s) “**Labour Payroll Burden**” has the meaning given in Section 2.9 of Appendix A – Cost Element Allocation Table Rules.
- (t) “**Non-Primary Project Co Team Subcontract**” means a Non-Primary Team Subcontract entered into by a Primary Team Member with a Non-Primary Project Co Team Subcontractor.
- (u) “**Non-Primary Project Co Team Subcontractor**” means a Non-Primary Team Subcontractor which is a Project Co Team Member.
- (v) “**OPSS 127 Rate**” means the rate for a unit of equipment, as applicable, as listed in OPSS 127 (Schedule of Rental Rates For Construction Requirement Including Model and Specification Reference) published on the Ontario Provincial Standards website, that is current at the time the Works are carried out.
- (w) “**Preceding Period**” means the Actualized Period immediately preceding any Current Actualized Period.
- (x) “**Project Co Team**” means, collectively, the following persons:
 - (i) [REDACTED]; and
 - (ii) [REDACTED],and any replacement or substitute thereof as may be permitted by this Agreement.
- (y) “**Project Co Team Member**” means a member of Project Co Team.
- (z) “**Site Labour**” means any person employed by Project Co to which Table C of the Cost Element Allocation Tables is applicable.

- (aa) “**Staff Payroll Burden**” has the meaning in Section 2.8 of Appendix A – Cost Element Allocation Table Rules.
- (bb) “**TPA Warranty Work Reimbursement Cap**” has the meaning set out in the applicable Target Price Agreement in effect.
- (cc) “**Warranty Claims**” means any costs and expenses incurred by Project Co or any Project Co Party related to, in respect of or arising out of carrying out and satisfying any and all warranties, guarantees and assurances set forth in this Agreement, including under or pursuant to Sections 11.16 (*Warranty Obligations*) and 11.17 (*Warranty Work and Prompt Repair of Warranty Work*) of this Agreement and for certainty, shall include:
 - (i) correcting and Making Good during the applicable TPA Warranty Period or DMCA Warranty Period any and all Construction Defects in respect of the Works;
 - (ii) correcting and Making Good any and all Construction Latent Defects;
 - (iii) Making Good Other Contractor’s work destroyed or damaged by any Construction Defect; and
 - (iv) carrying out and satisfying any and all Works during the applicable TPA Warranty Period or DMCA Warranty Period.
- (dd) “**Workstation Charges**” has the meaning set out in Table D of the Cost Element Allocation Tables.

2. GENERAL

- 2.1 Subject to Section 1 of Appendix A – Cost Element Allocation Table Rules of this Schedule 48 and any specific exclusions or disallowed costs contained in this Agreement, “**Defined Cost**” means those costs and expenses that are both:
 - (a) reasonably and actually incurred by Project Co in connection with the Works (excluding any corporate overhead component not specific to the Works and any profit or mark up of any kind); and
 - (b) described in Appendix A and B to this Schedule 48, or which this Agreement otherwise expressly provides will be Defined Cost.
- 2.2 Project Co acknowledges and agrees that it is a fundamental underlying principle of this Agreement that:
 - (a) except for Corporate Overhead and Profit, Project Co will not derive any mark-up, overhead, profit or unreasonable advantage from the utilization of its resources for the Works;
 - (b) Defined Cost shall be net of all discounts, rebates, deductions, credits and other price reductions and benefits, which relate to the Defined Cost incurred; and

- (c) no overhead, mark-up or profit (or any similar or analogous cost or compensation) payable to a Subcontractor under any Subcontract shall be paid or credited to, in any manner or in any form (including in the form of a trade discount, rebate or refund), directly or indirectly, by such Subcontractor to any Primary Team Member, and to the extent that any such overhead, mark-up or profit (or any similar or analogous cost or compensation), as applicable, is so paid or credited to any Primary Team Member, the same shall accrue to, and shall be held in trust for, Contracting Authority, and Project Co shall make provisions so that that any such overhead, mark-up or profit (or any similar or analogous cost or compensation), as applicable, is secured for the benefit of, and be paid promptly to, Contracting Authority.
- 2.3 For the avoidance of doubt, accruals or commitments made by Project Co are not considered to be Defined Cost for the purposes of this Agreement and, subject to the requirements of this Schedule 48, shall only become a Defined Cost when Project Co has paid the costs to which the accruals or commitments relate.
- 2.4 The cost of events for which this Agreement requires Project Co to insure and/or other costs paid to Project Co by insurers in relation to the Works shall be deducted from the Defined Costs.
- 2.5 Contracting Authority may set off any damages (liquidated and unliquidated) recovered by Project Co from any Project Co Party against any Defined Cost to be paid to Project Co.
- 2.6 No overhead, mark-up or profit (or any similar or analogous cost or compensation) payable under any Non-Primary Project Co Team Subcontract or any Subcontract, where and to the extent the Subcontract is priced on an actual cost basis (e.g., cost reimbursable, target cost or otherwise) and/or engaged on a single source or sole source basis or by way of any other non-competitive procurement process, shall be recoverable as Defined Cost until such time as such overhead, mark-up or profit (or any similar or analogous cost or compensation), as applicable, has been approved by Contracting Authority. Each invoice, bill or other request for payment issued by a Non-Primary Project Co Team Subcontract or applicable Subcontract or pursuant to the applicable Non-Primary Project Co Team Subcontract or Subcontract shall separately identify each of the overhead, mark-up and profit (or any similar or analogous cost or compensation) payable thereunder.
- 2.7 Payment by Contracting Authority of amounts in respect of applicable Warranty Claims up to the TPA Warranty Work Reimbursement Cap shall be in accordance with Schedule 42 – Payment Procedures of this Agreement.
- 2.8 Payment by Contracting Authority of amounts in respect of applicable Warranty Claims up to the DMCA Warranty Work Reimbursement Cap shall be in accordance with Schedule 42 – Payment Procedures of this Agreement.
- 3. COST ELEMENT ALLOCATION TABLES**
- 3.1 Tables A through H of Appendix B to this Schedule 48 (“**Cost Element Allocation Tables**”) allocate various cost elements between Defined Cost and Corporate Overhead.
- 3.2 The Cost Element Allocation Tables are subject to Appendix A – Cost Element Allocation Tables Rules of this Schedule 48.

3.3 The Cost Element Allocation Tables are an exhaustive list of the cost elements of Defined Cost that Project Co may recover under this Agreement, unless:

- (a) Contracting Authority agrees otherwise; or
- (b) Project Co can demonstrate to Contracting Authority’s reasonable satisfaction that there is no element of Corporate Overhead or Profit to cover the relevant cost element,

in which case Contracting Authority may determine, in its sole discretion, that any cost, notwithstanding that it is not otherwise a Defined Cost in accordance with this Schedule 48, shall be considered a Defined Cost.

3.4 Any consent, approval or authorization that may be required or granted by Contracting Authority pursuant to or as contemplated in this Schedule 48 shall only be effective if given in writing signed by a duly authorized representative of Contracting Authority.

3.5 Corporate Overhead as defined in this Agreement shall be deemed to include for Project Co’s recovery of those cost elements defined in the Cost Element Allocation Tables as “Corporate Overhead”.

3.6 Any cost element not listed in the Cost Element Allocation Tables is deemed included in the Corporate Overhead or Profit.

4. DISPUTES AS TO DEFINED COST

4.1 To the extent that Defined Cost are alleged by Contracting Authority to be not clear, any dispute may be referred by either Party for resolution under the Dispute Resolution Procedure.

4.2 The level of detail required to support Project Co’s Defined Cost will be determined and agreed by Contracting Authority subject to the amount of documentary evidence and records that will be required to be provided by Project Co in accordance with this Schedule 48.

5. ACTUALIZED RATES

5.1 Any Actualized Rate for Project Co may be used under this Agreement as a proxy for Defined Cost (otherwise derived in accordance with this Agreement) for Project Co where and to the extent such Actualized Rate has been approved for use by Contracting Authority in accordance with Section 5.2(a). For the avoidance of doubt, any approval, deemed approval or provisional approval given by Contracting Authority to the use of Actualized Rates of Project Co under this Section 5.1 does not extend to any Affiliated Subcontractor or Subcontractor, unless approved by Contracting Authority.

5.2 The provisions of this Section 5.2 apply to the use of Actualized Rates as a proxy for Defined Cost by Project Co in accordance with this Agreement:

- (a) Contracting Authority may from time to time acting reasonably approve an Actualized Rate (or revised Actualized Rate) proposed by Project Co in respect of Project Co’s Employed Staff (Table B of the Cost Element Allocation Tables) and/or Site Labour (Table C of the Cost Element Allocation Tables) engaged on the Works during each Actualized Period on

production of a worked example by Project Co in respect of the proposed Actualized Rate showing:

- (i) the specific account codes where the actual salary costs and employer on-costs are debited in Project Co's accounting systems;
- (ii) the specific accounting codes where the staff costs, based on rates charged to other projects are credited in Project Co's accounting system;
- (iii) a demonstration of Project Co's proposed regular reconciliation process which compares actual salary costs to the costs charged to projects and how any differences are subsequently reflected in adjusted rates;
- (iv) the calculation of the Actualized Rate is in accordance with the methodology agreed to by Contracting Authority and Project Co for the relevant Works; and
- (v) such other information or substantiation as Contracting Authority may reasonably require,

and Contracting Authority may, or require any consultant acting on Contracting Authority's behalf to, review or investigate any such proposed Actualized Rate and/or its worked example and may approve the use of an Actualized Rate on a provisional basis (which may be withdrawn by Contracting Authority on a retrospective basis at any time) pending satisfaction of such conditions as Contracting Authority may reasonably require. For the avoidance of doubt, a failure to submit a satisfactory worked example entitles Contracting Authority to withhold approval of the relevant proposed Actualized Rate.

- (b) Contracting Authority may from time to time approve, at Contracting Authority's sole discretion, an Actualized Rate (or revised Actualized Rate) proposed by Project Co in respect of any other cost category in the Cost Element Allocation Tables during each Actualized Period. Contracting Authority and Project Co shall together work to identify the information or substantiation that Contracting Authority may reasonably require to approach such Actualized Rate.
- (c) Subject to Section 5.2(f), where and to the extent Actualized Rates have been approved and determined in accordance with this Section 5.2 in respect of:
 - (i) Project Co;
 - (ii) any Actualized Category; and
 - (iii) any Current Actualized Period,

notwithstanding any other provision in this Schedule 48, the Defined Cost payable to Project Co pursuant to this Schedule 48 in respect of Project Co's Employed Staff and/or Site Labour in that Actualized Category during the Current Actualized Period are deemed to be the aggregate of:

- (iv) the relevant Actualized Rates; multiplied

- (v) by the total hours which would otherwise be recoverable as Defined Cost (excluding for the avoidance of doubt all non-cost hours such as overhead allocation, or where the resources used receive no pay in respect of the hours worked, or where the total daily hours exceed the standard daily hours assumed in the calculation of the relevant Actualized Rate),

for all such Employed Staff and/or Site Labour in that Actualized Category during the period within the Current Actualized Period to which any payment of Defined Cost relates.

- (d) Where at any time the use of Actualized Rates by Project Co are found following an audit by Contracting Authority (or any consultant acting on Contracting Authority's behalf) not to fairly represent a proxy for Defined Cost, then Contracting Authority may, in its sole discretion revoke the approval to use Actualized Rates and Project Co shall forthwith present its Defined Cost as defined herein (less any Defined Cost allowed for or included by Project Co as part of the Corporate Overhead) for reimbursement in lieu of Actualized Rates. If the Defined Cost that is the subject of Actualized Rates remain unaudited for 20 Business Days following a request by the Contracting Authority Representative or Contracting Authority to do so or if any audit shows that any Actualized Rates are not a proxy for their related Defined Cost, then either the Contracting Authority Representative or Contracting Authority may decide, at their sole discretion, to discontinue the use of Actualized Rates by Project Co as a proxy for Defined Cost for the period since the date of the last satisfactory audit of those Actualized Rates to such date as the Contracting Authority Representative or Contracting Authority may notify.
- (e) The Actualized Rate for:
 - (i) Project Co;
 - (ii) each Actualized Category; and
 - (iii) each Current Actualized Period,

is determined at the expiry of the Preceding Period in accordance with the methodology agreed to by Contracting Authority and Project Co.

- (f) Actualized Rates for Project Co shall be subject to reconciliation not less than once annually (and otherwise where determined by Contracting Authority) by Project Co to demonstrate that the recovery of cost by the use of Actualized Rates for any resource used in performing the Works is not significantly different to the Defined Cost incurred by Project Co for that resource, and such reconciliation shall be audited by Contracting Authority (or any consultant acting on Contracting Authority's behalf).
- (g) Where any discrepancy in the reconciliation is discovered by Contracting Authority (or any consultant acting on Contracting Authority's behalf) in an audit under Section 5.2(f), the matter shall be referred to Contracting Authority for resolution and Contracting Authority must direct that any overpayment is repaid by Project Co to Contracting Authority or that any underpayment is paid by Contracting Authority to Project Co as Defined Cost.

- (h) For Project Co, each Actualized Category and each Current Actualized Period, as soon as practicable following:
 - (i) the end of the relevant Preceding Period; and
 - (ii) the determination of the Actualized Rates for the relevant Current Actualized Period,

the total amount paid or payable at Actualized Rates to Project Co during that Preceding Period (the “**Initial Actualized Amount**”) must be recalculated using the relevant adjusted Actualized Rate determined in accordance with Section 5.2(h)(ii) (the “**Adjusted Actualized Amount**”) and the difference between the Initial Actualized Amount and the Adjusted Actualized Amount (if any) paid to Contracting Authority from Project Co or to Project Co from Contracting Authority (as the case may be) in the next payment otherwise due under this Agreement following determination of such difference (if any) or, if no payment is otherwise due, as a debt due to Contracting Authority or Project Co (as the case may be).

- (i) Project Co using Actualized Rates as a proxy for Defined Cost for Employed Staff and/or Site Labour in each Actualized Category must maintain a review of the trends of its costs and billable hours for each Actualized Category between each Actualized Period, and must promptly report, explain and justify to Contracting Authority any significant difference to the Defined Cost being incurred by it in the relevant Actualized Category during each Current Actualized Period, in order to ensure that any such person has the opportunity to mitigate any adverse trends that may lead to an overspend of Project Co’s estimated expenditure in connection with the Works.
- (j) The determination and use as a proxy for Defined Cost of all Actualized Rates, Initial Actualized Amounts and Adjusted Actualized Amounts under this Agreement must be approved by Contracting Authority and may be audited by Contracting Authority (or any consultant acting on Contracting Authority’s behalf) at any time.

5.3 To the extent that a Subcontractor under its Subcontract uses a specified rate, charge, payment or similar compensation amount as a proxy for Defined Cost in respect of the Works performed under such Subcontract, then Project Co shall ensure that the provisions of this Section 5 shall apply *mutatis mutandis* with respect to any such specified rate, charge, payment or similar compensation amount, including, for certainty, that:

- (a) the use of any such specified rate, charge, payment or similar compensation amount must be approved by Contracting Authority; and
- (b) any such specified rate, charge, payment or similar compensation amount is subject to reconciliation as set forth in Section 5.2.

6. FIXED RATES

6.1 Contracting Authority, at their sole discretion, may agree on fixed rates with Project Co for certain Fixed Rate Categories or a combination where, in the opinion of Contracting Authority:

- (a) the use of a Fixed Rate would not impart a significant commercial risk on Project Co nor present Project Co with a significant commercial opportunity;
 - (b) the costs covered by the Fixed Rate Category are relatively static and the quantification of the components of cost is predictable; and
 - (c) the administrative costs to Project Co and Contracting Authority of managing interim payment and/or audit of Defined Cost would not be commensurate to the relative value of the Fixed Rate Category.
- 6.2 Any Fixed Rate for Project Co may be used under this Agreement as a proxy for Defined Cost (otherwise derived in accordance with this Agreement) for Project Co where and to the extent such Fixed Rate has been approved for use by Contracting Authority in accordance with Section 6.4. For the avoidance of doubt, any approval, deemed approval or provisional approval given by Contracting Authority to the use of Fixed Rates of Project Co under this Section 6.2 does not extend to any Affiliated Subcontractor or Subcontractor, unless approved by Contracting Authority.
- 6.3 By way of example, a Fixed Rate may be an agreed weekly rate for the Project Office that includes related maintenance and running costs set out as a Defined Cost in the Cost Element Allocation Tables.
- 6.4 The provisions of this Section 6.4 apply to the use of Fixed Rates as a proxy for Defined Cost by Project Co in accordance with this Agreement:
- (a) Contracting Authority may from time to time approve a Fixed Rate (or revised Fixed Rate) proposed by Project Co and Project Co shall produce a worked example in respect of the proposed Fixed Rate showing:
 - (i) the unit of measure to which the Fixed Rate applies including any preamble as to how the unit of measure is quantified;
 - (ii) the specific coverage of the proposed Fixed Rate in relation to the Defined Cost identified in the Cost Element Allocation Tables;
 - (iii) the calculation of the Fixed Rate, which, for clarity, shall represent the assessment of the Defined Cost only and exclude Corporate Overhead and Profit;
 - (iv) the Fixed Rate Period to which the Fixed Rate applies;
 - (v) the benefit to Project Co of adopting a Fixed Rate for payment of Project Co's Defined Cost;
 - (vi) demonstration that the criteria in Sections 6.1(a) to 6.1(c) have been met; and
 - (vii) such other information or substantiation as Contracting Authority may reasonably require.
 - (b) Contracting Authority may, or require any consultant acting on Contracting Authority's behalf to, review or investigate any such proposed Fixed Rate and/or its worked example

and may approve the use of a Fixed Rate on a provisional basis (which may be withdrawn by Contracting Authority on a retrospective basis at any time) pending satisfaction of such conditions as Contracting Authority may reasonably require. For the avoidance of doubt, a failure to submit a satisfactory worked example entitles Contracting Authority to withhold approval of the relevant proposed Fixed Rate.

(c) Where and to the extent Fixed Rates have been approved and determined in accordance with this Section 6.4 in respect of:

- (i) Project Co;
- (ii) any Fixed Rate Category; and
- (iii) any Current Fixed Rate Period,

notwithstanding any other provision in this Schedule 48, the Defined Cost payable to Project Co pursuant to this Schedule 48 in respect of any relevant Fixed Rate during the Current Fixed Rate Period are deemed to be the aggregate of:

- (iv) the relevant Fixed Rates; multiplied by
- (v) the quantified amount claimed by Project Co based on the unit of measure and measurement preambles agreed pursuant to Section 6.4(a)(i),

and Project Co shall provide such substantiation as Contracting Authority may reasonably require to demonstrate the calculation in Section 6.4(c)(v).

(d) For duration of any Current Fixed Rate Period, payments agreed by Contracting Authority and made to Project Co using Fixed Rates shall not be subject to audit or further adjustment.

(e) Where at any time, in the opinion of Contracting Authority, the use of an approved Fixed Rate does not fairly represent a proxy for Defined Cost or the Works or services provided by Project Co in respect of an agreed Fixed Rate do not meet the scope of specification presented by Project Co in the worked example in Section 6.4(a), then Contracting Authority may, in its sole discretion:

- (i) require Project Co, within twenty (20) Business Days, to bring the Works or services covered by the Fixed Rate up to the agreed scope and/or specification;
- (ii) require Project Co, within ten (10) Business Days, to submit a revision to the Fixed Rate, following the principles in Section 6.1 and the requirements in Section 6.4(a), for approval by Contracting Authority; or
- (iii) revoke the approval to use a Fixed Rate and Project Co shall forthwith present its Defined Costs as defined in this Schedule 48 for payment.

(f) No sooner than thirty (30) days prior to expiry of the Fixed Rate Period, subject to the agreement of Contracting Authority and Project Co, the Parties may agree to continue to use the Fixed Rate approach and Project Co shall, if Contracting Authority requires, submit

a revision to the Fixed Rate, following the principles in Section 6.1 and the requirements in Section 6.4(a), for approval by Contracting Authority.

- 6.5 To the extent that a Subcontractor under its Subcontract uses a specified rate, charge, payment or similar compensation amount as a proxy for Defined Cost in respect of the Works performed under such Subcontract, then Project Co shall ensure that the provisions of this Section 6 shall apply *mutatis mutandis* with respect to any such specified rate, charge, payment or similar compensation amount, including, for certainty, that:
- (a) the use of any such specified rate, charge, payment or similar compensation amount must be approved by Contracting Authority; and
 - (b) any such specified rate, charge, payment or similar compensation amount is subject to reconciliation as set forth in Section 6.4.

7. AFFILIATED SUBCONTRACTS

7.1 The provisions of this Section 7 will apply in respect of any Works undertaken by Affiliated Subcontractors unless Contracting Authority has agreed otherwise in respect of Project Co Party's proposed Affiliated Subcontract:

- (a) Notwithstanding Section 1, the amount allowable as Defined Cost in relation to an Affiliated Subcontract is:
 - (i) the amount payable under and in accordance with the Affiliated Subcontract; less
 - (ii) the Affiliate Subcontract Fee.

Accordingly, the Affiliate Subcontract Fee is deemed only to be recoverable by Project Co within the Corporate Overhead and Profit (if any) payable to Project Co in respect of the Defined Cost incurred in connection with the applicable Affiliated Subcontract.

- (b) Where and to the extent that an Affiliated Subcontract is priced on an actual cost basis (e.g. cost reimbursable, target cost or otherwise):
 - (i) the component of the Defined Cost (excluding the Affiliate Subcontract Fee) that is payable to Project Co in respect of that Affiliated Subcontract must be determined on the basis that Schedule 48 is deemed to apply to the determination of those actual costs under the Affiliated Subcontract; and
 - (ii) for clarity, Section 7.1(c) will apply notwithstanding the terms of the relevant Affiliated Subcontract, or the amount actually payable in respect of such actual costs under that Affiliated Subcontract.
- (c) Project Co Representative must:
 - (i) within 20 Business Days of the end of each Financial Year; and

- (ii) at the end of the later of the final (i) TPA Warranty Period or (ii) DMCA Warranty Period,

certify that all Defined Cost claimed by Project Co are net of all discounts, incentives, benefits and the like that may have been provided to Project Co by any Project Co Party during the relevant Financial Year.

- (d) The certification under Section 7.1(c) in respect of Project Co must confirm for Project Co and its Affiliated Subcontractor that:

- (i) no Corporate Overhead has been recovered as Defined Cost; and
- (ii) no mark-up, profit and the like (other than the Profit) has been recovered,

by Project Co and its Affiliated Subcontractors and any such recovery of Defined Cost or profit discovered in the course of any audit must be repaid forthwith by Project Co.

8. AUDIT

- 8.1 Contracting Authority (or any consultant acting on Contracting Authority’s behalf) shall carry out the audits described in Section 26.2 (*Information and General Audit Rights*) of this Agreement.

APPENDIX A TO SCHEDULE 48

COST ELEMENT ALLOCATION TABLES RULES

1. **DISALLOWED COSTS**

- 1.1 The following amounts, fees, costs, expenses, disbursements, reimbursements, liabilities, payments, taxes, fines, penalties, losses or damages (including fees, costs, expenses and disbursements in respect of legal, accounting, financial advisory, consultancy or other professional or expert services) suffered or incurred by Project Co or any Project Co Party will not be Defined Cost (and to the extent that they have previously paid or have been recognized as Defined Cost will be credited against Defined Cost values or payments):
- (a) any costs or expenses excluded from Defined Cost under this Agreement;
 - (b) related to, in respect of or arising out of the performance of any Works or services which cannot be properly and reasonably justified by Project Co's or Project Co Party's accounts and records;
 - (c) related to, in respect of or arising out of equipment and resources not used by Project Co or a Contracting Authority Party in connection with the Works (for clarity, this does not include reasonable equipment or resource downtime provided such equipment or resource is intended to be used in connection with the Works);
 - (d) related to, in respect of or arising out of defending or prosecuting lawsuits or claims against Project Co or any Project Co Party (including payment of judgements, awards, orders, damages, restitution, compensation or interest), unless approved by Contracting Authority;
 - (e) related to, in respect of or arising out of a Subcontract (including a contract for supply) where Project Co has not complied with the Procurement Management Plan (as approved pursuant to this Agreement) in respect of that Subcontract (or contract for supply);
 - (f) related to, in respect of or arising out of Project Co or any Project Co Party defending any prosecution or claim brought against Project Co or any Project Co Party, as applicable, by a Governmental Authority by reason of an alleged breach of Applicable Law, unless approved by Contracting Authority, having regard to the nature of the breach and the effect of the breach on the Project, the Works and Contracting Authority;
 - (g) related to, in respect of or arising out of:
 - (i) any material breach or material non-compliance of this Agreement by Project Co;
 - (ii) any material breach or material non-compliance of any Subcontract;
 - (iii) any Project Co Event of Default;
 - (iv) any default or event of default (however defined) by a Subcontractor (or Project Co, if applicable) under any Subcontract;

- (v) the termination of this Agreement pursuant to Section 31 (*Project Co Default*) of this Agreement (except as otherwise provided therein); or
- (vi) the termination of any Subcontract, except where such termination has been directed by Contracting Authority in writing,

provided that this Section 1.1(g) shall not apply:

- A. to costs or expenses incurred or suffered to remedy delays experienced by Project Co in carrying out the Works:
 - (1) as identified in Project Co’s Recovery Works Schedule or in the Recovery Works Schedule Report;
 - (2) to achieve any TPA Substantial Completion by the applicable TPA Longstop Date; or
 - (3) to achieve any TPA Final Completion by the applicable TPA Scheduled Final Completion Date; and
- B. to any rectification of Construction Defects by Project Co or any Project Co Party prior to the applicable TPA Warranty Period or DMCA Warranty Period, to the extent that such Construction Defects are not caused by or attributed to, in any way, in whole or in part, willful misconduct, a deliberate act of wrongdoing, fraud or gross negligence by Project Co or any Project Co Party, or represent the Works (or parts thereof) being performed or completed by Project Co or any Project Co Party in a manner demonstrating material non-compliance with Good Industry Practice;
- (h) any penalties or fines in respect of or arising out of the payment of any fees, charges, duties, royalties, licences and statutory charges of any kind imposed with respect to the Works;
- (i) costs or expenses incurred by Project Co or any Project Co Party prior to the DMCA Effective Date, including costs or expenses in respect of the prequalification and procurement and the negotiation and execution of this Agreement, but excluding any costs in respect of Early Contractor Activities agreed to by Contracting Authority;
- (j) any amount paid or payable by or on behalf of Project Co or any Project Co Party to a Supplier to the extent that Project Co is entitled to claim and retain an input tax credit in respect of that payment and any costs or expenses in relation thereto;
- (k) incurred in respect of, arising out of or in connection with a Change in Control under this Agreement;
- (l) suffered or incurred by Project Co or any Project Co Party related to, in respect of or arising out of:
 - (i) any Dispute or Integration Dispute, including any claim or demand that could form the basis of any Dispute or Integration Dispute; and

(ii) the resolution of any Dispute pursuant to Schedule 27 – Dispute Resolution Procedure or any Integration Dispute pursuant to the RSSOM Interface Agreement, including, for certainty, any costs or expenses payable by Project Co as expressly described in Schedule 27 – Dispute Resolution Procedure or the RSSOM Interface Agreement,

except to the extent that it is finally determined pursuant to Schedule 27 – Dispute Resolution Procedure or the RSSOM Interface Agreement that all or any portion of such costs or expenses are payable by Contracting Authority;

- (m) any legal or consultant cost related to, in respect of or arising out of a payment expert determination to resolve an issue that arises between Contracting Authority and Project Co in respect of an amount payable, and any costs or expenses in relation thereto;
- (n) suffered or incurred by Project Co or any Project Co Party related to, in respect of or arising out of any Warranty Claims (which, for clarity, amounts in respect of the Warranty Claims up to the DMCA Warranty Work Reimbursement Cap or TPA Warranty Work Reimbursement Cap, as applicable, shall also comply with Schedule 42 – Payment Procedures), provided that this Appendix A shall not apply to Section Minor Deficiencies or Minor Deficiencies;
- (o) any amendment, revision, change or other modification of or to the design (or any part thereof) of the New Third Party Infrastructure arising out of or in connection with any negligent act or omission of Project Co or any Project Co Party or a breach by Project Co of any of its obligations under this Agreement;
- (p) any due diligence matters in respect of or relating to the Project, including in respect of due diligence matters relating to real property, including the Lands, of or associated with the Project, except to the extent that any such costs or expenses have been approved by Contracting Authority;
- (q) the preparation of any Project Co TPA Variation Notice under or pursuant to Schedule 22 – Estimates, Variations and Proposals;
- (r) the exercise or enforcement by Project Co or any Project Co Party of any of its rights, remedies, powers or entitlements under or pursuant to this Agreement, including any right of indemnification, except to the extent that it is finally determined pursuant to Schedule 27 – Dispute Resolution Procedure that all or any portion of such costs or expenses are payable by Contracting Authority;
- (s) the exercise or enforcement by Contracting Authority, any Contracting Authority Party or any Province Person of any of its rights, remedies, powers or entitlements under or pursuant to this Agreement, including such costs or expenses incurred by Project Co to pay or satisfy any reimbursement or similar obligation of Project Co to Contracting Authority of any costs or expenses incurred by Contracting Authority in relation to such exercise or enforcement by Contracting Authority;

- (t) related to, in respect of or arising out of an amount paid (or payable) to satisfy a claim under an indemnity provided pursuant to this Agreement or any Subcontract, and any costs or expenses in relation thereto, unless approved by Contracting Authority; or
- (u) any cost that is identified as being at Project Co’s own cost and expense under:
 - (i) Section 11.9(b)(vii) (*Protection of Works and Property and Reinstatement Work*) of this Agreement; and
 - (ii) Section 11.25(c) (*Demolition Requirements*) of this Agreement;
 - (iii) Section 16.6(f)(i) (*Adjustments to Metrolinx Lands Available to Project Co*) of this Agreement;
 - (iv) Section 16.6(g) (*Adjustments to Metrolinx Lands Available to Project Co*) of this Agreement;
 - (v) Section 41.1(g)(ii) (*Project Co Indemnities to Contracting Authority*);
 - (vi) Section 6.1 (*Property Access Closure Agreements*) of Schedule 36 – Property Access Matters; and
 - (vii) Section 4.1(b) (*Project Work Proposals*) of Schedule 22 – Estimates, Variations and Proposals.

2. STAFF AND SITE LABOUR

- 2.1 Project Co’s staff and Site Labour costs to be recovered as Defined Costs must consist of the actual amounts paid as salaries and wages or worker’s total earnings, including pre-authorized overtime, to the relevant employees, together with other Defined Costs paid by Project Co in relation to the employment of those employees.
- 2.2 Entitlement under Table B of the Cost Element Allocation Tables shall be limited to Project Co’s staff who are principally engaged in carrying out work on the Project, including the design and/or design approval process, provided they are detailed on a staff list approved by Contracting Authority, regardless of whether such staff are located at a Corporate Office, Project Office, working from home, or working from some other location approved by Contracting Authority.
- 2.3 The purposes of Table B of the Cost Element Allocation Tables, “Project Specific” means staff members who principally carry out work of any description in respect of the Project, with the prior approval of Contracting Authority, excluding support staff who work at a Corporate Office. No distinction shall be made between staff working for different divisions within the same legal entity.
- 2.4 Pension contributions shall exclude special pension contributions that Project Co may have to make to a pension fund to make up any shortfall in funding or any actuarial corrections to employer pension schemes.
- 2.5 Any bonus or incentive payment to which the employee is entitled by virtue of their contract of employment shall exclude any bonuses that are related to the profitability of Project Co’s business

or Project Co’s performance whilst engaged upon the Works unless expressly authorised by Contracting Authority.

2.6 Where Project Co claims non-productive costs, for holidays, sickness, maternity/paternity and training, it must demonstrate such costs have been reasonably incurred to the reasonable satisfaction of Contracting Authority.

2.7 If a percentage uplift is applied to productive labour and staff costs to compensate for non-productive time, for holidays, sickness, maternity/paternity and training, then the calculation and basis of the uplift must be audited by Contracting Authority for their approval. Contracting Authority shall review any such uplift at least every three calendar months and any adjustment required shall be made by Project Co in the next application for payment following approval by Contracting Authority of any revised uplift.

2.8 Staff payroll burden (“**Staff Payroll Burden**”) consists of:

- (a) pre-authorized overtime, night/weekend or vacation pay allowances, and sick pay (in accordance with Project Co’s standard HR policies);
- (b) WSIB premiums, if applicable and in accordance with Applicable Law, but only to the extent that Project Co can demonstrate to the satisfaction of Contracting Authority that such premium is a project specific cost and not corporate overhead;
- (c) employer contributions to private health/dental insurance and life insurance as per the employee’s contract of employment;
- (d) employer contributions to OHIP premiums or other provincial employer health tax in accordance with Applicable Laws;
- (e) employer contributions to approved pension schemes (excluding discretionary contributions and special pension contributions that the employer may have to make to the pension fund to make up any shortfall or any actuarial corrections to employer pension schemes);
- (f) mandatory employer contributions in respect of Canada Pension Plan (CPP), Quebec Pension Plan (QPP) and/or Employment Insurance (EI) in accordance with Applicable Law, or equivalent plans subject to approval by Contracting Authority;
- (g) Project Specific staff training inclusive of time spent and course fees, subject to prior written approval by Contracting Authority; and
- (h) an allowance, subject to the approval by Contracting Authority as outlined in Section 5, to cover any costs arising out of or in connection with Project Specific travel, relocation, and accommodation. Pursuant to Section 5.2(a)(v), Contracting Authority may request information demonstrating that this allowance is fair and reasonable.

2.9 Site Labour payroll burden (“**Labour Payroll Burden**”) consists of:

- (a) Payments in respect of public holidays and pre-authorized vacation;

- (b) WSIB premiums in accordance with Applicable Law, but only to the extent that Project Co can demonstrate to the satisfaction of Contracting Authority that such premium is a project specific cost and not corporate overhead;
- (c) Sickness or injury payments (not recovered by insurance);
- (d) Employer’s contributions to annual vacation credits, pensions, death benefit and other employment benefit schemes (excluding special pension contributions that Project Co (as employer) may have to make to the pension fund to make up any shortfall or any actuarial corrections to employer pension schemes);
- (e) Small tool allowance, subject to the approval by Contracting Authority;
- (f) Medical examinations where approved by Contracting Authority (except in the case of pre-existing medical conditions);
- (g) Personal protective equipment and clothing (subject to standard relevant Project Co policy); and
- (h) Project Specific employee training inclusive of time spent and course fees, subject to prior written authorisation by Contracting Authority.

3. MACHINERY AND EQUIPMENT

3.1 Project Co shall seek and instigate the most economical solution to the provision of machinery and equipment, including:

- (a) evaluating whether it is more economic to rent or hire in lieu of purchasing any item of machinery or equipment; and
- (b) evaluating whether it is more economic to rent or hire any item of machinery and equipment from an Affiliate company or a sub-contractor or supplier not affiliated to Project Co.

3.2 Machinery and equipment shall include, but not be limited to, machinery, tools, consumables and equipment required for the design, construction, installation, testing, commissioning and management of the Works, forming part of the Works, either purchased, hired or leased (including excavators, loaders, compactors, dozers, tunnel boring machines, overhead gantries, drill rigs, concrete plants, cranes, wheeled and tracked machinery, and small tools and supplies.

3.3 Incorporated in the Works

- (a) For machinery and equipment that is to be permanently incorporated into the Works, costs shall include transportation (including customs, duties and the like), storage, temporary protection, testing, certification, spare parts/consumables (requested by Contracting Authority), extended warranties (requested by Contracting Authority), providing/removing packaging and credits/returnable deposits on return packaging.

3.4 Rented or hired

- (a) For machinery and equipment that is rented or hired by Project Co (including from an Affiliated Subcontractor), Project Co must demonstrate to the reasonable satisfaction of Contracting Authority that the Defined Costs are reasonable when compared to market rental or hire rates, with reference to the OPSS 127 Rate, where applicable.

3.5 Project Co Owned

- (a) For machinery and equipment purchased specifically for use by Project Co to execute the Works, the cost is the purchase price or the first cost if Project Co assembled, fabricated or otherwise produced the item of machinery and equipment.
- (b) The Defined Cost is credited with the residual values, as actually realized upon disposal or if not disposed of by Project Co, at the value agreed by Contracting Authority after that machinery and equipment is no longer required by Project Co to execute the Works.
- (c) For machinery and equipment that is owned by Project Co but not purchased specifically for use by Project Co to execute the Works, Project Co must demonstrate to the reasonable satisfaction of Contracting Authority that the Defined Costs are reasonable when compared to market hire or rental rates, with reference to the OPSS 127 Rate, where applicable.
- (d) To the extent any depreciation rates are required to be used by Project Co to determine Defined Costs for Project Co owned machinery and equipment (including where amortisation is assumed in the rates), such rates must be made in accordance with Project Co's standard depreciation rate policy at the time, which may be audited by Contracting Authority.

4. MATERIALS

4.1 Costs for material, including Subcontractor's material, to be incorporated into the Works include:

- (a) transportation (including customs, duties and the like) and haulage;
- (b) insurance (if such insurance is not covered under IOCIP) whilst in storage and/or transit;
- (c) samples, tests and test pieces;
- (d) providing and removing packaging; and
- (e) credits or returnable deposits on return packaging;

4.2 Materials shall include, but not be limited to, an article, material, or supply brought to the construction site or otherwise required by Project Co or a subcontractor for incorporation into the Works (including concrete, reinforcing steel, connectors, wood, paint, glazing and cladding). For clarity, materials shall not include any articles, materials or supplies for the Project Office as set out in Table D of the Cost Element Allocation Table.

4.3 The Defined Cost shall be credited with costs recovered by Project Co through the resale or disposal of existing materials and/or the resale of surplus of materials ordered for the Works and paid for by Contracting Authority.

5. SUBCONTRACTS

5.1 For entitlement under Table G of the Cost Element Allocation Tables:

- (a) Subcontracts representing Non-Primary Project Co Team Subcontracts or any Subcontracts priced on an actual cost basis (e.g., cost reimbursable, target cost or otherwise) and/or engaged on a single source or sole source basis or by way of any other non-competitive procurement process are subject to Section 2.6; and
- (b) unless approved by Contracting Authority, shall not apply in respect of Affiliated Subcontracts. The provisions of Sections 11.39 (*Affiliated Subcontractors*) and 11.40 (*Competitive Procurement Requirements*) of this Agreement and Section 1 (*Disallowed Cost*) of Appendix A of this Schedule 48 shall apply.

APPENDIX B TO SCHEDULE 48

COST ELEMENT ALLOCATION TABLES

[REDACTED]

SCHEDULE 49

TARGET PRICE GAINSHARE / PAINSHARE REGIME

1. GENERAL

1.1 Definitions

- (a) In this Schedule 49, unless the context indicates a contrary intention, terms which are defined in this Agreement (and not otherwise defined in this Schedule 49) shall have meanings given to them in this Agreement and the following terms shall have the following meanings:
- (i) “**Defined Cost Overage**” means the amount equal to the difference between: (A) the Defined Cost component of the Reimbursable Price; and (B) the Defined Cost component of the applicable Target Price (which amount must be a positive amount).
 - (ii) “**Defined Cost Savings**” means the amount equal to the difference between: (A) the Defined Cost component of the applicable Target Price; and (B) the Defined Cost component of the Reimbursable Price (which amount must be a positive amount).
 - (iii) “**Gainshare**” has the meaning given in Section 2.2(a).
 - (iv) “**Gainshare Cap**” has the meaning given in Section 4.1(a).
 - (v) “**Gainshare Fee Multiplier**” is the amount calculated in accordance with Section 2.2(a).
 - (vi) “**Painshare**” has the meaning given in Section 2.3(a).
 - (vii) “**Painshare Cap**” has the meaning given in Section 3.1(a).
 - (viii) “**Painshare Fee Multiplier**” is the amount calculated in accordance with Section 2.3(a).
 - (ix) “**Post Target Price Defined Cost**” means the Defined Cost incurred by Project Co on and after the Defined Cost component of the Reimbursable Price of performing any TPA Works under this Agreement and any Target Price Agreement then in effect, as applicable, has exceeded the Defined Cost component of the applicable Target Price.
 - (x) “**Reimbursable Price**” means, in respect of any TPA Works, the total verified sum of:
 - A. all Defined Cost; and
 - B. all Corporate Overhead and Profit,

in each case payable by Contracting Authority to Project Co in accordance with this Agreement until the applicable TPA Final Completion Date.

- (xi) “**Reimbursable Price Confidence Level**” has the meaning given in Section 2.1(a).
- (xii) “**Target Price QCRA**” means the quantitative cost risk analysis curve prepared in respect of the Defined Cost component of the Target Price and used to set the Target Price, submitted by Project Co as part of its TPA Proposal in accordance with Section 8.1, as the same may be adjusted in accordance with Section 8.2.
- (xiii) “**Target Price QCRA Value**” means each applicable value set out in the Target Price QCRA Values Table attached to the Target Price Agreement then in effect.
- (xiv) “**Target Price QCRA Values Table**” means the table in Attachment 12 (*Target Price QCRA*) to the Target Price Agreement then in effect that sets out the applicable Target Price QCRA Values in the form of Appendix A to this Schedule 49.

1.2 Project Incentives Regime

- (a) Schedule 43 – Incentives and Construction Enforcement Regime and this Schedule 49 set out the general principles as to the manner in which the incentives regime for the Project is to operate.
- (b) The incentives regime for the Project is separated into five components, namely:
 - (i) the incentive regime set forth in Section 1 (*Milestone Incentive Events*) of Schedule 43 – Incentives and Construction Enforcement Regime, and which may result in Milestone Payments becoming payable by Contracting Authority to Project Co;
 - (ii) the incentive regime set forth in Section 2 (*Integration Incentive Events*) of Schedule 43 – Incentives and Construction Enforcement Regime, and which may result in Integration Incentive Payments becoming payable by Contracting Authority to Project Co;
 - (iii) the incentive regime set forth in Section 3 (*Key Result Areas Regime*) of Schedule 43 – Incentives and Construction Enforcement Regime, and which may result in a Performance Reward Amount payable by Contracting Authority to Project Co or a Performance Liability Amount payable by Project Co to Contracting Authority (if any as the case may be);
 - (iv) the incentive regime set forth in Section 4 (*Construction Enforcement Regime*) of Schedule 43 – Incentives and Construction Enforcement Regime, and which may result in Construction Period Deductions becoming payable by Project Co to Contracting Authority; and
 - (v) the cost component set out in Section 2 of this Schedule 49, in respect of the Reimbursable Price underrun or overrun from the then applicable Target Price, which may result in a Gainshare payable by Contracting Authority to Project Co

or a Painshare payable by Project Co to Contracting Authority (if any and as the case may be).

1.3 Demonstrating Reasons For Cost Savings

- (a) Project Co acknowledges and agrees that it must submit a report to Contracting Authority at the time that any Gainshare is calculated to be payable under this Agreement which:
 - (i) details each of the cost savings which have been achieved by Project Co against the Reimbursable Price;
 - (ii) provides reasoning as to how the cost savings have been achieved by Project Co; and
 - (iii) demonstrates how Project Co, in achieving the cost savings, has performed any TPA Works in accordance with this Agreement and any Target Price Agreement then in effect, as applicable.

2. REIMBURSABLE PRICE UNDERRUN OR OVERRUN (COST COMPONENT)

2.1 Interpretation

- (a) For the purposes of this Section 2, the “**Reimbursable Price Confidence Level**” shall be determined by establishing the confidence level on the Target Price QCRA that matches the Defined Cost component of the Reimbursable Price, being the Target Price QCRA Value under the column titled “Risk-Adjusted Value” in the applicable Target Price QCRA Values Table.

2.2 Gainshare

- (a) If the Defined Cost component of the Reimbursable Price of performing all applicable TPA Works is less than the applicable Defined Cost component of the Target Price then, as soon as practicable after the TPA Final Completion Date, Contracting Authority shall confirm the gainshare amount payable by Contracting Authority to Project Co (the “**Gainshare**”) as follows:
 - (i) A Gainshare Fee Multiplier shall be calculated as follows and as set out in the applicable Target Price QCRA Values Table:
 - A. where the Reimbursable Price Confidence Level is between [REDACTED] and [REDACTED], the Gainshare Fee Multiplier shall increase linearly from [REDACTED] at [REDACTED] to [REDACTED] at [REDACTED];
 - B. where the Reimbursable Price Confidence Level is between [REDACTED] and [REDACTED], the Gainshare Fee Multiplier shall increase linearly from [REDACTED] at [REDACTED] to [REDACTED] at [REDACTED];

- C. where the Reimbursable Price Confidence Level is between [REDACTED] and [REDACTED], the Gainshare Fee Multiplier shall increase linearly from [REDACTED] at [REDACTED] to [REDACTED] at [REDACTED]; and
 - D. where the Reimbursable Price Confidence Level is lower than [REDACTED], the Gainshare Fee Multiplier shall be [REDACTED].
- (ii) Subject to the Gainshare Cap, Project Co’s Gainshare shall be equal to the product of the Gainshare Fee Multiplier multiplied by the Corporate Overhead and Profit component of the Reimbursable Price.
- (b) As soon as practicable after calculating the Gainshare in accordance with Section 2.2(a), and subject to Sections 1.3 and 4, Contracting Authority shall make a payment (if any) of the Gainshare to Project Co in accordance with Schedule 42 – Payment Procedures.

2.3 Painshare

- (a) If the Defined Cost component of the Reimbursable Price of performing all applicable TPA Works is greater than the Defined Cost component of the applicable Target Price then, as soon as practicable after each Payment Period and following the TPA Final Completion Date, Contracting Authority shall confirm the painshare amount payable by Project Co to Contracting Authority (the “**Painshare**”) as follows:
 - (i) A Painshare Fee Multiplier shall be calculated as follows and as set out in the applicable Target Price QCRA Values Table:
 - A. where the Reimbursable Price Confidence Level is between [REDACTED] and [REDACTED], the Painshare Fee Multiplier shall increase linearly from [REDACTED] at [REDACTED] to [REDACTED] at [REDACTED]; and
 - B. where the Reimbursable Price Confidence Level is greater than [REDACTED], the Painshare Fee Multiplier shall be [REDACTED].
 - (ii) Subject to the Painshare Cap, Project Co’s Painshare shall be equal to the product of the Painshare Fee Multiplier multiplied by the Corporate Overhead and Profit component of the Reimbursable Price.

3. PAINSHARE CAP

3.1 General

- (a) Subject to Section 3.1(b), the maximum liability of Project Co to pay Painshare under this Agreement is capped at, and shall not exceed, an amount equal to the Corporate Overhead and Profit components of the Reimbursable Price at the time the Defined Cost component of the Reimbursable Price is equal to the Target Price (the “**Painshare Cap**”). For clarity, the Painshare Cap will be adjusted to reflect any adjustments of the applicable Target Price made in accordance with the terms of this Agreement and any Target Price Agreement then in effect, as applicable.

- (b) The Painshare Cap shall be reduced by:
- (i) the amount of the Performance Liability Amount paid by Project Co to Contracting Authority pursuant to and in accordance with Schedule 43 – Incentives and Construction Enforcement Regime;
 - (ii) the amount of the Construction Period Deductions deducted by Contracting Authority pursuant to and in accordance with Schedule 43 – Incentives and Construction Enforcement Regime; and
 - (iii) an amount equal to **[REDACTED]**% of the Defined Cost component of the Reimbursable Price,

provided that (A) the Painshare Cap may never be reduced to a number less than 0, and (B) the Painshare Cap shall cease to reduce once Project Co’s liability for Painshare meets the Painshare Cap.

4. GAINSHARE CAP

4.1 General

- (a) The maximum liability of Contracting Authority to pay Gainshare under this Agreement is capped at, and shall not exceed, an amount equal to the Defined Cost Savings (the “**Gainshare Cap**”). For clarity, the Gainshare Cap will be adjusted pursuant to Section 8.2 to reflect any adjustments of the applicable Target Price made in accordance with the terms of this Agreement and any Target Price Agreement then in effect, as applicable.

5. GAINSHARE AND PAINSHARE ON TERMINATION

5.1 General

- (a) On termination of this Agreement or any Target Price Agreement then in effect, as applicable, any amounts recoverable by Contracting Authority or Project Co on account of Painshare and/or Gainshare, if any, shall be determined in accordance with Schedule 23 – Compensation on Termination.

6. PAYMENT OF CORPORATE OVERHEAD AND PROFIT AFTER THE REIMBURSABLE PRICE EXCEEDS THE TARGET PRICE

6.1 General

- (a) If the Defined Cost component of the Reimbursable Price of performing any TPA Works under this Agreement and any Target Price Agreement then in effect, as applicable, has exceeded the Defined Cost component of the applicable Target Price, then Contracting Authority shall have no further obligation to pay, and shall make no further payments of, Corporate Overhead and Profit to Project Co.
- (b) Notwithstanding the foregoing, or anything to the contrary contained in this Agreement, in the event that the Painshare exceeds the Painshare Cap, then an amount equal to **[REDACTED]**% of the Defined Cost for TPA Works performed and which would

otherwise attract the payment of Corporate Overhead and Profit in accordance with Schedule 47 – Corporate Overhead and Profit, from and after such time, shall be due and payable by Contracting Authority to Project Co.

7. PAYMENT OF DEFINED COST AFTER THE REIMBURSABLE PRICE EXCEEDS THE TARGET PRICE

- (a) From and after the point in time when the Defined Cost component of the Reimbursable Price of performing any TPA Works exceeds the Defined Cost component of the applicable Target Price, as soon as practicable after each Payment Period, Contracting Authority shall confirm the amount of Painshare accrued in the applicable Payment Period, in accordance with Section 2.3(a).
- (b) Subject to Section 3.1(a), Contracting Authority shall be entitled to set-off any Painshare against the aggregate Post Target Price Defined Cost, provided that the maximum amount that Contracting Authority may set-off against the aggregate Post Target Price Defined Cost shall be limited to the aggregate Defined Cost Overage.
- (c) Subject to Section 3.1(a), following Contracting Authority’s final assessment of the Painshare after the TPA Final Completion Date in accordance with Section 2.3, Project Co shall not be liable for any amount of the Painshare that exceeds the Defined Cost Overage.

8. DEVELOPMENT OF TARGET PRICE QCRA

8.1 General Requirements

- (a) Project Co shall develop the Target Price QCRA in accordance with the Project Execution Plan and shall submit as part of its TPA Proposal a completed Target Price QCRA Values Table in the form attached as Appendix A to this Schedule 49.

8.2 Adjustment to the Target Price QCRA

- (a) If an Adjustment Event occurs, the Target Price QCRA shall be adjusted to the extent attributable to such Adjustment Event.

8.3 Merging of Multiple Target Price Cost Curves

- (a) Contracting Authority may, in its sole discretion, require Project Co to merge the Target Price QCRA with the Target Price QCRA for any prior Target Price Agreement, if applicable, for each “Risk-Adjusted Value” attributed to a cumulative probability in the Target Price QCRA Values Table using a weighted average approach based on the value of the respective TPA Scopes, and to include such merged Target Price QCRA Values in its TPA Proposal.

APPENDIX A TO SCHEDULE 49

TARGET PRICE QCRA VALUES TABLE

[REDACTED]